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AGENDA COVER MEMO

AGENDA DATE: August 17, 2011 (Public Hearing)
Board of County Commissioners, sitting as Local Contract Review Board (LCRB) for Lane County as Local Contract Agency

DEPARTMENT: Office of Legal Counsel

PRESENTED BY: Trina Laidlaw

AGENDA TITLE: In the Matter of Amending Lane Manual Chapter 20 Public Contracting Rules For Construction Manager/General Contractor, Design/Build, Energy Savings Performance Contracts; For General Exemption Process; For Appeals Denying Prequalification, Disqualification and Debarment, Sole Source, and for Consistency with Law and Current Practice

I. MOTION

Move to amend Lane Manual Chapter 20 as to Construction Manager/General Contractor, Design/Build, and Energy Savings Performance Contracts; as to general rule to exempt contracts from formal competitive bidding; as to appeals denying prequalification, disqualification, debarment and sole source; and as to other rules for clarification and consistency with law and current practice.

II. ISSUE OR PROBLEM

Lane Manual Chapter 20, the first chapter of public contracting rules for Lane County generally includes matters which the Board, as Lane County's Local Contract Review Board (LCRB) must decide. The County needs to update/add certain rules applicable to public improvement contracts when a County department, primarily Management Services, wants to competitively select and contract without using a formal bidding process. This includes using a Construction Manager/General Contractor model and Energy Savings Performance contracting where selection is through a Request for Proposal process. The addition of a Design/Build rule, while it may not be a current County need, would set the stage for opportunities which may arise in the future. There are additional "housekeeping" amendments which would improve current rules and make them consistent with current practice and law.

III. DISCUSSION

There are certain proposed rule changes covered by this agenda item which affect public improvement contracts, and more specifically certain exemptions from formal competitive bidding. Accordingly, an ad was published in the Daily Journal of Commerce (on July 29) more than 14 days in advance of this August 17 hearing, notifying interested parties that they could request copies of proposed Findings to support the rule changes and could appear and present comments on these rule changes.

The statutory test to be applied by the Board in considering approval of changes to exemption rules include:

1. It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for the public improvement contracts; and
2. The awarding of public contracts pursuant to the exemption will likely result in substantial cost savings to the public agency.

More specific criteria to consider for the findings include:

- a. Operation, budget and financial data
- b. Public benefits
- c. Value engineering
- d. Specialized expertise required
- e. Public safety
- f. Market conditions
- g. Technical complexity
- h. Funding source

3. In approving rule changes regarding exemptions, the Board should:

- a. Where appropriate, direct the use of alternate contracting and purchasing practices that take into account market realities and modern practices consistent with encouraging competition;
- b. Require and approve or disapprove written findings that support the exemption from requirements of competitive bidding.

The proposed Findings made available to the public address the statutory test and criteria above and are attached to this agenda item.

A. Analysis

The following is a summary of the proposed LM Chapter 20 rule changes:

1. Certain LM Chapter 20 rule changes are intended to reorganize/clarify rather than make substantive changes, and are accordingly "housekeeping" in nature: LM 20.085 Purpose and Authority; LM 20.095 Definitions for "Department", "Public Agency"; LM 20.100 to eliminate "public body" and replace with "County"; LM 20.250 to eliminate "public body" and replace with "County, its Commissioners, officers, employees and agents".
2. Certain LM Chapter 20 rule changes are proposed to reflect legal requirements: LM 20.265 adds the public hearing requirement for exempting a public improvement contract from formal competitive bidding if there is not another recognized exemption provided in law or County rules, adds some additional guidance for CM/GC and Design/Build contracts; LM 20.270 clarifies the standards for the LCRB to review appeals of denials of prequalification, decisions to debar (goods or services), and decisions to disqualify (public improvement) based on statute.

3. LM 20.253. CM/GC. This rule, while it appears to replace current LM 20.160, actually incorporates the provisions of LM 20.160 authorizing an RFP process rather than a competitive bid process and expands to include:

a. Specific CM/GC procedures and guidelines for the County department to obtain pre-approval from the Board for an exemption from formal competitive bidding in order to use CM/GC for particular building projects. This is consistent with law and Model Rules and would give guidance to the department and Board for their initial consideration of the project. (Also, in addition to this initial pre-approval, current practice would continue for the Board to again consider the project once the Guaranteed Maximum Price is set).

b. Authorization for "early work", when necessary, before the CM/GC contractor presents a Guaranteed Maximum Price. This change is based upon an Oregon Department of Administrative Services rule establishing this "early work" option within the CM/GC model. In the past, there have been a few times "early work" questions have arisen for building projects conducted by Management Services. The proposed rule would permit the County Administrator to waive competitive bid requirements for early work if it is critical to avoiding delay costs or to continue County services and operations without interruption. Having a recognized procedure including County Administrator oversight and approval would likely help these projects run more smoothly.

c. There are additional provisions covering proposal evaluation factors, pricing mechanisms, negotiations, and contract requirements which are consistent with current practice and county requirements.

4. LM 20.254. Design/Build. This new rule is patterned after the AG's Model Rule, and provides procedures and guidelines for the County department to obtain pre-approval from the Board for an exemption from formal competitive bidding in order to use Design/Build for particular building projects. It authorizes use of an RFP process instead of competitive bidding process for approved projects.

Based upon the design and construction resources in Lane County, the design/build option has not been a County need. The County's building projects are generally large. Locally, construction contractors tend to be separate businesses from architects and engineers. There are likely no local companies which combine design and construction into a single point of responsibility and which could do the County work. Such companies may develop in the future or companies from metropolitan areas such as Portland may become more interested in competing than in the past. The main purpose for adopting this rule now is to lay a foundation in the event a future opportunity arises. The County department would then have a procedural rule in place to be able to try the design/build model.

5. LM 20.255. Energy Savings Performance Contracting (ESPC). The Legislature determined that ESPC is exempt from formal competitive bidding in ORS 279.335(1) once a public entity adopts procedural rules. The County currently has an energy savings performance contractor working on projects for Community Corrections and for the PSB/Courthouse steam conversion (McKinstry). But, it began with Management Services using a general exemption rule to request initial pre-approval from the Board for an exemption from formal competitive bidding to hire an energy service company for this project, and

without knowing whether this would be a beneficial model. That step is not required with adoption of these proposed rules, although Management Services may report to the Board about its major construction plans as a matter of course. The proposed rules are consistent with standard practice in this field and with the AG's Model Rules. With the adoption of these rules, Management Services would use an RFP process and bring any proposed ESPC contract to the Board for approval before the project could proceed. The Board would approve the project, but would not need to approve an exemption from formal competitive bidding in order to use an RFP. These rules streamline the process.

There are additional provisions included for contract terms, proposal evaluation factors, negotiation, licensing, and performance security which should be consistent with current practice and County requirements.

IV. ALTERNATIVES/OPTIONS

1. Approve the motion to adopt all amendments to Lane Manual Chapter 20.
2. Approve only some of the amendments to Lane Manual Chapter 20.
3. Not approve the motion to adopt the amendments to Lane Manual Chapter 20. This would mean that the County rules would not be as consistent with law and practice as they should be.

V. RECOMMENDATION

Alternative 1 is recommended

VI. IMPLEMENTATION

Upon approval by the Board, Lane County's public contracting rules will be amended.

VII. ATTACHMENTS

Board Order
Findings to Support LM Chapter 20 amendments

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON
SITTING AS LOCAL CONTRACT REVIEW BOARD for THE LOCAL CONTRACT AGENCY

ORDER NO. 11-08-__ - __

IN THE MATTER OF AMENDING LANE MANUAL
CHAPTER 20 PUBLIC CONTRACTING RULES
FOR CONSTRUCTION MANAGER/GENERAL
CONTRACTOR, DESIGN/BUILD, ENERGY
SAVINGS PERFORMANCE CONTRACTS; FOR
GENERAL EXEMPTION PROCESS; FOR
APPEALS DENYING PREQUALIFICATION,
DISQUALIFICATION AND DEBARMENT, SOLE
SOURCE, AND FOR CONSISTENCY WITH LAW
AND CURRENT PRACTICE

WHEREAS, Oregon law establishes a policy that supports public contract rules which can take full advantage of evolving procurement methods as they emerge while preserving competitive bidding as the standard for public improvement contracts unless otherwise exempted;

WHEREAS, the Oregon Attorney General's Model Rules for public contracting (Model Rules) are recognized authority for implementing statutes, although Lane County has appropriately and expressly chosen to adopt its own rules separate from Model Rules;

WHEREAS, certain amendments to Lane Manual Chapter 20 public contracting rules exempting certain public improvement contracts from formal bidding based on Construction Manager/General Contractor, Design/Build, and Energy Savings Performance models would be helpful to Lane County and consistent with Model Rules and relevant rules of other state agencies;

WHEREAS, certain other amendments to Lane Manual Chapter 20 would clarify and provide consistency with law and current practice;

WHEREAS, Lane County is a local contracting agency under state statute, and the Board of Commissioners has taken action to establish itself as the Local Contract Review Board for Lane County to carry out powers and duties under the statutes;

NOW, THEREFORE, sitting as the Local Contract Review Board for Lane County, having examined and considered the findings in Exhibit A, incorporated by this reference, the record submitted and any evidence or testimony provided at the Board's public hearing, the Board adopts the Exhibit A findings and conclusions in support of amendments to LM Chapter 20 public contracting rules;

AND FURTHER, the Board sitting as the Local Contract Review Board and on behalf of Lane County as a local contracting agency, orders as follows:

Lane Manual Chapter 20 is hereby amended by deleting, substituting, and adding the following Chapter:

DELETE THIS CHAPTER

LM 20
as located on page 20-1 through 20-16
(a total of 17 pages)

INSERT THIS CHAPTER

LM 20
as located on page 20-1 through 20-22
(a total of 23 pages)

Said Chapter is attached hereto and incorporated herein by reference. The purpose of this substitution and addition is to amend Lane Manual Chapter 20 Public Contracting Rules for Construction Manager/General Contractor, Design/Build, Energy Savings Performance Contracts; for General Exemption Process; for Appeals Denying Prequalification, Disqualification and Debarment, Sole Source, and for Consistency with Law and Current Practice (LM 20).

Effective the _____ day of August, 2011.

Chair, Lane County Board of Commissioners

APPROVED AS TO FORM
Date 7/29/11 Lane County
J. Aidlaw
OFFICE OF LEGAL COUNSEL

EXHIBIT A

LOCAL CONTRACT REVIEW BOARD

FINDINGS ON RULE CHANGES AFFECTING EXEMPTIONS FROM COMPETITIVE BIDDING

FOR LANE COUNTY

Lane County is considering amending public contracting rules, including certain rules affecting public improvement contracts. These Findings address changes and additions to exemption rules applicable to public improvement contracts, including:

1. Expansion and clarification to the existing Construction Manager/General Contractor (CM/GC) exemption, currently LM 20.160;
2. Addition of an exemption for Design/Build contracts;
3. Procedural rules to implement the existing statutory exemption for energy savings performance contracts (ESPC).

A. General. The rule changes for Design/Build, Energy Savings Performance contracting and many relating to CMGC are based on the Oregon Attorney General's Model Public Contracting rules: OAR 137-049-0670 applies to Design/Build, OAR 137-049-0680 applies to ESPC, and OAR 137-049-0690 applies to CM/GC. County relies upon all relevant findings from the Attorney General's Office to support these findings in support of substantially similar County rules.

B. Nature of the Class of Projects and Operational Data

1. In CM/GC, the Contractor is included on the project team for design development of a public improvement; constructability reviews; value engineering, scheduling, estimating and subcontracting services, establishing a Guaranteed Maximum Price to complete the construction work, act as a general contractor, hold all subcontracts, coordinate and manage the building process, act as member of the project team with County representatives, architects/engineers and other consultants.

2. In Design/Build, the construction contractor also provides or obtains specified design services, participates on the project team with County representatives, manages both design and construction. A single person/entity provides the County with all of the personal services and work necessary to both design and construct the project.

3. In Energy Savings Performance Contracting (ESPC), the Contractor is a qualified energy service company which identifies, evaluates, recommends, designs and constructs energy conservation measures, including a design/build contract, that guarantee energy savings or performance.

C. Funding Sources, Costs, Budget and Financial Data

1. In CM/GC, the contractor provides recommendations to the Architect to be incorporated into the design on constructability for simplifying and reducing the cost of construction means, methods, access, phasing, etc. throughout the design and construction phases. The CM/GC provides detailed cost estimates at each design milestone which makes it possible for the County to make more informed decisions of cost implications and solutions to keep within budget. Improved teamwork and communication helps save money due to costly disputes and claims and additional change orders. The CM/GC will guarantee the final cost of the project, including change orders within the CM/GC's control before construction begins, protecting against cost overruns.

2. In Design/Build, the construction contractor joins the project team early with design responsibilities and integrates value engineering suggestions into the design phase with the potential of reducing contract changes and added costs. The potential for contract claims is reduced because the risk of design flaws is reduced, and misunderstandings and conflicts inherent in a construction contractor building from designs in which they have had no input are reduced.

3. In the ESPC model, the project financing, including payment of fees for the energy savings contractor is to be arranged so that incentives from utilities, the Energy Trust of Oregon, and from state of Oregon Business Energy Tax Credits assist with payment. Contractor is responsible for including costs and fees in the guaranteed maximum pricing. The energy savings are expected to cover costs for energy improvements and contractor's fees and costs. If the guaranteed savings are not achieved within 5 years (most likely), contractor would be obligated to pay County the difference between actual savings and guaranteed savings.

D. Specialized Expertise Required, Technical Complexity, and Market Conditions

The use of the traditional design-bid-build process is likely sufficient for building projects within the County's overall construction program. County building projects where specialized expertise is required or there is technical complexity of the project are distinguishable. All three alternative contracting relationships subject to these Findings are specifically appropriate where these distinguishing factors exist, and under these rule changes there would need to be some showing they exist before the CM/GC and Design Build process could be used. An RFP process would be used for selecting the contractor for each of the alternative contracting relationships. An RFP process is particularly suitable where evaluation of factors for qualifications and expertise in addition to cost is important, rather than evaluation limited only to cost as in a traditional process.

E. Value Engineering

All three alternative processes offer the opportunity for adding value engineering to the specific projects which could assist with limiting costs.

F. Public Benefits and Public Safety

The public benefits to the County using alternative contracting relationships is that there is potential to save costs and staff resources, and obtaining special expertise for complex projects. A post

project report for projects over \$100,000 would be provided to the Board which evaluates the decision to use one of the alternative contracting relationships versus the County being responsible for a number of separate construction contracts in a design-bid-build model. Because an RFP selection process would be used, the County will be able to consider the safety record of the contractors as part of the selection process. For projects on buildings which remain open to the public and staff during construction or projects near such buildings, the County will be able to require and enforce public safety requirements for contractors and others working on the public improvement.

G. Award of Contracts Under Rule Amendments Will Likely Result in Substantial Cost Savings to the County

Using a traditional design-bid-build process would probably require multiple and separate solicitations and contract awards by the County. Under the proposed amendments for the three alternative processes the number of solicitations and contracts is reduced. The ability to select through an RFP means that the selection can be based on expertise in addition to cost. There would likely be a substantial cost savings to the public and County through the selection of high quality professionals. For Design/Build and ESPC there is single-source accountability, and for ESPC and CM/GC there are maximum cost guarantees or protections, all designed to limit costs and reduce change orders.

One of the proposed changes for CMGC would permit “early work” without competitive bidding if necessary to avoid delay costs or interference with services to the public. Such limited action could likely be supported by using the County’s alternative emergency rule for avoiding formal bidding. There is likely not an overall change by permitting “early work” under these circumstances.

H. It is Unlikely that Rule Amendments will Encourage Favoritism or Substantially Diminish Competition

Using one of the three alternative contracting processes is not likely to substantially diminish competition or encourage favoritism because:

1. The County will use a formal RFP process as outlined in LM 21.107. The County’s RFP process is so substantially similar to its formal competitive bidding process that there would not be a significant effect on competition.

2. Under an RFP process, there is an additional protection for protesting the evaluation committee’s recommendation, which is not required under a formal competitive bidding process.

3. As to CM/GC, the rule changes would clarify that the County would obtain pre-approval from the Board for an exemption from competitive bidding on factors specific to the CM/GC and both the Departments and Board would have additional guidance for doing so.

I. Findings Not Required for Changes Supported by Law

Findings are not necessary to make certain changes to reflect statutory provisions. The LCRB may currently exempt other contracts, on a contract by contract basis, or class by class basis as they arise. LM 20.265. Proposed changes to this rule would clarify and reflect the County's current practice to hold a hearing after publishing notice at least 14 days before the hearing, consistent with the statute. There are other "housekeeping" changes on appealing a denial of prequalification and disqualification decision by the County. LM 20.270. These changes also reflect the statutory language.

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LEGISLATIVE
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Lane Manual

20.091

LOCAL CONTRACT REVIEW BOARD

**PUBLIC CONTRACT EXEMPTIONS, DESIGNATIONS, SPECIAL
PROCUREMENTS, AND RULES**

20.085 General.

~~(1)~~ **Purpose and Authority.**

(1) The Board of County Commissioners for Lane ~~These rules establish public contract exemptions, class special procurements, designations, and rules for Lane County, Oregon (hereafter, the County shall serve). Except as the Local Contract Review Board (LCRB) for Lane County. The otherwise provided in LM Chapter 20, the powers and duties of the local contract review board (LCRB) set forth in ORS 279A, B, and C (Public Contracting Code) shall be exercised and performed by the Lane County Board of County Commissioners on behalf of Lane County. The LCRB may delegate these powers and duties as long as not in conflict with the Public Contracting Code.~~

(2) The rules in Lane Manual ~~The model rules adopted by the Oregon Attorney General do not apply to Lane County, unless specifically adopted in these rules. The applicable rules are those contained in LM Chapters 20, 21, and 60 (regarding sale of personal/surplus property) are the public contracting rules for Lane County (County Rules). The model rules adopted by the Oregon Attorney General (Model Rules) under the Public Contracting Code do not apply, unless specifically adopted in these County Rules.~~

(3) Generally, Lane Manual (LM) Chapter 20 rules implement LCRB statutory powers and duties including, but not limited to, establishing public contract exemptions, class special procurements, designations, alternative contracting methods, certain protest and appeal processes.

(4) ~~)-~~The County Administrator, with the assistance of the Office of Legal Counsel as requested, ~~shall be delegated the authority to review future amendments to the Model Rules Attorney General model rules to evaluate the need to modify County Rules these Chapter 20 rules in order to comply with statutory changes.-~~ If the evaluation suggests modification may be necessary, proposed amendments shall be submitted to the LCRB for consideration. See ORS 279A.065.

(52) The County Administrator and Department Directors are authorized to further delegate the authority provided to them by these rules.

(63) Statutory Authority. -These rules are authorized by ORS 279C.335(2) and ORS 279B.085 and the Lane County Charter.

(74) An adversely affected party must file any available protest or appeal under LM Chapter 20 or 21 before seeking judicial review of the County's process, solicitation, contractor selection or award decisions.- All administrative protests must be exhausted prior to judicial review.- *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05; 05-3-9-21, 3.9.05)*

20.090 Findings.

Adoption of these rules and the exemptions herein are supported by the findings of the Board of County Commissioners adopted by Order 05-2-16-8. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05; 08-2-13-1, 2.13.08)*

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Lane Manual

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20.091 Construction and Interpretation.

OAR Chapter 137, including but not limited to OAR 137 Divisions 46, 47, 48, and 49 may be used to further interpret Lane County's public contracting rules in Lane Manual Chapters 20 and 21, when an ambiguity exists or to further explain the manner in which the County may interpret its rule.- When used as such, the reference shall be:- "See OAR ____." (Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12. 6.30.04; 05-2-16-8, 2.28.05)

20.095 Definitions.

As used hereafter, unless the context requires otherwise:

Authorization is used to reflect the LCRB's decision to approve a special procurement. -It may instead, or in addition, be used to describe a particular County employee's delegated authority to act.

Bid is a competitive offer in which price, delivery (or project completion) and conformance to specification and invitation to bid will be the predominant award criteria.

Board means the Board of Commissioners of Lane County.

Change Order means a written order authorizing a change in either plans, specifications, or quantities within the scope of the original contract.

Competitive Bidding means the issuing of invitations to bid which follow the formal process for advertising, bid, and bid opening required by ORS Chapter 279 and these rules.

Competitive Quotes or Quotes means the solicitation by the County of offers from competing vendors. -The solicitation may be by advertisement or by the County initiating a request to vendors to make an offer.- The solicitation and the offer may be in writing or oral.

Cost includes not only the product price but also other items of expense such as the actual or reasonably estimated costs related to quality or conversion, and may include such actual or estimated items as shipping, delivery, set-up, installation and training.

County means the County of Lane, a political subdivision of the State of Oregon. Unless the context requires otherwise, "County" also shall refer to the officer or employee empowered to authorize a purchase.

Department means County department which is implementing the public contracting rule or law, including conducting a procurement on the County's behalf. "Department" also means the Department Director who is authorized to conduct such a procurement, and any employee or officer authorized by the Director to conduct such a procurement.

Extra Work means item(s) of work not provided for in the original contract as awarded, but determined by the County to be essential to the proper completion of the contract.

Invitation to Bid means the solicitation of competitive offers in which specification, price and delivery (or project completion) will be the predominant award criteria.

LCRB means the Lane County Board of County Commissioners, acting as the local contract review board for Lane County.

Non-Public Improvement Contract. -See LM 21.101(1).

Personal Property means everything subject to ownership which is not real property and has exchangeable value.

Personal Service Agreements means the types of agreements described in LM Chapter 21.

Project means a specific plan or task with clearly defined limits.

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20.096 20.096 Lane Manual 20.097

Public Agency or Public Contracting Agency means any agency of the State of Oregon or any political subdivision thereof, **including Lane County**, ~~authorized by law to enter into public contracts~~ and any public body created by intergovernmental agreement **which is authorized by law to conduct a procurement under the Purchasing Code.**

Public Contract means any purchase, lease or sale by the County of personal property, public improvements or services including agreements which are for personal services.

Request for Proposal (RFP) means the solicitation of written competitive proposals, or offers, to be used as a basis for making an acquisition, or entering into a contract when specification and price will not necessarily be the predominant award criteria. –Also includes as preliminary phases of an RFP process, the "Request for Information" (RFI), "Request for Qualifications" (RFQ), and "Letter of Intent" (LOI) processes.

Requirements Contract means an agreement in which the contractor agrees to supply some or all of the County's requirements that arise for item(s) or service within a specified time period.

Service means work performed to meet a demand or need, especially work that is not connected with manufacturing a product.

Service Contract means a contract that calls primarily for a contractor's time and effort rather than for an end product.

Special Procurement means a contracting procedure for non-public improvement contracts that differs from bidding, request for proposals, small procurements, and intermediate procurements which might otherwise apply. –It refers to "class special procurement" and "contract-specific" special procurement as defined in ORS 279B.085, unless otherwise specified. (Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05; 05-3-9-21; 3.9.05)

DESIGNATIONS, EXEMPTIONS AND AUTHORIZATIONS

20.096 Sole Source Designation.

A contract for a public improvement project may be awarded based on sole source when covered by another LM Chapter 20 exemption or in accordance with LM 20.265(1). –For non-public improvement contracts, if there is only one source for goods or services, or a class of goods or services of the quality required by the County, a contract may be awarded to that source without competition.– Department Directors are delegated authority to make sole source determinations for contracts equal to or less than \$50,000, subject to any review and reversal by the County Administrator, in his or her discretion. This authority may be further delegated.– The County Administrator, or his or her designee, is delegated authority to make sole source determinations for contracts exceeding \$50,000.– Sole source determinations shall be made in accordance with procedures established in LM 21.111. (Revised by Order No. 05-2-16-8, Effective 2.28.05)

20.097 Personal Service Contracts Designation.

Personal service contracts are and shall be designated in accordance with this rule, and the procedures for screening and selection in LM 21.117 and 21.118 shall be followed. The Department Directors shall be delegated the authority to determine whether a particular type of contract or service falls within the following, except that the County Administrator may in his or her discretion, review and reverse a Department's determination.

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LEGISLATIVE FORMAT

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(1) Pursuant to ORS 279A.055, a personal service contract is one:

(a) Primarily based on a special trust and confidence between the County and contractor; or

(b) Where the services the County or contractor seek for themselves are primarily based on the special or unique expertise or knowledge; particular experience; or the exercise of discretionary judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider; or

(c) Where the County is purchasing services for clients and (a) and (b) above are met for the client, rather than County.

Examples of personal service contractors include, but are not limited to: consultants with special expertise in a particular area; architects; engineers; land surveyors; landscape architects; professionals providing facilities or land use planning services, environmental impact testing and analysis, construction management services, appraisals, timber cruise services; attorneys; auditors; accountants; medical personnel (including physicians, physician assistants, nurse practitioners, and nurses), licensed mental health therapists; artists, designers, data processing consultant; contracts for services of a specialized, creative and research-oriented nature; educators; investigators.

(2) The following are examples which are not considered personal services: -a contract, even though in a professional capacity, if predominately for a product; a service to supply labor which is of a type that can generally be done by a competent person or is primarily a custodial care service; a contract for a trade-related activity such as repair or maintenance for buildings or equipment. *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

20.098 Electronic Advertising.

It is likely to be more cost effective for the County to publicly advertise bid and request for proposal competitive processes, including for public improvement contracts, by publishing the ad electronically on the web, rather than paying the cost of advertising in a newspaper of general circulation in Lane County. -The same conclusion applies to other public notices required to be provided under LM Chapter 20 or LM Chapter 21.- The County is authorized to electronically advertise as long as procedures in LM 21.105(3) are followed. *(Revised by Order No. 05-2-16-8, Effective 2.28.05; 05-3-9-21; 3.9.05)*

GENERAL EXEMPTIONS

20.100 General Statutory/Regulatory Exemptions and Exclusions.

(1) County contracts are not required to be based upon a County competitive bidding or request for proposal process if a state or federal statute or regulation provides otherwise, or directs that another selection process be used. -The County will comply with any limits or conditions to competitive selection required by state or federal law or regulation.- Examples of such contracts include, but are not limited to the following:

(a) Contracts between contracting agencies or between contracting agencies and the federal government;

(b) Contracts between entities covered by ORS 190.010, or intergovernmental agreements.

(c) Contracts for public improvements if the value of the contract is less than \$5,000;

(d) Public improvement contracts not exceeding \$100,000, or \$50,000 in the case of a contract for a highway, bridge or other transportation project, made pursuant to competitive quotes;

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- (e) Intermediate procurements;
- (f) Grants;
- (g) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which ~~County~~ ~~public body~~ is or may become interested;
- (h) Acquisitions or disposals of real property or interests in real property;
- (i) Sole source expenditures when rates are set by law or ordinance for purposes of source selection;
- (j) ~~Contracts~~ for employee benefit plans as provided in ORS 243.105(1), 243.125(4), 243.221, 243.275, 243.291, 243.303 and 243.565;
- (k) ~~Insurance and service contracts~~ as provided for under ORS 414.115, 414.125, 414.135 and 414.145;
- (l) Contracts for repair, maintenance, improvement or protection of property obtained by the Director of Veterans' Affairs under ORS 407.135 and 407.145(1).
- (m) Contracts specifically exempt or authorized as a special procurement under LM Chapter 20 or under state law.
- (n) Cooperative procurements covered by ORS 279A.200 - ORS 279A.220.
- (o) Personal service contracts. -See ORS 279B.050(4); ORS 279A.070.
- (p) Contracts in which ~~a public entity such as Lane County~~ is permitted to award without bidding or request for proposals provided **that it the entity** adopts its own rules covering the selection process (e.g., ORS 279B.065 (small procurements), ORS 279C.335(5) (emergency), ORS 279A.180 (purchases through certain federal government programs).- *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05; 05-12-14-9, 1.1.06)*

20.105 Dollar Amount of Contract - Not to Exceed \$100,000.

(1) The County may let public contracts not to exceed \$100,000 for the purchase of goods materials, supplies, and/or services without formal competitive bidding when the following conditions are complied with:

- (a) The contract is for a single project and is not a component of or related to any other project in any one single year; and
- (b) When the amount of the contract does not exceed \$5,000 for non-public improvements or is less than \$5,000 for public improvements, the County may contract by direct selection, without competitive selection, subject to the requirements and procedures in LM 21.109. -However, competitive quotes in accordance with (c) below are encouraged, particularly for new purchases or projects.
- (c) When the amount of the contract exceeds the amounts in (b), but do not exceed \$100,000 the County shall obtain a minimum of three (3) competitive quotes or proposals, subject to the requirements and procedures in LM 21.110.- If three (3) quotes are not available for purchases covered by this rule, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.- The County shall keep a written record of the source and amount of quotes received.

(2) The County may let personal service contracts in accordance with LM 21.117 and LM 21.118, and subject to any waiver by the County Administrator. -*(Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05; 05-3-9-21, 3.9.05; 05-12-14-9, 1.1.06; 08-2-13-1, 2.13.08)*

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20.110 Contract Amendments (Including Change Orders under Extra Work).

(1) Any contract amendment or change order (except for personal services) which increases the original contract price may be made with the contractor without further competitive process if either of the following conditions are met:

(a) The original contract was let by competitive process authorized by these rules; rates, unit prices or bid alternates were provided that established the cost for extra or additional work; and a binding obligation exists on the parties covering the terms and conditions of the extra or additional work; or

(b) The amount of the aggregate cost increase resulting from all amendments does not exceed 25 percent of the amount approved through competitive selection and does not exceed a reasonable cost estimate by the County; with the exception of contracts for the renovation or remodelings of buildings which may have aggregate amendments not exceeding 33 percent of this amount. -Amendments made pursuant to LM 20.110(1)(a) above of this rule are not included in computing the aggregate amount under this section.

(2) Subject to any waiver, an amendment to a personal service contract may be executed without further competitive process when it is equal to or less than 50 percent of the original competitively selected amount, or in the event of multiple amendments, where the aggregate of the amendments is equal to or less than 50 percent. -In addition, if the amendment is related to continuation of a project as provided in LM 21.118(8), no additional competitive process is required.

(3) Amendments that result from a separate competitive selection are not included in computing the aggregate amounts under subsection (1)(b) or (2) of this rule. The competitive selection used for the amendment should be appropriate based on the type of procurement and dollar amount of the amendment. -See LM 21.105 (competitive bidding); LM 21.107 (requests for proposals); LM 21.108 (letters of interest); LM 21.109 (small procurements); LM 21.110 (intermediate procurements); LM 21.111 (sole source); LM 21.112A (cooperative procurements); LM 20.265 (special procurements); LM 21.118 (personal services).- The competitively selected amendment amount(s) may be added to the original competitively selected amount to determine a new base amount.- The aggregate cost increase resulting from all amendments which have not been covered by a competitive selection cannot exceed the percentages listed above in (1)(b) and (2) of the new base amount.- It is the department's responsibility to maintain documentation concerning the competitive selection used for any such amendments and for which time periods.- *(Revised by Order No. 98-12-2, Effective 12.2.98; 05-2-16-8, 2.28.05; 08-2-13-1, 2.13.08; 09-1-23-6, 1.28.09)*

20.115 Life Cycle Costing.

(1) In determining the lowest responsible competitor in the award of a contract, the County may use the concept of life cycle costing if it complies with LM 20.115(2) below. -As used in this rule, life cycle costing means determining the cost of a product for its useful life.

(2) (a) Prior to the time of writing specifications for the product, the County shall identify those factors which will have cost implications over the life of the product;

(b) The written solicitation or invitation shall set out clearly the factors and methodology to be used in life cycle cost adjustments;

(c) The results of life cycle costing adjustments shall be applied to the base and any applicable alternate bids, proposals or quotes, and the competitor whose total results in the lowest ownership cost, taking into account the life cycle costing

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adjustments, shall be considered the lowest responsible competitor. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

20.120 Price Regulated Items or Services.

The County may, without competitive bidding or quotes, contract for the purchase of goods or services, where the rate or price for the goods or services being purchased is established by Federal, State, or regulatory authority. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

20.125 Price Set by Federal Contracts.

(1) When the price of goods and services has been established by a contract with an agency of the federal government pursuant to a federal contract award, the County may purchase the goods and services from the supplier without subsequent competitive bidding. -In exercising this authority under this exemption, the County shall:

(a) Include in the contract file a letter or memoranda from the appropriate federal agency granting permission to purchase under federal contract;

(b) Include in the contract file documentation showing the cost savings to be gained from anticipated purchases from the federal contract, based on at least two (2) other quotes, or if two are not available, one will suffice provided that a written record is made of the effort to obtain the quotes. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05)*

20.128 Client/Patient Services.

The County may contract for direct client services without competitive selection where the ~~County~~ Department:

(1) Reasonably believes after inquiring that no qualified providers are likely to participate in competitive selection; and

(2) Will include on a list all qualified providers willing to consider taking client referrals on an as-needed basis; and

(3) Will select a qualified provider from the list as a client need arises, based on criteria including, but not limited to, client and family needs, quality/type of appropriate care, availability of service at the time it is needed, and cost. *(Revised by Order 02-12-4-4, Effective 12.04.02)*

20.130 Request for Proposal.

The County may, at its discretion, use a **request for proposal**~~request for proposal~~ competitive selection process for:

(1) Procuring goods or services relating to non-public improvement contracts for any amount, or

(2) Personal service contracts, except as otherwise required for qualification based selection, or

(3) Public improvement contracts as authorized by ORS 279C.335 or by separate exemption covered by LM Chapter 20 rule, if not covered by (1), (2), or (3), or

(4) For any other contract which is not required to be formally competitively bid. -The RFP process is set forth in LM 21.107. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05)*

20.135 Requirements and Price Agreements and Cooperative Purchases.

(1) The County may enter into requirements contracts whereby it agrees to purchase requirements for an anticipated need at a predetermined price providing the following conditions are complied with:

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(a) The contract must be let by a competitive procurement process pursuant to the County's public contracting rules.

(b) The term of the contract including renewals does not exceed three years.

(2) When the price of goods or services has been established by a requirements contract, the County may purchase the goods and services from the supplier without subsequent competitive process.

(3) Where the County anticipates an ongoing business relationship with a particular contractor, i.e. computer company, and where the contractor requests an umbrella contract with general terms which only apply if specific purchases are made and reflected in a separately executed attachment, the umbrella contract is exempt from competitive bidding or quote requirements if:

(a) It provides that the contract may be canceled upon 30 days written notice by the County at its discretion; and

(b) Each specific purchase is considered separately for competitive selection pursuant to the applicable County public contracting rules.

(4) The County may enter into requirements contracts and price agreements through cooperative purchases pursuant to ORS 279A.200 through ORS 279A.225, with the administering agency being a governmental body in Oregon or another jurisdiction.

(a) The County may participate in, sponsor or administer joint cooperative procurements to establish contracts or price agreements for goods or services or personal services that use source selection methods substantially equivalent to those set forth in ORS 279B.055, 279B.060, or 279B.085 or to establish contracts for public improvements that use a competitive bidding process substantially equivalent to that set forth in ORS 279C.005 through ORS 279C.870.

(b) The County may participate in, sponsor, conduct or administer permissive cooperative procurements to establish contracts or price agreements for the acquisition of goods or services or personal services that use source selection methods substantially equivalent to those set forth in ORS 279B.055 or ORS 279B.060.

(c) The County may participate in, sponsor, conduct or administer interstate cooperative procurements to establish contracts or price agreements for the acquisition of goods or services or personal services that use source selection methods substantially equivalent to those set forth in ORS 279B.055 or ORS 279B.060.

(5) Any protest of the procurement process, the contents of the solicitation document or the proposed award or award of a proposed contract through cooperative purchase, shall be in accordance with ORS 279B.400 through ORS 279B.425 unless the administering agency is not subject to the Oregon statutes; then in such case, the bidder or proposer shall make the protest in accordance with the processes and procedures established by the administering contracting agency. –Any other protest related to a cooperative procurement, or disputes related to a contract arising out of a cooperative procurement shall be made and resolved as set forth in ORS 279A.225. – (Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05; 08-2-13-1, 2.13.08)

EXEMPTIONS, SPECIAL PROCUREMENTS, AND AUTHORIZATIONS BY TOPIC

20.155 Advertising Contracts.

The County may purchase advertising without competitive bidding or quotes. –This includes, but is not limited to, space for advertising and legal notices in newspapers and

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other publications, and radio and television spots. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

~~**20.160 Construction Manager/General Contractor.**~~

~~The County may use a request for proposal procedure for the selection of construction manager/general contractor firms (CM/GC) who will be required to establish guaranteed maximum prices for constructing public improvements, subject to the following conditions:~~

~~———— (1) Contractual requirements are stated clearly in the solicitation document. The contract shall describe the methods by which the CM/GC shall competitively select other contractors and subcontractors to perform the work of the improvement. Further, the contract shall describe the methods by which the CM/GC and its affiliated or subsidiary entities, if any, may compete to perform the work of the improvement; such methods shall include, at a minimum, public opening of sealed bids at a pre-announced time and place.~~

~~———— (2) Evaluation criteria to be applied in selecting the CM/GC firm are stated clearly in the solicitation document. Criteria used to identify the CM/GC firm which best meets the public contracting needs may include, but are not limited to, cost, quality, experience relevant to the improvement to be constructed, and time required to commence and complete the improvement. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*~~

20.165 Copyrighted Materials.

The County may contract for the purchase of copyrighted materials without competitive bidding or quotes if there is only one known supplier. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

20.170 Election Supplies and Services.

The County is exempt from competitive bidding or quote requirements for the printing of official ballots, including sample and test ballots, ballot envelopes, ballot counting equipment and software, and drop site signs. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12, 6.30.04; 10-6-23-3, 06.23.10)*

20.175 Equipment Repair and Overhaul.

(1) Contracts for equipment repair, overhaul, or maintenance may be let without formal competitive bidding or quotes, subject to the following conditions:

(a) Service and/or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

(b) Service and/or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source.

(2) If the contract exceeds \$100,000, the County shall document in its procurement file the reasons why competitive bids or quotes were deemed to be impractical. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05)*

20.180 Food Service Contracts.

(1) For purposes of this rule, food service means a contract in which the contractor agrees to perform for the County all of the following functions: the purchase, preparation, and service of meals and related services.

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(2) Contracts for food services (excluding for jail and juvenile detention facilities) may be let without formal competitive bidding subject to the following conditions:

(a) Prior to the selection of a contractor, the County has made reasonable efforts to inform known companies providing food services of the subject matter of the contract and solicits proposals including public advertisement pursuant to LM 21.105(3).

(b) The contractor is selected on the basis of the most competitive offer considering cost, quality of the product and the service to be rendered.

(3) Contracts for jail and juvenile detention facility food items are exempt from competitive bidding. -The County should, where feasible, obtain competitive quotes. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05)*

20.185 Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalts.

The County is exempt from formal competitive bidding requirements for the purchase of gasoline, diesel fuel, heating oil, lubricants and asphalts, if the County seeks a minimum of three (3) competitive quotes, makes its purchases from the least expensive source, and retains written justification for the purchase made. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

20.190 Oil or Hazardous Material Removal.

(1) The County may enter into public contracts without competitive bidding when ordered to cleanup oil or hazardous waste pursuant to the authority granted the Department of Environmental Quality (DEQ) under ORS Chapter 466, especially ORS 466.605 through 466.680 and this order necessitates the prompt establishment and performance of the contract in order to comply with the statutes regarding spill or release of oil or hazardous material that have created an emergency condition. Comprehensive cleanup rules are set forth at OAR 340-122-0205 to 340-122-0360. In exercising its authority under this exemption the County shall:

(a) To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services;

(b) Make written findings describing the circumstances requiring cleanup or a copy of the DEQ order ordering such cleanup;

(c) Record the measures taken under LM 21.111(2) above to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the contractor selected.

(2) The County shall not contract pursuant to this exemption in the absence of an order from the Department of Environmental Quality to cleanup a site with a time limitation that would not permit hiring a contractor under the usual competitive bidding procedures. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05)*

20.195 Office Copier Purchases.

(1) The County may enter into multiple price agreements or requirements contracts for either the purchase or lease of office copying equipment. -Except for this multiple award exemption, such agreements shall otherwise conform to the requirements of LM 20.135(1) above.

(2) In exercising this exemption the County shall fully consider the operating capabilities, limitations and cost of each brand or model and select that brand which will

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produce the best combination of performance and cost per copy for each application.

(Revised by Order No. 98-12-2-1, Effective 12.2.98)

20.200 Laboratory and Medical Supplies.

The County is not required to purchase laboratory and medical supplies on the basis of a single award to the lowest responsible bidder, but instead may purchase different brands of the same item by awarding contracts, after competitive bidding, to the lowest responsible bidder for each brand.-- The County may specify medical and laboratory supplies by brand name if the County finds a medical or scientific basis for the specification. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

20.205 Purchases of Hospital and Medical Supplies and Equipment.

Purchases of hospital and medical supplies and equipment through a legally established purchasing cooperative are exempt from competitive bidding or quotes if the County is a member of such cooperative. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

20.206 Library and Reading Materials.

(1) The County may purchase library circulation materials, such as books, videos, tapes and CDs, without competitive bidding or quotes.

(2) The County may purchase subscriptions for newspapers and periodicals, including journals, magazines, and similar publications without competitive bidding or quotes. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

20.207 Purchases of Used Personal Property.

The County may purchase used personal property for \$50,000 or less without competitive bidding or quotes if the County has determined that the direct purchase without competitive bidding will result in cost savings.-- For purchases of used personal property over \$50,000, three (3) competitive quotes shall be obtained.-- If three (3) quotes are not available, a written record must be made of the attempt to obtain quotes. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

PRODUCTS SPECIFYING BRAND NAME

20.210 Specification of Particular Brand Names or Products.

(1) Specifications for public improvement contracts shall not expressly or implicitly require any product of any particular manufacturer or seller except pursuant to an exemption under LM 20.215 below (Brand Name or Mark Exemption Applications), LM 20.220 below (Copyrighted Materials), LM 20.225 below (Single Manufacturer or Compatible Products), LM 20.230 below (Product Pre-qualification), and LM 20.200 above (Laboratory and Medical Supplies).

(2) If there is no other practical method of specification, the County may designate a particular brand name, make, or product supplied by, or "approved equal," or "equivalent," or similar language, "or equal," but this practice should be avoided whenever practicable. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05)*

20.215 Brand Name or Mark Exemption Applications.

(1) LM 21.112 covers brand name procedures for non-public improvement contracts. -This rule covers the LCRB granting an exemption for a brand name or make

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for current and contemplated future purchases for public improvement contracts. Applications shall contain the following information:

(a) A brief description of the contract or contracts to be covered. -The description should include contemplated future purchases.

(b) The brand name, mark, or product to be specified.

(c) The reasons the County is seeking the exemption.

(2) The LCRB may grant exemptions if any of the following conditions are met:

(a) The exemption is not likely to encourage favoritism in awarding public improvement contracts or substantially diminish competition, or

(b) The specification of a product by brand name or mark, or the product of a particular manufacturer or seller would result in substantial cost savings to the County, or

(c) There is only one manufacturer or seller of the product of the quality required, or efficient utilization of existing equipment or supplies requires acquisition of compatible equipment or supplies, or

(d) Efficient utilization of existing equipment or supplies requires acquisition of compatible equipment or supplies. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05)*

20.220 Copyrighted Materials.

The County may specify a copyrighted product. -This exemption does not include patented or trademark goods. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

20.225 Single Manufacturer or Service Provider.

(1) If there is only one manufacturer or seller of a product or service of the quality required or if the efficient utilization of the existing equipment or supplies requires a compatible product of a particular manufacturer or seller, the County may specify such particular product subject to the following conditions:

(a) The product is selected on the basis of the most competitive offer considering quality and cost.

(b) It follows the procedure in LM 20.21511(2). *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05)*

20.230 Product Pre-Qualification.

(1) When it is impractical to create specific design or performance specifications for a type of product to be purchased, the County may specify a list of approved products by reference to particular manufacturers or sellers in accordance with the following product pre-qualification procedure:

(a) The County has made reasonable efforts to notify known manufacturers or vendors of competitive products of its intention to accept applications for inclusion in its list of pre-qualified products. Notification shall be in accordance with LM 21.105(3) and may include advertisement in a trade journal of statewide distribution when possible. -In lieu of advertising, the County may notify vendors and manufacturers appearing on an appropriate list maintained by the County.

(b) The County permits application for pre-qualification of similar products up to 5 days prior to advertisement for bids on the product.

(2) Manufacturers and vendors shall have the opportunity to submit goods where testing or examination is necessary or desirable. -The decision to pre-qualify the goods shall be based on the results of tests or examinations.- If an application for inclusion in a list of pre-qualified products is denied, or an existing pre-qualification is

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revoked, the County shall notify the applicant in writing.- The applicant may appeal to the County Administrator.- The appeal must be filed with the department soliciting the product within 5 days of mailing of the denial or revocation.- The appeal must state the grounds for appeal.- The County Administrator shall decide the matter on the written record within 7 days. *(Revised by Order No 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05)*

COUNTY ADMINISTRATIVE SERVICES

20.235 Insurance Contracts.

(1) Contracts for insurance where either the annual or aggregate premium exceeds \$100,000 must be let by formal competitive bidding or by one of the following:

(a) Agent of Record:- The public contracting agency may appoint a licensed insurance agent (agent of record) to perform insurance services in connection with more than one insurance contract. Among the services to be provided is the securing of competitive proposals from insurance carriers for all coverages for which the agent of record is given responsibility:

(i) Prior to the selection of an agent of record, the County shall make reasonable efforts to inform known insurance agents in the competitive market area that it is considering such selection. -These efforts shall include a public advertisement pursuant to LM 21.105(3).- The advertisement shall generally describe the nature of the insurance that the public contracting agency will require.- If the amount of the annual premium for insurance, other than employee benefits insurance, is likely to exceed \$100,000 per year, such notice shall also include a public advertisement in at least one insurance trade publication of general circulation in the state;

(ii) Any appointment period shall not exceed three years. Agents may serve more than one appointment period. Agents must qualify for appointment prior to each period as if each appointment period were the first;

(iii) In selecting an agent of record, the County shall select the agent(s) most likely to perform the most cost-effective services.

(b) Specific Proposals for Insurance Contracts: The County may solicit proposals from licensed insurance agents for the purpose of acquiring specific insurance contracts subject to the following conditions:

(i) The County shall make reasonable efforts to inform known insurance agents in the competitive market area of the subject matter of the contract, and to solicit proposals for providing the services required in connection with the contract. Such efforts shall include public advertisements pursuant to LM 21.105(3).- If the amount of annual premium for insurance, other than employee benefits insurance is likely to exceed \$100,000 per year, such notice shall also include a public advertisement in at least one insurance trade publication of general circulation in the state;

(ii) The County shall select an agent on the basis of the most competitive offer considering coverage, premium cost, and service to be provided.

(2) Contracts for insurance where either the annual or aggregate premium is less than or equal to \$100,000 may be let by informal quotes. *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

20.240 Employee Benefit Insurance.

The County may purchase employee benefit insurance without competitive bidding or quotes. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

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20.245 Investment Contracts.

~~County Public contracting agencies~~ may, without competitive bidding, contract for the purpose of the investment of public funds or the borrowing of funds by a public agency when such investment or borrowing is contracted pursuant to duly enacted statute, order, ordinance, charter, or constitution. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

20.250 Litigation Services.

(1) The County may purchase the following types of personal services without a competitive process when County Counsel deems it necessary to do so: —expert witnesses, consultants, arbitrators, mediators, investigators or other specialized personnel. This may include for the purpose of providing services or testimony relating to existing or potential litigation or legal matters in which **County, its Commissioners, officers, employees and agents** ~~area public body~~ is or may become interested.

(2) To the extent practicable, County Counsel shall develop and maintain a list of qualified experts, consultants, and other specialized personnel eligible to be retained.

(3) Selection criteria shall include, but are not limited to, education and specialized training, experience, demeanor, cost and availability.

(4) Multiple contracts for similar services are authorized. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05)*

ALTERNATIVE CONTRACTING METHODS

20.251 Purpose and Evaluation

(1) The LCRB authorizes the use of the following alternative contracting methods for public improvements in order to take advantage of evolving procurement methods as they emerge, while preserving competitive bidding as the standard unless exempted: **Construction Manager/General Contractor (CM/GC), Design/Build, and Energy Savings Performance contracting (ESPC).** ORS 279A.015(6).

(2) **Post Project Evaluation.** If the public improvement project exceeds \$100,000, the Department shall, within 30 days of project acceptance, provide a post-project evaluation to the LCRB. The purpose is to evaluate whether it was in the County's best interest to use the alternative contracting method, and should include as applicable: financial information including comparing estimates with actual cost; any Guaranteed Maximum Price (GMP); changes and actual costs; successes and failures during design, engineering and construction; and assessment of the use of method as compared to any exemption findings.

20.253 Construction Manager/General Contractor.

The County may, in its discretion, use a request for proposal (RFP) process for the selection of a construction manager/general contractor (CMGC) as defined in OAR 137-049-0610 and OAR 137-049-0690(1) subject to the following:

(1) The LCRB adopts findings identifying the project (or class of projects) and addressing substantial cost savings and unlikeliness of encouraging favoritism or substantially diminishing competition in accordance with LM 20.265(2)-(4).

(a) The project or class is identified by defining characteristics including at least: project description(s), location, anticipated time periods, anticipated contract values or range of values, method of procurement (but cannot be sole criteria), other significant factors that distinguish the project(s) from the

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County's overall construction program, or that reasonably relate to the criteria in LM 20.265(2)-(4).

(b) As a general guideline, in order to utilize the CM/GC method, the County should be able to reasonably anticipate the following benefits in addition to others it may identify:

(i) **Time savings.** The public improvement has significant schedule ramifications, such as concurrent design and construction are necessary in order to meet critical deadlines and shorten overall duration of construction. The County may consider operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods.

(ii) **Cost Savings.** Early contractor input during the design process is expected to contribute to significant cost savings. The County may consider value engineering, building systems analysis, life cycle costing analysis and construction planning that lead to cost savings. The County may specify any special factors influencing this analysis, including high rates of inflation, market uncertainty, and the need for specialized construction expertise due to technical challenges; or

(iii) **Technical Complexity.** The public improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the County, design professionals and contractor, in which the contractor will assist in addressing specific project challenges through pre-construction services. The County may consider the need for contractor input on issues such as operations of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling projects and projects requiring complex phasing or highly coordinated scheduling.

(2) **Proposal Evaluation.** Factors in addition to price may be considered in the selection process for a CM/GC, and as set forth in the RFP, including, but not limited to: firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposal methods of construction, proposed milestone dates, references, service, and related matters that affect cost or quality, ability to respond to the technical complexity or unique character of the project, analyze and propose solutions or approaches to complex project problems, coordination of multiple disciplines, the time required to commence and complete the improvement.

(3) **Pricing Mechanism.** The RFP should describe the pricing mechanism. A contract price is typically specified for the design phase. If County determines the project is within its budget, the contractor will propose a Guaranteed Maximum Price (GMP) for the construction phase. If County accepts the GMP it will be included in the parties' contract. If the parties do not reach mutual agreement on the GMP, the County may terminate the contract. The County may then proceed to negotiate a new contract (and GMP) with the firm that was next ranked in the original selection process, or employ other means for continuing the project under ORS 279C.

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(4) **Early Work.** The RFP shall identify, whenever feasible, the circumstances under which any of the following activities may be authorized and undertaken for compensation prior to establishing the GMP:

- (a) Early procurement of materials and supplies;
- (b) Early release of bid packages; and
- (c) Other advance work related to critical components of the

Contract.

If the need for early work was not anticipated at the RFP stage, County reserves the right to waive competitive bid requirements for selecting subcontractors for this work, and negotiate reasonable compensation for performance by the CM/GC or any other contractor if it is critical in order to maintain the project schedule and avoid the likelihood of delay costs or the interruption of County operations. The County Administrator is delegated the authority to make this waiver determination and approve a contract or amendment covering this early work.

(5) **Contract negotiations.** Contract terms may be negotiated to the extent allowed by the RFP and any related County rules. Generally, terms that may be negotiated consist of details of contract performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that affect cost or quality.

(6) **Contract Requirements.**

(a) **Setting the GMP.** The GMP may be set after supporting information reasonably considered necessary to its use has been developed. It should include a description of what work is included and excluded from the GMP. A set of drawings and specifications may be produced establishing the GMP scope. The basis for payment is reimbursable direct costs as defined under the contract, plus a fee constituting full payment for work and services rendered, which together should not exceed the GMP. The GMP may be set by phase if there is sufficient separation of work and it is deemed necessary by the County.

(b) **Cost reimbursement and fees.** The Contract should identify what items or categories of items are eligible for cost reimbursement within the GMP. Compensation for the CM/GC's services must be paid on the basis of a fee that is inclusive of profit, overhead and all other indirect or non-reimbursable costs. The fee, first expressed as a proposed percentage of all reimbursable costs, should be identified during and become an element of the selection process. It should subsequently be expressed as a fixed amount when the GMP is established.

(c) In addition to any other terms required by the County, the contract shall describe the methods by which the CM/GC will competitively select other contractors and subcontractors to perform the work of the improvement. The County reserves the right to veto selection of any such contractors in order to protect its interests. Further, the contract shall describe the methods by which the CM/GC and its affiliated or subsidiary entities, if any, may compete to perform the work of the improvement; such methods shall include, at a minimum, public opening of sealed bids at a pre-announced time and place. The contract should describe, whenever feasible, the elements of work the CM/GC may self-perform as general functions of a CM/GC without competition, e.g., work of job-site general conditions.

(d) **Cost savings.** Any cost savings resulting from completion of the work below the GMP shall accrue to the County, unless the contract expressly provides otherwise.

20.254 Design/Build.

The County may, in its discretion, use a request for proposal procedure for the selection of a design/build contractor as defined in OAR 137-049-0610(3) and OAR 137-049-0670(1) subject to the following:

(1) The LCRB adopts findings identifying the project (class of projects) and addressing substantial cost savings and unlikelihood of encouraging favoritism or substantially diminishing competition in accordance with LM 20.265(2)-(4).

(2) The findings identify the project(s) by defining characteristics including: project description, location, anticipated time periods, anticipated contract value (or range), method of procurement (but not sole criteria), other significant factors that distinguish the project(s) from the County's overall construction program, or that reasonably relate to LM 20.265(2)-(4).

(3) As a general guideline, in order to utilize the design/build method, the County should be able to reasonably anticipate the following benefits in addition to any others it may identify:

(a) Obtaining, through a design/build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control and required documentation as a fully integrated function with a single point of responsibility;

(b) Integrating value engineering suggestions into the design phase, as the construction contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing contract changes;

(c) Reducing the risk of design flaws, misunderstandings and conflicts inherent in construction contractors building from designs in which they have had no opportunity for input, with the potential for reducing contract claims;

(d) Shortening project time as construction activity commences prior to completion of a "biddable" design, or where a design solution is still required (complex or phased projects); or

(e) Obtaining innovative design solutions through the collaboration of the contractor and design team, which would not otherwise be possible if the contractor had not yet been selected.

(4) Proposal Evaluation. Factors in addition to price may be considered in the selection process for a design/build contractor, as set forth in the RFP. The RFP may include, but is not limited to, the same proposal evaluation factors for a CMGC in addition to design professional qualifications, specialized experience, preliminary design submittals, technical merit, design/builder team experience and related matters that affect cost or quality. A qualification based selection process is not applicable.

(5) Licensing. The design/build contractor should be an Oregon licensed professional, but if not must identify the Oregon licensed professional(s) who will provide design services.

(6) Performance Security. The surety's obligation on performance bonds, or the bidder's obligation on cashier's or certified checks accepted in lieu thereof, must include the preparation and completion of design and related personal services specified in the contract. This additional obligation, beyond performance of construction work, extends only to the provision of services related to design

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revisions, corrective work and associated costs prior to final contract completion. This is not intended to be a substitute for professional liability insurance.

(7) Contract terms may be negotiated to the extent allowed by the RFP and any related County rules. In addition to any other terms required by the County, the contract shall identify the liability of design professionals with respect to the design/build contractor and County, and requirements for professional liability insurance. The contract shall identify the extent to which the County requires express indemnification for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty work claims.

20.255. Energy Savings Performance Contracting.

The following rules implement the requirement of ORS 279C.335(1)(f) for procedures governing energy savings performance contracts (ESPC) and which are statutorily exempt from competitive bidding requirements. In addition, nothing in these rules prohibits the County from instead following its general exemption procedure in LM 20.265.

(1) **General Description.** The ESPC is a public improvement contract with a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures (ECM), including a design/build contract that guarantee energy savings or performance. The scope of work includes work on building systems and components that are directly related to ECMs and are to pay for themselves over the useful life of the ECMs. It includes the following types of integrated personal services and work: facility profiling, energy baseline studies, energy efficiency measures, technical energy audits, project development planning, engineering design, plan preparation, cost estimating, life cycle costing, construction administration, project management, construction, quality control, operations and maintenance training, commissioning services, measurement and verification services and required documentation as a fully integrated function with a single point of responsibility.

(2) **Contract Terms.** An ESPC involves a multiphase contract structure which includes:

- (a) A technical energy audit;
- (b) Project development plan;
- (c) Design/build contract
- (d) Measurement and verification services.

Pricing alternatives include: a fixed price for each phase of the personal services and work to be provided; a cost reimbursement pricing mechanism with a maximum not-to-exceed guaranteed maximum price, or a combination of these pricing options. County shall include any other terms it determines, in its discretion, to be required.

(3) County may, in its discretion, use an RFP process, including but not limited to a multi-tier competitive range selection process for selecting an ESPC as described in LM 21.107. County may use a Request for Qualifications (RFQ) process as a first step in a two step solicitation process, in which distribution of an RFP is limited to firms identified as most qualified through their submitted statements of qualification. County will provide a right to protest competitive range, including within the RFQ, similar to that referenced in LM 21.107.

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(4) **Proposal Evaluation.** Factors in addition to price may be considered in the selection process for an ESPC as set forth in the RFP. The County may provide in the RFP that qualifications-based evaluation factors will outweigh consideration of price-related factors, due to the fact that prices for the major components of the Work will likely not be determinable at the time of Proposal evaluation. The RFP may include, but is not limited to, evaluation factors set forth in County rules for CM/GC and Design/build contracting, as well as factors related specifically to ESPC as set forth in OAR 137-049-0640(2)(d).

(5) **Negotiation.** Contract terms may be negotiated to the extent allowed by the RFP and related County rules. Examples of terms that may be negotiated consist of details of contract performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that affect cost or quality, in addition to specific terms related to ESPC. See OAR 137-049-0640(3).

(6) **Licensing.** The contractor should be an Oregon licensed professional, but if not, must identify the Oregon licensed professional(s) who will provide the services.

(7) **Performance Security.** At the point the parties enter into a binding contract that is a design/build contract, the contractor shall provide a performance and payment bond each for 100% of the full contract price, including construction and design related services.

EXEMPTIONS AND AUTHORIZATIONS AS CIRCUMSTANCES ARISE

20.255 Emergency Contracts.

The County may execute contracts without a competitive process if an emergency exists and requires prompt execution of a contract to remedy the condition. -An emergency is generally defined, but not limited to, a set of circumstances creating a substantial risk of loss, damage, interruption of services or threat to public health or safety that could not have been reasonably foreseen or is beyond the control of the County or its employees. The resulting contract would be necessary under these circumstances to preserve public funds, property, or the uninterrupted provision of government services.- The County Administrator is delegated authority to declare an emergency and execute a contract(s) to remedy it not to exceed \$100,000.- The Board of County Commissioners, sitting as the local contracting agency, shall declare an emergency and award any contract exceeding \$100,000.- The contract shall be executed within 60 days unless the LCRB grants an extension.- The procedures in LM 21.128 shall be followed in exercising the authority delegated under this rule. *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

20.265 LCRB Exemption for Other Public Improvement Contracts and Special Procurements.

(1) Subsections (2)-(5) w4), and ~~(13)~~ below apply to public improvement contracts, and subsections (6)-(145)-(13) apply to non-public improvement contracts.

(2) The LCRB may exempt a particular public improvement contract, or a category of contracts, from the bidding requirements of ORS 279C.335, which are not otherwise exempt under these rules. -The County department's request for exemption shall include draft findings with information, including, but not limited to the following:

(a) The nature of the project;

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(b) The financial impact including estimated cost of the project, operational, budget and financial data;

(c) Public benefits;

(d) Value engineering;

(e) Specialized expertise required;

(f) Public safety;

(g) Market conditions;

(h) Technical complexity;

(i) Funding sources;

(j) Any other information identified by the County, in its discretion, and used to justify the conclusion to except from competitive bidding.

_____ (3) Consideration of the applicable information in LM 20.265 (2) will be documented in findings and include the following standard:

(a) It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and

(b) The awarding of public contracts pursuant to the exemption will likely result in substantial cost savings to the public contracting agency considering the type, cost, amount of the contract, number of persons available to bid and such other factors as may be deemed appropriate.

(i) **CM/GC and Design/build.** Additional factors which may be considered include an analysis or reasonable forecast of future cost savings as well as present cost savings; and industry practices, surveys, trends, past experiences, evaluations of completed projects and related information regarding expected benefits and drawbacks of the CM/GC method, and to the extent practicable relate back to the specific characteristics of the project(s).

(ii) **Pilot Project.** Where an alternative contracting method has not been previously used, an alternative to this "substantial cost savings" finding is a finding that identifies the project as a pilot project for which the County intends to determine whether the use of the alternate contracting method actually results in substantial cost savings to the County.

(c) The findings should include:— a narrative description of the cost savings anticipated by the exemption from competitive bidding; the reasons competitive bidding would be inappropriate; if appropriate, propose alternative contracting methods; and, the estimated date by which it would be necessary to let the contract.

(4) For a class exemption, the LCRB findings will identify a limited class by factors that distinguish it from the County's overall construction program, and not solely by funding source or method of procurement.

(5) **Public hearing.** The LCRB shall hold a public hearing before final adoption of the findings. Public notice of the public hearing to take comments on the draft findings for an exemption from competitive bidding shall be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing. The notice shall include a statement about the purpose of the hearing and about how the public may obtain access to copies of the draft findings, and may describe the process by which findings are finally adopted.

If the County is required to act promptly due to circumstances beyond the County's control that do not constitute an emergency, notification of the public hearing may be published simultaneously with the County's solicitation for the

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alternative contracting method, as long as responses to the solicitation are due at least five days after the meeting and approval of the findings.

(6—(5) The LCRB may approve a special procurement for a particular non-public improvement contract, or a category of contracts, to allow procurement other than through an otherwise applicable process including competitive bidding (ORS 279B.055), request for proposals (ORS 279B.060), small procurement (ORS 279B.065), and intermediate procurement (ORS 279B.070).- The written request for approval of a special procurement shall include:

(a) A description of the goods or services or the class of goods or services to be acquired; and,

(b) A description of the proposed contracting procedure; and,

(c) A description of the circumstances that justify the use of a special procurement.

(76) The LCRB may require such additional information as it deems necessary to determine whether a specific contract, or category of contracts under (5), should be procured by a process other than one that would be applicable.

(87) Application of the information in LM 20.265 (5) must demonstrate that the special procurement would meet the following standard:

(a) It is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and

(b) Either is reasonably expected to result in substantial cost savings to the contracting agency or to the public, or otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements under ORS 279B.055, 279B.060, 279B.065, 279B.070, including any rules adopted thereunder.

(98) Public Notice.— Public notice of a request **and intent to approve** ~~for a~~ special procurement shall be provided through the standard public notice ~~for~~ Lane County Board of Commissioners/LCRB meetings, **including on the County's website.** - Public notice of the approval of a special procurement shall be the date of the ~~oral~~ decision to approve at the LCRB meeting, unless otherwise provided by the LCRB.

(109) An affected person or entity may protest the LCRB's decision to approve a special procurement.- The affected person or entity shall deliver a written protest to the County department within ten days after the public notice of the ~~oral~~ decision to approve, unless the LCRB provides a different protest period in its public notice.

(11+0) Untimely filed protests in (9) will not be considered.

(12+1) A written protest shall include a statement of the legal and factual grounds for the protest, a description of the resulting harm to the affected person, and the relief requested.

(13+2) For protests covered by (9) above, the County department may prepare a response within three days.- If the County department concurs with the protest, in whole or in part, it may revise the proposed special procurement accordingly, or withdraw the request.- If it does not concur, the LCRB will consider the protest at the time set for considering the request for special procurement for a protest under (9) on a future LCRB agenda as soon as reasonably practicable.- The LCRB shall consider the written record, including but not limited to, any County department analysis and submissions by the affected person or entity, and any oral testimony.- The LCRB may revise the special procurement, in whole or in part, or deny or sustain the protest.

(14+3) A contract may not be awarded until after the running of the protest period or completion of protest process in (109) above. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-2-8, 2.2.05; 05-12-14-9, 1.1.06; 08-2-13-1, 2.13.08)*

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**APPEALS ARISING ~~APPEAL~~ FROM PREQUALIFICATION, ~~DECISION OR~~
DEBARMENT, DISQUALIFICATION, AND SOLE SOURCE**

20.270 Prequalification, ~~and~~ Debarment, and Disqualification Appeals.

A prospective bidder or proposer may appeal a Department's decision to debar (**non-public improvement**) or disqualify (**public improvement**), or **deny**, revise or revoke prequalification. See ORS 279B.425 and ORS 279C.450.

(1) A prospective bidder or proposer shall file a written appeal within 3 days after receiving notice of the County's decision. -The appellant shall include a detailed statement of the grounds for the appeal.

(2) The Department shall schedule the appeal to be heard before the LCRB, or a designee, as soon as reasonably possible, notify the appellant of the time and place for the hearing, prepare a written response, and provide it to the appellant and to the LCRB. The Department shall also submit the written record to the LCRB.

(3) There shall be a de novo review of the notice of denial, revocation or revision of prequalification or notice of debarment or **disqualification** and any evidence provided by the parties.- The LCRB shall apply the standards of responsibility in **deciding an appeal of a denial, revision or revocation of a prequalification determining ~~disqualification~~** in (5) below **and** ~~or~~ criteria for debarment or **disqualification** in (6) below.

(4) The hearing and appeal decision shall occur within 30 days after receiving the notice form the Department. -The LCRB shall provide written reasons for the decision in a final order, and include any allocation of costs for the hearing.

(5) In determining whether the standards of responsibility have been met, the LCRB shall consider whether one or more of the following criteria have been met:

(a) Non-availability of appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain resources and expertise necessary to indicate capability to meet contractual responsibilities;

(b) Unsatisfactory record of performance;

(c) Unsatisfactory record of integrity;

(d) Not legally qualified to contract;

(e) Failure to supply all necessary information in connection with the inquiry concerning responsibility;

(f) Whether contractor has been debarred (**non-public improvement**) or **disqualification (public improvement)**.-

(g) **Also, for public improvement contracts, failure to hold current licenses that businesses or service professionals must hold to perform work; is not covered by liability insurance and other insurance in amounts required by County; failure to disclose first-tier subcontractors; whether prospective contractor qualifies as a carrier-insured or self-insured employer under Workers Compensation laws or elected coverage under ORS 656.128.**

(6) In determining whether to debar or **disqualify** a prospective bidder or proposer from consideration of award of the County's contracts for up to 3 years, the decision-maker shall consider whether one or more of the following have been met:

(a) Conviction of a criminal offense as an incident in obtaining or attempting to obtain or performing pursuant to a public or private contract or subcontract;

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(b) Conviction under state or federal law or embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating lack of business integrity or business honesty that currently, seriously and directly affects responsibility as a contractor;

(c) Conviction under state or federal antitrust statutes;

(d) Violation of a contract provision and debarment was listed as a potential penalty in the terms of the contract;

(e) Failure to carry workers' compensation or unemployment insurance as required by statute. *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

20.271 Protests of Sole Source Contract Exceeding \$100,000

The LCRB shall decide any protests to sole source contracts exceeding \$100,000 in accordance with LM 21.111(6).

BID SECURITY AND BONDS

20.275 Bid Security and Bonds.

(1) Contracts, other than those for public improvements and construction contracts as defined in ORS 279C.320(1), are exempt from the bid security requirements of ORS 279B.050 and performance and payment bond requirements provided that the County may require bid, performance, or payment security, in its discretion, regardless of this exemption.

(2) Contracts for public improvements and construction contracts as defined in ORS 279C.320(1) which do not exceed \$100,000 (except for highway, bridge and other transportation projects which do not exceed \$50,000) are exempt from bid security, and performance and payment bond requirements provided that the County may require such security in its discretion, regardless of this exemption. ORS 279C.390. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05; 05-3-9-21; 3.9.05)*

LOCAL CONTRACT REVIEW BOARD

PUBLIC CONTRACT EXEMPTIONS, DESIGNATIONS, SPECIAL PROCUREMENTS, AND RULES

20.085 Purpose and Authority.

(1) The Board of County Commissioners for Lane County shall serve as the Local Contract Review Board (LCRB) for Lane County. The powers and duties of the LCRB set forth in ORS 279A, B, and C (Public Contracting Code) shall be exercised and performed by the Board of County Commissioners on behalf of Lane County. The LCRB may delegate these powers and duties as long as not in conflict with the Public Contracting Code.

(2) The rules in Lane Manual Chapters 20, 21 and 60 (regarding sale of personal/surplus property) are the public contracting rules for Lane County (County Rules). The model rules adopted by the Oregon Attorney General (Model Rules) under the Public Contracting Code do not apply, unless specifically adopted in these County Rules.

(3) Generally, Lane Manual (LM) Chapter 20 rules implement LCRB statutory powers and duties including, but not limited to, establishing public contract exemptions, class special procurements, designations, alternative contracting methods, certain protest and appeal processes.

(4) The County Administrator, with the assistance of the Office of Legal Counsel as requested, is delegated the authority to review future amendments to the Model Rules to evaluate the need to modify County Rules in order to comply with statutory changes. If the evaluation suggests modification may be necessary, proposed amendments shall be submitted to the LCRB for consideration. See ORS 279A.065.

(5) The County Administrator and Department Directors are authorized to further delegate the authority provided to them by these rules.

(6) Statutory Authority. These rules are authorized by ORS 279C.335(2) and ORS 279B.085 and the Lane County Charter.

(7) An adversely affected party must file any available protest or appeal under LM Chapter 20 or 21 before seeking judicial review of the County's process, solicitation, contractor selection or award decisions. All administrative protests must be exhausted prior to judicial review. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05; 05-3-9-21, 3.9.05)*

20.090 Findings.

Adoption of these rules and the exemptions herein are supported by the findings of the Board of County Commissioners adopted by Order 05-2-16-8. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05; 08-2-13-1, 2.13.08)*

20.091 Construction and Interpretation.

OAR Chapter 137, including but not limited to OAR 137 Divisions 46, 47, 48, and 49 may be used to further interpret Lane County's public contracting rules in Lane Manual Chapters 20 and 21, when an ambiguity exists or to further explain the manner in which the County may interpret its rule. When used as such, the reference shall be: "See OAR ____." *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05)*

20.095 Definitions.

As used hereafter, unless the context requires otherwise:

Authorization is used to reflect the LCRB's decision to approve a special procurement. It may instead, or in addition, be used to describe a particular County employee's delegated authority to act.

Bid is a competitive offer in which price, delivery (or project completion) and conformance to specification and invitation to bid will be the predominant award criteria.

Board means the Board of Commissioners of Lane County.

Change Order means a written order authorizing a change in either plans, specifications, or quantities within the scope of the original contract.

Competitive Bidding means the issuing of invitations to bid which follow the formal process for advertising, bid, and bid opening required by ORS Chapter 279 and these rules.

Competitive Quotes or Quotes means the solicitation by the County of offers from competing vendors. The solicitation may be by advertisement or by the County initiating a request to vendors to make an offer. The solicitation and the offer may be in writing or oral.

Cost includes not only the product price but also other items of expense such as the actual or reasonably estimated costs related to quality or conversion, and may include such actual or estimated items as shipping, delivery, set-up, installation and training.

County means the County of Lane, a political subdivision of the State of Oregon. Unless the context requires otherwise, "County" also shall refer to the officer or employee empowered to authorize a purchase.

Department means County department which is implementing the public contracting rule or law, including conducting a procurement on the County's behalf. "Department" also means the Department Director who is authorized to conduct such a procurement, and any employee or officer authorized by the Director to conduct such a procurement.

Extra Work means item(s) of work not provided for in the original contract as awarded, but determined by the County to be essential to the proper completion of the contract.

Invitation to Bid means the solicitation of competitive offers in which specification, price and delivery (or project completion) will be the predominant award criteria.

LCRB means the Lane County Board of County Commissioners, acting as the local contract review board for Lane County.

Non-Public Improvement Contract. See LM 21.101(1).

Personal Property means everything subject to ownership which is not real property and has exchangeable value.

Personal Service Agreements means the types of agreements described in LM Chapter 21.

Project means a specific plan or task with clearly defined limits.

Public Agency or Public Contracting Agency means any agency of the State of Oregon or any political subdivision thereof, including Lane County, and any public body created by intergovernmental agreement which is authorized by law to conduct a procurement under the Purchasing Code.

Public Contract means any purchase, lease or sale by the County of personal property, public improvements or services including agreements which are for personal services.

Request for Proposal (RFP) means the solicitation of written competitive proposals, or offers, to be used as a basis for making an acquisition, or entering into a contract when specification and price will not necessarily be the predominant award criteria. Also includes as preliminary phases of an RFP process, the "Request for

Information" (RFI), "Request for Qualifications" (RFQ), and "Letter of Intent" (LOI) processes.

Requirements Contract means an agreement in which the contractor agrees to supply some or all of the County's requirements that arise for item(s) or service within a specified time period.

Service means work performed to meet a demand or need, especially work that is not connected with manufacturing a product.

Service Contract means a contract that calls primarily for a contractor's time and effort rather than for an end product.

Special Procurement means a contracting procedure for non-public improvement contracts that differs from bidding, request for proposals, small procurements, and intermediate procurements which might otherwise apply. It refers to "class special procurement" and "contract-specific" special procurement as defined in ORS 279B.085, unless otherwise specified. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05; 05-3-9-21; 3.9.05)*

DESIGNATIONS, EXEMPTIONS AND AUTHORIZATIONS

20.096 Sole Source Designation.

A contract for a public improvement project may be awarded based on sole source when covered by another LM Chapter 20 exemption or in accordance with LM 20.265(1). For non-public improvement contracts, if there is only one source for goods or services, or a class of goods or services of the quality required by the County, a contract may be awarded to that source without competition. Department Directors are delegated authority to make sole source determinations for contracts equal to or less than \$50,000, subject to any review and reversal by the County Administrator, in his or her discretion. This authority may be further delegated. The County Administrator, or his or her designee, is delegated authority to make sole source determinations for contracts exceeding \$50,000. Sole source determinations shall be made in accordance with procedures established in LM 21.111. *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

20.097 Personal Service Contracts Designation.

Personal service contracts are and shall be designated in accordance with this rule, and the procedures for screening and selection in LM 21.117 and 21.118 shall be followed. The Department Directors shall be delegated the authority to determine whether a particular type of contract or service falls within the following, except that the County Administrator may in his or her discretion, review and reverse a Department's determination.

(1) Pursuant to ORS 279A.055, a personal service contract is one:

(a) Primarily based on a special trust and confidence between the County and contractor; or

(b) Where the services the County or contractor seek for themselves are primarily based on the special or unique expertise or knowledge; particular experience; or the exercise of discretionary judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider; or

(c) Where the County is purchasing services for clients and (a) and (b) above are met for the client, rather than County.

Examples of personal service contractors include, but are not limited to: consultants with special expertise in a particular area; architects; engineers; land surveyors; landscape architects; professionals providing facilities or land use planning services, environmental impact testing and analysis, construction management services,

appraisals, timber cruise services; attorneys; auditors; accountants; medical personnel (including physicians, physician assistants, nurse practitioners, and nurses), licensed mental health therapists; artists, designers, data processing consultant; contracts for services of a specialized, creative and research-oriented nature; educators; investigators.

(2) The following are examples which are not considered personal services: a contract, even though in a professional capacity, if predominately for a product; a service to supply labor which is of a type that can generally be done by a competent person or is primarily a custodial care service; a contract for a trade-related activity such as repair or maintenance for buildings or equipment. *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

20.098 Electronic Advertising.

It is likely to be more cost effective for the County to publicly advertise bid and request for proposal competitive processes, including for public improvement contracts, by publishing the ad electronically on the web, rather than paying the cost of advertising in a newspaper of general circulation in Lane County. The same conclusion applies to other public notices required to be provided under LM Chapter 20 or LM Chapter 21. The County is authorized to electronically advertise as long as procedures in LM 21.105(3) are followed. *(Revised by Order No. 05-2-16-8, Effective 2.28.05; 05-3-9-21; 3.9.05)*

GENERAL EXEMPTIONS

20.100 General Statutory/Regulatory Exemptions and Exclusions.

(1) County contracts are not required to be based upon a County competitive bidding or request for proposal process if a state or federal statute or regulation provides otherwise, or directs that another selection process be used. The County will comply with any limits or conditions to competitive selection required by state or federal law or regulation. Examples of such contracts include, but are not limited to the following:

- (a) Contracts between contracting agencies or between contracting agencies and the federal government;
- (b) Contracts between entities covered by ORS 190.010, or intergovernmental agreements.
- (c) Contracts for public improvements if the value of the contract is less than \$5,000;
- (d) Public improvement contracts not exceeding \$100,000, or \$50,000 in the case of a contract for a highway, bridge or other transportation project, made pursuant to competitive quotes;
- (e) Intermediate procurements;
- (f) Grants;
- (g) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which County is or may become interested;
- (h) Acquisitions or disposals of real property or interests in real property;
- (i) Sole source expenditures when rates are set by law or ordinance for purposes of source selection;
- (j) Contracts for employee benefit plans as provided in ORS 243.105(1), 243.125(4), 243.221, 243.275, 243.291, 243.303 and 243.565;
- (k) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145;

(l) Contracts for repair, maintenance, improvement or protection of property obtained by the Director of Veterans' Affairs under ORS 407.135 and 407.145(1).

(m) Contracts specifically exempt or authorized as a special procurement under LM Chapter 20 or under state law.

(n) Cooperative procurements covered by ORS 279A.200 - ORS 279A.220.

(o) Personal service contracts. See ORS 279B.050(4); ORS 279A.070.

(p) Contracts in which County is permitted to award without bidding or request for proposals provided that it adopts its own rules covering the selection process (e.g., ORS 279B.065 (small procurements), ORS 279C.335(5) (emergency), ORS 279A.180 (purchases through certain federal government programs). *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05; 05-12-14-9, 1.1.06)*

20.105 Dollar Amount of Contract - Not to Exceed \$100,000.

(1) The County may let public contracts not to exceed \$100,000 for the purchase of goods materials, supplies, and/or services without formal competitive bidding when the following conditions are complied with:

(a) The contract is for a single project and is not a component of or related to any other project in any one single year; and

(b) When the amount of the contract does not exceed \$5,000 for non-public improvements or is less than \$5,000 for public improvements, the County may contract by direct selection, without competitive selection, subject to the requirements and procedures in LM 21.109. However, competitive quotes in accordance with (c) below are encouraged, particularly for new purchases or projects.

(c) When the amount of the contract exceeds the amounts in (b), but do not exceed \$100,000 the County shall obtain a minimum of three (3) competitive quotes or proposals, subject to the requirements and procedures in LM 21.110. If three (3) quotes are not available for purchases covered by this rule, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. The County shall keep a written record of the source and amount of quotes received.

(2) The County may let personal service contracts in accordance with LM 21.117 and LM 21.118, and subject to any waiver by the County Administrator. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05; 05-3-9-21, 3.9.05; 05-12-14-9, 1.1.06; 08-2-13-1, 2.13.08)*

20.110 Contract Amendments (Including Change Orders under Extra Work).

(1) Any contract amendment or change order (except for personal services) which increases the original contract price may be made with the contractor without further competitive process if either of the following conditions are met:

(a) The original contract was let by competitive process authorized by these rules; rates, unit prices or bid alternates were provided that established the cost for extra or additional work; and a binding obligation exists on the parties covering the terms and conditions of the extra or additional work; or

(b) The amount of the aggregate cost increase resulting from all amendments does not exceed 25 percent of the amount approved through competitive selection and does not exceed a reasonable cost estimate by the County; with the exception of contracts for the renovation or remodelings of buildings which may have aggregate amendments not exceeding 33 percent of this amount. Amendments made pursuant to LM 20.110(1)(a) above of this rule are not included in computing the aggregate amount under this section.

(2) Subject to any waiver, an amendment to a personal service contract may be executed without further competitive process when it is equal to or less than 50 percent of the original competitively selected amount, or in the event of multiple amendments, where the aggregate of the amendments is equal to or less than 50 percent. In addition, if the amendment is related to continuation of a project as provided in LM 21.118(8), no additional competitive process is required.

(3) Amendments that result from a separate competitive selection are not included in computing the aggregate amounts under subsection (1)(b) or (2) of this rule. The competitive selection used for the amendment should be appropriate based on the type of procurement and dollar amount of the amendment. See LM 21.105 (competitive bidding); LM 21.107 (requests for proposals); LM 21.108 (letters of interest); LM 21.109 (small procurements); LM 21.110 (intermediate procurements); LM 21.111 (sole source); LM 21.112A (cooperative procurements); LM 20.265 (special procurements); LM 21.118 (personal services). The competitively selected amendment amount(s) may be added to the original competitively selected amount to determine a new base amount. The aggregate cost increase resulting from all amendments which have not been covered by a competitive selection cannot exceed the percentages listed above in (1)(b) and (2) of the new base amount. It is the department's responsibility to maintain documentation concerning the competitive selection used for any such amendments and for which time periods. *(Revised by Order No. 98-12-2-, Effective 12.2.98; 05-2-16-8, 2.28.05; 08-2-13-1, 2.13.08; 09-1-23-6, 1.28.09)*

20.115 Life Cycle Costing.

(1) In determining the lowest responsible competitor in the award of a contract, the County may use the concept of life cycle costing if it complies with LM 20.115(2) below. As used in this rule, life cycle costing means determining the cost of a product for its useful life.

(2) (a) Prior to the time of writing specifications for the product, the County shall identify those factors which will have cost implications over the life of the product;

(b) The written solicitation or invitation shall set out clearly the factors and methodology to be used in life cycle cost adjustments;

(c) The results of life cycle costing adjustments shall be applied to the base and any applicable alternate bids, proposals or quotes, and the competitor whose total results in the lowest ownership cost, taking into account the life cycle costing adjustments, shall be considered the lowest responsible competitor. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

20.120 Price Regulated Items or Services.

The County may, without competitive bidding or quotes, contract for the purchase of goods or services, where the rate or price for the goods or services being purchased is established by Federal, State, or regulatory authority. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

20.125 Price Set by Federal Contracts.

(1) When the price of goods and services has been established by a contract with an agency of the federal government pursuant to a federal contract award, the County may purchase the goods and services from the supplier without subsequent competitive bidding. In exercising this authority under this exemption, the County shall:

(a) Include in the contract file a letter or memoranda from the appropriate federal agency granting permission to purchase under federal contract;

(b) Include in the contract file documentation showing the cost savings to be gained from anticipated purchases from the federal contract, based on at least two (2)

other quotes, or if two are not available, one will suffice provided that a written record is made of the effort to obtain the quotes. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05)*

20.128 Client/Patient Services.

The County may contract for direct client services without competitive selection where the Department:

- (1) Reasonably believes after inquiring that no qualified providers are likely to participate in competitive selection; and
- (2) Will include on a list all qualified providers willing to consider taking client referrals on an as-needed basis; and
- (3) Will select a qualified provider from the list as a client need arises, based on criteria including, but not limited to, client and family needs, quality/type of appropriate care, availability of service at the time it is needed, and cost. *(Revised by Order 02-12-4-4, Effective 12.04.02)*

20.130 Request for Proposal.

The County may, at its discretion, use a request for proposal competitive selection process for:

- (1) Procuring goods or services relating to non-public improvement contracts for any amount, or
- (2) Personal service contracts, except as otherwise required for qualification based selection, or
- (3) Public improvement contracts as authorized by ORS 279C.335 or by separate exemption covered by LM Chapter 20 rule, if not covered by (1), (2), or (3), or
- (4) For any other contract which is not required to be formally competitively bid. The RFP process is set forth in LM 21.107. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05)*

20.135 Requirements and Price Agreements and Cooperative Purchases.

- (1) The County may enter into requirements contracts whereby it agrees to purchase requirements for an anticipated need at a predetermined price providing the following conditions are complied with:
 - (a) The contract must be let by a competitive procurement process pursuant to the County's public contracting rules.
 - (b) The term of the contract including renewals does not exceed three years.
- (2) When the price of goods or services has been established by a requirements contract, the County may purchase the goods and services from the supplier without subsequent competitive process.
- (3) Where the County anticipates an ongoing business relationship with a particular contractor, i.e. computer company, and where the contractor requests an umbrella contract with general terms which only apply if specific purchases are made and reflected in a separately executed attachment, the umbrella contract is exempt from competitive bidding or quote requirements if:
 - (a) It provides that the contract may be canceled upon 30 days written notice by the County at its discretion; and
 - (b) Each specific purchase is considered separately for competitive selection pursuant to the applicable County public contracting rules.

(4) The County may enter into requirements contracts and price agreements through cooperative purchases pursuant to ORS 279A.200 through ORS 279A.225, with the administering agency being a governmental body in Oregon or another jurisdiction.

(a) The County may participate in, sponsor or administer joint cooperative procurements to establish contracts or price agreements for goods or services or personal services that use source selection methods substantially equivalent to those set forth in ORS 279B.055, 279B.060, or 279B.085 or to establish contracts for public improvements that use a competitive bidding process substantially equivalent to that set forth in ORS 279C.005 through ORS 279C.870.

(b) The County may participate in, sponsor, conduct or administer permissive cooperative procurements to establish contracts or price agreements for the acquisition of goods or services or personal services that use source selection methods substantially equivalent to those set forth in ORS 279B.055 or ORS 279B.060.

(c) The County may participate in, sponsor, conduct or administer interstate cooperative procurements to establish contracts or price agreements for the acquisition of goods or services or personal services that use source selection methods substantially equivalent to those set forth in ORS 279B.055 or ORS 279B.060.

(5) Any protest of the procurement process, the contents of the solicitation document or the proposed award or award of a proposed contract through cooperative purchase, shall be in accordance with ORS 279B.400 through ORS 279B.425 unless the administering agency is not subject to the Oregon statutes; then in such case, the bidder or proposer shall make the protest in accordance with the processes and procedures established by the administering contracting agency. Any other protest related to a cooperative procurement, or disputes related to a contract arising out of a cooperative procurement shall be made and resolved as set forth in ORS 279A.225. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05; 08-2-13-1, 2.13.08)*

EXEMPTIONS, SPECIAL PROCUREMENTS, AND AUTHORIZATIONS BY TOPIC

20.155 Advertising Contracts.

The County may purchase advertising without competitive bidding or quotes. This includes, but is not limited to, space for advertising and legal notices in newspapers and other publications, and radio and television spots. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

20.165 Copyrighted Materials.

The County may contract for the purchase of copyrighted materials without competitive bidding or quotes if there is only one known supplier. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

20.170 Election Supplies and Services.

The County is exempt from competitive bidding or quote requirements for the printing of official ballots, including sample and test ballots, ballot envelopes, ballot counting equipment and software, and drop site signs. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12, 6.30.04; 10-6-23-3, 06.23.10)*

20.175 Equipment Repair and Overhaul.

(1) Contracts for equipment repair, overhaul, or maintenance may be let without formal competitive bidding or quotes, subject to the following conditions:

(a) Service and/or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

(b) Service and/or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source.

(2) If the contract exceeds \$100,000, the County shall document in its procurement file the reasons why competitive bids or quotes were deemed to be impractical. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05)*

20.180 Food Service Contracts.

(1) For purposes of this rule, food service means a contract in which the contractor agrees to perform for the County all of the following functions: the purchase, preparation, and service of meals and related services.

(2) Contracts for food services (excluding for jail and juvenile detention facilities) may be let without formal competitive bidding subject to the following conditions:

(a) Prior to the selection of a contractor, the County has made reasonable efforts to inform known companies providing food services of the subject matter of the contract and solicits proposals including public advertisement pursuant to LM 21.105(3).

(b) The contractor is selected on the basis of the most competitive offer considering cost, quality of the product and the service to be rendered.

(3) Contracts for jail and juvenile detention facility food items are exempt from competitive bidding. The County should, where feasible, obtain competitive quotes. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05)*

20.185 Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalts.

The County is exempt from formal competitive bidding requirements for the purchase of gasoline, diesel fuel, heating oil, lubricants and asphalts, if the County seeks a minimum of three (3) competitive quotes, makes its purchases from the least expensive source, and retains written justification for the purchase made. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

20.190 Oil or Hazardous Material Removal.

(1) The County may enter into public contracts without competitive bidding when ordered to cleanup oil or hazardous waste pursuant to the authority granted the Department of Environmental Quality (DEQ) under ORS Chapter 466, especially ORS 466.605 through 466.680 and this order necessitates the prompt establishment and performance of the contract in order to comply with the statutes regarding spill or release of oil or hazardous material that have created an emergency condition. Comprehensive cleanup rules are set forth at OAR 340-122-0205 to 340-122-0360. In exercising its authority under this exemption the County shall:

(a) To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services;

(b) Make written findings describing the circumstances requiring cleanup or a copy of the DEQ order ordering such cleanup;

(c) Record the measures taken under LM 21.111(2) above to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the contractor selected.

(2) The County shall not contract pursuant to this exemption in the absence of an order from the Department of Environmental Quality to cleanup a site with a time limitation that would not permit hiring a contractor under the usual competitive bidding procedures. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05)*

20.195 Office Copier Purchases.

(1) The County may enter into multiple price agreements or requirements contracts for either the purchase or lease of office copying equipment. Except for this multiple award exemption, such agreements shall otherwise conform to the requirements of LM 20.135(1) above.

(2) In exercising this exemption the County shall fully consider the operating capabilities, limitations and cost of each brand or model and select that brand which will produce the best combination of performance and cost per copy for each application. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

20.200 Laboratory and Medical Supplies.

The County is not required to purchase laboratory and medical supplies on the basis of a single award to the lowest responsible bidder, but instead may purchase different brands of the same item by awarding contracts, after competitive bidding, to the lowest responsible bidder for each brand. The County may specify medical and laboratory supplies by brand name if the County finds a medical or scientific basis for the specification. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

20.205 Purchases of Hospital and Medical Supplies and Equipment.

Purchases of hospital and medical supplies and equipment through a legally established purchasing cooperative are exempt from competitive bidding or quotes if the County is a member of such cooperative. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

20.206 Library and Reading Materials.

(1) The County may purchase library circulation materials, such as books, videos, tapes and CDs, without competitive bidding or quotes.

(2) The County may purchase subscriptions for newspapers and periodicals, including journals, magazines, and similar publications without competitive bidding or quotes. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

20.207 Purchases of Used Personal Property.

The County may purchase used personal property for \$50,000 or less without competitive bidding or quotes if the County has determined that the direct purchase without competitive bidding will result in cost savings. For purchases of used personal property over \$50,000, three (3) competitive quotes shall be obtained. If three (3) quotes are not available, a written record must be made of the attempt to obtain quotes. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

PRODUCTS SPECIFYING BRAND NAME

20.210 Specification of Particular Brand Names or Products.

(1) Specifications for public improvement contracts shall not expressly or implicitly require any product of any particular manufacturer or seller except pursuant to an exemption under LM 20.215 below (Brand Name or Mark Exemption Applications), LM 20.220 below (Copyrighted Materials), LM 20.225 below (Single Manufacturer or

Compatible Products), LM 20.230 below (Product Pre-qualification), and LM 20.200 above (Laboratory and Medical Supplies).

(2) If there is no other practical method of specification, the County may designate a particular brand name, make, or product supplied by, or "approved equal," or "equivalent," or similar language, "or equal," but this practice should be avoided whenever practicable. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05)*

20.215 Brand Name or Mark Exemption Applications.

(1) LM 21.112 covers brand name procedures for non-public improvement contracts. This rule covers the LCRB granting an exemption for a brand name or make for current and contemplated future purchases for public improvement contracts. Applications shall contain the following information:

(a) A brief description of the contract or contracts to be covered. The description should include contemplated future purchases.

(b) The brand name, mark, or product to be specified.

(c) The reasons the County is seeking the exemption.

(2) The LCRB may grant exemptions if any of the following conditions are met:

(a) The exemption is not likely to encourage favoritism in awarding public improvement contracts or substantially diminish competition, or

(b) The specification of a product by brand name or mark, or the product of a particular manufacturer or seller would result in substantial cost savings to the County, or

(c) There is only one manufacturer or seller of the product of the quality required, or efficient utilization of existing equipment or supplies requires acquisition of compatible equipment or supplies, or

(d) Efficient utilization of existing equipment or supplies requires acquisition of compatible equipment or supplies. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05)*

20.220 Copyrighted Materials.

The County may specify a copyrighted product. This exemption does not include patented or trademark goods. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

20.225 Single Manufacturer or Service Provider.

(1) If there is only one manufacturer or seller of a product or service of the quality required or if the efficient utilization of the existing equipment or supplies requires a compatible product of a particular manufacturer or seller, the County may specify such particular product subject to the following conditions:

(a) The product is selected on the basis of the most competitive offer considering quality and cost.

(b) It follows the procedure in LM 20.215(2). *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05)*

20.230 Product Pre-Qualification.

(1) When it is impractical to create specific design or performance specifications for a type of product to be purchased, the County may specify a list of approved products by reference to particular manufacturers or sellers in accordance with the following product pre-qualification procedure:

(a) The County has made reasonable efforts to notify known manufacturers or vendors of competitive products of its intention to accept applications

for inclusion in its list of pre-qualified products. Notification shall be in accordance with LM 21.105(3) and may include advertisement in a trade journal of statewide distribution when possible. In lieu of advertising, the County may notify vendors and manufacturers appearing on an appropriate list maintained by the County.

(b) The County permits application for pre-qualification of similar products up to 5 days prior to advertisement for bids on the product.

(2) Manufacturers and vendors shall have the opportunity to submit goods where testing or examination is necessary or desirable. The decision to pre-qualify the goods shall be based on the results of tests or examinations. If an application for inclusion in a list of pre-qualified products is denied, or an existing pre-qualification is revoked, the County shall notify the applicant in writing. The applicant may appeal to the County Administrator. The appeal must be filed with the department soliciting the product within 5 days of mailing of the denial or revocation. The appeal must state the grounds for appeal. The County Administrator shall decide the matter on the written record within 7 days. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05)*

COUNTY ADMINISTRATIVE SERVICES

20.235 Insurance Contracts.

(1) Contracts for insurance where either the annual or aggregate premium exceeds \$100,000 must be let by formal competitive bidding or by one of the following:

(a) Agent of Record: The public contracting agency may appoint a licensed insurance agent (agent of record) to perform insurance services in connection with more than one insurance contract. Among the services to be provided is the securing of competitive proposals from insurance carriers for all coverages for which the agent of record is given responsibility:

(i) Prior to the selection of an agent of record, the County shall make reasonable efforts to inform known insurance agents in the competitive market area that it is considering such selection. These efforts shall include a public advertisement pursuant to LM 21.105(3). The advertisement shall generally describe the nature of the insurance that the public contracting agency will require. If the amount of the annual premium for insurance, other than employee benefits insurance, is likely to exceed \$100,000 per year, such notice shall also include a public advertisement in at least one insurance trade publication of general circulation in the state;

(ii) Any appointment period shall not exceed three years. Agents may serve more than one appointment period. Agents must qualify for appointment prior to each period as if each appointment period were the first;

(iii) In selecting an agent of record, the County shall select the agent(s) most likely to perform the most cost-effective services.

(b) Specific Proposals for Insurance Contracts: The County may solicit proposals from licensed insurance agents for the purpose of acquiring specific insurance contracts subject to the following conditions:

(i) The County shall make reasonable efforts to inform known insurance agents in the competitive market area of the subject matter of the contract, and to solicit proposals for providing the services required in connection with the contract. Such efforts shall include public advertisements pursuant to LM 21.105(3). If the amount of annual premium for insurance, other than employee benefits insurance is likely to exceed \$100,000 per year, such notice shall also include a public advertisement in at least one insurance trade publication of general circulation in the state;

(ii) The County shall select an agent on the basis of the most competitive offer considering coverage, premium cost, and service to be provided.

(2) Contracts for insurance where either the annual or aggregate premium is less than or equal to \$100,000 may be let by informal quotes. *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

20.240 Employee Benefit Insurance.

The County may purchase employee benefit insurance without competitive bidding or quotes. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

20.245 Investment Contracts.

County may, without competitive bidding, contract for the purpose of the investment of public funds or the borrowing of funds when such investment or borrowing is contracted pursuant to duly enacted statute, order, ordinance, charter, or constitution. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

20.250 Litigation Services.

(1) The County may purchase the following types of personal services without a competitive process when County Counsel deems it necessary to do so: expert witnesses, consultants, arbitrators, mediators, investigators or other specialized personnel. This may include for the purpose of providing services or testimony relating to existing or potential litigation or legal matters in which County, its Commissioners, officers, employees and agents are or may become interested.

(2) To the extent practicable, County Counsel shall develop and maintain a list of qualified experts, consultants, and other specialized personnel eligible to be retained.

(3) Selection criteria shall include, but are not limited to, education and specialized training, experience, demeanor, cost and availability.

(4) Multiple contracts for similar services are authorized. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05)*

ALTERNATIVE CONTRACTING METHODS

20.251 Purpose and Evaluation

(1) The LCRB authorizes the use of the following alternative contracting methods for public improvements in order to take advantage of evolving procurement methods as they emerge, while preserving competitive bidding as the standard unless exempted: Construction Manager/General Contractor (CM/GC), Design/Build, and Energy Savings Performance contracting (ESPC). ORS 279A.015(6).

(2) Post Project Evaluation. If the public improvement project exceeds \$100,000, the Department shall, within 30 days of project acceptance, provide a post-project evaluation to the LCRB. The purpose is to evaluate whether it was in the County's best interest to use the alternative contracting method, and should include as applicable: financial information including comparing estimates with actual cost; any Guaranteed Maximum Price (GMP); changes and actual costs; successes and failures during design, engineering and construction; and assessment of the use of method as compared to any exemption findings.

20.253 Construction Manager/General Contractor.

The County may, in its discretion, use a request for proposal (RFP) process for the selection of a construction manager/general contractor (CMGC) as defined in OAR 137-049-0610 and OAR 137-049-0690(1) subject to the following:

(1) The LCRB adopts findings identifying the project (or class of projects) and addressing substantial cost savings and unlikelihood of encouraging favoritism or substantially diminishing competition in accordance with LM 20.265(2)-(4).

(a) The project or class is identified by defining characteristics including at least: project description(s), location, anticipated time periods, anticipated contract values or range of values, method of procurement (but cannot be sole criteria), other significant factors that distinguish the project(s) from the County's overall construction program, or that reasonably relate to the criteria in LM 20.265(2)-(4).

(b) As a general guideline, in order to utilize the CM/GC method, the County should be able to reasonably anticipate the following benefits in addition to others it may identify:

(i) Time savings. The public improvement has significant schedule ramifications, such as concurrent design and construction are necessary in order to meet critical deadlines and shorten overall duration of construction. The County may consider operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods.

(ii) Cost Savings. Early contractor input during the design process is expected to contribute to significant cost savings. The County may consider value engineering, building systems analysis, life cycle costing analysis and construction planning that lead to cost savings. The County may specify any special factors influencing this analysis, including high rates of inflation, market uncertainty, and the need for specialized construction expertise due to technical challenges; or

(iii) Technical Complexity. The public improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the County, design professionals and contractor, in which the contractor will assist in addressing specific project challenges through pre-construction services. The County may consider the need for contractor input on issues such as operations of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling projects and projects requiring complex phasing or highly coordinated scheduling.

(2) Proposal Evaluation. Factors in addition to price may be considered in the selection process for a CM/GC, and as set forth in the RFP, including, but not limited to: firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposal methods of construction, proposed milestone dates, references, service, and related matters that affect cost or quality, ability to respond to the technical complexity or unique character of the project, analyze and propose solutions or approaches to complex project problems, coordination of multiple disciplines, the time required to commence and complete the improvement.

(3) Pricing Mechanism. The RFP should describe the pricing mechanism. A contract price is typically specified for the design phase. If County determines the project is within its budget, the contractor will propose a Guaranteed Maximum Price (GMP) for the construction phase. If County accepts the GMP it will be included in the parties' contract. If the parties do not reach mutual agreement on the GMP, the County may terminate the contract. The County may then proceed to negotiate a new contract (and GMP) with the firm that was next ranked in the original selection process, or employ other means for continuing the project under ORS 279C.

(4) Early Work. The RFP shall identify, whenever feasible, the circumstances under which any of the following activities may be authorized and undertaken for compensation prior to establishing the GMP:

- (a) Early procurement of materials and supplies;
- (b) Early release of bid packages; and
- (c) Other advance work related to critical components of the Contract.

If the need for early work was not anticipated at the RFP stage, County reserves the right to waive competitive bid requirements for selecting subcontractors for this work, and negotiate reasonable compensation for performance by the CM/GC or any other contractor if it is critical in order to maintain the project schedule and avoid the likelihood of delay costs or the interruption of County operations. The County Administrator is delegated the authority to make this waiver determination and approve a contract or amendment covering this early work.

(5) Contract negotiations. Contract terms may be negotiated to the extent allowed by the RFP and any related County rules. Generally, terms that may be negotiated consist of details of contract performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that affect cost or quality.

(6) Contract Requirements.

(a) Setting the GMP. The GMP may be set after supporting information reasonably considered necessary to its use has been developed. It should include a description of what work is included and excluded from the GMP. A set of drawings and specifications may be produced establishing the GMP scope. The basis for payment is reimbursable direct costs as defined under the contract, plus a fee constituting full payment for work and services rendered, which together should not exceed the GMP. The GMP may be set by phase if there is sufficient separation of work and it is deemed necessary by the County.

(b) Cost reimbursement and fees. The Contract should identify what items or categories of items are eligible for cost reimbursement within the GMP. Compensation for the CM/GC's services must be paid on the basis of a fee that is inclusive of profit, overhead and all other indirect or non-reimbursable costs. The fee, first expressed as a proposed percentage of all reimbursable costs, should be identified during and become an element of the selection process. It should subsequently be expressed as a fixed amount when the GMP is established.

(c) In addition to any other terms required by the County, the contract shall describe the methods by which the CM/GC will competitively select other contractors and subcontractors to perform the work of the improvement. The County reserves the right to veto selection of any such contractors in order to protect its interests. Further, the contract shall describe the methods by which the CM/GC and its affiliated or subsidiary entities, if any, may compete to perform the work of the improvement; such methods shall include, at a minimum, public opening of sealed bids at a pre-announced time and place. The contract should describe, whenever feasible, the elements of work the CM/GC may self-perform as general functions of a CM/GC without competition, e.g., work of job-site general conditions.

(d) Cost savings. Any cost savings resulting from completion of the work below the GMP shall accrue to the County, unless the contract expressly provides otherwise.

20.254 Design/Build.

The County may, in its discretion, use a request for proposal procedure for the selection of a design/build contractor as defined in OAR 137-049-0610(3) and OAR 137-049-0670(1) subject to the following:

(1) The LCRB adopts findings identifying the project (class of projects) and addressing substantial cost savings and unlikelihood of encouraging favoritism or substantially diminishing competition in accordance with LM 20.265(2)-(4).

(2) The findings identify the project(s) by defining characteristics including: project description, location, anticipated time periods, anticipated contract value (or range), method of procurement (but not sole criteria), other significant factors that distinguish the project(s) from the County's overall construction program, or that reasonably relate to LM 20.265(2)-(4).

(3) As a general guideline, in order to utilize the design/build method, the County should be able to reasonably anticipate the following benefits in addition to any others it may identify:

(a) Obtaining, through a design/build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control and required documentation as a fully integrated function with a single point of responsibility;

(b) Integrating value engineering suggestions into the design phase, as the construction contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing contract changes;

(c) Reducing the risk of design flaws, misunderstandings and conflicts inherent in construction contractors building from designs in which they have had no opportunity for input, with the potential for reducing contract claims;

(d) Shortening project time as construction activity commences prior to completion of a "biddable" design, or where a design solution is still required (complex or phased projects); or

(e) Obtaining innovative design solutions through the collaboration of the contractor and design team, which would not otherwise be possible if the contractor had not yet been selected.

(4) Proposal Evaluation. Factors in addition to price may be considered in the selection process for a design/build contractor, as set forth in the RFP. The RFP may include, but is not limited to, the same proposal evaluation factors for a CMGC in addition to design professional qualifications, specialized experience, preliminary design submittals, technical merit, design/builder team experience and related matters that affect cost or quality. A qualification based selection process is not applicable.

(5) Licensing. The design/build contractor should be an Oregon licensed professional, but if not must identify the Oregon licensed professional(s) who will provide design services.

(6) Performance Security. The surety's obligation on performance bonds, or the bidder's obligation on cashier's or certified checks accepted in lieu thereof, must include the preparation and completion of design and related personal services specified in the contract. This additional obligation, beyond performance of construction work, extends only to the provision of services related to design revisions, corrective work and associated costs prior to final contract completion. This is not intended to be a substitute for professional liability insurance.

(7) Contract terms may be negotiated to the extent allowed by the RFP and any related County rules. In addition to any other terms required by the County, the contract shall identify the liability of design professionals with respect to the design/build contractor and County, and requirements for professional liability insurance. The contract shall identify the extent to which the County requires express indemnification for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty work claims.

20.255. Energy Savings Performance Contracting.

The following rules implement the requirement of ORS 279C.335(1)(f) for procedures governing energy savings performance contracts (ESPC) and which are statutorily

exempt from competitive bidding requirements. In addition, nothing in these rules prohibits the County from instead following its general exemption procedure in LM 20.265.

(1) General Description. The ESPC is a public improvement contract with a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures (ECM), including a design/build contract that guarantee energy savings or performance. The scope of work includes work on building systems and components that are directly related to ECMs and are to pay for themselves over the useful life of the ECMs. It includes the following types of integrated personal services and work: facility profiling, energy baseline studies, energy efficiency measures, technical energy audits, project development planning, engineering design, plan preparation, cost estimating, life cycle costing, construction administration, project management, construction, quality control, operations and maintenance training, commissioning services, measurement and verification services and required documentation as a fully integrated function with a single point of responsibility.

(2) Contract Terms. An ESPC involves a multiphase contract structure which includes:

- (a) A technical energy audit;
- (b) Project development plan;
- (c) Design/build contract
- (d) Measurement and verification services.

Pricing alternatives include: a fixed price for each phase of the personal services and work to be provided; a cost reimbursement pricing mechanism with a maximum not-to-exceed guaranteed maximum price, or a combination of these pricing options. County shall include any other terms it determines, in its discretion, to be required.

(3) County may, in its discretion, use an RFP process, including but not limited to a multi-tier competitive range selection process for selecting an ESPC as described in LM 21.107. County may use a Request for Qualifications (RFQ) process as a first step in a two step solicitation process, in which distribution of an RFP is limited to firms identified as most qualified through their submitted statements of qualification. County will provide a right to protest competitive range, including within the RFQ, similar to that referenced in LM 21.107.

(4) Proposal Evaluation. Factors in addition to price may be considered in the selection process for an ESPC as set forth in the RFP. The County may provide in the RFP that qualifications-based evaluation factors will outweigh consideration of price-related factors, due to the fact that prices for the major components of the Work will likely not be determinable at the time of Proposal evaluation. The RFP may include, but is not limited to, evaluation factors set forth in County rules for CM/GC and Design/build contracting, as well as factors related specifically to ESPC as set forth in OAR 137-049-0640(2)(d).

(5) Negotiation. Contract terms may be negotiated to the extent allowed by the RFP and related County rules. Examples of terms that may be negotiated consist of details of contract performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that affect cost or quality, in addition to specific terms related to ESPC. See OAR 137-049-0640(3).

(6) Licensing. The contractor should be an Oregon licensed professional, but if not, must identify the Oregon licensed professional(s) who will provide the services.

(7) Performance Security. At the point the parties enter into a binding contract that is a design/build contract, the contractor shall provide a performance and

payment bond each for 100% of the full contract price, including construction and design related services.

EXEMPTIONS AND AUTHORIZATIONS AS CIRCUMSTANCES ARISE

20.255 Emergency Contracts.

The County may execute contracts without a competitive process if an emergency exists and requires prompt execution of a contract to remedy the condition. An emergency is generally defined, but not limited to, a set of circumstances creating a substantial risk of loss, damage, interruption of services or threat to public health or safety that could not have been reasonably foreseen or is beyond the control of the County or its employees. The resulting contract would be necessary under these circumstances to preserve public funds, property, or the uninterrupted provision of government services. The County Administrator is delegated authority to declare an emergency and execute a contract(s) to remedy it not to exceed \$100,000. The Board of County Commissioners, sitting as the local contracting agency, shall declare an emergency and award any contract exceeding \$100,000. The contract shall be executed within 60 days unless the LCRB grants an extension. The procedures in LM 21.128 shall be followed in exercising the authority delegated under this rule. *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

20.265 LCRB Exemption for Other Public Improvement Contracts and Special Procurements.

(1) Subsections (2)-(5) w below apply to public improvement contracts, and subsections (6)-(14) apply to non-public improvement contracts.

(2) The LCRB may exempt a particular public improvement contract, or a category of contracts, from the bidding requirements of ORS 279C.335, which are not otherwise exempt under these rules. The County department's request for exemption shall include draft findings with information, including, but not limited to the following:

- (a) The nature of the project;
- (b) The financial impact including estimated cost of the project, operational, budget and financial data;
- (c) Public benefits;
- (d) Value engineering;
- (e) Specialized expertise required;
- (f) Public safety;
- (g) Market conditions;
- (h) Technical complexity;
- (i) Funding sources;
- (j) Any other information identified by the County, in its discretion, and used to justify the conclusion to except from competitive bidding.

(3) Consideration of the applicable information in LM 20.265 (2) will be documented in findings and include the following standard:

(a) It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and

(b) The awarding of public contracts pursuant to the exemption will likely result in substantial cost savings to the public contracting agency considering the

type, cost, amount of the contract, number of persons available to bid and such other factors as may be deemed appropriate.

(i) CM/GC and Design/build. Additional factors which may be considered include an analysis or reasonable forecast of future cost savings as well as present cost savings; and industry practices, surveys, trends, past experiences, evaluations of completed projects and related information regarding expected benefits and drawbacks of the CM/GC method, and to the extent practicable relate back to the specific characteristics of the project(s).

(ii) Pilot Project. Where an alternative contracting method has not been previously used, an alternative to this "substantial cost savings" finding is a finding that identifies the project as a pilot project for which the County intends to determine whether the use of the alternate contracting method actually results in substantial cost savings to the County.

(c) The findings should include: a narrative description of the cost savings anticipated by the exemption from competitive bidding; the reasons competitive bidding would be inappropriate; if appropriate, propose alternative contracting methods; and, the estimated date by which it would be necessary to let the contract.

(4) For a class exemption, the LCRB findings will identify a limited class by factors that distinguish it from the County's overall construction program, and not solely by funding source or method of procurement.

(5) Public hearing. The LCRB shall hold a public hearing before final adoption of the findings. Public notice of the public hearing to take comments on the draft findings for an exemption from competitive bidding shall be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing. The notice shall include a statement about the purpose of the hearing and about how the public may obtain access to copies of the draft findings, and may describe the process by which findings are finally adopted.

If the County is required to act promptly due to circumstances beyond the County's control that do not constitute an emergency, notification of the public hearing may be published simultaneously with the County's solicitation for the alternative contracting method, as long as responses to the solicitation are due at least five days after the meeting and approval of the findings.

(6) The LCRB may approve a special procurement for a particular non-public improvement contract, or a category of contracts, to allow procurement other than through an otherwise applicable process including competitive bidding (ORS 279B.055), request for proposals (ORS 279B.060), small procurement (ORS 279B.065), and intermediate procurement (ORS 279B.070). The written request for approval of a special procurement shall include:

(a) A description of the goods or services or the class of goods or services to be acquired; and,

(b) A description of the proposed contracting procedure; and,

(c) A description of the circumstances that justify the use of a special procurement.

(7) The LCRB may require such additional information as it deems necessary to determine whether a specific contract, or category of contracts under (5), should be procured by a process other than one that would be applicable.

(8) Application of the information in LM 20.265 (5) must demonstrate that the special procurement would meet the following standard:

(a) It is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and

(b) Either is reasonably expected to result in substantial cost savings to the contracting agency or to the public, or otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements under ORS 279B.055, 279B.060, 279B.065, 279B.070, including any rules adopted thereunder.

(9) Public Notice. Public notice of a request and intent to approve a special procurement shall be provided through the standard public notice for Lane County Board of Commissioners/LCRB meetings, including on the County's website. Public notice of the approval of a special procurement shall be the date of the decision to approve at the LCRB meeting, unless otherwise provided by the LCRB.

(10) An affected person or entity may protest the LCRB's decision to approve a special procurement. The affected person or entity shall deliver a written protest to the County department within ten days after the public notice of the decision to approve, unless the LCRB provides a different protest period in its public notice.

(11) Untimely filed protests in (9) will not be considered.

(12) A written protest shall include a statement of the legal and factual grounds for the protest, a description of the resulting harm to the affected person, and the relief requested.

(13) For protests covered by (9) above, the County department may prepare a response within three days. If the County department concurs with the protest, in whole or in part, it may revise the proposed special procurement accordingly, or withdraw the request. If it does not concur, the LCRB will consider the protest at the time set for considering the request for special procurement for a protest under (9) on a future LCRB agenda as soon as reasonably practicable. The LCRB shall consider the written record, including but not limited to, any County department analysis and submissions by the affected person or entity, and any oral testimony. The LCRB may revise the special procurement, in whole or in part, or deny or sustain the protest.

(14) A contract may not be awarded until after the running of the protest period or completion of protest process in (10) above. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-2-8, 2.2.05; 05-12-14-9, 1.1.06; 08-2-13-1, 2.13.08)*

APPEALS ARISING FROM PREQUALIFICATION, DEBARMENT, DISQUALIFICATION, AND SOLE SOURCE

20.270 Prequalification, Debarment, and Disqualification Appeals.

A prospective bidder or proposer may appeal a Department's decision to debar (non-public improvement) or disqualify (public improvement), or deny, revise or revoke prequalification. See ORS 279B.425 and ORS 279C.450.

(1) A prospective bidder or proposer shall file a written appeal within 3 days after receiving notice of the County's decision. The appellant shall include a detailed statement of the grounds for the appeal.

(2) The Department shall schedule the appeal to be heard before the LCRB, or a designee, as soon as reasonably possible, notify the appellant of the time and place for the hearing, prepare a written response, and provide it to the appellant and to the LCRB. The Department shall also submit the written record to the LCRB.

(3) There shall be a de novo review of the notice of denial, revocation or revision of prequalification or notice of debarment or disqualification and any evidence provided by the parties. The LCRB shall apply the standards of responsibility in deciding an appeal of a denial, revision or revocation of a prequalification in (5) below and criteria for debarment or disqualification in (6) below.

(4) The hearing and appeal decision shall occur within 30 days after receiving the notice from the Department. The LCRB shall provide written reasons for the decision in a final order, and include any allocation of costs for the hearing.

(5) In determining whether the standards of responsibility have been met, the LCRB shall consider whether one or more of the following criteria have been met:

(a) Non-availability of appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain resources and expertise necessary to indicate capability to meet contractual responsibilities;

(b) Unsatisfactory record of performance;

(c) Unsatisfactory record of integrity;

(d) Not legally qualified to contract;

(e) Failure to supply all necessary information in connection with the inquiry concerning responsibility;

(f) Whether contractor has been debarred (non-public improvement) or disqualification (public improvement).

(g) Also, for public improvement contracts, failure to hold current licenses that businesses or service professionals must hold to perform work; is not covered by liability insurance and other insurance in amounts required by County; failure to disclose first-tier subcontractors; whether prospective contractor qualifies as a carrier-insured or self-insured employer under Workers Compensation laws or elected coverage under ORS 656.128.

(6) In determining whether to debar or disqualify a prospective bidder or proposer from consideration of award of the County's contracts for up to 3 years, the decision-maker shall consider whether one or more of the following have been met:

(a) Conviction of a criminal offense as an incident in obtaining or attempting to obtain or performing pursuant to a public or private contract or subcontract;

(b) Conviction under state or federal law of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating lack of business integrity or business honesty that currently, seriously and directly affects responsibility as a contractor;

(c) Conviction under state or federal antitrust statutes;

(d) Violation of a contract provision and debarment was listed as a potential penalty in the terms of the contract;

(e) Failure to carry workers' compensation or unemployment insurance as required by statute. *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

20.271 Protests of Sole Source Contract Exceeding \$100,000

The LCRB shall decide any protests to sole source contracts exceeding \$100,000 in accordance with LM 21.111(6).

BID SECURITY AND BONDS

20.275 Bid Security and Bonds.

(1) Contracts, other than those for public improvements and construction contracts as defined in ORS 279C.320(1), are exempt from the bid security requirements of ORS 279B.050 and performance and payment bond requirements provided that the County may require bid, performance, or payment security, in its discretion, regardless of this exemption.

(2) Contracts for public improvements and construction contracts as defined in ORS 279C.320(1) which do not exceed \$100,000 (except for highway, bridge and other

transportation projects which do not exceed \$50,000) are exempt from bid security, and performance and payment bond requirements provided that the County may require such security in its discretion, regardless of this exemption. ORS 279C.390. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05; 05-3-9-21; 3.9.05)*

