

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 14-07-22-03

IN THE MATTER OF AMENDING THE  
SECTIONS OF LANE MANUAL  
CHAPTER 20 THAT CONTAINS  
EXEMPTIONS TO COMPETITIVE  
BIDDING FOR PUBLIC  
IMPROVEMENT CONTRACTS, TO  
ACCOMMODATE CHANGES IN THE  
OREGON PUBLIC CONTRACTING  
CODE

WHEREAS, Oregon Public Contracting Code allows local public contract review boards to establish local rules governing the procurement of goods and services; and

WHEREAS, the Board, acting as the local public contract review board, has opted to adopt its own rules governing public contracting in lieu of adopting the Oregon Attorney General's Model Public Contract Rules; and

WHEREAS, the Board's adopted rules are those contained in Chapters 20, 21, and 60 of the Lane Manual; and

WHEREAS, certain amendments to the rules are necessary to accommodate changes to the Oregon Public Contracting Code, reduce redundancy, and reduce the necessity for frequent amendments in the future;

NOW, THEREFORE, sitting as both the local contract review board and as the Board of County Commissioners of Lane County, **ORDERS** as follows:

1. The Board, acting as the local public contract review board, continues to opt to adopt its own rules governing public contracting in lieu of adopting the Oregon Attorney General's Model Public Contract Rules; and
2. That Lane Manual Chapter 20 is hereby amended by replacing the following sections with the sections indicated as attached to this Board Order:

**REMOVE THESE SECTIONS:**

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**INSERT THESE SECTIONS:**

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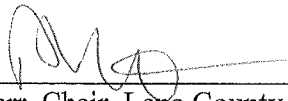
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These sections are attached hereto and incorporated by reference. The purpose of these substitutions is to accommodate recent changes to the Oregon Public Contracting Code, clarify technical language, and align the County's administrative requirements with the current departmental structure.

**ADOPTED** this 22nd day of July, 2014.



Pat Farr, Chair, Lane County Board of Commissioners

APPROVED AS TO FORM

Date 7-9-14 Lane County

  
OFFICE OF LEGAL COUNSEL

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~~ALTERNATIVE CONTRACTING METHODS~~  
**PUBLIC IMPROVEMENT CONTRACT EXEMPTIONS**

**20.251 Purpose and Evaluation Competitive Bidding Exemptions for Public Improvement Contracts**

(1) ~~Contracts Subject to Exemption. Upon approval of the findings in (2)(c) below, the LCRB may authorize an exemption from competitive bidding requirements for any the use of the following types of alternative contracting methods for public improvements contracts in order to take advantage of evolving procurement methods as they emerge, while preserving competitive bidding as the standard unless exempted:~~

(a) ~~-Construction Manager/General Contractor (CM/GC), as defined in ORS 279C.332 and OAR 137-049-0610;~~

(b) ~~Design/ Build, as defined in OAR 137-049-0610; and~~

(c) ~~and Energy Savings Performance eContracting (ESPC), as defined in ORS 279A.015(6) and OAR 137-049-0610.~~

(2) **Approval of Findings.** Prior to exempting a contract from competitive bidding requirements, the LCRB must:

(a) **Hold a public hearing, in accordance with ORS 279C.335(5);**

(b) **Give at least 14 days' notice of the public hearing, in accordance with ORS 279C.335(5)(b) and (c), and**

(c) **Approve written findings that:**

(i) **It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts, and**

(ii) **The awarding of public improvement contracts under the exemption will likely result in substantial cost savings to the County or the public. In making this finding, the LCRB may consider the type, cost and amount of the contract, the number of persons available to bid, and must consider all required factors in ORS 279C.335(2)(b), to the extent applicable.**

(23) **Post Project Evaluation.** Upon completion and final payment for any ~~if~~ the public improvement project in excess of ~~exceeds~~ \$100,000 for which an exemption was authorized under this section, the contracting Department shall prepare and deliver ~~within 30 days of project acceptance, provide a post-project evaluation to the~~ LCRB an evaluation of the public improvement contract. The evaluation must, at a minimum, meet the requirements of ORS 279C.335(b) and (c), and ~~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. *(Revised by Order No. 11-08-17-8, Effective, 08.17.11)*

**20.252 Construction Manager/General Contractor.**

~~If the~~ **The County conducts a procurement for a Construction Manager/General Contractor pursuant to an exemption granted under LM 20.251, the procurement must be conducted in accordance with model rules adopted by the Attorney General under ORS 279A.065(3).may, in its discretion, use a request for**

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~~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 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'~~

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~~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.~~

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~~\_\_\_\_\_ (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. (Revised by Order No. 11-08-17-8, Effective, 08.17.11)~~

**20.253 Design/Build.**

~~If the County conducts a procurement for a Design-Build contractor pursuant to an exemption granted under LM 20.251, the procurement may be conducted following may, in its discretion, use a request for proposal procedure in accordance with LM 21.107 and utilizing the criteria in OAR 137-049-0670 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 unlikeliness 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.~~

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~~(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. (Revised by Order No. 11-08-17-8, Effective, 08.17.11)~~

**20.254 Energy Savings Performance Contracting.**

If the County conducts a procurement for a an Energy Savings Performance Contractor (ESPC) pursuant to an exemption granted under LM 20.251, the procurement may be conducted following a request for proposal procedure in accordance with LM 21.107 and utilizing the criteria in OAR 137-049-0680. 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~~

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~~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. (Revised by Order No. 11-08-17-8, Effective, 08.17.11)~~

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### **20.265 LCRB Exemptions 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;~~



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~~\_\_\_\_\_ (h) Technical complexity;  
\_\_\_\_\_ (i) Funding sources;  
\_\_\_\_\_ (j) Any other information identified by the County, in its discretion, and  
used to justify the conclusion to exempt 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.~~

~~\_\_\_\_\_ (e) 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.~~

(16) 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),

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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.

(72) 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.

(83) 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.

(94) 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.

(105) 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.

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

(127) 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.

(138) 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.

(149) 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; 11-08-17-8, 08.17.11)*

## PUBLIC IMPROVEMENT CONTRACT EXEMPTIONS

### **20.251 Competitive Bidding Exemptions for Public Improvement Contracts**

(1) Contracts Subject to Exemption. Upon approval of the findings in (2)(c) below, the LCRB may authorize an exemption from competitive bidding requirements for any of the following types of public improvement contracts

(a) Construction Manager/General Contractor (CM/GC), as defined in ORS 279C.332 and OAR 137-049-0610;

(b) Design Build, as defined in OAR 137-049-0610; and

(c) Energy Savings Performance Contracting (ESPC), as defined in ORS 279A.010 and OAR 137-049-0610.

(2) Approval of Findings. Prior to exempting a contract from competitive bidding requirements, the LCRB must:

(a) Hold a public hearing, in accordance with ORS 279C.335(5);

(b) Give at least 14 days' notice of the public hearing, in accordance with ORS 279C.335(5)(b) and (c), and

(c) Approve written findings that:

(i) It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts, and

(ii) The awarding of public improvement contracts under the exemption will likely result in substantial cost savings to the County or the public. In making this finding, the LCRB may consider the type, cost and amount of the contract, the number of persons available to bid, and must consider all required factors in ORS 279C.335(2)(b), to the extent applicable.

(3) Post Project Evaluation. Upon completion and final payment for any public improvement project in excess of \$100,000 for which an exemption was authorized under this section, the contracting Department shall prepare and deliver to the LCRB an evaluation of the public improvement contract. The evaluation must, at a minimum, meet the requirements of ORS 279C.335(b) and (c), and should include : 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. *(Revised by Order No. 11-08-17-8, Effective, 08.17.11)*

### **20.252 Construction Manager/General Contractor.**

If the County conducts a procurement for a Construction Manager/General Contractor pursuant to an exemption granted under LM 20.251, the procurement must be conducted in accordance with model rules adopted by the Attorney General under ORS 279A.065(3). *(Revised by Order No. 11-08-17-8, Effective, 08.17.11)*

**20.253 Design-Build.**

If the County conducts a procurement for a Design-Build contractor pursuant to an exemption granted under LM 20.251, the procurement may be conducted following a request for proposal procedure in accordance with LM 21.107 and utilizing the criteria in OAR 137-049-0670. *(Revised by Order No. 11-08-17-8, Effective, 08.17.11)*

**20.254 Energy Savings Performance Contracting.**

If the County conducts a procurement for a an Energy Savings Performance Contractor (ESPC) pursuant to an exemption granted under LM 20.251, the procurement may be conducted following a request for proposal procedure in accordance with LM 21.107 and utilizing the criteria in OAR 137-049-0680. *(Revised by Order No. 11-08-17-8, Effective, 08.17.11)*

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**20.265 LCRB Exemptions for Special Procurements.**

(1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

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

(7) 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.

(8) 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.

(9) 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; 11-08-17-8, 08.17.11)*