

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO. 19-05-21-03

IN THE MATTER OF REVISING CHAPTER
20 OF THE LANE MANUAL TO CORRECT
AND UPDATE THE COUNTY'S PUBLIC
CONTRACTING RULES

The Board of County Commissioners of Lane County ORDERS as follows:

Lane Manual Chapter 20 is amended by removing, substituting and adding the following sections.

REMOVE THESE SECTIONS

20.225
20.270
20.315 - 20.325
20.355
20.420 - 20.430
20.515
NONE
20.650 – 20.670
20.710 – 20.720

INSERT THESE SECTIONS

20.225
20.270
20.315 - 20.325
20.355
20.420 - 20.430
20.515
20.597
20.650 – 20.670
20.710 – 20.720

If any section, subsection, sentence, clause, phrase or portion of this Order or the referenced Lane Manual provisions are for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion is deemed a separate, distinct, and independent provision, and such holding does not affect the validity of the remaining portions.

Said sections are attached hereto and incorporated herein by reference. The purpose of this substitution is to update rules and policies pertaining to Public Contracting.

ADOPTED this 21st day of May, 2019.



Peter Sorenson, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 5/14/2019 Lane County



OFFICE OF LEGAL COUNSEL

20.225 Equipment Repair and Overhaul.

(1) The County may contract for equipment repair, overhaul, or maintenance without competitive bidding or quotes, subject to the following conditions:

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

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

(2) If a contract under this exemption exceeds ~~\$100,000~~**\$150,000**, the County shall document in its procurement file the reasons why competitive bids or quotes were deemed to be impractical.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

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

The County may enter into contracts for the purchase of gasoline, diesel fuel, heating oil, lubricants, and asphalts without formal competitive bidding, provided that:

(1) The County has solicited a minimum of three (3) competitive quotes,

(2) Makes its purchases from the least expensive source, taking into consideration the costs of delivery or transportation, and

(3) Retains written justification for the source selected for the purchase.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.235 Client and 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 and type of appropriate care, availability of service at the time it is needed, and cost.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.240 Laboratory and Medical Supplies.

The County may specify or select laboratory and medical supplies on the basis of brand name, provided that:

(1) The purchase is made from the lowest priced vendor for the specific product and brand, and

(2) The County has a reasonable medical or scientific basis for the selection.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.250 Used Personal Property.

The County may purchase used personal property for \$50,000 or less without competitive selection, provided that:

(1) The County has determined that the direct purchase without competitive bidding will result in cost savings, and

(2) For purchases of used personal property over \$50,000, at least 3 competitive quotes have been obtained, if available. If 3 quotes are not available, a written record must be made of the attempt to obtain quotes.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.255 Litigation Services.

The County may contract for personal services related to litigation or legal matters without competitive selection when County Counsel deems it necessary to do so, including but not limited to outside legal representation, expert witnesses, consultants, arbitrators, mediators, investigators or other specialized personnel.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.260 Employee Benefit Insurance.

The County may purchase employee benefit insurance without competitive selection.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.265 Investments.

The County may contract for the purpose of the investment of public funds or the borrowing of funds without competitive selection, when such investment or borrowing is contracted pursuant to a enacted statute, order, ordinance, charter, or constitution.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.270 Insurance.

(1) The County may purchase insurance without a formal competitive selection when the annual or aggregate premium is less than or equal to \$100,000.

(2) Contracts for insurance where either the annual or aggregate premium exceeds ~~\$100,000~~**\$150,000** must be let by competitive selection or through an agent of record.

(3) Agent of Record. The County may appoint a licensed insurance agent as its agent of record to perform insurance services in connection with more than one insurance contract, including the securing of proposals from insurance carriers for all coverages for which the agent of record is given responsibility, provided that:

(a) The County has made reasonable efforts to inform known insurance agents in the competitive market area that it is considering such appointment, including a public advertisement describing the nature of the agent of record services,

(b) The appointment does not exceed three years, and

(c) In making the appointment, the County has selected the agent most likely to perform cost-effective services.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.275 Oil or Hazardous Material Removal.

The County may enter into contracts without competitive selection when necessary to comply with a cleanup order issued under the authority granted the Department of Environmental Quality (DEQ) under ORS Chapter 466, especially ORS 466.605 through 466.680, provided that:

(1) The 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,

(2) The order contains time limitations that do not permit hiring a contractor under the usual competitive selection procedures,

(3) To the extent reasonable under the circumstances, the County has encouraged competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services, and

(4) The cleanup is conducted in accordance with the rules set forth at OAR 340-122-0205 to 340-122-0360.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.280 Disposal of Recyclable and Nonrecyclable Waste Materials.

The County may sell, pay for disposal of, or contract for the sale or disposal of waste materials without competitive selection when necessary to dispose of waste materials received at County solid waste or Public Works facilities in a timely manner, provided that:

(1) The County has encouraged competition by researching potential purchasers or receivers and making formal or informal solicitations for such services,

(2) The County has been unable to either obtain competitive offers or to identify purchasers or receivers willing to enter into a term contract with the County, and

(3) The Director of the Department of Public Works has approved the method for selection of a purchaser, receiver, or contractor for the type of material that is in the best interests of the County. Such methods may include, but are not limited to, selection of the only known purchaser or receiver within a commercial reasonable distance, comparative one-time price quotes, response time, and direct negotiation.

(Revised by Order No. 19-04-30-02, Effective 04-30-19)

CONDITIONAL EXEMPTIONS FROM COMPETITIVE SELECTION

20.310 Small Procurements.

(1) Where possible, selection of a vendor for small procurements should be made by competitive selection, unless impracticable. However, the County may award a contract for goods or services without competitive selection, provided that:

(a) For public improvement projects, the amount does not exceed \$5,000 or 3 years in length, pursuant to ORS 279C.335.

(b) For all other small procurements, the amount does not exceed \$10,000 or 3 years in length.

(2) No contract may be considered a small procurement under this rule if it is a component of a larger purchase, set of purchases, or project, all taking place in one year, and which when taken together as a whole would exceed \$10,000 in contract amount.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.315 Sole Source Contracts.

The County may award a contract for goods or services without competitive selection, when there is only one source for goods or services, or a class of goods or services of the quality required by the County, providing that:

(1) The County makes a reasonable effort to identify and notify any potential offerors regarding the intended purchase or project. Such efforts may include, but are not limited to: direct vendor contacts, requests for information, requests for letters of interest, or requests for qualifications. If the County intends to make multiple purchases of the product or services over a period of time, that information must be included in any information given to potential offerors.

(2) A sole source determination is made based on written findings, pursuant to ORS 279B.075(2). Authority to make the determination is granted to:

(a) For contracts not greater than \$50,000, to the Department directors or their designees.

(b) For contracts not greater than ~~\$100,000~~**\$150,000**, to the County Administrator, based upon proposed written findings prepared by the Department, along with such other information as the Administrator may require.

(c) For contracts in excess of \$~~100,000~~**150,000**, public notice of the proposed determination must be published electronically on the website designated by the County for advertisements for bids or through another public notice placed so as to be reasonably able to reach potential offeror of such goods or services. The notice must provide that any person that believes its interests would be adversely affected by the determination must deliver a written protest to the County Administrator and within 5 days of the public notice. The written protest shall include a detailed statement of the legal and factual grounds for the protest, a description of the resulting harm, and the relief requested. Unless otherwise specified in the public notice of the sole source procurement, the LCRB may consider the written record, and any other testimony provided at the public meeting and must make its determination by Board Order.

(3) Following a determination under part (2) of this rule, the County negotiates with the sole source to obtain contract terms advantageous to the County, to the extent practicable.

(4) To the extent purchases under this rule are part of an approved special procurement under LM 20.240 through 20.254, the terms of the special procurement prevail over this rule.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.320 Emergency Contracts.

Certain contracts may be awarded without competitive selection, if an emergency exists that requires prompt execution of those contract(s) to preserve public funds, property, or the uninterrupted provision of government services.

(1) As used in this section, an emergency is generally defined as circumstances that could not have been reasonably foreseen, and create a substantial risk of loss, damage, or interruption of services, or a threat to property, public health, or safety. ORS 279A.010(f).

(2) A written determination must be made documenting the nature of the emergency, the method of contractor selection, and designating the contract(s) to be awarded. The County Administrator is delegated authority to make the determination for one or more contracts, in an aggregate amount not to exceed \$~~100,000~~**150,000** for a single occurrence or event. A determination for emergency contracts in excess of \$~~100,000~~**150,000** for a single occurrence or event must be made by the LCRB.

(3) The County must ensure competition for the contract that is reasonable and appropriate under the emergency circumstances, which may include, but are not limited to:

(a) Limiting the scope or duration of the contract to the amount necessary under the emergency conditions,

(b) Providing a limited solicitation period and limiting required documentation, and

(c) Waiver of a performance or payment bond pursuant to ORS 279C.380(4) or of a public works bond pursuant to ORS 279C.836(9).

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.325 Personal Services Contracts.

Where possible, selection of a personal service contractor must be made by competitive selection, unless impracticable. However, the County may award a contract for personal services without competitive selection, providing that:

(1) The Department Director makes a written determination that the services to be provided in the particular contract are personal services, as defined in LM 20.~~5430~~(1), and

(2) The County has made a finding that direct contracting is in the best interests of the County for the contract. Authority to make the finding is granted to:

(a) Each Department Director, for contracts not greater than \$50,000.

(b) The County Administrator, for contracts not greater than \$~~100,000~~**150,000**.

(c) The LCRB, for contracts greater than \$~~100,000~~**150,000**.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

EXEMPTIONS FROM COMPETITIVE SELECTION FOR ALTERNATIVE CONTRACTING METHODS

20.350 Special Procurements.

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.070), and intermediate procurement (ORS 279B.070). Approval of a special procurement must be made in accordance with the requirements of ORS 279B.085, and any protest of such approval must be made in accordance with ORS 279B.400.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.355 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~~ **\$150,000** 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. 15-09-01-05, Effective 10-15-15)

20.360 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 the model rules adopted by the Attorney General under ORS 279A.065(3).

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.365 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 20.420(1) and utilizing the criteria in OAR 137-049-0670.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.370 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 20.420 and utilizing the criteria in OAR 137-049-0680.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

SOLICITATION PROCEDURES

20.410 Preliminary Procedures and Prequalification.

In preparation for competitive selection, the County may:

(1) Issue a request for information, request for letters of interest, request for qualifications, or other preliminary documents, for the purpose of determining the availability and interest of possible vendors for the goods or services proposed.

(2) Allow or require prequalification of bidders or proposers, either through an advertised process setting forth the procedure and criteria for prequalification prior to issuance of competitive procurement, or by inclusion of the requirements in the invitation to bid. The public officer has authority to determine when prequalification may be required for a specific contract or class of contracts, and may determine the prequalification procedure in accordance with the requirements of ORS 279B.120 and 279B.125, and the requirements of ORS 279C.430 for public improvements projects. Determination of prequalification must be made in accordance with ORS 279B.120(2), or the requirements of ORS 279C.375(3)(b) for public improvements projects.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.420 Methods of Source Selection.

Unless exempted under LM 20.110 to 20.450, all contracts for goods or services must be awarded by competitive selection. Notwithstanding such exemption, the public officer may use competitive selection to select a vendor for any type of goods or services except those relating to purchases from qualified rehabilitation facilities in accordance with LM 20.115.

(1) Competitive Selection. The County may use any of the following procedures to procure goods and services through competitive selection:

(a) Competitive Bidding pursuant to the requirements for competitive sealed bidding in ORS 279B.055.

(b) Request for Proposals (RFP) pursuant to the requirements for competitive sealed proposals in ORS 279B.060.

(c) Competitive Quotes (CQ) pursuant to the requirements for intermediate procurements in ORS 279B.070. CQs for contracts greater than \$50,000 in value, the County must prepare a written solicitation document. ~~The written solicitation document must:~~

~~(i) Require that the quote be made in writing, and identify any other forms or documentation that must be submitted with the quote;~~

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Bold indicates material being added

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~~_____ (ii) State the date, time, and method of submission for quotes, which must be not less than 7 days from the date the solicitation is delivered;~~

~~_____ (iii) Include, or include by reference, the County's standard bidding and proposal procedures, and~~

~~_____ (iv) Include the contract terms applicable to the contract.~~

(2) Direct Selection Subject to an Exemption. For procurement of goods or services that are exempt from the requirement for competitive selection pursuant to the requirements of LM 20.110 to 20.450, the public officer is authorized to make the selection that best serves the County's interests, taking into account price, qualifications, schedule, and other factors.

(3) Contracts Relating to Public Improvements. Specific requirements apply to procurements and contracts relating to both the design or the construction of public improvements:

(a) Construction. Contracts relating to the construction of public improvements may be awarded using any competitive selection procedure described in subsection (1) of this section, and must also comply with the requirements of ORS 279C.300 through 279C.870 and with the County Rules.

(b) Design-Related Services. Contracts relating to the design of public improvements must comply with the requirements of ORS 279C.100 through 279C.120, in addition to the requirements of the County Rules.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.430 Personal Services Contract Selection Procedures.

(1) Pursuant to ORS 279A.055, a contract may be designated as a personal service contract if the contractual relationship is based primarily on a special trust and confidence between the County and contractor; or the type and quality of services to be provided under the contract are based primarily on the contractor's special or unique expertise or knowledge; particular experience; or the exercise of discretionary judgment skills unique to the service provider.

(a) Contracts that may be designated personal service contracts include, but are not limited to, contracts for: expert consulting, appraisal, timber cruising, licensed professionals (including attorneys, auditors, accountants, physicians, physician assistants, nurse practitioners, nurses, therapists, realtors and engineers), research, polling, education, and artwork.

(b) Contracts that are not personal services contracts include contracts for services that can generally be performed by an experienced competent person, whether the person is required to be licensed or not, including but not limited to contracts for: trade-related activity (including plumbing and electrical work), custodial services, document filing and storage, general labor, and repairs and maintenance services for buildings or equipment.

(c) Pursuant to ORS 279C.100 through 279C.120, contracts for services relating to planning, designing, engineering, or overseeing of public improvements are designated by law as personal services. These include architectural, engineering, photogrammetric mapping, transportation planning, and land surveying services, and related services as defined in ORS 279C.100(8).

(2) If a contract has been designated as a personal services contract, the County may use an RFP process or a CQ process, depending upon the contract amount.

(a) Evaluation factors should include, but not limited to, the proposed contractor's qualifications, abilities, licenses and certifications, capacity and capability, past record of performance, cost control, quality of work, financial resources, availability, and familiarity with the area.

(b) The process may include, as appropriate, written submissions, demonstrations, and interviews. For contracts in excess of ~~\$100,000~~**150,000**, the process should include interviews of not fewer than 2 of the most qualified prospective contractors.

(3) For personal services related to the planning, designing, engineering, or overseeing of public improvements, the RFP or CQ process must comply with the requirements of ORS 279C.100

through 279C.120, including the prohibition on soliciting information regarding price until after a contractor has been selected.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.440 Requirements Contract Selection Procedures.

If the contract for goods or services will be a requirements contract, the County may use any competitive selection process for selection of a contractor, provided the process is in compliance with the requirements of this rule.

- (1) In conducting competitive selection, the Invitation or Request must:
 - (a) State whether the County will consider awarding and executing more than one contract for a single type of service or good, and
 - (b) If the awarding of more than one contract is anticipated, state the method to be used in selecting which contractor will perform specific services or provide certain goods.
- (2) In addition, the conditions of the Invitation or Request must provide:
 - (a) A stated minimum or maximum value of goods or services to be purchased under the contract,
 - (b) The term of the contract, which, including renewals, may not exceed 3 years, and must allow the County to cancel the contract upon 30 days written notice, and
 - (c) An estimated dollar amount of purchases to be made during the term of the contract.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.450 Bidding and Proposal Procedures.

The bidding and proposal procedures in this section are applicable to Competitive Bidding, RFPs, and CQs under LM 20.520(1). When applied to the procedures for RFPs or CQs, the terms related to "proposals" or "quotes" must be substituted for the terms related to "bids" as used in this section.

- (1) Clarifications to Bidding Documents. If a bidder finds discrepancies or omissions in the drawings or bid documents, or is in doubt as to their meaning, the bidder must immediately notify the public officer. If the public officer believes a clarification is necessary, an addendum will be issued in writing not less than 48 hours prior to the deadline for bid. The terms of any addenda issued are to be included in the bidder's proposal, and will become part of the contract documents.
- (2) Submission and Receipt of Bids.
 - (a) To be received and considered, all bids must be in writing and signed by the bidder or the bidder's authorized representative. Bids required or allowed to be submitted as sealed bids in paper copy must be submitted in a sealed envelope. Bids required or allowed to be submitted electronically must be submitted in the manner specified in the invitation to bid.
 - (b) By signing and returning a bid, the bidder acknowledges it has read and understands the terms and conditions applicable to the solicitation document and that it accepts and agrees to be bound by the terms and conditions of the contract, including to perform the scope of work and meet the performance standards.
 - (c) Modifications. A bidder may not modify its bid after submission. A bidder may withdraw its bid at any time prior to the deadline set for receipt of bids, and may submit a replacement bid in accordance with the required bid submission procedures. The County may release an unopened bid which has been withdrawn to the bidder or authorized representative after voiding any date and time stamp mark.
 - (d) Late Bids. The County will not consider any bid received after the time and date stated for bid opening in the invitation to bid.
 - (e) Bids Irrevocable. All bids must be irrevocable for 30 days from the deadline for submission, unless otherwise stated in the invitation to bid. In addition, the bids of the three lowest bidders will be irrevocable and binding, and any bid securities may be retained by the public officer, until

20.515 Purchase Orders.

(1) Unless otherwise provided, County purchase orders are not contracts until the purchase order is agreed to by the recipient. Once accepted, a purchase order becomes a contract according to its terms.

(2) **Authority to approve issuance of Purchase Orders for County Purchases is subject to the limitations on contract amount and delegated authority contained in LM 20.630, 20.660, and 20.670.**

(3) The County Administrator is delegated authority to prescribe rules for the types of contracts or purchases that may be made using a purchase order, and the form to be used.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.520 Goods and/or Services Contracts.

Goods and/or Services contracts are the County's standard method of contracting for goods, services, or a combination of goods and services. Such contracts may only be used to engage independent contractors meeting the requirements of ORS 670.600, and may not provide for the contractor or contractor's staff to be under the direction and control of the County.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.525 Construction and Public Improvement Contracts.

(1) All contracts relating to construction must comply with the requirements of ORS 279C.300 through 279C.870, in addition to these rules. Except as provided in these rules, the requirements of ORS chapter 279B do not apply to contracts for construction.

(2) All contracts relating to construction must contain, either by inclusion or by reference, the County's standard contract provisions contained in LM 20.590 and the standard contract provisions for construction contained in LM 20.595, except as approved by the Office of Legal Counsel.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.530 Requirements Contracts and Price Agreements.

Requirements contracts and price agreements must meet the requirements of ORS 279B.140 and this rule.

(1) The terms of the resulting contract or contracts must state the method to be used to authorize a purchase of goods or services under the agreement.

(a) If set prices for defined goods or services are stated in the contract, the County may purchase such goods and services from the contractor

(b) If the goods or scope of work to be purchased are described in general terms in the contract, requiring further definition for a specific scope or project, such additional definition must be made in writing and executed as an amendment to the contract.

(2) The contract may not be amended to encompass goods or services not reasonably anticipated in the terms of the original competitive procurement.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.535 Future Purchase and Retainer Contracts.

Future purchase and retainer contracts establish general terms for the future purchase of goods or services, the terms of which will apply only if subsequent purchases are made.

(1) Each contract must comply with the requirements of LM 20.130, and:

(a) Contain a description of the method that the County will use to initiate a purchase under the agreement, which must include a writing, and

(b) State that the County makes no guarantee that any purchase will be made or any minimum amount paid under the contract.

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authorization from Lane County provided that the undersigned replaces the matured bond or security with an identical one of equal or greater value.

If the bonds or securities deposited are to be credited to more than one public contract, the distribution will be allocated as stated on Schedule "A."

SCHEDULE "A"

1. DESCRIPTION OF THE BONDS OR SECURITIES.
2. NAME OF CONTRACTOR/ASSIGNOR.
3. IDENTIFICATION NUMBER OF THE CONTRACT OR PROJECT.
4. PAR VALUE OF SECURITIES OR BONDS (AND THE MARKET VALUE, IF DIFFERENT).
5. MATURITY DATES OF SECURITIES OR BONDS.

Signed and dated at _____, Lane County, Oregon, this __ day of _____, 20__ .

(Signature of Depositor/Assignor)
Address:

ACCEPTANCE

_____ (Bank or Trust Company) hereby accepts the foregoing Assignment and Safekeeping Receipt No. __, in the total amount of \$_____, this day of _____, 20__, and hereby acknowledges receipt of the bonds or securities listed in Schedule "A" above to hold in trust for Lane County for the uses and purposes stated above.

(Authorized Signature)

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.597 Modification of Standard Contract Provisions.

Except as required by Oregon or federal law, the Office of Legal Counsel is delegated authority to waive one or more of the Standard County Contract Provisions contained in LM 20.590 and 20.595 when it is in the best interests of the County to do so.

AUTHORITY TO AWARD, APPROVE, AND CANCEL CONTRACTS

20.610 Contract Award and Approval.

(1) Contract award may be made by the public officer delegated the authority to execute the contract or, if no delegation has been made, by the Board.

(2) All contracts must be processed through procedures prescribed by the County Administrator, including review by legal, risk management, budget and other staff, except as expressly stated otherwise by these rules.

(3) Contracts for personal services for, or related to, legal services and investigations will be processed and archived in the Office of Legal Counsel. However, the authority to execute or amend such contracts must be exercised in accordance with the requirements of LM 20.650 through 20.670.

(b) The County Administrator is delegated authority to execute an amendment to a contract that exceeds the limitations in this section when, in the Administrator's judgment, the increase in the contract amount is necessary to provide continuity of services or is necessitated by conditions outside the County's control.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.640 Construction Change Orders.

The Director of a Department with authority to contract for public improvements, construction, or the renovation of roads and transportation facilities is granted authority to authorize and execute construction change orders, providing that all of the following conditions are met:

- (1) The change would not increase the cost of the project by more than 10 percent of the contract price,
- (2) The change order is reasonably related to the purpose of the project, and
- (3) The Director has determined that it is in the best interest of the County to authorize the order to facilitate completion of the project.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.645 Contract Completion and Acceptance.

Each Department Director is granted authority to determine that all obligations under the contract have been met and the contract is completed and accepted.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

AUTHORITY TO EXECUTE CONTRACTS, AMENDMENTS, GRANT APPLICATIONS, AND GRANTS

20.650 Delegation of Authority to Execute Grant Applications and Accept Grants.

(1) Each Department Director is delegated the authority to approve and execute all documents in application for or acceptance of a grant not exceeding ~~\$25,000~~**\$50,000**.

(2) The County Administrator is delegated authority to approve and execute all documents in application for and acceptance of a grant not exceeding ~~\$100,000~~**\$150,000**.

(3) The County Administrator is delegated authority to approve and execute all documents in application for a grant in excess of ~~\$150,000+00,000~~, provided that the application does not obligate the County to accept the grant if awarded.

(4) The Board must approve the acceptance of a grant exceeding ~~\$150,000+00,000~~. If an application for a grant in excess of ~~\$150,000+00,000~~ obligates the County to accept the award as a condition of application, the Board must approve the application for the grant. Following Board approval of a grant or grant application, the Administrator is delegated authority to approve and execute all other grant documents.

(5) The County Administrator is delegated authority to approve and execute all documents to continue a grant that was approved by the Board, so long as the continuation is substantially similar to the original grant approved by the Board.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.660 County Administrator's Authority to Execute Contracts.

(1) The County Administrator is delegated authority to execute all contracts and agreements that do not exceed ~~\$150,000+00,000~~ in cost or revenue nor three years in length.

(2) The County Administrator is further delegated authority to execute contracts that exceed three years in length, or are by their terms self-renewing, but only if:

- (a) The cost or revenue for the first three years does not exceed \$50,000, and
- (b) The contract contains a provision allowing the County to terminate the contract upon not more than one year's notice.

(3) The County Administrator is further delegated authority to execute, without limitation of amount or length:

- (a) All contracts that have been awarded or expressly approved by the Board.
- (b) Contracts specifically identified in a budget adoption order or supplemental budget order approved by the Board.
- (c) Insurance nonwaiver agreements and insurance endorsements to original policies.
- (d) Land use improvement agreements, Building Program Quick Start Agreements and acceptance and release of land use performance bonds.

(e) Contracts and assignments for the collection of County judgments.

(f) All contracts with terms of three years or less that implement public improvement projects described on the adopted Public Works five-year Capital Improvement Program list, the adopted Parks Capital Improvement Program priorities list, and the Public Works and ~~Management Services~~**County Administration** public improvement lists prepared for filing with the Commissioner of the Bureau of Labor and Industries (BOLI) pursuant to ORS 279C.305. This delegation includes, without limitation, **contracts to prepare for, design, administer, and construct listed projects, as well as** those contracts reflecting the County paid portion of the project, those reflecting any amount to be paid by other governmental agencies or housing development entities for assisted housing projects, and those covering environmental mitigation responsibility.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.665 County Administrator’s Authority to Execute Amendments.

Subject to the limitations on cumulative contract amount in LM 20.630, the County Administrator is delegated authority to:

- (1) Execute amendments to contracts that do not cause the contract amount to exceed ~~\$150,000~~**\$100,000** in cost or revenue nor three years in length,
- (2) Execute amendments to contracts, without limitation of amount or length, if the amendment amount or length is within limits authorized by the Board for that specific contract or class of contracts, and
- (3) Execute amendments to contracts where the original contract amount exceeds ~~\$150,000~~**\$100,000**, subject to the following limitations:
 - (a) If the original contract amount is greater than \$500,000, the total of all amendments to that contract may not exceed 25 percent of the contract amount approved by the Board.
 - (b) If the original contract amount is \$500,000 or less, the total of all amendments may not exceed 50 percent of the contract amount approved by the Board, and
 - (c) The amendment does not extend the length of the contract beyond three years, unless the original contract contained a provision for a longer duration and was awarded or expressly approved by the Board.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.670 Department Directors’ Authority to Execute Contracts and Amendments.

- (1) Each Department Director is delegated authority to execute contracts that do not exceed ~~\$50,000~~**\$25,000** nor three years in length.
- (2) **Each Department Director is further delegated authority to execute contracts that exceed three years in length, or are by their terms self-renewing, but only if:**
 - (a) **The cost or revenue for the first three years does not exceed \$50,000, and**

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(b) The contract contains a provision allowing the County to terminate the contract upon not more than one year's notice.

(3) Subject to the limitations on cumulative contract amount in LM 20.630, each Department Director is delegated authority to execute amendments that do not exceed **\$50,000**~~25,000~~, subject to the following limitations:

(a) The amendment, in combination with all prior amendments, does not cause the contract amount to exceed **\$150,000**~~100,000~~ in cost or revenue nor three years in length, and

(b) The amendment, in combination with all prior amendments, does not exceed **\$50,000, or 2550%** of ~~either the original contract amount, or the amount expressly~~ approved by the Board, whichever is greater.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.680 County Administrator's Authority to Cancel Awards and Terminate Contracts.

The County Administrator is delegated the authority to cancel awards and terminate contracts and grants, including amendments, as provided in the contract or by law.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.685 Further Delegation.

The County Administrator and each Department Director's authority under LM 20.650, 20.655, 20.660, 20.665, and 20.670 may only be delegated through a writing.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

PROTESTS OF PREQUALIFICATION, DEBARMENT, AND DISQUALIFICATION

20.710 Protest of Solicitation Process.

~~Protest of Solicitation Documents.~~ Pursuant to **ORS 279B.405**, ~~Aa~~ prospective bidder or proposer may file a protest of ~~an competitive bidding or RFP process, or CQa solicitation~~ process ~~for a contract in excess of \$50,000 pursuant to ORS 279B.405~~. To be considered, the protest must be received by the County not less than seven 7 calendar days prior to ~~bid opening~~**the date bids or responses are due**, and must contain the information and statements required in ORS 279B.405(4)(a) through (d). The County will issue a determination in accordance with ORS 279B.405(5) and (6).

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.720 Protest of Award Based Upon Competitive Bidding or Quotes.

A bidder that submitted a responsive bid, ~~or a competitive quote for a contract greater than \$50,000 in value~~, may protest the award of a contract based on the bids received for that contract. Any protest must be received by the County within seven 7 days of the date of the notice of intent to award or, if no notice of award is given, of the date of actual award. Protests of award or intent to award will be considered by the LCRB, if the Board's action were required to award the contract. All other protests of intent of award will be considered by the County Administrator, or the Administrator's designee.

(1) Requirements for protest.

(a) A protest of award of a public improvement contract must specify the applicable grounds for protest set forth in OAR 137-049-0450(4)(c), which is hereby adopted into this rule.

(b) All other protests of award must be in writing and specify the applicable grounds for the protest as set forth in ORS 279B.410(1).

(c) Any protest not in compliance with these rules may be rejected.

(2) Review and determination.

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(a) **Contracts Requiring Board Action to Award.** If the public officer determines there is sufficient merit to reject bids, the public officer may do so. If, following any action by the public officer, any portion of the protest remains, the LCRB must be provided with, and may consider, a complete copy of the written record, and any other evidence provided, at a public meeting. The LCRB may affirm, reverse, or revise an award, or may send the matter back to the Department for further action, and must issue its decision by Board Order.

(b) **Contracts Not Requiring Board Action to Award.** The County Administrator has authority to reject bids, or to affirm, reverse, or revise the award, or send the matter back to the department for further action. The Administrator must deliver this decision to the LCRB. If, within seven 7 days, the LCRB elects to review the matter, the LCRB must be provided with and may consider a complete copy of the written record, and any other evidence provided, at a public meeting. The LCRB may affirm, reverse, or revise an award, or may send the matter back to the Department for further action, and must issue its decision by Board Order. If the LCRB does not elect to review the matter within seven 7 days, the Administrator's decision will be final.

(3) The procedures in this rule are mandatory to the extent they establish the time and manner for protests to be submitted to the County, including that the protest be in writing specifying the grounds and timely filed, and that there be a written response. The other protest procedures above are directory, and failure to follow or complete the action in the manner provided will not invalidate the County's decision.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.225 Equipment Repair and Overhaul.

(1) The County may contract for equipment repair, overhaul, or maintenance without competitive bidding or quotes, subject to the following conditions:

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

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

(2) If a contract under this exemption exceeds \$150,000, the County shall document in its procurement file the reasons why competitive bids or quotes were deemed to be impractical.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

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

The County may enter into contracts for the purchase of gasoline, diesel fuel, heating oil, lubricants, and asphalts without formal competitive bidding, provided that:

(1) The County has solicited a minimum of three (3) competitive quotes,

(2) Makes its purchases from the least expensive source, taking into consideration the costs of delivery or transportation, and

(3) Retains written justification for the source selected for the purchase.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.235 Client and 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 and type of appropriate care, availability of service at the time it is needed, and cost.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.240 Laboratory and Medical Supplies.

The County may specify or select laboratory and medical supplies on the basis of brand name, provided that:

(1) The purchase is made from the lowest priced vendor for the specific product and brand, and

(2) The County has a reasonable medical or scientific basis for the selection.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.250 Used Personal Property.

The County may purchase used personal property for \$50,000 or less without competitive selection, provided that:

(1) The County has determined that the direct purchase without competitive bidding will result in cost savings, and

(2) For purchases of used personal property over \$50,000, at least 3 competitive quotes have been obtained, if available. If 3 quotes are not available, a written record must be made of the attempt to obtain quotes.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.255 Litigation Services.

The County may contract for personal services related to litigation or legal matters without competitive selection when County Counsel deems it necessary to do so, including but not limited to outside legal

representation, expert witnesses, consultants, arbitrators, mediators, investigators or other specialized personnel.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.260 Employee Benefit Insurance.

The County may purchase employee benefit insurance without competitive selection.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.265 Investments.

The County may contract for the purpose of the investment of public funds or the borrowing of funds without competitive selection, when such investment or borrowing is contracted pursuant to a enacted statute, order, ordinance, charter, or constitution.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.270 Insurance.

(1) The County may purchase insurance without a formal competitive selection when the annual or aggregate premium is less than or equal to \$100,000.

(2) Contracts for insurance where either the annual or aggregate premium exceeds \$150,000 must be let by competitive selection or through an agent of record.

(3) Agent of Record. The County may appoint a licensed insurance agent as its agent of record to perform insurance services in connection with more than one insurance contract, including the securing of proposals from insurance carriers for all coverages for which the agent of record is given responsibility, provided that:

(a) The County has made reasonable efforts to inform known insurance agents in the competitive market area that it is considering such appointment, including a public advertisement describing the nature of the agent of record services,

(b) The appointment does not exceed three years, and

(c) In making the appointment, the County has selected the agent most likely to perform cost-effective services.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.275 Oil or Hazardous Material Removal.

The County may enter into contracts without competitive selection when necessary to comply with a cleanup order issued under the authority granted the Department of Environmental Quality (DEQ) under ORS Chapter 466, especially ORS 466.605 through 466.680, provided that:

(1) The 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,

(2) The order contains time limitations that do not permit hiring a contractor under the usual competitive selection procedures,

(3) To the extent reasonable under the circumstances, the County has encouraged competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services, and

(4) The cleanup is conducted in accordance with the rules set forth at OAR 340-122-0205 to 340-122-0360.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.280 Disposal of Recyclable and Nonrecyclable Waste Materials.

The County may sell, pay for disposal of, or contract for the sale or disposal of waste materials without competitive selection when necessary to dispose of waste materials received at County solid waste or Public Works facilities in a timely manner, provided that:

- (1) The County has encouraged competition by researching potential purchasers or receivers and making formal or informal solicitations for such services,
- (2) The County has been unable to either obtain competitive offers or to identify purchasers or receivers willing to enter into a term contract with the County, and
- (3) The Director of the Department of Public Works has approved the method for selection of a purchaser, receiver, or contractor for the type of material that is in the best interests of the County. Such methods may include, but are not limited to, selection of the only known purchaser or receiver within a commercial reasonable distance, comparative one-time price quotes, response time, and direct negotiation.

(Revised by Order No. 19-04-30-02, Effective 04-30-19)

CONDITIONAL EXEMPTIONS FROM COMPETITIVE SELECTION

20.310 Small Procurements.

(1) Where possible, selection of a vendor for small procurements should be made by competitive selection, unless impracticable. However, the County may award a contract for goods or services without competitive selection, provided that:

(a) For public improvement projects, the amount does not exceed \$5,000 or 3 years in length, pursuant to ORS 279C.335.

(b) For all other small procurements, the amount does not exceed \$10,000 or 3 years in length.

(2) No contract may be considered a small procurement under this rule if it is a component of a larger purchase, set of purchases, or project, all taking place in one year, and which when taken together as a whole would exceed \$10,000 in contract amount.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.315 Sole Source Contracts.

The County may award a contract for goods or services without competitive selection, when there is only one source for goods or services, or a class of goods or services of the quality required by the County, providing that:

(1) The County makes a reasonable effort to identify and notify any potential offerors regarding the intended purchase or project. Such efforts may include, but are not limited to: direct vendor contacts, requests for information, requests for letters of interest, or requests for qualifications. If the County intends to make multiple purchases of the product or services over a period of time, that information must be included in any information given to potential offerors.

(2) A sole source determination is made based on written findings, pursuant to ORS 279B.075(2). Authority to make the determination is granted to:

(a) For contracts not greater than \$50,000, to the Department directors or their designees.

(b) For contracts not greater than \$150,000, to the County Administrator, based upon proposed written findings prepared by the Department, along with such other information as the Administrator may require.

(c) For contracts in excess of \$150,000, public notice of the proposed determination must be published electronically on the website designated by the County for advertisements for bids or through another public notice placed so as to be reasonably able to reach potential offeror of such goods or services. The notice must provide that any person that believes its interests would be adversely affected by the determination must deliver a written protest to the County Administrator and within 5 days of the public notice. The written protest shall include a detailed statement of the legal and factual grounds for the protest, a description of the resulting harm, and the relief requested. Unless otherwise

specified in the public notice of the sole source procurement, the LCRB may consider the written record, and any other testimony provided at the public meeting and must make its determination by Board Order.

(3) Following a determination under part (2) of this rule, the County negotiates with the sole source to obtain contract terms advantageous to the County, to the extent practicable.

(4) To the extent purchases under this rule are part of an approved special procurement under LM 20.240 through 20.254, the terms of the special procurement prevail over this rule.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.320 Emergency Contracts.

Certain contracts may be awarded without competitive selection, if an emergency exists that requires prompt execution of those contract(s) to preserve public funds, property, or the uninterrupted provision of government services.

(1) As used in this section, an emergency is generally defined as circumstances that could not have been reasonably foreseen, and create a substantial risk of loss, damage, or interruption of services, or a threat to property, public health, or safety. ORS 279A.010(f).

(2) A written determination must be made documenting the nature of the emergency, the method of contractor selection, and designating the contract(s) to be awarded. The County Administrator is delegated authority to make the determination for one or more contracts, in an aggregate amount not to exceed \$150,000 for a single occurrence or event. A determination for emergency contracts in excess of \$150,000 for a single occurrence or event must be made by the LCRB.

(3) The County must ensure competition for the contract that is reasonable and appropriate under the emergency circumstances, which may include, but are not limited to:

(a) Limiting the scope or duration of the contract to the amount necessary under the emergency conditions,

(b) Providing a limited solicitation period and limiting required documentation, and

(c) Waiver of a performance or payment bond pursuant to ORS 279C.380(4) or of a public works bond pursuant to ORS 279C.836(9).

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.325 Personal Services Contracts.

Where possible, selection of a personal service contractor must be made by competitive selection, unless impracticable. However, the County may award a contract for personal services without competitive selection, providing that:

(1) The Department Director makes a written determination that the services to be provided in the particular contract are personal services, as defined in LM 20.430(1), and

(2) The County has made a finding that direct contracting is in the best interests of the County for the contract. Authority to make the finding is granted to:

(a) Each Department Director, for contracts not greater than \$50,000.

(b) The County Administrator, for contracts not greater than \$150,000.

(c) The LCRB, for contracts greater than \$150,000.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

EXEMPTIONS FROM COMPETITIVE SELECTION FOR ALTERNATIVE CONTRACTING METHODS

20.350 Special Procurements.

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.070), and intermediate procurement (ORS 279B.070). Approval of a special procurement must be

made in accordance with the requirements of ORS 279B.085, and any protest of such approval must be made in accordance with ORS 279B.400.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.355 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 \$150,000 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. 15-09-01-05, Effective 10-15-15)

20.360 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 the model rules adopted by the Attorney General under ORS 279A.065(3).

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.365 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 20.420(1) and utilizing the criteria in OAR 137-049-0670.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.370 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 20.420 and utilizing the criteria in OAR 137-049-0680.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

SOLICITATION PROCEDURES

20.410 Preliminary Procedures and Prequalification.

In preparation for competitive selection, the County may:

(1) Issue a request for information, request for letters of interest, request for qualifications, or other preliminary documents, for the purpose of determining the availability and interest of possible vendors for the goods or services proposed.

(2) Allow or require prequalification of bidders or proposers, either through an advertised process setting forth the procedure and criteria for prequalification prior to issuance of competitive procurement, or by inclusion of the requirements in the invitation to bid. The public officer has authority to determine when prequalification may be required for a specific contract or class of contracts, and may determine the prequalification procedure in accordance with the requirements of ORS 279B.120 and 279B.125, and the requirements of ORS 279C.430 for public improvements projects. Determination of prequalification must be made in accordance with ORS 279B.120(2), or the requirements of ORS 279C.375(3)(b) for public improvements projects.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.420 Methods of Source Selection.

Unless exempted under LM 20.110 to 20.450, all contracts for goods or services must be awarded by competitive selection. Notwithstanding such exemption, the public officer may use competitive selection to select a vendor for any type of goods or services except those relating to purchases from qualified rehabilitation facilities in accordance with LM 20.115.

(1) Competitive Selection. The County may use any of the following procedures to procure goods and services through competitive selection:

(a) Competitive Bidding pursuant to the requirements for competitive sealed bidding in ORS 279B.055.

(b) Request for Proposals (RFP) pursuant to the requirements for competitive sealed proposals in ORS 279B.060.

(c) Competitive Quotes (CQ) pursuant to the requirements for intermediate procurements in ORS 279B.070. CQs for contracts greater than \$50,000 in value, the County must prepare a written solicitation document.

(2) Direct Selection Subject to an Exemption. For procurement of goods or services that are exempt from the requirement for competitive selection pursuant to the requirements of LM 20.110 to 20.450, the public officer is authorized to make the selection that best serves the County's interests, taking into account price, qualifications, schedule, and other factors.

(3) Contracts Relating to Public Improvements. Specific requirements apply to procurements and contracts relating to both the design or the construction of public improvements:

(a) Construction. Contracts relating to the construction of public improvements may be awarded using any competitive selection procedure described in subsection (1) of this section, and must also comply with the requirements of ORS 279C.300 through 279C.870 and with the County Rules.

(b) Design-Related Services. Contracts relating to the design of public improvements must comply with the requirements of ORS 279C.100 through 279C.120, in addition to the requirements of the County Rules.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.430 Personal Services Contract Selection Procedures.

(1) Pursuant to ORS 279A.055, a contract may be designated as a personal service contract if the contractual relationship is based primarily on a special trust and confidence between the County and contractor; or the type and quality of services to be provided under the contract are based primarily on the

contractor's special or unique expertise or knowledge; particular experience; or the exercise of discretionary judgment skills unique to the service provider.

(a) Contracts that may be designated personal service contracts include, but are not limited to, contracts for: expert consulting, appraisal, timber cruising, licensed professionals (including attorneys, auditors, accountants, physicians, physician assistants, nurse practitioners, nurses, therapists, realtors and engineers), research, polling, education, and artwork.

(b) Contracts that are not personal services contracts include contracts for services that can generally be performed by an experienced competent person, whether the person is required to be licensed or not, including but not limited to contracts for: trade-related activity (including plumbing and electrical work), custodial services, document filing and storage, general labor, and repairs and maintenance services for buildings or equipment.

(c) Pursuant to ORS 279C.100 through 279C.120, contracts for services relating to planning, designing, engineering, or overseeing of public improvements are designated by law as personal services. These include architectural, engineering, photogrammetric mapping, transportation planning, and land surveying services, and related services as defined in ORS 279C.100(8).

(2) If a contract has been designated as a personal services contract, the County may use an RFP process or a CQ process, depending upon the contract amount.

(a) Evaluation factors should include, but not limited to, the proposed contractor's qualifications, abilities, licenses and certifications, capacity and capability, past record of performance, cost control, quality of work, financial resources, availability, and familiarity with the area.

(b) The process may include, as appropriate, written submissions, demonstrations, and interviews. For contracts in excess of \$150,000, the process should include interviews of not fewer than 2 of the most qualified prospective contractors.

(3) For personal services related to the planning, designing, engineering, or overseeing of public improvements, the RFP or CQ process must comply with the requirements of ORS 279C.100 through 279C.120, including the prohibition on soliciting information regarding price until after a contractor has been selected.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.440 Requirements Contract Selection Procedures.

If the contract for goods or services will be a requirements contract, the County may use any competitive selection process for selection of a contractor, provided the process is in compliance with the requirements of this rule.

(1) In conducting competitive selection, the Invitation or Request must:

(a) State whether the County will consider awarding and executing more than one contract for a single type of service or good, and

(b) If the awarding of more than one contract is anticipated, state the method to be used in selecting which contractor will perform specific services or provide certain goods.

(2) In addition, the conditions of the Invitation or Request must provide:

(a) A stated minimum or maximum value of goods or services to be purchased under the contract,

(b) The term of the contract, which, including renewals, may not exceed 3 years, and must allow the County to cancel the contract upon 30 days written notice, and

(c) An estimated dollar amount of purchases to be made during the term of the contract.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.450 Bidding and Proposal Procedures.

The bidding and proposal procedures in this section are applicable to Competitive Bidding, RFPs, and CQs under LM 20.520(1). When applied to the procedures for RFPs or CQs, the terms related to "proposals" or "quotes" must be substituted for the terms related to "bids" as used in this section.

(b) The County requires that the name of the party or parties with whom the County is entering into a contract be the parties' correct legal names. Verification of parties' legal names through the Oregon Secretary of State's website is encouraged.

(2) **Mandatory Contract Terms.**

(a) All contracts must contain, either expressly or by reference, the County's standard contract provisions contained in LM 20.590, except as approved by the Office of Legal Counsel.

(b) All contracts funded in whole or in part by federal or state funds must contain all contract conditions required by the agency or agencies contributing such funds, in the form required by the funding.

(3) **Contract Considerations.**

(a) Consideration should be given, in all contracts, to the risks involved in the specific work of the contract. Consultation with the County's Risk Manager is advised concerning the County's insurance requirements for a specific contract.

(b) Title to all personal property obtained through a contract must be described on all formal title documents and bills of sale as: Lane County, Lane County Public Service Building, 125 E. 8th Avenue, Eugene, Oregon 97401.

(3) The Office of Legal Counsel is required to maintain standard forms for common contracts that comply with these rules, and make the forms available to County Departments.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.515 Purchase Orders.

(1) Unless otherwise provided, County purchase orders are not contracts until the purchase order is agreed to by the recipient. Once accepted, a purchase order becomes a contract according to its terms.

(2) Authority to approve issuance of Purchase Orders for County Purchases is subject to the limitations on contract amount and delegated authority contained in LM 20.630, 20.660, and 20.670.

(3) The County Administrator is delegated authority to prescribe rules for the types of contracts or purchases that may be made using a purchase order, and the form to be used.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.520 Goods and/or Services Contracts.

Goods and/or Services contracts are the County's standard method of contracting for goods, services, or a combination of goods and services. Such contracts may only be used to engage independent contractors meeting the requirements of ORS 670.600, and may not provide for the contractor or contractor's staff to be under the direction and control of the County.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.525 Construction and Public Improvement Contracts.

(1) All contracts relating to construction must comply with the requirements of ORS 279C.300 through 279C.870, in addition to these rules. Except as provided in these rules, the requirements of ORS chapter 279B do not apply to contracts for construction.

(2) All contracts relating to construction must contain, either by inclusion or by reference, the County's standard contract provisions contained in LM 20.590 and the standard contract provisions for construction contained in LM 20.595, except as approved by the Office of Legal Counsel.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.530 Requirements Contracts and Price Agreements.

Requirements contracts and price agreements must meet the requirements of ORS 279B.140 and this rule.

(1) The terms of the resulting contract or contracts must state the method to be used to authorize a purchase of goods or services under the agreement.

amount of the bonds or securities will accrue and may be credited or paid to the undersigned.

If a bond or security deposited under this assignment reaches maturity while subject to these conditions, it may be disbursed to the undersigned without specific authorization from Lane County provided that the undersigned replaces the matured bond or security with an identical one of equal or greater value.

If the bonds or securities deposited are to be credited to more than one public contract, the distribution will be allocated as stated on Schedule "A."

SCHEDULE "A"

1. DESCRIPTION OF THE BONDS OR SECURITIES.
2. NAME OF CONTRACTOR/ASSIGNOR.
3. IDENTIFICATION NUMBER OF THE CONTRACT OR PROJECT.
4. PAR VALUE OF SECURITIES OR BONDS (AND THE MARKET VALUE, IF DIFFERENT).
5. MATURITY DATES OF SECURITIES OR BONDS.

Signed and dated at _____, Lane County, Oregon, this __ day of _____, 20__ .

(Signature of Depositor/Assignor)
Address:

ACCEPTANCE

(Bank or Trust Company) hereby accepts the foregoing Assignment and Safekeeping Receipt No. __, in the total amount of \$_____, this day of _____, 20__, and hereby acknowledges receipt of the bonds or securities listed in Schedule "A" above to hold in trust for Lane County for the uses and purposes stated above.

(Authorized Signature)

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.597 Modification of Standard Contract Provisions.

Except as required by Oregon or federal law, the Office of Legal Counsel is delegated authority to waive one or more of the Standard County Contract Provisions contained in LM 20.590 and 20.595 when it is in the best interests of the County to do so.

AUTHORITY TO AWARD, APPROVE, AND CANCEL CONTRACTS

20.610 Contract Award and Approval.

(1) Contract award may be made by the public officer delegated the authority to execute the contract or, if no delegation has been made, by the Board.

(2) All contracts must be processed through procedures prescribed by the County Administrator, including review by legal, risk management, budget and other staff, except as expressly stated otherwise by these rules.

(b) The County Administrator is delegated authority to execute an amendment to a contract that exceeds the limitations in this section when, in the Administrator's judgment, the increase in the contract amount is necessary to provide continuity of services or is necessitated by conditions outside the County's control.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.640 Construction Change Orders.

The Director of a Department with authority to contract for public improvements, construction, or the renovation of roads and transportation facilities is granted authority to authorize and execute construction change orders, providing that all of the following conditions are met:

(1) The change would not increase the cost of the project by more than 10 percent of the contract price,

(2) The change order is reasonably related to the purpose of the project, and

(3) The Director has determined that it is in the best interest of the County to authorize the order to facilitate completion of the project.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.645 Contract Completion and Acceptance.

Each Department Director is granted authority to determine that all obligations under the contract have been met and the contract is completed and accepted.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

AUTHORITY TO EXECUTE CONTRACTS, AMENDMENTS, GRANT APPLICATIONS, AND GRANTS

20.650 Delegation of Authority to Execute Grant Applications and Accept Grants.

(1) Each Department Director is delegated the authority to approve and execute all documents in application for or acceptance of a grant not exceeding \$50,000.

(2) The County Administrator is delegated authority to approve and execute all documents in application for and acceptance of a grant not exceeding \$150,000.

(3) The County Administrator is delegated authority to approve and execute all documents in application for a grant in excess of \$150,000, provided that the application does not obligate the County to accept the grant if awarded.

(4) The Board must approve the acceptance of a grant exceeding \$150,000. If an application for a grant in excess of \$150,000 obligates the County to accept the award as a condition of application, the Board must approve the application for the grant. Following Board approval of a grant or grant application, the Administrator is delegated authority to approve and execute all other grant documents.

(5) The County Administrator is delegated authority to approve and execute all documents to continue a grant that was approved by the Board, so long as the continuation is substantially similar to the original grant approved by the Board.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.660 County Administrator's Authority to Execute Contracts.

(1) The County Administrator is delegated authority to execute all contracts and agreements that do not exceed \$150,000 in cost or revenue nor three years in length.

(2) The County Administrator is further delegated authority to execute contracts that exceed three years in length, or are by their terms self-renewing, but only if:

(a) The cost or revenue for the first three years does not exceed \$50,000, and

(b) The contract contains a provision allowing the County to terminate the contract upon not more than one year's notice.

(3) The County Administrator is further delegated authority to execute, without limitation of amount or length:

- (a) All contracts that have been awarded or expressly approved by the Board.
- (b) Contracts specifically identified in a budget adoption order or supplemental budget order approved by the Board.
- (c) Insurance nonwaiver agreements and insurance endorsements to original policies.
- (d) Land use improvement agreements, Building Program Quick Start Agreements and acceptance and release of land use performance bonds.
- (e) Contracts and assignments for the collection of County judgments.
- (f) All contracts with terms of three years or less that implement public improvement projects described on the adopted Public Works five-year Capital Improvement Program list, the adopted Parks Capital Improvement Program priorities list, and the Public Works and County Administration public improvement lists prepared for filing with the Commissioner of the Bureau of Labor and Industries (BOLI) pursuant to ORS 279C.305. This delegation includes, without limitation, contracts to prepare for, design, administer, and construct listed projects, as well as those contracts reflecting the County paid portion of the project, those reflecting any amount to be paid by other governmental agencies or housing development entities for assisted housing projects, and those covering environmental mitigation responsibility.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.665 County Administrator's Authority to Execute Amendments.

Subject to the limitations on cumulative contract amount in LM 20.630, the County Administrator is delegated authority to:

- (1) Execute amendments to contracts that do not cause the contract amount to exceed \$150,000 in cost or revenue nor three years in length,
- (2) Execute amendments to contracts, without limitation of amount or length, if the amendment amount or length is within limits authorized by the Board for that specific contract or class of contracts, and
- (3) Execute amendments to contracts where the original contract amount exceeds \$150,000, subject to the following limitations:
 - (a) If the original contract amount is greater than \$500,000, the total of all amendments to that contract may not exceed 25 percent of the contract amount approved by the Board.
 - (b) If the original contract amount is \$500,000 or less, the total of all amendments may not exceed 50 percent of the contract amount approved by the Board, and
 - (c) The amendment does not extend the length of the contract beyond three years, unless the original contract contained a provision for a longer duration and was awarded or expressly approved by the Board.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.670 Department Directors' Authority to Execute Contracts and Amendments.

- (1) Each Department Director is delegated authority to execute contracts that do not exceed \$50,000 nor three years in length.
- (2) Each Department Director is further delegated authority to execute contracts that exceed three years in length, or are by their terms self-renewing, but only if:
 - (a) The cost or revenue for the first three years does not exceed \$50,000, and
 - (b) The contract contains a provision allowing the County to terminate the contract upon not more than one year's notice.
- (3) Subject to the limitations on cumulative contract amount in LM 20.630, each Department Director is delegated authority to execute amendments that do not exceed \$50,000, subject to the following limitations:

(a) The amendment, in combination with all prior amendments, does not cause the contract amount to exceed \$150,000 in cost or revenue nor three years in length, and

(b) The amendment, in combination with all prior amendments, does not exceed \$50,000, or 50% of the contract amount approved by the Board, whichever is greater.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.680 County Administrator's Authority to Cancel Awards and Terminate Contracts.

The County Administrator is delegated the authority to cancel awards and terminate contracts and grants, including amendments, as provided in the contract or by law.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.685 Further Delegation.

The County Administrator and each Department Director's authority under LM 20.650, 20.655, 20.660, 20.665, and 20.670 may only be delegated through a writing.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

PROTESTS OF PREQUALIFICATION, DEBARMENT, AND DISQUALIFICATION

20.710 Protest of Solicitation Process.

Pursuant to ORS 279B.405, a prospective bidder or proposer may file a protest of a solicitation process. To be considered, the protest must be received by the County not less than seven 7 calendar days prior to the date bids or responses are due, and must contain the information and statements required in ORS 279B.405(4)(a) through (d). The County will issue a determination in accordance with ORS 279B.405(5) and (6).

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.720 Protest of Award Based Upon Competitive Bidding or Quotes.

A bidder that submitted a responsive bid may protest the award of a contract based on the bids received for that contract. Any protest must be received by the County within seven 7 days of the date of the notice of intent to award or, if no notice of award is given, of the date of actual award. Protests of award or intent to award will be considered by the LCRB, if the Board's action were required to award the contract. All other protests of intent of award will be considered by the County Administrator, or the Administrator's designee.

(1) Requirements for protest.

(a) A protest of award of a public improvement contract must specify the applicable grounds for protest set forth in OAR 137-049-0450(4)(c), which is hereby adopted into this rule.

(b) All other protests of award must be in writing and specify the applicable grounds for the protest as set forth in ORS 279B.410(1).

(c) Any protest not in compliance with these rules may be rejected.

(2) Review and determination.

(a) Contracts Requiring Board Action to Award. If the public officer determines there is sufficient merit to reject bids, the public officer may do so. If, following any action by the public officer, any portion of the protest remains, the LCRB must be provided with, and may consider, a complete copy of the written record, and any other evidence provided, at a public meeting. The LCRB may affirm, reverse, or revise an award, or may send the matter back to the Department for further action, and must issue its decision by Board Order.

(b) Contracts Not Requiring Board Action to Award. The County Administrator has authority to reject bids, or to affirm, reverse, or revise the award, or send the matter back to the department for further action. The Administrator must deliver this decision to the LCRB. If, within seven 7 days, the LCRB elects to review the matter, the LCRB must be provided with and may consider a complete copy of the written record, and any other evidence provided, at a public meeting. The LCRB

may affirm, reverse, or revise an award, or may send the matter back to the Department for further action, and must issue its decision by Board Order. If the LCRB does not elect to review the matter within seven 7 days, the Administrator's decision will be final.

(3) The procedures in this rule are mandatory to the extent they establish the time and manner for protests to be submitted to the County, including that the protest be in writing specifying the grounds and timely filed, and that there be a written response. The other protest procedures above are directory, and failure to follow or complete the action in the manner provided will not invalidate the County's decision.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.730 Protest of Award Based Upon a Request for Proposals (RFP).

A respondent to an RFP that submitted a responsive proposal, and is not selected for award, may protest the award or recommendation for award of a contract based on RFPs submitted. Any protest must be received by the County within seven 7 days of the notice of recommendation or intent to award or, if no notice is given, of actual award. Protests of award or intent to award will be considered by the LCRB, if the Board's action were required to award the contract. All other protests of intent of award will be considered by the County Administrator, or the Administrator's designee.

(1) Requirements for protest.

(a) A protest of award of a public improvement contract must specify the applicable grounds for protest set forth in OAR 137-049-0450(4)(c), which is hereby adopted into this rule.

(b) All other protests of award must be in writing and specify the applicable grounds for the protest as set forth in ORS 279B.410(1).

(c) Any protest not in compliance with these rules may be rejected.

(2) Review and determination.

(a) Upon receipt of a protest, the department must promptly notify both the evaluation committee and the proposer recommended for award that a protest has been received, and furnish each with a copy of the protest. Both the recommended proposer and the committee may, within three 3 calendar days from the date the protest was received, respond to the protest in writing.

(b) After a protest has been received, the Department that issued the RFP must prepare a written analysis of the protest and make a recommendation to the decision maker as to appropriate action to be taken.

(c) **Contracts Requiring Board Action to Award.** If the public officer determines there is sufficient merit to reject proposals, the public officer may do so. If, following any action by the public officer, any portion of the protest remains, the LCRB must be provided with, and may consider, a complete copy of the written record, and any other evidence provided, at a public meeting. At the public meeting the LCRB may, at the LCRB's discretion, allow the department that issued the RFP and the appellant an opportunity to address the protest. The LCRB may affirm, reverse, or revise an award, or may send the matter back to the Department for further action, and must issue its decision by Board Order.

(d) **Contracts Not Requiring Board Action to Award.** The County Administrator has authority to reject proposals, or to affirm, reverse, or revise the award, or send the matter back to the department for further action. The Administrator must deliver this decision to the LCRB. If, within seven 7 days, the LCRB elects to review the matter, the LCRB must be provided with and may consider a complete copy of the written record, and any other evidence provided, at a public meeting. The LCRB may affirm, reverse, or revise an award, or may send the matter back to the Department for further action, and must issue its decision by Board Order. If the LCRB does not elect to review the matter within seven 7 days, the Administrator's decision will be final.

(3) The procedures in this rule are mandatory to the extent they establish the time and manner for protests to be submitted to the County, including that the protest be in writing specifying the grounds and timely filed, and that there be a written response. The other protest procedures above are directory, and failure to follow or complete the action in the manner provided will not invalidate the County's decision.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.740 Appeals of Prequalification, Debarment, and Disqualification

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 must file a written appeal, including a detailed statement of the grounds for the appeal, within 3 days after receiving notice of the County's decision,.

(2) The department must schedule the appeal to be heard before the LCRB, or its designee, as soon as reasonably possible, and notify the appellant of the time and place for the hearing.

(3) The Department must prepare a written response, provide a copy to the appellant and to the LCRB, and submit the written record to the LCRB.

(4) The LCRB must provide 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, and 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.

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

(6) In determining whether the standards of responsibility have been met, the LCRB consider the criteria in ORS 279C.375 for public contracts and in ORS 279B.110 for non-public contracts have been met.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.780 Other Protests Referred to the LCRB.

The LCRB shall decide any protests referred to the LCRB under the County Rules.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)