

AGENDA COVER MEMO

WJSC
04-6-30-12

AGENDA DATE: June 30, 2004
TO: Lane County Board of Commissioners
PRESENTED BY: Trina Laidlaw, Assistant County Counsel
AGENDA ITEM TITLE: IN THE MATTER OF AMENDING LANE MANUAL CHAPTERS 20, 21, AND 60 TO ADDRESS CURRENT PUBLIC CONTRACTING NEEDS AND IMPROVE CONSISTENCY

I. MOTION

1. Move that Lane Manual Chapter 20 rules on exemptions from competitive bidding be amended to reflect changes in elections equipment and materials and to make editing changes.
2. Move that Lane Manual Chapter 21 rules on public contracting procedures be amended to:
 - a. Make editing changes for consistency
 - b. Reflect statutory changes and certain changes in model rules of Attorney General
 - c. Reflect department practices
 - d. Allow the Board of Commissioners to consider evidence presented at a public meeting, instead of being limited to written record, in deciding a vendor's protest of contract award.
 - e. Clarify the County Administrator's delegated authority to execute contracts and amendments.
3. Move that Lane Manual rules 60.405(1), (4)(c) and (d) be amended to delete reference to a repealed state rule and to permit acceptance of bids for sale of surplus/personal property valued at \$50,000 or less without a formal "public opening" with certain conditions.

II. ISSUE OR PROBLEM

Should Lane County amend its public contracting rules to reflect certain changes in statutes, state model rules, department requests, and clarify the Board's and County Administrator's roles?

III. DISCUSSION

A. Background

Lane County needs to make some interim changes to its public contracting rules, while engaged in a process to re-examine all of its rules contained by March 2005. The 2003 Legislature adopted HB 2341 that was, essentially, a redrafting of Oregon's public purchasing law contained in ORS Chapter 279. While some sections of ORS 279 have relatively few changes, there are 30 pages of statutes that were added. A majority of the provisions do not take effect until March 2005. This new law provides, in part, that all of the rules adopted by "a local contract review board" (which is the Board of County Commissioners in Lane County) will automatically be repealed in March 2005, unless such board "re-adopts" each rule in light of the amendments to ORS Chapter 279 and any subsequent amendments to the Attorney General's model public contracting rules. If the local contract review board does not adopt its own rules, then the Attorney General's model rules will apply. The Attorney General's Office has until September 2004 to publish rules interpreting ORS Chapter 279 legislative amendments.

On June 3, 2004, Assistant County Counsel, Trina Laidlaw, and Purchasing Manager, Gail Murray met with department representatives to provide an overview of the statutory changes, and to begin to compare Lane County's existing rules with those amendments, with the ultimate goal of making sure that Lane County's rules would not violate new ORS 279. Several work groups consisting of department representatives will meet and provide recommendations about rule changes. It is likely that these work groups may want the Board of Commissioners to consider certain initial policy questions this summer, including its direction and guidance, and the majority of work on recommended Lane County rule changes would follow this Fall. It is anticipated that a packet of proposed Lane County public contracting rules, in their entirety, will be presented to the Board in winter 2005 for review and approval in order to meet the March 2005 deadline.

In the meantime, Lane County needs to amend certain existing rules in order to comply with current law. It is anticipated that a majority of the proposed changes in this agenda packet will be "re-incorporated" into the new set of rules taking effect in March 2005.

Included in this packet are proposed amendments to Lane Manual Chapter 20 that are Lane County's adopted contract class exemptions from formal competitive bidding. The Board should be sitting in its capacity as the local contract review board in order to consider such amendments after a public hearing. Also included in this packet are proposed amendments to Lane Manual Chapters 21 and 60 which are public contracting procedural rules adopted by the Board of County Commissioners, sitting in their BCC capacity. No public hearing is required to consider and approve these amendments. The proposed Board Order reflects the different roles which the Board plays regarding the proposed amendments in this packet.

B. Analysis

Oregon statute allows local contract review boards to "opt-out" of the state Attorney General's model public contracting rules by adopting their own rules. Lane County's local contract review board decided to opt-out, and Lane County's rules are contained in Lane Manual Chapters 20, 21, and portion of Chapter 60 (sale of personal/surplus property). The current Attorney General model rules have been reviewed, and there appears to be no reason to make any substantive changes in Lane County's rules. Editing or "housekeeping" changes are now proposed to reflect a change in the citations or rule numbers of the Attorney General's model rules.

1. Lane Manual Chapter 20 - Exemptions From Formal Bids

One purpose of this agenda item is to propose a substantive change to Lane Manual Chapter 20 exemptions from formal competitive bidding: Existing LM 20.170 covers election supplies and services. The primary reason for seeking an amendment is to reflect Lane County's change from a punch card to an optical scan voting system.

In addition to this substantive change, this agenda item also requests some additional editing and "housekeeping" changes to Lane Manual Chapter 20. The proposed changes in LM 20.091 and 20.190 are editing changes to correct the citations to OARs (Oregon Administrative Rules). The state changed its rule numbering system. Because these Lane Manual rules reference OARs, the Lane Manual rules should be amended to include the correct citations. The proposed changes to LM 20.095 Definitions do not change any substance, rather reflect a formatting change which Lane County is now generally using. The proposed change to LM 20.210 corrects an internal citation for Lane County's exemption concerning Laboratory and Medical Supplies. Proposed amendments to LM 20.100(2) and LM 20.265(3) correct wording choices in order to clarify the existing substance of the rules. Proposed amendment to LM 20.140(5) corrects a typographical error, changing "purchased" to "purchases."

In order to consider the above changes to Lane Manual Chapter 20, the local contract review board should do so within a public hearing. The statutory test to be applied in approving exemptions, and presumably amendments to them is:

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

The criteria to consider for these findings include:

1. Operation, budget and financial data
2. Public benefits
3. Value engineering
4. Specialized expertise required
5. Public safety
6. Market conditions
7. Technical complexity
8. Funding source

In granting an exemption, the local contract review board shall:

- a. Where appropriate, direct the use of alternate contracting and purchasing practices that take into account market realities and modern or innovative contracting and purchasing methods which are also consistent with the public policy of encouraging competition.
- b. Require and approve or disapprove written findings that support the awarding of a particular public contract without the requirements of competitive bidding. The findings must show that the exemption meets the three point statutory test.

Proposed findings addressing the test and criteria above are attached for review and consideration.

2. Lane Manual Chapter 21

Sitting as the Board of County Commissioners, the Board is asked to amend Lane Manual Chapters 21 and 60. There is no public hearing requirement to consider these amendments, and a public meeting is sufficient.

Substantive Changes

The following substantive changes are requested:

1. In LM 21.100(4) there is a definition of "public contract." This definition, as well as the "public contract" definitions in LM 20.095 and ORS 279.011 should all be consistent. A modification is needed to clarify that the definition in LM 21.100(4) is consistent, particularly with ORS 279.011.

2. LM 21.105(11) covers protests of award. As to procedure, it provides that the County Administrator first consider a protest of contract award by a bidder not chosen. The County Administrator's decision is then transmitted to the Board of Commissioners. The decision becomes final after seven days, unless within that time the Board elects to review the matter. The proposed amendment to this rule addresses the next step: When the Board elects to review the matter, it is now limited to a review on the "written record before it" or in other words, the written record which the County Administrator reviewed. This proposed amendment would expand the information which the Board of Commissioners could review to include any other information provided at a public meeting, in addition to the written record.

3. LM 21.106(1) covers bid security in an amount not to exceed 10 percent of the bid. Currently, the rule allows a surety bond, cashier's check or certified check. ORS 279.027 now also includes an "irrevocable letter of credit issued by an insured institution as defined in ORS 706.008." This amendment would add the irrevocable letter of credit option to LM 21.106(1).

4. LM 21.115(2)(j) and (2)(k) are new proposed subsections. LM 21.115(2) is a general list of contract requirements for public improvement contracts. Subsection (j) reflects Lane County's current practice in complying with ORS 279.312 (requiring public improvement contract to contain a condition that the contractor demonstrate an employee drug testing program is in place). This proposed amendment requires contractor and subcontractor to certify that an employee drug testing program is in place, that it will be maintained throughout the contract period, and that failure to do so is grounds for rejection of a bid or immediate termination of the contract.

Subsection (k) adds a general reference to the required first-tier subcontractor disclosure as one of the requirements for certain public improvement contracts in accordance with ORS 279.027. (As an aside, the 2003 Oregon Legislature amended certain provisions this subcontractor disclosure effective August 1, 2003, i.e., changing the dollar amount, time to disclose from four hours after the bid deadline to two hours after the deadline, and changing the possible bid deadlines from Monday through Thursday or Friday prior to noon to Tues. through Thursday between 2 and 5 pm with certain exceptions. The Lane County departments were notified of this change and have been following this.)

5. LM 21.118(d) covers a qualifications-based competitive process for selecting professional service contractors. Currently, this is only one option for selecting professionals (other than registered engineers, architects, or land surveyors). Other options include an RFP process or a quote process. Pursuant to ORS 279.057, a qualifications-based competitive process is now required for contracting with registered engineers, architects or land surveyors for certain projects. The amendments to LM 21.118(d) clarify the distinctions between the optional process for non-ORS 279.057 professionals, and the process required for ORS 279.057 professionals. The major difference is that proposed cost/compensation can be considered as a criteria for evaluating non-ORS 279.057 professionals. However, for registered engineers, architects, or land surveyors covered by ORS 279.057, a department should not solicit or use a compensation proposal until after evaluating and ranking the candidates. Once ranked, the department may negotiate with the highest ranked professional toward a fair and reasonable price. (As an aside, the applicability of ORS 279.057 provisions to counties "sunsets" July 1, 2008. We will likely need to re-evaluate the Lane County rule at that time.)

6. LM 21.147 covers the delegated authority of the County Administrator to execute amendments to contracts. A new (4) is proposed to clarify that the County Administrator is delegated authority to execute an amendment, when combined with the original contract amount and all preceding amendments all totals \$50,000 or less. Currently, the County Administrator is delegated authority to execute "contracts" not exceeding \$50,000. This amendment would clarify that this includes not

just contracts originally in the amount of \$50,000 or less, but also contracts with original amounts combined with all amendments that are \$50,000 or less.

Housekeeping Changes

This agenda item requests some editing and "housekeeping" changes to Chapter 21. Proposed changes to LM 21.100(3), 21.105(5), (7), (8), (9), and (11), LM 21.107(2), LM 21.115(2), and LM 21.116(2) are needed to correct state rule citations which Lane County's rules cite for guidance or adoption. In addition, there are proposed editing changes, including those related to statutory renumbering and wording changes, such as in LM 21.105(7), 21.105(9), 21.107(2), 21.115(1), 21.117(2), 21.122(3), 21.130(9), and 21.147(6). There are proposed language amendments intended to clarify the existing substance of the rules in LM 21.107(6), 21.130(10), and 21.105(5).

3. Lane Manual Chapter 60

Changes are proposed in rules covering the sale of the County's personal and surplus property. The change proposed in Lane Manual 60.405(1) and (4)(d) is to delete the option of selling property by direct sale pursuant to state rule. The state rule has been repealed. A current Lane County public contracting work group will be considering this new amendments in this area of County business.

The change proposed in LM 60.405(4)(c) is intended to clarify that advertising for bids be accomplished as in LM 21.105(2) for consistency. The primary reason for the proposed change in deleting the "public opening" requirement for bids at \$50,000 or less is a situation which occurred at the annual Fleet Services surplus vehicle sale. Lane County Department of Public Works, Fleet services holds an annual surplus vehicle and equipment sealed "bid" sale. Vehicles and equipment are advertised in local newspapers and on the County web page. Public response has been excellent with 820 "bids" generated in the November 2002 sale, for example. The value of each piece of property was less than \$50,000. Opening the sealed "bids" took over four (4) hours. The public may, and often do, make "bids" on more than one vehicle and indicate their priorities of preferred vehicle. For example, if someone is not the high "bidder" on their first or second choice, but is the "high" bidder on the third choice - the person would purchase the third vehicle. If the person were the high bidder on more than one vehicle, but wishes to purchase only one, he/she would purchase their first choice. A public bid opening in a formal bid process typically involves the opening of all bids in public, reading them aloud, brief review of grounds to reject, and many times includes an announcement of a preliminary "winner" to be finally announced after a more thorough review. However, with the prevalence of multiple bids from a single person, the sorting out the process takes several days effort. Having a public opening, including the reading of the bids, in a mass sale situation arguably does not provide as meaningful information to the bidders as more limited sales or purchases, and takes a great deal of staff time.

Under Lane Manual rules, other than LM Chapter 60, a formal bid process is not required for purchases of \$50,000 or less. So, amending LM Chapter 60, to continue to allow a formal bid process option, including for sales of \$50,000 or less with the "public opening" not required, would not be inconsistent with other Lane Manual public contracting rules. A formal bid process, including all formal bid procedures, would still be an option for selling items valued at over \$50,000 under LM 60.405(4)(c). Also, the proposed change would require a department which does not conduct a "public opening" to notify all bidders of its decisions as soon as practicable and within a reasonable time. This would assist the public in receiving information about their bids in a timely fashion.

IV. ALTERNATIVES/OPTIONS

1. Approve the motions to amend LM Chapter 20, 21, and 60 rules.
2. Not approve one or all or any part of the motions.

V. RECOMMENDATIONS

Alternative 1 is recommended.

VI. IMPLEMENTATION

Upon approval by the Board and local contract review board, the amendments will be made to Lane County's public contracting rules.

VII. ATTACHMENTS

Board Order
Findings to Support Lane Manual Chapter 20 Amendments

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.

IN THE MATTER OF AMENDING LANE MANUAL
CHAPTERS 20, 21, AND 60 TO ADDRESS
CURRENT PUBLIC CONTRACTING NEEDS AND
IMPROVE CONSISTENCY

WHEREAS, public contracting law allows a local contract review board to "opt out" of the State Attorney General's Model Rules of Public Contracting;

WHEREAS, the Board, sitting as the local contract review board decided to adopt its own rules for public contracts separate from the Attorney General's Model Rules and wishes to continue to "opt out";

WHEREAS, certain amendments in Lane County's public contracting rules are necessary to reflect changes in department needs, to better reflect department practices, to clarify the County Administrator's and Board's roles, and to make minor "housekeeping" or editing changes;

NOW, THEREFORE, sitting as the local contract review board for Lane County, having examined and considered findings in Exhibit A, incorporated by this reference, the record submitted and any evidence or testimony provided at the Board's public hearing, orders and finds as follows:

1. The Board adopts the Exhibit A findings and conclusions in support of amendments to LM Chapter 20 public contracting and approves the amendments.

2. Lane County will continue to "opt out" of the state Attorney General's Model Rules, including those currently in effect. Lane County's public contracting rules are those in Lane Manual Chapter 20, 21, and 60, as amended by this order, and as they may be further amended in the future.

3. The County Administrator shall take all necessary actions to implement these rules.

NOW, THEREFORE, sitting as the Board of County Commissioners, the Board hereby orders that:

Lane Manual Chapters 20, 21, and 60 are hereby amended by removing, substituting and adding the following sections:

REMOVE THESE SECTIONS

20.091 through 20.105
as located on pages 20-1 through 20-3
(a total of 3 pages)

20.170
as located on page 20-6
(a total of 1 page)

INSERT THESE SECTIONS

20.091 through 20.105
as located on pages 20-1 through 20-3
(a total of 3 pages)

20.170
as located on page 20-6
(a total of 1 page)

REMOVE THESE SECTIONS

20.190
as located on pages 20-7 through 20-8
(a total of 2 pages)

20.210
as located on pages 20-8 through 20-9
(a total of 2 pages)

20.265
as located on page 20-12
(a total of 1 page)

21.100 through 21.107
as located on pages 21-1 through 21-7
(a total of 7 pages)

21.115 through 21.118
as located on pages 21-8 through 21-13
(a total of 6 pages)

21.122
as located on page 21-14
(a total of 1 page)

21.130
as located on pages 21-16 through 21-19
(a total of 4 pages)

21.145 through 21.147
as located on pages 21-20 through 21-21
(a total of 2 pages)

60.405
as located on pages 60-3 through 60-5
(a total of 3 pages)

INSERT THESE SECTIONS

20.190
as located on page 20-7
(a total of 1 page)

20.210
as located on page 20-8
(a total of 1 page)

20.265
as located on page 20-12
(a total of 1 page)

21.100 through 21.107
as located on pages 21-1 through 21-7
(a total of 7 pages)

21.115 through 21.118
as located on pages 21-8 through 21-14
(a total of 7 pages)

21.122
as located on page 21-15
(a total of 1 page)

21.130
as located on pages 21-16 through 21-19
(a total of 4 pages)

21.145 through 21.147
as located on pages 21-21 through 21-22
(a total of 2 pages)

60.405
as located on pages 60-3 through 60-5
(a total of 3 pages)

Said sections are attached hereto and incorporated herein by reference. The purpose of these substitutions is to implement the amendments to LM Chapter 20 ordered by the local contract review board above, and to amend LM Chapters 21 and 60 to make editing changes for consistency, reflect statutory changes, reflect department practices, and clarify the roles of the County Administrator and Board.

Adopted this _____ day of _____ 2004.

Chair, Lane County Board of Commissioners
Chair, Lane County Local Contract Review Board

APPROVED AS TO FORM
Date 6/24/04 Lane County

J. Aidlaw
OFFICE OF LEGAL COUNSEL

CONTRACT REVIEW BOARD

PUBLIC CONTRACT EXEMPTIONS AND RULES

20.085 Purpose and Statutory Authority.

(1) Purpose. These rules establish procedures and public contract exemptions for Lane County, Oregon (hereafter, the County).

(2) Statutory Authority. These rules are authorized by ORS 279.015(2) and ORS 279.017(2) and the Lane County Charter. *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

20.090 Findings.

Adoption of these rules and the exemptions herein are supported by the findings of the Board of County Commissioners adopted by Order 98-12-2-1. *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

20.091 Construction and Interpretation.

The following state administrative authorities may be used to further interpret Lane Manual Public Contracting Rules and Exemptions and Policies, Chapters 20 and 21, when an ambiguity exists:

(1) The following provisions of OAR Chapters 125 and 137:

(a) OAR 125 Divisions 30, 300, 310, 320, 330, 340, 350, 360.

(b) OAR 137 Divisions 30, 35, and 40. *(Revised by Order No. 98-12-2-1;*

Effective 12.2.98)

20.095 Definitions.

As used hereafter, unless the context requires otherwise:

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

Board means the Board of Commissioners of Lane County.

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

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

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

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

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

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

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

LCRB means the Lane County Board of County Commissioners, acting as the local contract review board for Lane County pursuant to ORS 279.055.

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

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

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

Public Agency or Public Contracting Agency means any agency of the State of Oregon or any political subdivision thereof authorized by law to enter into public contracts and any public body created by intergovernmental agreement.

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

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

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

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

Service Contract means a contract that calls primarily for a contractor's time and effort rather than for an end product. *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

GENERAL EXEMPTIONS

20.100 General Statutory Exemptions and Exclusion.

(1) Consistent with ORS 279.015, all public contracts shall be based upon competitive bids or proposals except the following:

(a) Contracts made with other public agencies or the federal government.

(b) Contracts between public agencies utilizing an existing solicitation or current requirement contract of one of the public agencies that is party to the contract for which:

(i) The original contract met the requirements of the County's public contracting rules.

(ii) The contract allows other public agency usage of the contract; and

(iii) The original contracting public agency concurs.

(c) No written agreement under ORS 190, which grants authority to local governments to make intergovernmental agreements, is necessary if the arrangement is between or among units of local government.

(d) Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals.

(e) Contracts for products, services or supplies if the value of the contract is less than \$5,000.

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

(g) Contracts specifically exempt under these rules in LM Chapter 20 or under state law.

(h) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.

(2) Personal and professional service contracts are excluded from the definition of public contract and selection procedures are covered in LM Chapter 21. *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

20.105 Dollar Amount of Contract - Not to Exceed \$50,000.

(1) The County may let public contracts not to exceed \$50,000 for the purchase of goods, materials, supplies, and/or services without formal competitive bidding when the following conditions are complied with:

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

(b) When the amount of the contract does not exceed \$5,000, the County should, where feasible, obtain competitive quotes.

(c) When the amount of the contract is more than \$5,000, but equal to or less than \$50,000, the County shall obtain a minimum of three (3) competitive quotes. The County shall keep a written record of the source and amount of quotes received. If three (3) quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

(2) The County may let public contracts for trade related projects, i.e., building or road construction, maintenance, repair, or similar labor and materials contracts under the applicable provision in LM 20.105(1)(a), (b), and (c) above if it will result in cost savings. However, all other applicable public improvement contract requirements must be met. *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

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

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

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

(2) The amount of the aggregate cost increase resulting from all amendments does not exceed 20 percent of the amount proposed and accepted through competitive selection for the initial contract; with the exception of contracts for the renovation or remodelings of buildings which may have aggregate amendments not exceeding 33 percent of this amount. Amendments made pursuant to LM 20.110(1) above of this rule are not included in computing the aggregate amount under this section. *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

20.115 Life Cycle Costing.

(1) In determining the lowest responsible competitor in the award of a contract, the County may use the concept of life cycle costing if it complies with LM

(4) The County shall document its basis for determining the contractor is a sole source.

(5) If the County intends to make several purchases of the product or service of a particular seller or provider for a period not to exceed 3 years, it may so state in the documentation required in LM 20.140(4) above and such documentation shall be sufficient notice as to subsequent purchases. *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

EXEMPTIONS BY TOPIC

20.155 Advertising Contracts.

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

20.160 Construction Manager/General Contractor.

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

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

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

20.165 Copyrighted Materials.

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

20.170 Election Supplies and Services.

The County is exempt from competitive bidding or quote requirements for the printing of official ballots, including sample and test ballots, ballot envelopes, and including polling place and drop site signs. *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

20.175 Equipment Repair and Overhaul.

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

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

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

(2) If the contract exceeds \$50,000, the County shall document in its procurement file the reasons why competitive bids or quotes were deemed to be impractical. *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

20.180 Food Service Contracts.

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

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

(a) Prior to the selection of a contractor, the County has made reasonable efforts to inform known companies providing food services of the subject matter of the contract and solicits proposals including public advertisements in at least one newspaper of general circulation in the area where the contract is to be performed.

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

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

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

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

20.190 Oil or Hazardous Material Removal.

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

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

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

(c) Record the measures taken under LM 20.140(a) above to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the contractor selected.

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

20.195 Office Copier Purchases.

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

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

20.200 Laboratory and Medical Supplies.

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

20.205 Purchases of Hospital and Medical Supplies and Equipment.

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

20.206 Library and Reading Materials.

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

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

20.207 Purchases of Used Personal Property.

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

PRODUCTS SPECIFYING BRAND NAME**20.210 Specification of Particular Brand Names or Products.**

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

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

20.265 LCRB Exemption for Other Contracts.

(1) The LCRB may exempt a particular contract, or a category of contracts, from the bidding requirements of ORS 279.015, which are not otherwise exempt under these rules. The request for exemption shall contain the following information where appropriate:

- (a) The nature of the project;
- (b) The financial impact including estimated cost of the project, operational, budget and financial data and funding sources;
- (c) A narrative description of the cost savings anticipated by the exemption from competitive bidding, and the reasons competitive bidding would be inappropriate;
- (d) Public benefits;
- (e) Value engineering;
- (f) Specialized expertise required;
- (g) Public safety;
- (h) Market conditions;
- (i) Technical complexity;
- (j) Proposed alternative contracting and purchasing practices to be employed; and
- (k) The estimated date by which it would be necessary to let the contract.

(2) The LCRB may require such additional information as it deems necessary to determine whether a specific contract, or a category of contracts, is to be exempt from competitive bidding.

(3) Application of the information in LM 20.265(1) and (2) must demonstrate that the exemption would meet the following standard:

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

(b) The awarding of public contracts pursuant to the exemption will result in substantial cost savings to the public contracting agency considering the type, cost, amount of the contract, number of persons available to bid and such other factors as may be deemed appropriate. *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

BID SECURITY AND PERFORMANCE BOND**20.270 Bid and Performance Security.**

(1) Contracts, other than those for public improvements, are exempt from the bid security requirements of ORS 279.027 and performance security requirements of ORS 279.029 provided that the County may require bid, performance, or payment security, in its discretion, regardless of this exemption.

(2) Contracts for public improvements which are equal to or less than \$50,000 are exempt from bid and performance security requirements provided that the County may require such security in its discretion, regardless of this exemption. *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

Chapter 21

CONTRACT POLICIES**PUBLIC CONTRACTS****21.100 Generally.**

(1) Nothing stated in this Chapter shall be construed contrary to the provisions of ORS Chapter 279. Any reference in this Chapter to OAR Chapter 125 and OAR Chapter 137 provisions shall be for the sole purpose of aiding in interpretation in the event of ambiguity. When used as such, the reference shall be: "See OAR _____." Unless otherwise specifically noted, these OAR provisions are not adopted as rules applicable to County contracts; the applicable rules are those contained in LM Chapter 20 and 21.

(2) The County Administrator is delegated the authority to adopt all procedures necessary to implement the provisions of this Chapter.

(3) Definitions. As used in this Chapter, the following words and phrases shall mean:

- (a) Board. The Board of County Commissioners.
- (b) Competitive bidding and competitive quotes. LM 20.095; see 137-030-0000.
- (c) Lowest responsible bidder. ORS 279.029.
- (d) Personal Services Contract. ORS 279.051; LM 21.117.
- (e) Public contract. ORS 279.011; 279.310.
- (f) Public improvement. ORS 279.011; 279.310.
- (g) Public officer. The County Administrator, and where otherwise delegated, Department Directors.
- (h) Request for Proposal. LM 21.107.
- (i) Retainage. The difference between the amount earned by the contractor on a public contract and the amount paid, held to guarantee full performance. ORS 279.410.

(4) Definition of Public Contract. In addition to the statutory definitions in ORS 279.011 and ORS 279.310, a "public contract" is any written document which sets forth the promises of the parties, one of whom is the County. More specifically, a public contract can cover purchases, sales, leases, or other interests in personal property or public improvements. It can also cover sales and purchases of services, excluding personal or professional services. Net financial effect for the County is not a factor in determining whether a public contract exists. A public contract may bind the County to incur a financial obligation, may produce revenue, or may have little or no financial implications.

(5) Policy on Competition. It is the policy of Lane County to encourage open and impartial competition and to encourage the economic integration of minorities, women and emerging small businesses into the business sector.

All public contracts shall be awarded by competitive procurement, except as otherwise allowed or required in ORS 279, ORS 282.210, or the County's public contracting, policies and exemption rules. If federal funds are involved, federal laws, rules and regulations shall govern, in the event of conflict.

Even though contracts for personal or professional services are not public contracts, the applicable competitive selection procedure in LM 21.118 shall be followed.

(6) Contract Execution and Processing.

(a) All contracts shall be in writing and signed by the Board, or a duly authorized delegate. Until a contract is executed by the Board, or authorized delegate, and by the contractor, it shall not be binding.

(b) All contracts shall be processed through procedures prescribed by the County Administrator for review by legal, risk management and budget staff, except where expressly stated otherwise by the County Administrator or these rules. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

COMPETITIVE SELECTION

21.105 Competitive Bidding.

Competitive bidding is a formal process by which departments advertise and issue a written invitation to bid, and receive and open bids as required by ORS Chapter 279 and these rules. An invitation to bid is a solicitation of competitive offers in which technical specifications, price and delivery (or project completion) will be the predominant award criteria.

(1) When Required. Generally, competitive bids are required for all public contracts unless exempt under ORS Chapter 279 or the County's exemption rules, or where non-price related factors will be significant award criteria.

(2) Advertisements. All advertisements for bids shall comply with ORS 279.025, and shall include a provision that the contractor shall be an "Equal Opportunity Employer." See OAR 137-30-015.

(3) Delegations and Authority to Act.

(a) Calling and Opening of Bids. The County Administrator is generally delegated the authority to call and open bids for public contracts, and the following public officers are delegated the same authority for the purposes set forth:

(i) The Director of the Department of Public Works may call and open bids for public contracts for construction and maintenance relating to, and for lease or purchase of materials and equipment and for services related to roads and other transportation-related facilities, including supplies and equipment for Fleet Services, Parks, Land Management and Solid Waste divisions.

(ii) The Director of the Department of Management Services may call and open bids for public contracts for the purchase of materials, materials and services, equipment, supplies, office furniture and other personal property, and for public contracts for construction, renovation, remodeling and maintenance of County facilities and related capital outlay expenditures.

(iii) Pursuant to ORS 565.230 the Fair Board may call and open bids for all contracts relating to fairground facilities and operations.

(iv) The County Administrator may call and open bids for the lease, purchase or sale of computers and related data processing equipment.

(b) The public officer delegated authority to call for and open bids shall be responsible for placing the advertisements for bids and for the remaining obligations of "public officer" under this rule.

(c) The public officer to whom authority is delegated under this LM 21.105(3) may further delegate this authority to a representative by signed written document.

(4) Bids. To be received and considered, all bids must be in writing and signed by the bidder or authorized representative and submitted in a sealed envelope. No oral, telegraphic, telephonic, or telephonic facsimile bids, modifications of bids, or signatures, will be considered, unless otherwise stated in the bid documents.

(a) All bids shall include a sworn statement by the bidder, properly notarized, that the bid is made without connection or agreement with any other person,

firm or corporation making a bid in response to the bid solicitation, and is in all aspects fair and without collusion or fraud.

(b) All bids shall contain a statement as to whether the bidder is a resident bidder as defined in ORS 279.029, and a certification per ORS 279.111 that the bidder has not discriminated against minority, women or small business enterprises in obtaining any required subcontracts.

(c) If applicable, the bid shall include a statement that the provisions of ORS 279.350 regarding prevailing rate of wage shall be met.

(d) If applicable, the bid shall include the bidder's registration number with the Construction Contractors Board or Landscape Contractors Board and its expiration date.

(e) A bidder may not modify any bid after it has been deposited with the public officer. All bids shall be irrevocable for 30 days from the time of opening unless otherwise stated in the bid documents. Further, the bids of the three lowest unrejected bidders shall be irrevocable and binding and the bid securities shall be retained by the public officer until there is an executed contract and the contractor has provided all required satisfactory performance bonds. All other bid securities shall be returned promptly upon award of the contract or rejection of all bids.

(f) A bidder may withdraw the bid at any time prior to the deadline set for receipt of bids and deposit a new, sealed bid in accordance with these procedures.

(g) If a bidder finds discrepancies or omissions in the drawings or bid documents, or is in doubt as to their meaning, the bidder shall immediately notify the public officer. If the public officer believes a clarification is necessary, an addendum will be issued to all bidders in writing preferably at least five calendar days prior to the deadline set for bid receipt but in no case less than 72 hours prior to the deadline for bid. If there are not five calendar days left before the deadline for bid receipt, the addendum may postpone the date for bid for a minimum of five calendar days. Any addenda so issued are to be covered in the bid proposal and will become part of the contract documents.

(5) Protest of Specifications. The public officer shall respond promptly to any protest of specifications submitted in accordance with OAR 137-030-0050, which is hereby adopted, with the exception of protest deadline. Unless otherwise specified in the bid, a protest with respect to a public improvement contract must be filed 10 calendar days before bid opening and with respect to all other contracts, five calendar days before bid opening.

(6) Opening of Bids. All bids submitted to the County will be opened publicly at the time designated by the public officer. Any bid, modification, or notice of withdrawal received after the designated deadline shall be returned unopened to the bidder. After opening, the bids shall be available for public inspection, subject to the provisions of ORS 192.500 et seq.

(a) Prior to opening, the public officer may hold a prebid conference to answer any questions concerning the bid specifications or procedures. The public officer shall inform all prospective bidders (i.e., all persons who have received a bid package or indicated an interest in the bid) of the time and location of the conference.

(b) The public officer will not examine any bid prior to opening. The officer shall note on the envelope containing the bid the date and hour received.

(7) Evaluation of Bids.

(a) Evaluation of bids will be conducted by the public officer in cooperation with the department requesting the bid, if any, and shall be based on minimum requirements established by the bid documents, compliance with public bidding procedures, bidder responsibility, ethical practice, product acceptability, ORS Chapter 279, and LM Chapter 20.

(b) Goods and services that have been manufactured, produced or performed in this state shall be preferred, if price, fitness, availability and quality are otherwise equal. See OAR 137-030-0095.

(c) The public officer shall make all necessary investigation to determine whether the apparent lowest responsible bidder should be disqualified under ORS 279.037. See also ORS 279.029(6)

(d) Where the methods and factors which have cost implications over the life of the product have been identified in the bid documents pursuant to LM 20.115, a life cycle cost analysis shall be made of all bids to determine the lowest responsible bidder.

(8) Mistakes in Bids. Minor informalities, may be waived. Mistakes discovered in bids after opening where the intended correct bid is clearly evident or properly substantiated may be corrected. Where the intended correct bid is not clearly evident or cannot be substantiated by accompanying documents, the bid may not be accepted. The County reserves the right to waive technical defects, discrepancies and minor irregularities, and to not award a contract when it finds such action to be in the public interest. See OAR 137-030-0075.

(9) Rejection. The County reserves the right to reject any bid not in compliance with the bid documents or all prescribed public bidding procedures and requirements, and may, for good cause, reject any or all bids when it is in the public interest to do so. ORS 279.035; see OAR 137-030-0102. The public officer is delegated the authority to reject all bids, prepare findings of public interest and provide written notice of rejection of all bids including the reasons therefore to all bidders. The public officer is further delegated authority to reject any bid which does not conform to prescribed public contract procedures and requirements and to reject for good cause any bid upon a written finding it is in the public interest to do so per ORS 279.035. See OAR 137-030-0100. However, if the rejection is of what initially appears to be the successful bid, the Board or the County Administrator, depending upon authority to execute the contract, shall exercise the right to reject the apparent successful bid.

(10) Authority to Award Contract Subject to Bid.

(a) The County Administrator is delegated authority to award contracts where the authority to execute the contract has been specifically delegated under LM 21.145 below.

(b) Other than as delegated in LM 21.105(10)(a), the Board shall award contracts which have been bid in a public meeting. Generally, public testimony will not be received unless the Board specifically determines otherwise.

(c) Any award shall be made to the lowest responsible bidder and, consistent with bid documents, may be made by item, groups of items, or as a whole .

(11) Protests of Award. Unless otherwise specified in the bid documents, all protests of award must be filed within fourteen (14) days of the notice of award. Protests of award shall be handled by the County Administrator or his or her designee in conformity with OAR 137-030-0104(4) which is hereby adopted. Under this provision, the County Administrator or his or her designee has authority to reject all bids, and authority to revise the award of the contract in order to correct any errors made in the original award, so that the contract is awarded to the bidder legally entitled to receive an award pursuant to public contract law and regulations and the criteria stated in the documents. A copy of the decision shall be promptly transmitted to the Board. The decision shall be final seven days after it is delivered to the Board, unless within that time the Board elects to review the matter. Thereafter, within a reasonable time period, a complete copy of the written record shall be delivered to the Board. The Board may consider this written record, and any other evidence provided at a public meeting and shall issue its decision by Board Order. The Board may affirm, reverse or revise the decision of the County

Administrator or his or her designee. Upon adoption of the order, the decision will be final. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.106 Bid and Performance Securities.

(1) Bid Security.

(a) Unless otherwise provided below, all bids shall require as bid security a surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008, cashier's check or certified check, of the bidder in an amount not to exceed 10 percent of the bid. The dollar amount or percentage required as security shall be stated in the bid documents.

(b) The public officer is delegated the authority to waive the bid security requirement described above prior to bid opening for any non-public improvement contract and any public improvement contract equal to or less than \$50,000, if he or she believes:

(i) That waiving the bid security requirement will probably result in lower bids or an increased number of bids, and

(ii) That waiving the bid security requirement will not endanger completion of the project if rebidding is necessary because the successful bidder is unable or unwilling to sign the contract or provide any required performance bond, and

(iii) That the potential for cost to the County of rebidding the project is outweighed by the benefits.

(2) Performance Security.

(a) All bids for public improvements shall require a performance security in accordance with ORS Chapter 279. All bids for contracts for other than public improvements may require a performance security, if the public officer determines it is in the County's best interest to do so.

(b) Performance security is not required for public improvement contracts if the amount of the contract is less than \$50,000 pursuant to LM 20.270.

(c) In cases of emergency or as described in ORS 279.029(5), if all members of the Board concur, the requirement for a performance bond may be excused. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.107 Requests for Proposals.

(1) Description. Requests for proposals (hereinafter RFPs) are a means of soliciting competitive proposals or offers for entering into a contract for personal services, materials, materials and services, equipment, or for awarding grants, subgrants or contracts when price and specification will not necessarily be the predominant basis for award. An RFP process is one, but not the only means of competition for personal or professional services contracts.

(2) Requirements. Proposals submitted in response to RFPs are offers as are bids. See OAR 137-030-0000(23), 137-030-0012(1). The RFPs must generally comply with the requirements stated in LM 21.105 above and in ORS Chapter 279, applicable to bids, unless otherwise stated. In addition, all RFPs must meet the requirements of OAR 125-310-0200, including but not limited to:

(a) The composition and role of the evaluation committee must be clearly stated in the RFP.

(b) The evaluation criteria to be used in awarding the contract and the weight assigned to each criterion must be clearly identified in the RFP.

(c) The RFP must provide for an opportunity for persons interested in responding to comment on any specifications they believe limit competition, or to protest the specifications or contract terms in accordance with LM 21.105(5) above.

(d) The RFP must clearly state the contractual requirements.

(e) The RFP must clearly describe the right of appeal as stated in LM 21.107(9) below.

(f) The RFP must invite the submission of sealed, written offers to be publicly opened at a designated time and place.

(3) Advertisements and Proposals. See LM 21.105(2) above and (3). References to "bid" or "bidder" there include "proposal" or "proposer."

(4) Delegations and Authority to Act. Each Department Director is delegated the authority to call for open, direct evaluation of requests for proposals, and perform all other obligations of the "public officer" under LM 21.107. The Department Directors may further delegate this authority to a representative by a signed written document. The evaluation committee's recommendation for award of the contract shall be considered and finally decided by either the Board or the County Administrator, depending upon authority to execute the contract per LM 21.145.

(5) Opening. See LM 21.105(6) above. References to "bid" or "bidder" there include "proposal" or "proposer."

(6) Evaluation of Proposals. The evaluation committee shall evaluate the proposals according to the criteria stated in the RFP, compliance with public bidding procedures, proposer responsibility, ethical practice, product acceptability, and ORS Chapter 279. See also OAR Chapter 125 and OAR Chapter 137. The department responsible for issuing the RFP shall mail notice of the evaluation committee recommendation to the proposers within two days of the committee's decision unless otherwise stated in the RFP. Negotiations with proposers regarding contract terms may occur only after the award or only as provided in the RFP. See OAR 137-030-0090 as guidance.

(7) Bid and Performance Security. Unless otherwise provided in the RFP, bid and performance security requirements may be waived if the contract will not be a public improvement contract or if it will be for a public improvement for less than \$50,000. Bid and performance securities shall be provided if the contract will be for a public improvement of \$50,000 or more.

(8) Rejection. See LM 21.105(9). References to "bid" includes "proposal." References to "bidders" includes "proposers." References to "bid documents" include "request for proposal documents." References to "opening bids" include "opening proposals."

(9) Appeal of Evaluation Committee Recommendation. Anyone responding to an RFP who is not recommended for award by the evaluation committee may appeal the recommendation to the decision maker, either the Board or the County Administrator, depending upon which has authority to execute the contract.

(a) Any appeal must be made in writing, be received before the contract is awarded by the decision maker, clearly state the grounds for the appeal, and indicate what condition(s) resulted in the proposal not being recommended for award. Any appeal which does not comply with the applicable procedures may be rejected.

(b) Unless otherwise stated in the RFP, the appeal must be received by the department which issued the RFP not later than seven calendar days after notice of the evaluation committee's decision was mailed. Upon receipt of the appeal, the department shall notify the proposer recommended for award of the appeal and the evaluation committee's recommendation. The proposer and the committee shall have three calendar days from the date the appeal was filed to respond to the appeal in writing if they so desire.

(c) When an appeal is filed, the department responsible for preparing the RFP shall prepare a written analysis of the appeal and make a recommendation to the decision maker as to appropriate action to be taken.

(d) The grounds for appeal are:

(i) Different criteria were used to evaluate different proposals.

(ii) The evaluation committee unfairly applied the evaluation criteria to a proposal.

(iii) A member or members of the evaluation committee had a relationship with a proposer that represented a conflict of interest.

(iv) The criteria used to evaluate the proposals did not pertain to the services or products requested.

(v) A member or members of the evaluation committee demonstrated bias toward a proposal or a proposer.

(e) If the decision maker is the Board, the department which issued the RFP shall present the issues orally or in writing at a public meeting. The appellant shall then have 10 minutes to specifically address the appeal criteria, and the evaluation committee's recommendation and the recommended proposer(s) shall have a total of 10 minutes to respond, divided between them as they wish. If the decision maker is the County Administrator, the decision shall be made on the written record.

(f) If an appeal is timely filed, the Board or County Administrator, as appropriate, shall consider the evaluation committee's recommendation and the allegations of the appeal before rendering a final decision. If the Board is the decisions maker, it shall carefully evaluate any appeal before rendering a decision and shall state the conclusions reached and reasons either in writing or on the record in a public meeting. Any decision to overturn the recommendation shall be based on a finding that one of the criteria of LM 21.107(9)(d) above occurred to the substantial prejudice of the appellant.

(g) The appeal procedures and limits set forth herein to be followed by the County are directory and not mandatory and failure to follow or complete the action in the manner provided shall not invalidate the decision.

(10) Authority to Award Contract Subject to RFP.

(a) The County Administrator is delegated authority to award a contract resulting from an RFP process where authority to execute such contract has been specifically delegated under LM 21.145.

(b) All decisions to award a contract following a request for proposals shall be based on the criteria stated therein, substantial compliance with public contract laws, rules and procedures, and the best interests of the County.

(11) Protests of Award. See LM 21.105(11). References to "bid documents" includes "request for proposal documents" and references to "bid" include "proposal." *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.108 Letters of Interest.

(1) Description. Letters of Interest (LOIs) are expressions of interest in a particular contract by potential contractors. Typically, potential contractors submit a letter in response to the County's solicitation which states they are interested in providing a good or service. This selection process should be used cautiously in order to avoid any chill to competition.

(2) When Applicable.

(a) LOIs may be used as a means of determining whether a potential contractor is a sole source under LM 20.140. This contemplates a situation where the fundamental nature of the good or service is so limiting that it seems likely that only one seller/provider exists. Because it is the County's policy to encourage competition whenever possible, it is not permissible to describe a fundamentally broad need in a narrow or limiting way in order to use this process. The expectation of the funding source is one important factor in determining the fundamental nature of a good or service. There may be additional facts to support sole source.

(b) An LOI process may be used as a preliminary phase of an RFP process. If the County receives more than one LOI such responses may be included on a list of potential contractors who will be mailed a bid, RFP or RFPs solicitation document.

- (3) **Requirements.** LOIs may be sought in the following manner:
- (a) An advertisement must be run in a newspaper of general countywide circulation at least once and not less than five days before the LOIs are due. Additional advertisements may also be published in other newspapers.
- (b) The advertisement must contain a description of the nature of the work to be performed or good to be provided, the term of the contract, the person to whom LOIs are to be submitted and the date the LOIs are due. There must be a sufficient description of the service or good that potential competitors will be able to evaluate whether they are qualified, able and wish to perform.
- (c) If there is only one LOI submitted, the department shall obtain sufficient proof, as it deems necessary, of basic ability to perform, including but not limited to, an adequate level of professional, fiscal and management capability, prior to awarding the contract.
- (d) If the County receives more than one LOI response, all parties responding shall receive an opportunity to compete for the contract pursuant to a bid invitation, RFP, or RFPS. If this occurs, the competition must be open to all potential competitors, and not just those submitting LOIs. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

TYPES OF CONTRACTS

21.113 Material, Service, and Material/Service Contracts.

(1) A materials contract is one that calls primarily for an end product and in which the County purchases, obtains some interest in, or leases personal property. A service contract is one that calls primarily for a contractor's time and effort, and does not include work connected with manufacturing a product or personal or professional services. A service contract includes one for a trade-related activity to accomplish routine functions of a type that can generally be done by any competent worker, even though a specific license is required. A contract may be a combination materials and services contract.

(2) Materials and/or service contracts may only be executed after appropriate competitive selection has been completed.

(3) Title to all personal property shall be described on all formal title documents and bills of sale as: Lane County, Lane County Public Service Building, Eugene, Oregon 97401.

(4) For contracts involving the rental, lease or lease purchase of equipment, the Risk Manager should be consulted regarding insurance requirements. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.114 Maintenance and Repair Contracts.

Contracts for the maintenance or repair of equipment or public improvements are subject to the public contract laws and regulations.

(1) Contracts for maintenance or repair of equipment must comply with the requirements of LM 20.175. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.115 Public Improvement Contracts.

(1) Public improvements shall usually be performed by contract. When the project is estimated to cost more than \$125,000, the provisions of ORS 279.023 and 279.025 shall be followed. Unless otherwise approved by the Board, public improvement projects shall be performed according to the capital improvements list adopted by the Board pursuant to ORS 279.023.

(2) Public improvement contracts must comply with a number of requirements. Care should be taken to see that the requirements including, but not limited to, the following are met:

(a) Advertisement (including Asbestos Abatement) - ORS 279.025 and LM 21.105 above. See, OAR 137-040-0005, 137-030-0015(2)(c).

(b) Bid security - ORS 279.027, LM 20.270, LM 21.106 above.

(c) Performance security - ORS 279.029, LM 20.270, LM 21.106 above.

(d) Prevailing rates of wage - ORS 279.348 to 279.380. See OAR 137-040-0010, OAR Chapter 839.

(e) Retainage - ORS 279.400 to 279.435, LM 21.116 below.

(f) Prompt payment policies - ORS 279.435. See, OAR 137-040-0030 to OAR 137-040-0045.

(g) Subcontractor clauses - see ORS 279.435 and ORS 279.445.

(h) Insurance - see LM 21.305 below.

(i) Exempt contracts over \$100,000 evaluation report required - see ORS 279.103.

(j) Contractor shall certify that an employee drug testing program is in place at the time of contract execution, and that such a program will be maintained throughout the contract period including any extensions. Failure of contractor to certify, to have, or to maintain such a drug testing program is grounds for rejection of a bid or immediate termination of the contract. Contractor shall also certify that it will require any subcontractors to demonstrate to Contractor that it will have such a drug testing program. ORS 279.312.

(k) First-tier subcontractor disclosure for contracts greater than \$100,000. ORS 279.027.

(3) The County Administrator is delegated the authority to make final acceptance of a public improvement and may further delegate this authority to a representative by a signed written document. If it is determined that the project should not be finally accepted, the matter shall be brought to the attention of the Board. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.116 Retainage.

(1) Retainage of five percent of the contract price of the work completed shall be withheld on all public improvements contracts until the project is at least 50 percent complete, after which the retainage may be reduced, upon the County Administrator's approval, in accordance with ORS 279.435.

(2) Deposit of Securities in lieu of retainage.

(a) Notwithstanding LM 21.116(1) above, Lane County shall reduce the retainage in an amount equal to the market value of bond or securities deposited by the contractor in accordance with the procedures set out below. Bonds or securities offered for deposit in lieu of retainage shall be as authorized in OAR 137-040-0025(3), which is hereby adopted.

(b) All bonds or securities in lieu of retainage shall be deposited with a bank or trust company in Lane County, Oregon, in an account for the benefit of Lane County established for this purpose. Upon deposit, the bank or trust company shall prepare an Assignment and Safekeeping Receipt in the form set out in Exhibit "A." The contractor shall deliver in person one copy of this receipt to the Department of Management Services.

(i) Bonds or securities deposited shall be in fully transferable form. Any nonnegotiable bonds or securities shall have all necessary instruments attached to enable the County to effect transfer of title should the contractor be unable to fulfill the contract obligations.

(ii) Bonds or securities deposited in lieu of retainage shall be released only upon the written instructions and authorization of the County. Upon default, the County may elect to authorize the bank or trust company to transfer any securities deposited under these provisions, rather than undertake to transfer such securities itself.

(c) If at any time the market value of the bonds or securities deposited in lieu of retainage drops below five percent of the contract price of the work completed, the County may withhold from payments due the contractor an amount sufficient to maintain its appropriate retainage protection. Withheld amounts shall only be released to the extent of the market value of additional bonds or securities deposited by the contractor in accordance with this section.

(3) Retainage Deposited in Interest Bearing Account. In accordance with ORS 279.420(4), retainage may be deposited upon the request of the contractor in an interest bearing account with earnings to accrue to the contractor.

(4) Surety Bond in Lieu of Retainage. In accordance with ORS 279.420(6), upon approval of the County Administrator, the contractor may deposit a surety bond for all or a portion of the retainage. The bond shall be in a form acceptable to the County Administrator. The retainage shall be accordingly reduced, and the contractor shall accept like bonds from subcontractors and suppliers.

(5) All retainage on public contracts for public improvements, less costs as allowed by statute, shall be released within 30 days after the work under the contract has been completed and the County Administrator or the Board has authorized final acceptance thereof. If not so released, interest shall be paid in accordance with ORS 279.435(3). *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

ASSIGNMENT AND SAFEKEEPING RECEIPT No. _____

THIS ASSIGNMENT is to satisfy the requirements for deposits of bonds or securities in lieu of retainage on public improvements contracts set out in LM 21.116.

Subject to the conditions below, the undersigned does hereby assign, transfer and set over to Lane County all right, title and interest in and to the bonds and securities listed in the attached Schedule "A" for the use and purpose of retainage on the public contract between Lane County and the undersigned, identified as

(Project Identification)

_____ agrees that the bonds or securities listed in Schedule
(Bank or Trust Company)

"A" will be held in trust for the purposes stated here, and shall be released only upon the written instructions and authorization of Lane County.

Periodic interest payments or other disbursements which do not reduce the face amount of the bonds or securities shall 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, if, and only if, 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 shall be 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 above-stated.

(Authorized Signature)

Exhibit "A" to LM 21.116(2)

(Revised by Order No. 98-12-2-4, Effective 12.2.98)

21.117 Personal and Professional Service Contracts.

(1) Personal and professional service contracts are those for the rendering of services where the particular skill or experience of the contractor is of primary importance, or which involve a relationship of special trust and confidence between the County and the contractor. See OAR 125-020-0130 for guidance as to whether a proposed contract is one for personal or professional service as opposed to one for materials and service.

(2) Personal or professional service contracts shall not be used to engage persons who would be deemed County employees, rather than independent contractors. Two of the primary differences are the amount of control the County has the right to exercise over the individual and the method of payment. That a County employee supervises or has the right to supervise the individual (i.e., assign work, review work,

review performance) is an indicator the individual would be an employee, not an independent contractor. That the individual is paid for time and services is an indicator the person is an employee, whereas, that he or she is paid for results or for a total project is an indicator the individual is an independent contractor. All personal and professional services contractors must meet the independent contractor standards of ORS 670.600.

(3) Generally, all personal or professional services contracts shall require the contractor to defend, indemnify and hold the County, its officers, agents and employees harmless from all damages, losses and expenses including but not limited to attorney fees and to defend all claims, proceedings, lawsuits and judgments arising out of the contractor's performance or failure to perform the contract. When the Office of Legal Counsel determines the risk of a substantial judgment against the County is minimal, this provision may be waived.

(4) Care shall be taken in the use of personal or professional service contracts to insure they do not violate the terms of any collective bargaining agreement to which the County is a party. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.118 Selection of Personal or Professional Service Contractor.

Personal or professional service contracts are excluded from competitive bidding; however, the following selection procedures shall be utilized:

(1) Dollar Amount.

(a) \$5,000 or less. For contracts of \$5,000 or less, the Department Director or designated officer may negotiate a contract with any qualified contractor of his or her selection.

(b) Greater than \$5,000. For contracts greater than \$5,000 and for all retainer type contracts, the Department Director or designated officer shall solicit at least three prospective contractors who appear to meet the minimum requirements for the proposed contract, inform each in reasonable detail of the contract and determine the prospective contractor's interest and ability to perform the contract. For all retainer type contracts, quotations shall be solicited from appropriate minority, women and emerging small business enterprises certified by the State pursuant to ORS Chapter 200, and as specified through County administrative procedures.

(c) Greater than \$50,000. Where the contract is greater than \$50,000, the Department Director or designated officer shall conduct interviews of at least the two most qualified prospective contractors, if two or more are available. Interviews may be either by telephone, in person or by written questions. When the Department Director deems it appropriate, he or she may solicit prospective contractors by advertisement for bids or by a request for proposals process in LM 21.107 above, or by the following request for professional service (RFPS) process.

(d) Requests for Professional Services Greater than \$50,000.

(i) Description. A request for professional services (RFPS) is a selection procedure used when the County requires the services of the most highly qualified professional based on demonstrated competence and qualifications, and where a fair and reasonable price rather than lowest competitive price is the focus. It may be used in the discretion of the Department Director, on a project-by-project basis, except a qualifications based process is required for selecting registered professional engineers, registered architects, or registered professional land surveyors for consulting services where:

(aa) The County receives grants, loans or moneys from the Oregon State Highway Fund or from the State that exceeds 35% of the value of the project, and

(bb) The value of the project exceeds \$400,000. ORS 279.057.

(ii) Requirements.

(aa) An advertisement shall appear at least once in at least one newspaper of general circulation in the area where the project is to be located, and shall briefly describe the project, the services sought, where copies of the solicitation may be obtained and the deadline for submitting a response.

(bb) The solicitation document shall contain, at a minimum, the information in LM 21.118(1)(d)(ii)(aa) above, specifications, project requirements, a statement of the particular professional qualifications for the project, the evaluation criteria, and the screening or evaluation method to be used. It shall also reserve the County's right, at any time during the solicitation or contract process, to reject any or all proposals or cancel the solicitation, without liability, if there is good cause or if doing so would be in the public interest. A sample of the contract expected to be executed should be included.

(cc) A screening and evaluation committee shall review, score and rank the proposals according to solicitation criteria and results of any oral interviews. Criteria may include, but is not limited to, specialized experience, capabilities and technical competence to meet project requirements, availability and resources to perform the work, experience of key staff, demonstrated ability to successfully complete similar projects, references and recommendations, history in meeting deadlines, submitting accurate estimates, producing quality work, meeting financial obligations, contract administration status of licensing, proposed solutions to any perceived design or construction problems, availability and familiarity with project locale, and project management approach. Proposed compensation may be included as evaluation criteria except for projects and professional engineer, architect, and land surveyor services covered by ORS 279.057.

(dd) Contract negotiations, including refining scope of services, with the highest ranked professional shall be directed toward an agreement on a compensation level which is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the professional services. A department may solicit or use a compensation proposal for projects and services covered by ORS 279.057 only after evaluating and ranking candidates.

(ee) If an agreement is not reached in a reasonable time, the County may terminate negotiations with the highest ranked proposer and begin with the second ranked, and then to the third, if applicable. If no agreement is reached, the solicitation may be terminated.

(ff) Contractor may protest the contract award in accordance with process in LM 21.105(11).

(2) Amendments. The selection procedures stated in LM 21.118(1) above shall be utilized for any amendment of a personal or professional services contract which is more than 50 percent of the original contract amount, or when the aggregate of amendments are more than 50 percent of the original amount. However, they need not be utilized if the scope of the amendment was clearly included in the original selection such that prospective contractors understood this amendment would occur.

(3) Criteria. The following criteria shall be considered, as appropriate, in the evaluation and selection of personal or professional service contractors:

- (a) Specialized experience in the type of work.
- (b) Capacity and capability to perform the work within necessary time and other limitations.
- (c) Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules and contract administration.
- (d) Availability to and familiarity with the area in which the specific work is located.
- (e) Any other factors relevant to the particular contract.

(4) Waiver. The selection procedures described above may be waived by the County Administrator prior to selection of the personal or professional services contractor or to permit an amendment in excess of the 50 percent limit of LM 21.118(2) above for any of the following reasons:

(a) An emergency exists which could not have been reasonably foreseen and which requires prompt execution of a contract, or

(b) The contractor is the only person within a reasonable area who performs this type of work, or

(c) When good cause is demonstrated to the County Administrator, such that he or she believes award of the contract without utilizing the selection procedures is in the public's interest. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.120 Requirements Contracts.

Requirements contracts provide for the establishing of unit prices for goods or services (including personal or professional services) when the County knows it will need them, but is unable to determine the quantity in advance. Generally, the vendor agrees to supply some or all of the County's requirements within a specified period of time. Competitive selection and contract/amendment execution authority is governed by the rules which apply to the underlying contract type, i.e., materials, materials and services, services, personal or professional services.

(1) In conducting competitive selection, the County shall inform all potential bidders/proposers:

(a) Whether it will consider awarding and executing more than one requirements contract for a single type of service or good; and

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

(2) All requirements contracts shall provide that:

(a) the County will purchase a specified minimum amount of goods or services; or

(b) a maximum, not to exceed amount of goods or services; and

(c) the contract may be canceled upon 30 days written notice by the County; and

(d) the term of the contract, including renewals, shall not exceed three years.

(3) When the price of goods and services has been established by a requirements contract, the County may purchase the goods and services from the supplier without subsequent competitive selection. In order to purchase or pay for goods and/or services under an executed requirements contract, the following steps apply:

(a) For a services/requirements contract, if the scope of work is originally defined in general terms, and the parties anticipate further defining of the work as it arises, i.e., professional services on a project by project basis, the additional defining of the scope of work shall be in writing, signed by both parties and processed as an amendment if the total anticipated dollar amount of work on the project exceeds \$50,000. If the total anticipated dollar amount of work on the project is \$50,000 or less, the definition of the scope of work shall be in writing, on or attached to a purchase order and processed as a purchase order.

(b) For all other requirements contracts where the services and/or goods are specifically defined in the original contract, i.e., delivery of rock, specific purchases may be made through a purchase order.

(4) The County departments shall determine the most reasonable estimate of the dollar amount of a requirements contract, including from all amendments, purchase orders, etc., throughout the term of the contract. That dollar figure shall be the basis for

determining contract/amendment execution authority. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.122 Revenue Contracts.

Revenue contracts must comply with all public contract laws and regulations and LM Chapter 21.

(1) The County Administrator and the Director of the Department of Management Services each individually are delegated the authority to execute certificates of title and bills of sale for County-owned personal property duly sold under established procedures and may further delegate this authority in writing.

(2) A revenue contract which involves elements of an interest in real property (for example, a caretaker or concessionaire agreement or a lease), may also have to comply with laws regarding the disposition of publicly owned real property. The Department considering such a contract should consult with the Office of Legal Counsel regarding appropriate procedures and contract terms.

(3) Disposition of personal property must comply with ORS 279.015, 279.095 and LM 60.405. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.124 Intergovernmental Agreements.

(1) Intergovernmental agreements are exempt from competitive selection.

(2) Under the authority of Chapter II, Section 8 of the Lane County Home Rule Charter and ORS Chapter 190, it is the policy of Lane County to offer services to other public agencies where feasible. Lane County must be compensated for the complete cost of providing all intergovernmental services. An intergovernmental agreement should be utilized whenever possible as the implementing document. The Board in its discretion may approve waivers to the policy of complete compensation. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.126 Grants.

"Grant" means a federal, state or other agreement in which the County receives and disburses funding for purposes itemized in the grant, and subject to the conditions set forth in the grant. "Grants" include sub-grants through which the County merely passes through the grant funds received, in whole or in part, without modifying any terms or conditions of the original grant, except as related to County administration and oversight of the grant conditions. An agreement may not be a sub-grant if the County does modify, and may be more appropriately analyzed as a service contract, or a materials and service contract, intergovernmental agreement, etc. depending upon the subject matter. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.127 Amendments.

(1) **Selection Procedures.** All amendments including but not limited to change orders, extra work, and modifications, shall comply with public contract laws and regulations regarding competitive bidding and selection procedures. The selection procedures of LM 21.118(1) above shall not apply to amendments to personal services contracts, except when the total of all amendments exceed 50 percent of the original amount. A waiver of the selection procedure pursuant to LM 21.118(4) above may nonetheless be sought in those cases.

Generally, a contract amendment should include a reference to the original contract by title and/or date, terms of amendment including citation to specific provisions in the original contract being amended, and ending with a provision that "except as set forth above, all provisions of the original contract dated _____ remain unchanged." *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.128 Emergency Contracts.

(1) An emergency is generally defined, but not limited to, as a set of circumstances creating a substantial risk of loss, damage, interruption of services or threat to public health or safety that could not have been reasonably foreseen. If such an emergency exists which requires the prompt execution of a contract to remedy the situation, the provisions of ORS 279.015, 279.029, LM 20.255 and 20.260 shall be appropriately followed.

(2) The County Administrator is delegated authority to declare an emergency and to execute a contract to remedy it not to exceed \$50,000. The Board of Commissioners must declare the emergency and award any contract exceeding \$50,000.

(3) In all cases, the nature of the emergency and the anticipated harm if a contract is not promptly executed must be described with specificity in writing, and the efforts, if any, made to encourage competition through informal solicitations or quotes.

(4) Any performance bond requirement may be waived upon approval of all members of the Board, pursuant to ORS 279.029(5).

(5) Unless an extension is approved by the LCRB, an emergency contract must be awarded within 60 days of the declaration of emergency. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.129 Purchase Orders.

Purchase orders may be used to obtain materials, services, personal or professional services, to implement a purchase pursuant to a requirements contract, to implement a purchase utilizing a contract competitively bid by other political subdivisions when the specifications indicated that more than one political subdivision could utilize the bid award, and to purchase price-regulated items when the rate or price has been set by Federal, State or local regulatory authority.

(1) In implementation of LM 21.100 above, quotations for purchase orders shall be solicited from appropriate minority, women and emerging small business enterprises, who are certified by the State pursuant to ORS Chapter 200. The County Administrator shall implement this requirement through administrative procedure.

(2) Purchases of more than \$50,000 can be made by purchase order only in implementation of an appropriately awarded written contract or to purchase price-regulated items or the printing of ballots. Purchase orders shall not be utilized to circumvent the public contract law or regulations.

(3) A purchase order for more than \$25,000 of trade-related services must comply with all applicable conditions for public improvement contracts.

(4) The Director of Management Services or his or her delegate shall have the discretion to require a written contract in lieu of a purchase order, whenever he or she believes a contract to be in the best interests of the County.

(5) The Director of the Department of Management Services is delegated authority to execute all purchase orders. He or she may further delegate such authority in writing. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

STANDARD PROVISIONS**21.130 Standard Contract Provisions.**

The following standard public contract clauses shall be included expressly or by reference where appropriate in every contract of the County.

(1) Contractor shall make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in the contract, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.

(2) Contractor shall pay promptly all contributions or amounts due to the State Industrial Accident Fund and the State Unemployment Compensation Fund from contractor or any subcontractor in connection with the performance of the contract.

(3) Contractor shall not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished, shall assume responsibility for satisfaction of any lien so filed or prosecuted and shall defend against, indemnify and hold County harmless from any such lien or claim.

(4) Contractor and any subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

(5) If contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the contractor or its surety from the obligation with respect to any unpaid claim. If the County is unable to determine the validity of any claim for labor or services furnished, the County may withhold from any current payment due contractor an amount equal to said claim until its validity is determined, and the claim, if valid, is paid by the contractor or the County. There shall be no final acceptance of the work under the contract until all such claims have been resolved.

(6) Contractor shall make payment promptly, as due, to any person, copartnership, association or corporation furnishing medical, surgical, hospital or other needed care and attention, incident to sickness or injury, to the employees of contractor, of all sums which the contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing payment for such service.

(7) For all public contracts, with certain exceptions listed below, contractor shall not require or permit any person to work more than 10 hours in any one day, or 40 hours in any one week except in case of necessity, emergency, or where public policy absolutely requires it, and in such cases the person shall be paid at least time and a half for:

(a) All overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday, or

(b) All overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday, and

(c) All work performed on the days specified in ORS 279.334.

For personal/professional service contracts as defined in ORS 279.051, instead of (a) and (b) above, a laborer shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Sections 201 to 209, from receiving overtime.

Contractor shall follow all other exceptions, pursuant to ORS 279.316 and ORS 279.334, including contracts for public improvements involving a collective bargaining agreement, contracts for services, and contracts for fire prevention or suppression.

Contractor must give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(8) The hourly rate of wage to be paid by any contractor or subcontractor to workers upon all public works shall be not less than the prevailing rate

of wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279.348 to 279.365.

(9) The contractor, its subcontractors, if any, and all employers working under the contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, or otherwise be exempt under ORS 656.126.

(10) Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to those dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the contract. A list of entities who have enacted such laws or regulations is found in the Oregon Attorney General's Model Public Contract Rules Manual. OAR 137-030-0010, Commentary 4. If new or amended statutes, ordinances, or regulations are adopted, or the contractor encounters a condition not referred to in the bid document not caused by the contractor and not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws or regulations dealing with the prevention of environmental pollution or the preservation of natural resources, both the County and the contractor shall have all the rights and obligations specified in ORS 279.318 to handle the situation.

(11) The contract may be canceled at the election of County for any substantial breach, willful failure or refusal on the part of contractor to faithfully perform the contract according to its terms. The County may terminate the contract by written order or upon request of the contractor, if the work cannot be completed for reasons beyond the control of either the contractor or the County, or for any reason considered to be in the public interest other than a labor dispute, or by reason of any third party judicial proceeding relating to the work other than one filed in regards to a labor dispute, and when circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work. In either case, if the work is suspended but the contract not terminated, the contractor is entitled to a reasonable time extension, costs and overhead per ORS 279.328. Unless otherwise stated in the contract, if the contract is terminated, the contractor shall be paid per ORS 279.330.

(12) If the County does not appropriate funds for the next succeeding fiscal year to continue payments otherwise required by the contract, the contract will terminate at the end of the last fiscal year for which payments have been appropriated. The County will notify the contractor of such non-appropriation not later than 30 days before the beginning of the year within which funds are not appropriated. Upon termination pursuant to this clause, the County shall have no further obligation to the contractor for payments beyond the termination date. This provision does not permit the County to terminate the contract in order to provide similar services or goods from a different contractor.

(13) By execution of this contract, contractor certifies, under penalty of perjury that:

(a) To the best of contractor's knowledge, contractor is not in violation of any tax laws described in ORS 305.380(4), and

(b) Contractor has not discriminated against minority, women or small business enterprises in obtaining any required subcontracts.

(14) Contractor agrees to prefer goods or services that have been manufactured or produced in this State if price, fitness, availability or quality are otherwise equal.

(15) Contractor agrees to not assign this contract or any payments due hereunder without the proposed assignee being first approved and accepted in writing by County.

(16) Contractor agrees to make all provisions of the contract with the County applicable to any subcontractor performing work under the contract.

(17) The County will not be responsible for any losses or unanticipated costs suffered by contractor as a result of the contractor's failure to obtain full information in advance in regard to all conditions pertaining to the work.

(18) All modifications and amendments to the contract shall be effective only if in writing and executed by both parties.

(19) The contractor certifies he or she has all necessary licenses, permits, or certificates of registration (including Construction Contractors Board registration or Landscape Contractors Board license, if applicable), necessary to perform the contract and further certifies that all subcontractors shall likewise have all necessary licenses, permits or certificates before performing any work. The failure of contractor to have or maintain such licenses, permits, or certificates is grounds for rejection of a bid or immediate termination of the contract.

(20) Unless otherwise provided, data which originates from this contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the County. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights. Data which is delivered under the contract, but which does not originate therefrom shall be transferred to the County with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; provided that such license shall be limited to the extent which the contractor has a right to grant such a license. The contractor shall exert all reasonable effort to advise the County, at the time of delivery of data furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this contract. The County shall receive prompt written notice of each notice or claim of copyright infringement received by the contractor with respect to any data delivered under this contract. The County shall have the right to modify or remove any restrictive markings placed upon the data by the contractor.

(21) If as a result of this contract, the contractor produces a report, paper, publication, brochure, pamphlet or other document on paper which uses more than a total 500 pages of 8 1/2" by 11" paper, the contractor shall conform to the Lane County Recycled Paper Procurement and Use policy, LM 2.440 through 2.448, by using recycled paper with at least 25% post-consumer content which meets printing specifications and availability requirements.

(22) The Standard Specifications for Highway Construction adopted by the State of Oregon, and the Manual on Uniform Traffic Control Devices, each as is currently in effect, shall be applicable to all road construction projects except as modified by the bid documents. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

AUTHORITY TO AWARD, EXECUTE, CANCEL

21.135 Contracts Which are Exempt from Bids and RFPs.

(1) The award of contracts which are exempt from competitive bids shall be made by the public officer delegated the authority to execute the contract or, if no delegation has been made, the Board.

(2) Generally, the award shall be made to the person or entity which has submitted the lowest responsible quote or proposal, in the case where the County is purchasing a good or service, or to the highest responsible quote or proposal, in the case where the County is selling a good or service. In the situation where interviews or substantive proposals have been sought, the award shall be made to the entity submitting the quote or proposal which best meets the needs of the County, in conformity with all prescribed selection procedures. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.137 Grant Applications.

(1) For grants from \$0 - \$50,000, the County Administrator is delegated authority to approve and execute all documents in the application process and the acceptance of the award.

(2) For grants over \$50,000, the Board shall approve the preliminary application and acceptance of the grant. This may be done in one Board action if the application contains complete information, and the grant is ultimately awarded without unusual conditions, or there may be separate Board actions to approve grant application submittal and grant award acceptance. The County Administrator is delegated authority to approve and execute all other grant documents in the application process.

(3) The County Administrator is delegated authority to approve and execute all documents to continue a grant that was approved by the Board pursuant to LM 21.137(2), so long as the continuation is substantially similar to the original proposal approved by the Board.

(4) The County Administrator may further delegate the authority in (1), (2) and (3) to a representative by a signed written agreement. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 02-1-30-1, 1.30.02)*

21.139 Fair Board.

Pursuant to ORS 565.230, the Fair Board has authority to award and execute all contracts relating to fairground facilities and operations, except those contracts which transfer an interest in real property. It is also delegated authority to cancel or terminate such contracts as provided in the contract or by law. The Fair Board may further delegate authority under this provision to a representative by signed written document. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.141 On-Site Construction Change Orders.

The Director of the Department of Public Works or his or her authorized representative, is delegated the authority to execute an on-site construction change order to a contract for the construction or renovation of roads or other transportation facilities and the Director of the Department of Management Services, or his or her representative, is delegated the authority to execute an on-site construction change order to a contract for the construction, renovation, remodeling or repair of County facilities, if 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 or \$25,000, whichever is less,

(2) The change order is necessary for completion of the contract,

(3) Failure to immediately authorize the change could result in a work stoppage or severe slowdown, causing undue and unnecessary costs, or result in a hazard to the public and

(4) It is in the best interest of the County to authorize the order and facilitate completion of the project. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.143 Cancellation of Award.

(1) The Board reserves the right to cancel the award of any contract at any time prior to the execution of said contract by all parties without any liability against the Board or Lane County. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

**COUNTY ADMINISTRATOR DELEGATED AUTHORITY CONTRACTS AND
AMENDMENTS**

21.145 Delegation of Authority to Execute Contracts.

(1) The County Administrator is delegated authority to execute the following types of contracts:

(a) All contracts which have been competitively bid and awarded by the Board.

(b) All contracts and agreements not exceeding \$50,000 nor three years in length.

(c) Subcontracts and subgrants not exceeding \$50,000 which implement grants.

(d) Amendments to contracts or modifications to grants, subgrants, and subcontracts as described in LM 21.147.

(e) All computer software licenses not exceeding a purchase price of \$50,000 and which may be terminated upon discontinued use of software if longer than three years in length.

(f) Insurance nonwaiver agreements and insurance endorsements to original policies.

(g) Land use improvement agreements, Building Program Quick Start Agreements and acceptance and release of land use performance bonds.

(h) Real property leases, licenses and permits, caretaker agreements involving the lease of property, and concessionaire agreements, not exceeding \$50,000 nor three years in length.

(i) Emergency contracts which do not exceed \$50,000, with one exception, and which are executed within 60 days of the declaration of the emergency. See LM 20.255 and 20.260.

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

(k) All contracts implementing projects listed on the public improvements project list adopted pursuant to ORS 279.023, including those 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.

(l) All projects, services, materials/product purchases, contracts specifically listed as part of budget adoption order, or a supplemental budget adoption order.

(m) Any other type of contract the award of which has been expressly approved by the Board. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.147 Delegation of Authority to Execute Amendments.

The County Administrator is delegated authority to execute amendments which comply with LM 21.127(1) above as follows:

(1) For personal or professional services contracts where the original amount is equal to or less than \$500,000, the County Administrator may execute any individual amendment which does not exceed \$50,000, but the total of all amendments of that contract shall not exceed 50 percent of the original contract amount. For personal or professional services contracts where the original amount is greater than \$500,000, the County Administrator may execute any individual amendment which does not exceed 20 percent of the original contract amount, but the total of all amendments of that contract shall not exceed 50 percent of the original contract amount.

(2) For grants or sub-grants where the original amount is equal to or less than \$500,000, the County Administrator may execute any individual amendment which does not exceed \$50,000. For grants or sub-grants where the original amount is greater than

\$500,000, the County Administrator may execute any individual amendment which does not exceed 20 percent of the original contract amount. The delegation of authority provided in LM 21.137(3) applies only to grant continuations which are substantially similar to the original proposal approved by the Board pursuant to LM 21.137(2); all other grant amendments are governed by this subsection.

(3) The County Administrator is delegated authority to execute all amendments which meet the conditions of LM 20.110.

(4) The County Administrator is delegated authority to execute an amendment when combined with all other amendments and the original contract amount total \$50,000 or less.

(5) For intergovernmental agreements and requirements contracts, the County Administrator is delegated authority to execute amendments based on either dollar amount of original contract or underlying subject matter, i.e., materials, services, materials/services, personal services, grant, etc.

(6) For contracts which include the subject matter in LM 21.145(1)(e), (f), (g), (h), (i), (j) above, or any other situation not covered by LM 21.147 (1), (2), (3), (4) or (5) above, the County Administrator is delegated authority to execute any amendment which does not exceed \$50,000 and which is less than three years in length. *(Revised by Order No. 98-12-2-4, Effective 12.2.98, 02-1-30-1, 1.30.02)*

21.149 Further Delegation and Termination.

(1) Contract Termination. The County Administrator is delegated the authority to cancel or terminate contracts including amendments, as provided in the contract or by law.

(2) Additional Delegation. The County Administrator may further delegate authority under LM 21.145 and 21.147 to a representative by signed written document. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

INSURANCE

21.300 Generally.

(1) In all contracts involving work upon a County facility or County-owned property, and in contracts involving a significant risk of liability to the County, the department handling the contract shall consult with the Risk Manager prior to advertising for bid or obtaining quotes to determine whether the contractor will be required to provide an additional named insured endorsement in favor of Lane County for the life of the contract. If such endorsement is not obtainable, a certificate of insurance directed to the County may be substituted.

(2) The County must be informed in advance in writing of all cancellation.

(3) Limits of liability and types of coverage will be set by the Risk Manager based upon risk and exposure in the performance of the contract. Generally, the limits shall not be less than those established in the Oregon Tort Claims Act, ORS Chapter 30.

(4) Where appropriate, as determined by the Risk Manager, contractor will be required to furnish evidence of Workers' Compensation Insurance as required by ORS Chapter 656.

(5) Lane County reserves the right to secure insurance, if the contractor fails to do so, and the cost of same may be deducted from payments due to the contractor. *(Revised by Order No. 85-6-12-13, Effective 6.12.85)*

21.305 Standard Insurance Provisions for Construction Contracts.

(1) General. Contractor shall not commence any work until he or she obtains, at his or her own expense, all required insurance. Such insurance must have the approval of County as to limit, form and amount. Contractor will not permit any subcontractor to

(2)	<u>Regional Disposal Sites.</u>		Wednesday-Saturday
(a)	Cottage Grove	8 a.m.-6 p.m.	
(b)	Creswell	8 a.m.-6 p.m.	
(c)	Oakridge	8 a.m.-6 p.m.	
(d)	Florence	8 a.m.-6 p.m.	
(3)	<u>Rural Transfer Sites.</u>		
(a)	London	9 a.m.-5 p.m.	Saturday
(b)	Sharp's Creek	9 a.m.-5 p.m.	Saturday
(c)	Vida	9 a.m.-5 p.m.	Wednesday-Saturday
(d)	Low Pass	9 a.m.-5 p.m.	Friday-Saturday
(e)	Walton	9 a.m.-5 p.m.	Saturday
(f)	Mapleton	9 a.m.-5 p.m.	Saturday
(g)	Swishhome	9 a.m.-5 p.m.	Saturday
(h)	Marcola	9 a.m.-5 p.m.	Wednesday-Saturday
(i)	Rattlesnake	9 a.m.-5 p.m.	Wednesday-Saturday
(j)	Veneta	8 a.m.-6 p.m.	Wednesday-Saturday
(k)	McKenzie Bridge	9 a.m.-5 p.m.	Saturday
		1 p.m.-5 p.m.	Monday
		1 p.m.-5 p.m.	Thursday

(Revised by Order No. 96-4-2-8, Effective 7.1.96)

60.030 Hardship Exceptions.

The Director of the Public Works Department or his or her designated representative may make special arrangements for access to Lane County Solid Waste Disposal Sites during hours or days other than those indicated in LM 60.025 or 60.026 above when strict adherence to those hours or days would result in a serious hardship situation. *(Revised by Order No. 96-4-2-8, Effective 7.1.96)*

60.405 Disposal of Unclaimed Personal Property in the County's Possession and County-Owned Surplus Property.

(1) Policy. Except as otherwise provided, unclaimed personal property in the County's possession and unneeded County-owned personal property shall be disposed of expeditiously under the centralized supervision of the County financial officer. Disposal shall be by auction, sealed bids, grant to other governmental bodies or non-profit organizations, or discarding. The policies in this section expressly do not apply to unclaimed, lost or abandoned property coming into the possession of the County, where disposition is specifically subject to State Statutes e.g., vehicles, including bicycles, intangible personal property, stolen property where the owner is known, seized concealed weapons, and property of a deceased person taken into possession by the County.

(2) Certification of Inability to Determine Owner of Property. Before disposition of any unclaimed, lost or abandoned personal property not owned by the County but in possession of the County, the Director of the Department in possession of the property shall certify to the County financial officer that a reasonable effort to identify and locate the owner of the property has been unsuccessful. Upon such certification, and with the approval of the County financial officer, the certifying Department may retain any specified property as County property for County use. The County financial officer, or his or her designee, shall establish procedures for storage of property certified to his or her Department for disposition by means other than retention by the certifying Department.

(3) Certification as Surplus Property. Before County-owned personal property may be disposed of as surplus, the appropriate Department Director shall certify that such property is surplus as to his or her Department to the County financial officer. The County financial officer, or his or her designee, shall establish procedures for storage of property so certified. If the certified surplus property consists of vehicles or motor-powered equipment in the possession of any Department, the County financial officer shall authorize sale by auction, sealed bid, direct sale, grant or discard by the possessing Department pursuant to LM 60.405(4) below.

(4) Disposal of Unclaimed Personal Property in the County's Possession and Certified County-Owned Surplus Property. The County financial officer or his or her designee, shall establish procedures for disposal of unclaimed, lost or abandoned personal property in the County's possession and certified County-owned surplus property to include at minimum the following:

(a) Circulating lists of selected items declared surplus to other County Departments, other governmental organizations, and non-profit groups. Cities and school districts located within Lane County shall receive preferential consideration for disposal of certified County-owned surplus vehicles and motor-powered equipment, as follows:

(i) The fair market value of the surplus vehicles and equipment shall be established by the Department Directors or their designee based upon prices obtained in prior years' auctions and upon other relevant information.

(ii) Before the final list of surplus vehicles and equipment for public sale is prepared, all of the school districts and incorporated cities within Lane County shall be notified in writing of the availability of such surplus vehicles and equipment.

(iii) The notice shall include, but need not be limited to, the list of surplus vehicles and equipment, the established fair market value for the surplus vehicles and equipment, the date by which an irrevocable school district or city offer to purchase surplus vehicles and/or equipment at the established fair market value must be submitted, and the date on which the purchase offers will be reviewed.

(iv) In the event that more than one city makes an offer on a vehicle or unit of equipment, the priority for approval of the purchase offers shall be in inverse order to the cities' populations. In the event that more than one school district makes an offer on a vehicle or unit of equipment, the priority for approval shall be in inverse order of the school district's enrollment. In the event that a city and a school district make an offer on a vehicle or unit of equipment, the city shall receive preference over the school district.

(v) The execution of certificates of title and bills of sale for surplus vehicles and equipment sold under this provision shall comply with LM 21.260 or 2.620(1)(h).

(vi) Once the school districts' and cities' offers have been met to the extent possible, any remaining offers shall be returned to the appropriate school districts and cities and the final list of any remaining surplus vehicles and equipment shall be prepared for public sale.

(b) By public auction, or

(c) By advertising pursuant to LM 21.105(2), for the purpose of sealed bids. For sales estimated at \$50,000 or less, a public opening of bids is not required as long as the department notifies bidders of its decision as soon as practicable and within a reasonable time. Acceptance or rejection of the sealed bid price will be at the discretion of Lane County.

(d) By discarding when in the judgment of the County financial officer, or his or her designee, the property is of such little value that it should be discarded.

(5) Disposition of Firearms. The Sheriff will return all stolen firearms in the Sheriff's possession to the rightful owner if the owner can be identified and located through reasonable effort. All seized concealed weapons shall be disposed of in accordance with State statute. The sheriff shall dispose of all other firearms by any reasonable means chosen by the Sheriff, which may include sale at auction, destruction, and donation to other agencies for such purpose as training in hunter safety.

(6) County Employees. Surplus County supplies and equipment shall not be made available to any County employee, except through public auction or sealed bid.

(7) Warranties. No warranty or guarantee shall be made as to the condition of any item offered for sale. All surplus property is offered for sale "as is and where is," without recourse against the County.

(8) Terms of Purchase. All property shall be paid for in full during the sale and legal title of ownership shall pass from the County to purchaser prior to removal from the site. *(Revised by Order No. 93-1-19-14, Effective 1.19.93)*

CONTRACT REVIEW BOARD

PUBLIC CONTRACT EXEMPTIONS AND RULES

20.085 Purpose and Statutory Authority.

(1) Purpose. These rules establish procedures and public contract exemptions for Lane County, Oregon (hereafter, the County).

(2) Statutory Authority. These rules are authorized by ORS 279.015(2) and ORS 279.017(2) and the Lane County Charter. (*Revised by Order No. 98-12-2-1; Effective 12.2.98*)

20.090 Findings.

Adoption of these rules and the exemptions herein are supported by the findings of the Board of County Commissioners adopted by Order 98-12-2-1. (*Revised by Order No. 98-12-2-1; Effective 12.2.98*)

20.091 Construction and Interpretation.

The following state administrative authorities may be used to further interpret Lane Manual Public Contracting Rules and Exemptions and Policies, Chapters 20 and 21, when an ambiguity exists:

(1) The following provisions of OAR Chapters 125 and 137:

(a) OAR 125 Divisions ~~3130, 300, 310, 320, 330, 340, 350, 360, OAR~~
~~125-30-070.~~

(b) OAR 137 Divisions 30, 35, and 40. (*Revised by Order No. 98-12-2-1; Effective 12.2.98*)

20.095 Definitions.

As used hereafter, unless the context requires otherwise:

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

(2) ~~"Board"~~ means the Board of Commissioners of Lane County.

(3) ~~"Change order-Order"~~ means a written order authorizing a change in either plans, specifications, or quantities within the scope of the original contract.

(4) ~~"Competitive bidding"~~**Bidding** means the issuing of invitations to bid which follow the formal process for advertising, bid, and bid opening required by ORS Chapter 279 and these rules.

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

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

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

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

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

(10) — "LCRB" means the Lane County Board of County Commissioners, acting as the local contract review board for Lane County pursuant to ORS 279.055.

(11) — "Personal pProperty" means everything subject to ownership which is not real property and has exchangeable value.

(12) — "Personal sService aAgreements" means the types of agreements described in LM Chapter 21.

(13) — "Project" means a specific plan or task with clearly defined limits.

(14) — "Public aAgency" or "~~public~~ Public contracting—Contracting agencyAgency" means any agency of the State of Oregon or any political subdivision thereof authorized by law to enter into public contracts and any public body created by intergovernmental agreement.

(15) — "Public Cecontract" means any purchase, lease or sale by the County of personal property, public improvements or services other than agreements which are for personal and professional services.

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

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

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

(19) — "Service eContract" means a contract that calls primarily for a contractor's time and effort rather than for an end product. (*Revised by Order No. 98-12-2-1; Effective 12.2.98*)

GENERAL EXEMPTIONS

20.100 General Statutory Exemptions and Exclusion.

(1) Consistent with ORS 279.015, all public contracts shall be based upon competitive bids or proposals except the following:

(a) Contracts made with other public agencies or the federal government.

(b) Contracts between public agencies utilizing an existing solicitation or current requirement contract of one of the public agencies that is party to the contract for which:

(i) The original contract met the requirements of the County's public contracting rules.

(ii) The contract allows other public agency usage of the contract;
and

- (iii) The original contracting public agency concurs.
 - (c) No written agreement under ORS 190, which grants authority to local governments to make intergovernmental agreements, is necessary if the arrangement is between or among units of local government.
 - (d) Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals.
 - (e) Contracts for products, services or supplies if the value of the contract is less than \$5,000.
 - (f) Contracts for repair, maintenance, improvement or protection of property obtained by the Director of Veterans' Affairs under ORS 407.135 and 407.145(1).
 - (g) Contracts specifically exempt under these rules in LM Chapter 20 or under state law.
 - (h) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.
- (2) Personal and professional service contracts are excluded from the definition of public contract and ~~are not subject to a formal competitive selection requirement selection procedures for these~~ **selection procedures** are covered in LM Chapter 21. *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

20.105 Dollar Amount of Contract - ~~Under~~ Not to Exceed \$50,000.

- (1) The County may let public contracts not to exceed \$50,000 for the purchase of goods, materials, supplies, and/or services without formal competitive bidding when the following conditions are complied with:
- (a) The contract is for a single project and is not a component of or related to any other project in any one fiscal year; and
 - (b) When the amount of the contract does not exceed \$5,000, the County should, where feasible, obtain competitive quotes.
 - (c) When the amount of the contract is more than \$5,000, but equal to or less than \$50,000, the County shall obtain a minimum of three (3) competitive quotes. The County shall keep a written record of the source and amount of quotes received. If three (3) quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.
- (2) The County may let public contracts for trade related projects, i.e., building or road construction, maintenance, repair, or similar labor and materials contracts under the applicable provision in LM 20.105(1)(a), (b), and (c) above if it will result in cost savings. However, all other applicable public improvement contract requirements must be met. *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

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

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

- (1) The original contract was let by competitive process authorized by these rules; rates, unit prices or bid alternates were provided that established the cost for extra or additional work; and a binding obligation exists on the parties covering the terms and conditions of the extra or additional work; or
- (2) The amount of the aggregate cost increase resulting from all amendments does not exceed 20 percent of the amount proposed and accepted through competitive

20.165 Copyrighted Materials.

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

20.170 Election Supplies and Services.

The County is exempt from competitive bidding or quote requirements for the printing of ~~polling place signs, official ballots, including and sample and test ballots, including ballot pages and labeling of ballot cards.~~ **ballot envelopes, and including polling place and drop site signs.** *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

20.175 Equipment Repair and Overhaul.

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

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

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

(2) If the contract exceeds \$50,000, the County shall document in its procurement file the reasons why competitive bids or quotes were deemed to be impractical. *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

20.180 Food Service Contracts.

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

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

(a) Prior to the selection of a contractor, the County has made reasonable efforts to inform known companies providing food services of the subject matter of the contract and solicits proposals including public advertisements in at least one newspaper of general circulation in the area where the contract is to be performed.

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

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

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

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

20.190 Oil or Hazardous Material Removal.

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

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

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

(c) Record the measures taken under LM 20.140(a) above to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the contractor selected.

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

20.195 Office Copier Purchases.

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

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

20.200 Laboratory and Medical Supplies.

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

20.205 Purchases of Hospital and Medical Supplies and Equipment.

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

20.206 Library and Reading Materials.

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

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

20.207 Purchases of Used Personal Property.

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

PRODUCTS SPECIFYING BRAND NAME

20.210 Specification of Particular Brand Names or Products.

(1) Specifications for public contracts shall not expressly or implicitly require any product of any particular manufacturer or seller except pursuant to an exemption under LM 20.215 below (Brand Name or Mark Exemption Applications), LM 20.220 below (Copyrighted Materials), LM 20.225 below (Single Manufacturer or Compatible Products), LM 20.230 below (Product Pre-qualification), and LM 20.195–200 above (Laboratory and Medical Supplies).

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

20.215 Brand Name or Mark Exemption Applications.

(1) The LCRB may grant an exemption for a brand name or make for current and contemplated future purchases. Applications shall contain the following information:

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

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

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

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

(a) The exemption is not likely to encourage favoritism in public contracts or substantially diminish competition and will result in substantial cost savings to the County.

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

(c) The exemption is requested for the purchase of a particular product to be used in an experimental project. *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

20.220 Copyrighted Materials.

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

20.255 Emergency Contracts Under ORS 279.015(2).

(1) The County may enter into public contracts without competitive bidding when circumstances that could not reasonably be anticipated necessitate the prompt establishment and performance of the contract in order to preserve public funds, property, or the uninterrupted provision of government services. In exercising its authority under this exemption, the County shall:

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

(b) Make written findings describing with specificity the circumstances that require the prompt performance of the contract and of the harm anticipated to result from failing to establish the contract on an expedited basis;

(c) Record the measures taken under LM 20.255(a) above to encourage competition, the amounts of the quotes or proposals obtained, if any, and the reason for selecting the contractor.

(2) The County shall not contract pursuant to this exemption in the absence of a substantial risk of loss damage or interruption of services that would occur if contract performance awaited the time necessary given the complexity of the project to solicit, receive and analyze bids or proposals. *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

20.260 Emergency Contracts Under ORS 279.015.

(1) The County, under ORS 279.015 may, in its discretion, let public contracts without formal competitive bidding if an emergency exists and the emergency consists of circumstances creating a substantial risk of loss damage interruption of services or threat to public health or safety that could not have been reasonably foreseen and requires prompt execution of a contract to remedy the condition.

(2) In exercising its authority under this exemption, the County shall comply with LM 20.255(a), (b) and (c) above.

(3) Any contract awarded under this exemption shall be awarded within 60 days following declaration of the emergency unless an extension is granted pursuant to ORS 279.015(4). *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

20.265 LCRB Exemption for Other Contracts.

(1) The LCRB may exempt a particular contract, or a category of contracts, from the bidding requirements of ORS 279.015, which are not otherwise exempt under these rules. The request for exemption shall contain the following information where appropriate:

(a) The nature of the project;

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

(c) A narrative description of the cost savings anticipated by the exemption from competitive bidding, and the reasons competitive bidding would be inappropriate;

- (d) Public benefits;
- (e) Value engineering;
- (f) Specialized expertise required;
- (g) Public safety;
- (h) Market conditions;
- (i) Technical complexity;

(j) Proposed alternative contracting and purchasing practices to be employed; and

(k) The estimated date by which it would be necessary to let the contract.

(2) The LCRB may require such additional information as it deems necessary to determine whether a specific contract, or a category of contracts, is to be exempt from competitive bidding.

(3) Application of the information in LM 20.265(1) and (2) below—must demonstrate that the exemption would meet the following standard:

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

(b) The awarding of public contracts pursuant to the exemption will result in substantial cost savings to the public contracting agency considering the type, cost, amount of the contract, number of persons available to bid and such other factors as may be deemed appropriate. *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

BID SECURITY AND PERFORMANCE BOND

20.270 Bid and Performance Security.

(1) Contracts, other than those for public improvements, are exempt from the bid security requirements of ORS 279.027 and performance security requirements of ORS 279.029 provided that the County may require bid, performance, or payment security, in its discretion, regardless of this exemption.

(2) Contracts for public improvements which are equal to or less than \$50,000 are exempt from bid and performance security requirements provided that the County may require such security in its discretion, regardless of this exemption. *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

Chapter 21

CONTRACT POLICIES

PUBLIC CONTRACTS

21.100 Generally.

(1) Nothing stated in this Chapter shall be construed contrary to the provisions of ORS Chapter 279. Any reference in this Chapter to OAR Chapter 125 and OAR Chapter 137 provisions shall be for the sole purpose of aiding in interpretation in the event of ambiguity. When used as such, the reference shall be: "See OAR _____." Unless otherwise specifically noted, these OAR provisions are not adopted as rules applicable to County contracts; the applicable rules are those contained in LM Chapter 20 and 21.

(2) The County Administrator is delegated the authority to adopt all procedures necessary to implement the provisions of this Chapter.

(3) Definitions. As used in this Chapter, the following words and phrases shall mean:

- (a) Board. The Board of County Commissioners.
- (b) Competitive bidding and competitive quotes. LM 20.095; see 137-030-0000.
- (c) Lowest responsible bidder. ORS 279.029; ~~see OAR 137-30-000~~.
- (d) Personal Services Contract. ORS 279.051; LM 21.117.
- (e) Public contract. ORS 279.011; 279.310.
- (f) Public improvement. ORS 279.011; 279.310.
- (g) Public officer. The County Administrator, and where otherwise delegated, Department Directors.
- (h) Request for Proposal. LM 21.107.
- (i) Retainage. The difference between the amount earned by the contractor on a public contract and the amount paid, held to guarantee full performance. ORS 279.410.

(4) Definition of Public Contract. In addition to the statutory definitions in ORS 279.011 and ORS 279.310, a "public contract" is any written document which sets forth the promises of the parties, one of whom is the County. More specifically, a public contract can cover purchases, sales, leases, or other interests in personal or real property or public improvements. It can also cover sales and purchases of services, excluding personal or professional services. Net financial effect for the County is not a factor in determining whether a public contract exists. A public contract may bind the County to incur a financial obligation, may produce revenue, or may have little or no financial implications.

(5) Policy on Competition. It is the policy of Lane County to encourage open and impartial competition and to encourage the economic integration of minorities, women and emerging small businesses into the business sector.

All public contracts shall be awarded by competitive procurement, except as otherwise allowed or required in ORS 279, ORS 282.210, or the County's public contracting, policies and exemption rules. If federal funds are involved, federal laws, rules and regulations shall govern, in the event of conflict.

Even though contracts for personal or professional services are not public contracts, the applicable competitive selection procedure in LM 21.118 shall be followed.

(6) Contract Execution and Processing.

(a) All contracts shall be in writing and signed by the Board, or a duly authorized delegate. Until a contract is executed by the Board, or authorized delegate, and by the contractor, it shall not be binding.

(b) All contracts shall be processed through procedures prescribed by the County Administrator for review by legal, risk management and budget staff, except where expressly stated otherwise by the County Administrator or these rules. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

COMPETITIVE SELECTION

21.105 Competitive Bidding.

Competitive bidding is a formal process by which departments advertise and issue a written invitation to bid, and receive and open bids as required by ORS Chapter 279 and these rules. An invitation to bid is a solicitation of competitive offers in which technical specifications, price and delivery (or project completion) will be the predominant award criteria.

(1) When Required. Generally, competitive bids are required for all public contracts unless exempt under ORS Chapter 279 or the County's exemption rules, or where non-price related factors will be significant award criteria.

(2) Advertisements. All advertisements for bids shall comply with ORS 279.025, and shall include a provision that the contractor shall be an "Equal Opportunity Employer." See OAR 137-30-015.

(3) Delegations and Authority to Act.

(a) Calling and Opening of Bids. The County Administrator is generally delegated the authority to call and open bids for public contracts, and the following public officers are delegated the same authority for the purposes set forth:

(i) The Director of the Department of Public Works may call and open bids for public contracts for construction and maintenance relating to, and for lease or purchase of materials and equipment and for services related to roads and other transportation-related facilities, including supplies and equipment for Fleet Services, Parks, Land Management and Solid Waste divisions.

(ii) The Director of the Department of Management Services may call and open bids for public contracts for the purchase of materials, materials and services, equipment, supplies, office furniture and other personal property, and for public contracts for construction, renovation, remodeling and maintenance of County facilities and related capital outlay expenditures.

(iii) Pursuant to ORS 565.230 the Fair Board may call and open bids for all contracts relating to fairground facilities and operations.

(iv) The County Administrator may call and open bids for the lease, purchase or sale of computers and related data processing equipment.

(b) The public officer delegated authority to call for and open bids shall be responsible for placing the advertisements for bids and for the remaining obligations of "public officer" under this rule.

(c) The public officer to whom authority is delegated under this LM 21.105(3) may further delegate this authority to a representative by signed written document.

(4) Bids. To be received and considered, all bids must be in writing and signed by the bidder or authorized representative and submitted in a sealed envelope. No

oral, telegraphic, telephonic, or telephonic facsimile bids, modifications of bids, or signatures, will be considered, unless otherwise stated in the bid documents.

(a) All bids shall include a sworn statement by the bidder, properly notarized, that the bid is made without connection or agreement with any other person, firm or corporation making a bid in response to the bid solicitation, and is in all aspects fair and without collusion or fraud.

(b) All bids shall contain a statement as to whether the bidder is a resident bidder as defined in ORS 279.029, and a certification per ORS 279.111 that the bidder has not discriminated against minority, women or small business enterprises in obtaining any required subcontracts.

(c) If applicable, the bid shall include a statement that the provisions of ORS 279.350 regarding prevailing rate of wage shall be met.

(d) If applicable, the bid shall include the bidder's registration number with the Construction Contractors Board or Landscape Contractors Board and its expiration date.

(e) A bidder may not modify any bid after it has been deposited with the public officer. All bids shall be irrevocable for 30 days from the time of opening unless otherwise stated in the bid documents. Further, the bids of the three lowest unrejected bidders shall be irrevocable and binding and the bid securities shall be retained by the public officer until there is an executed contract and the contractor has provided all required satisfactory performance bonds. All other bid securities shall be returned promptly upon award of the contract or rejection of all bids.

(f) A bidder may withdraw the bid at any time prior to the deadline set for receipt of bids and deposit a new, sealed bid in accordance with these procedures.

(g) If a bidder finds discrepancies or omissions in the drawings or bid documents, or is in doubt as to their meaning, the bidder shall immediately notify the public officer. If the public officer believes a clarification is necessary, an addendum will be issued to all bidders in writing preferably at least five calendar days prior to the deadline set for bid receipt but in no case less than 72 hours prior to the deadline for bid. If there are not five calendar days left before the deadline for bid receipt, the addendum may postpone the date for bid for a minimum of five calendar days. Any addenda so issued are to be covered in the bid proposal and will become part of the contract documents.

(5) Protest of Specifications. The public officer shall respond promptly to any protest of specifications submitted in accordance with OAR 137-030-0050, which is hereby adopted, **with the exception of protest deadline**. Unless otherwise specified in the bid, a protest with respect to a public improvement contract must be filed 10 calendar days before bid opening and with respect to all other contracts, five calendar days before bid opening.

(6) Opening of Bids. All bids submitted to the County will be opened publicly at the time designated by the public officer. Any bid, modification, or notice of withdrawal received after the designated deadline shall be returned unopened to the bidder. After opening, the bids shall be available for public inspection, subject to the provisions of ORS 192.500 et seq.

(a) Prior to opening, the public officer may hold a prebid conference to answer any questions concerning the bid specifications or procedures. The public officer shall inform all prospective bidders (i.e., all persons who have received a bid package or indicated an interest in the bid) of the time and location of the conference.

(b) The public officer will not examine any bid prior to opening. The officer shall note on the envelope containing the bid the date and hour received.

(7) Evaluation of Bids.

(a) Evaluation of bids will be conducted by the public officer in cooperation with the department requesting the bid, if any, and shall be based on minimum requirements established by the bid documents, compliance with public bidding procedures, bidder responsibility, ethical practice, product acceptability, ORS Chapter 279, and LM Chapter 20.

(b) Goods and services that have been manufactured, produced or performed in this state shall be preferred, if price, fitness, availability and quality are otherwise equal. See OAR 137-030-0095.

(c) The public officer shall make all necessary investigation to determine whether the apparent lowest responsible bidder ~~should be disqualified is qualified under~~ ORS 279.037. See also ORS 279.029(6)

(d) Where the methods and factors which have cost implications over the life of the product have been identified in the bid documents pursuant to LM 20.115, a life cycle cost analysis shall be made of all bids to determine the lowest responsible bidder.

(8) Mistakes in Bids. Minor informalities, may be waived. Mistakes discovered in bids after opening where the intended correct bid is clearly evident or properly substantiated may be corrected. Where the intended correct bid is not clearly evident or cannot be substantiated by accompanying documents, the bid may not be accepted. The County reserves the right to waive technical defects, discrepancies and minor irregularities, and to not award a contract when it finds such action to be in the public interest. See OAR 137-030-0075.

(9) Rejection. The County reserves the right to reject any bid not in compliance with the bid documents or all prescribed public bidding procedures and requirements, and may, for good cause, reject any or all bids when it is in the public interest to do so. **ORS 279.035; see OAR 137-030-0102.** The public officer is delegated the authority to reject all bids, **prepare findings of public interest and provide.** See ~~OAR 137-30-102. Written notice of rejection of all bids including the reasons therefore and a finding of public interest, shall be sent to all bidders.~~ The public officer is further delegated authority to reject any bid which does not conform to prescribed public contract procedures and requirements and to reject for good cause any bid upon a written finding it is in the public interest to do so per ORS 279.035. See OAR 137-030-0100. However, if the rejection is of what initially appears to be the successful bid, the Board or the County Administrator, depending upon authority to execute the contract, shall exercise the right to reject the apparent successful bid.

(10) Authority to Award Contract Subject to Bid.

(a) The County Administrator is delegated authority to award contracts where the authority to execute the contract has been specifically delegated under LM 21.145 below.

(b) Other than as delegated in LM 21.105(10)(a), the Board shall award contracts which have been bid in a public meeting. Generally, public testimony will not be received unless the Board specifically determines otherwise.

(c) Any award shall be made to the lowest responsible bidder and, consistent with bid documents, may be made by item, groups of items, or as a whole.

(11) Protests of Award. Unless otherwise specified in the bid documents, all protests of award must be filed within fourteen (14) days of the notice of award. Protests of award shall be handled by the County Administrator or his or her designee in conformity with OAR 137-030-0104(4) which is hereby adopted. Under this provision, the County Administrator or his or her designee has authority to reject all bids, and authority

to revise the award of the contract in order to correct any errors made in the original award, so that the contract is awarded to the bidder legally entitled to receive an award pursuant to public contract law and regulations and the criteria stated in the documents. A copy of the decision shall be promptly transmitted to the Board. The decision shall be final seven days after it is delivered to the Board, unless within that time the Board elects to review the matter. Thereafter, within a reasonable time period, a complete copy of the written record shall be delivered to the Board. The Board ~~shall conduct its review on the basis of the record before it,~~ **may consider this written record, and any other evidence provided at a public meeting** and shall issue its decision by Board Order. The Board may affirm, reverse or revise the decision of the County Administrator or his or her designee. Upon adoption of the order, the decision will be final. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.106 Bid and Performance Securities.

(1) Bid Security.

(a) Unless otherwise provided below, all bids shall require as bid security a surety bond, **irrevocable letter of credit issued by an insured institution as defined in ORS 706.008**, cashier's check or certified check, of the bidder in an amount not to exceed 10 percent of the bid. The dollar amount or percentage required as security shall be stated in the bid documents.

(b) The public officer is delegated the authority to waive the bid security requirement described above prior to bid opening for any non-public improvement contract and any public improvement contract equal to or less than \$50,000, if he or she believes:

(i) That waiving the bid security requirement will probably result in lower bids or an increased number of bids, and

(ii) That waiving the bid security requirement will not endanger completion of the project if rebidding is necessary because the successful bidder is unable or unwilling to sign the contract or provide any required performance bond, and

(iii) That the potential for cost to the County of rebidding the project is outweighed by the benefits.

(2) Performance Security.

(a) All bids for public improvements shall require a performance security in accordance with ORS Chapter 279. All bids for contracts for other than public improvements may require a performance security, if the public officer determines it is in the County's best interest to do so.

(b) Performance security is not required for public improvement contracts if the amount of the contract is less than \$50,000 pursuant to LM 20.270.

(c) In cases of emergency or as described in ORS 279.029(5), if all members of the Board concur, the requirement for a performance bond may be excused. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.107 Requests for Proposals.

(1) Description. Requests for proposals (hereinafter RFPs) are a means of soliciting competitive proposals or offers for entering into a contract for personal services, materials, materials and services, equipment, or for awarding grants, subgrants or contracts when price and specification will not necessarily be the predominant basis for award. An RFP process is one, but not the only means of competition for personal or professional services contracts.

(2) Requirements. Proposals submitted in response to RFPs are **offers as are** bids. See OAR 137-030-0000(23), 137-030-0012(1). The RFPs must ~~therefore~~ generally comply with the requirements stated in LM 21.105 above and in ORS Chapter 279, applicable to bids, unless otherwise stated. In addition, all RFPs must meet the requirements of OAR 125-310-02005, including but not limited to:

(a) The composition and role of the evaluation committee must be clearly stated in the RFP.

(b) The evaluation criteria to be used in awarding the contract and the weight assigned to each criterion must be clearly identified in the RFP.

(c) The RFP must provide for an opportunity for persons interested in responding to comment on any specifications they believe limit competition, or to protest the specifications or contract terms in accordance with LM 21.105(5) above.

(d) The RFP must clearly state the contractual requirements.

(e) The RFP must clearly describe the right of appeal as stated in LM 21.107(9) below.

(f) The RFP must invite the submission of sealed, written offers to be publicly opened at a designated time and place.

(3) Advertisements and Proposals. See LM 21.105(2) above and (3). References to "bid" or "bidder" there include "proposal" or "proposer."

(4) Delegations and Authority to Act. Each Department Director is delegated the authority to call for open, direct evaluation of requests for proposals, and perform all other obligations of the "public officer" under LM 21.107. The Department Directors may further delegate this authority to a representative by a signed written document. The evaluation committee's recommendation for award of the contract shall be considered and finally decided by either the Board or the County Administrator, depending upon authority to execute the contract per LM 21.145.

(5) Opening. See LM 21.105(6) above. References to "bid" or "bidder" there include "proposal" or "proposer."

(6) Evaluation of Proposals. The evaluation committee shall evaluate the proposals according to the criteria stated in the RFP, compliance with public bidding procedures, proposer responsibility, ethical practice, product acceptability, **and** ORS Chapter 279. See also OAR Chapter 125 and OAR Chapter 137. The department responsible for issuing the RFP shall **mail notice of the evaluation committee recommendation to the proposers** ~~notify by mail the proposers of the recommendation of the evaluation committee~~ within two days of the committee's decision unless otherwise stated in the RFP. Negotiations with proposers regarding contract terms may occur only after the award ~~and~~ or only as provided in the RFP. ~~See~~ **OAR 137-030-0090 as guidance.**

(7) Bid and Performance Security. Unless otherwise provided in the RFP, bid and performance security requirements may be waived if the contract will not be a public improvement contract or if it will be for a public improvement for less than \$50,000. Bid and performance securities shall be provided if the contract will be for a public improvement of \$50,000 or more.

(8) Rejection. See LM 21.105(9). References to "bid" includes "proposal." References to "bidders" includes "proposers." References to "bid documents" include "request for proposal documents." References to "opening bids" include "opening proposals."

(9) Appeal of Evaluation Committee Recommendation. Anyone responding to an RFP who is not recommended for award by the evaluation committee may appeal the

recommendation to the decision maker, either the Board or the County Administrator, depending upon which has authority to execute the contract.

(a) Any appeal must be made in writing, be received before the contract is awarded by the decision maker, clearly state the grounds for the appeal, and indicate what condition(s) resulted in the proposal not being recommended for award. Any appeal which does not comply with the applicable procedures may be rejected.

(b) Unless otherwise stated in the RFP, the appeal must be received by the department which issued the RFP not later than seven calendar days after notice of the evaluation committee's decision was mailed. Upon receipt of the appeal, the department shall notify the proposer recommended for award of the appeal and the evaluation committee's recommendation. The proposer and the committee shall have three calendar days from the date the appeal was filed to respond to the appeal in writing if they so desire.

(c) When an appeal is filed, the department responsible for preparing the RFP shall prepare a written analysis of the appeal and make a recommendation to the decision maker as to appropriate action to be taken.

(d) The grounds for appeal are:

(i) Different criteria were used to evaluate different proposals.

(ii) The evaluation committee unfairly applied the evaluation criteria to a proposal.

(iii) A member or members of the evaluation committee had a relationship with a proposer that represented a conflict of interest.

(iv) The criteria used to evaluate the proposals did not pertain to the services or products requested.

(v) A member or members of the evaluation committee demonstrated bias toward a proposal or a proposer.

(e) If the decision maker is the Board, the department which issued the RFP shall present the issues orally or in writing at a public meeting. The appellant shall then have 10 minutes to specifically address the appeal criteria, and the evaluation committee's recommendation and the recommended proposer(s) shall have a total of 10 minutes to respond, divided between them as they wish. If the decision maker is the County Administrator, the decision shall be made on the written record.

(f) If an appeal is timely filed, the Board or County Administrator, as appropriate, shall consider the evaluation committee's recommendation and the allegations of the appeal before rendering a final decision. If the Board is the decisions maker, it shall carefully evaluate any appeal before rendering a decision and shall state the conclusions reached and reasons either in writing or on the record in a public meeting. Any decision to overturn the recommendation shall be based on a finding that one of the criteria of LM 21.107(9)(d) above occurred to the substantial prejudice of the appellant.

(g) The appeal procedures and limits set forth herein to be followed by the County are directory and not mandatory and failure to follow or complete the action in the manner provided shall not invalidate the decision.

(10) Authority to Award Contract Subject to RFP.

(a) The County Administrator is delegated authority to award a contract resulting from an RFP process where authority to execute such contract has been specifically delegated under LM 21.145.

(b) All decisions to award a contract following a request for proposals shall be based on the criteria stated therein, substantial compliance with public contract laws, rules and procedures, and the best interests of the County.

(11) Protests of Award. See LM 21.105(11). References to "bid documents" includes "request for proposal documents" and references to "bid" include "proposal."
(Revised by Order No. 98-12-2-4, Effective 12.2.98)

21.108 Letters of Interest.

(1) Description. Letters of Interest (LOIs) are expressions of interest in a particular contract by potential contractors. Typically, potential contractors submit a letter in response to the County's solicitation which states they are interested in providing a good or service. This selection process should be used cautiously in order to avoid any chill to competition.

(2) When Applicable.

(a) LOIs may be used as a means of determining whether a potential contractor is a sole source under LM 20.140. This contemplates a situation where the fundamental nature of the good or service is so limiting that it seems likely that only one seller/provider exists. Because it is the County's policy to encourage competition whenever possible, it is not permissible to describe a fundamentally broad need in a narrow or limiting way in order to use this process. The expectation of the funding source is one important factor in determining the fundamental nature of a good or service. There may be additional facts to support sole source.

(b) An LOI process may be used as a preliminary phase of an RFP process. If the County receives more than one LOI such responses may be included on a list of potential contractors who will be mailed a bid, RFP or RFPs solicitation document.

(3) Requirements. LOIs may be sought in the following manner:

(a) An advertisement must be run in a newspaper of general countywide circulation at least once and not less than five days before the LOIs are due. Additional advertisements may also be published in other newspapers.

(b) The advertisement must contain a description of the nature of the work to be performed or good to be provided, the term of the contract, the person to whom LOIs are to be submitted and the date the LOIs are due. There must be a sufficient description of the service or good that potential competitors will be able to evaluate whether they are qualified, able and wish to perform.

(c) If there is only one LOI submitted, the department shall obtain sufficient proof, as it deems necessary, of basic ability to perform, including but not limited to, an adequate level of professional, fiscal and management capability, prior to awarding the contract.

(d) If the County receives more than one LOI response, all parties responding shall receive an opportunity to compete for the contract pursuant to a bid invitation, RFP, or RFPS. If this occurs, the competition must be open to all potential competitors, and not just those submitting LOIs. (Revised by Order No. 98-12-2-4, Effective 12.2.98)

TYPES OF CONTRACTS

21.113 Material, Service, and Material/Service Contracts.

(1) A materials contract is one that calls primarily for an end product and in which the County purchases, obtains some interest in, or leases personal property. A service contract is one that calls primarily for a contractor's time and effort, and does not include work connected with manufacturing a product or personal or professional services. A service contract includes one for a trade-related activity to accomplish routine functions of a type that can generally be done by any competent worker, even

though a specific license is required. A contract may be a combination materials and services contract.

(2) Materials and/or service contracts may only be executed after appropriate competitive selection has been completed.

(3) Title to all personal property shall be described on all formal title documents and bills of sale as: Lane County, Lane County Public Service Building, Eugene, Oregon 97401.

(4) For contracts involving the rental, lease or lease purchase of equipment, the Risk Manager should be consulted regarding insurance requirements. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.114 Maintenance and Repair Contracts.

Contracts for the maintenance or repair of equipment or public improvements are subject to the public contract laws and regulations.

(1) Contracts for maintenance or repair of equipment must comply with the requirements of LM 20.175. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.115 Public Improvement Contracts.

(1) Public improvements shall usually be performed by contract. When the project is estimated to cost more than \$125,000, the provisions of ORS 279.023 and 279.025 shall be followed. Unless otherwise approved by the Board, public improvement projects shall be performed according to the capital improvements list adopted by the Board pursuant to ORS 279.023.

(2) Public improvement contracts must comply with a number of requirements. Care should be taken to see that the requirements including, but not limited to, the following are met:

(a) Advertisement (including Asbestos Abatement) - ORS 279.025 and LM 21.105 above. See, OAR 137-040-0005, 137-030-0015(2)(c)~~137-40-010~~.

(b) Bid security - ORS 279.027, LM 20.270, LM 21.106 above.

(c) Performance security - ORS 279.029, LM 20.270, LM 21.106 above.

(d) Prevailing rates of wage - ORS 279.348 to 279.380. See OAR 137-040-0010, OAR Chapter 839.

(e) Retainage - ORS 279.400 to 279.435, LM 21.116 below. See ~~OAR 125-31-0000 to OAR 125-31-0010~~.

(f) Prompt payment policies - ORS 279.435. See, OAR 137-040-0030 to OAR 137-040-0045~~0~~.

(g) Subcontractor clauses - see ORS 279.435 and ORS 279.445.

(h) Insurance - see LM 21.305 below.

(i) Exempt contracts over \$100,000 evaluation report required - see ORS 279.103.

(j) Contractor shall certify that an employee drug testing program is in place at the time of contract execution, and that such a program will be maintained throughout the contract period including any extensions. Failure of contractor to certify, to have, or to maintain such a drug testing program is grounds for rejection of a bid or immediate termination of the contract. Contractor shall also certify that it will require any subcontractors to demonstrate to Contractor that it will have such a drug testing program. ORS 279.312.

(k) First-tier subcontractor disclosure for contracts greater than \$100,000. ORS 279.027.

(3) The County Administrator is delegated the authority to make final acceptance of a public improvement and may further delegate this authority to a representative by a signed written document. If it is determined that the project should not be finally accepted, the matter shall be brought to the attention of the Board. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.116 Retainage.

(1) Retainage of five percent of the contract price of the work completed shall be withheld on all public improvements contracts until the project is at least 50 percent complete, after which the retainage may be reduced, upon the County Administrator's approval, in accordance with ORS 279.435.

(2) Deposit of Securities in lieu of retainage.

(a) Notwithstanding LM 21.116(1) above, Lane County shall reduce the retainage in an amount equal to the market value of bond or securities deposited by the contractor in accordance with the procedures set out below. Bonds or securities offered for deposit in lieu of retainage shall be as authorized in OAR 137-040-0025(3)~~125-31-0005~~, which is hereby adopted.

(b) All bonds or securities in lieu of retainage shall be deposited with a bank or trust company in Lane County, Oregon, in an account for the benefit of Lane County established for this purpose. Upon deposit, the bank or trust company shall prepare an Assignment and Safekeeping Receipt in the form set out in Exhibit "A." The contractor shall deliver in person one copy of this receipt to the Department of Management Services.

(i) Bonds or securities deposited shall be in fully transferable form. Any nonnegotiable bonds or securities shall have all necessary instruments attached to enable the County to effect transfer of title should the contractor be unable to fulfill the contract obligations.

(ii) Bonds or securities deposited in lieu of retainage shall be released only upon the written instructions and authorization of the County. Upon default, the County may elect to authorize the bank or trust company to transfer any securities deposited under these provisions, rather than undertake to transfer such securities itself.

(c) If at any time the market value of the bonds or securities deposited in lieu of retainage drops below five percent of the contract price of the work completed, the County may withhold from payments due the contractor an amount sufficient to maintain its appropriate retainage protection. Withheld amounts shall only be released to the extent of the market value of additional bonds or securities deposited by the contractor in accordance with this section.

(3) Retainage Deposited in Interest Bearing Account. In accordance with ORS 279.420(4), retainage may be deposited upon the request of the contractor in an interest bearing account with earnings to accrue to the contractor.

(4) Surety Bond in Lieu of Retainage. In accordance with ORS 279.420(6), upon approval of the County Administrator, the contractor may deposit a surety bond for all or a portion of the retainage. The bond shall be in a form acceptable to the County Administrator. The retainage shall be accordingly reduced, and the contractor shall accept like bonds from subcontractors and suppliers.

(5) All retainage on public contracts for public improvements, less costs as allowed by statute, shall be released within 30 days after the work under the contract has been completed and the County Administrator or the Board has authorized final

|At right margin indicates changes
Bold indicates material being added
~~Strikethrough~~ indicates material being deleted
21.11621.100 Lane Manual

LEGISLATIVE
FORMAT

21.11621.100

acceptance thereof. If not so released, interest shall be paid in accordance with ORS 279.435(3). (Revised by Order No. 98-12-2-4, Effective 12.2.98)

ASSIGNMENT AND SAFEKEEPING RECEIPT No. ____

THIS ASSIGNMENT is to satisfy the requirements for deposits of bonds or securities in lieu of retainage on public improvements contracts set out in LM 21.116.

Subject to the conditions below, the undersigned does hereby assign, transfer and set over to Lane County all right, title and interest in and to the bonds and securities listed in the attached Schedule "A" for the use and purpose of retainage on the public contract between Lane County and the undersigned, identified as

(Project Identification)

_____ agrees that the bonds or securities listed in Schedule
(Bank or Trust Company)
"A" will be held in trust for the purposes stated here, and shall be released only upon the written instructions and authorization of Lane County.

Periodic interest payments or other disbursements which do not reduce the face amount of the bonds or securities shall 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, if, and only if, 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 shall be 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__.

|At right margin indicates changes
Bold indicates material being added
Strikethrough indicates material being deleted
21.11721.100 Lane Manual

LEGISLATIVE
FORMAT

21.11721.100

(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 above-stated.

(Authorized Signature)

Exhibit "A" to LM 21.116(2)

(Revised by Order No. 98-12-2-4, Effective 12.2.98)

21.117 Personal and Professional Service Contracts.

(1) Personal and professional service contracts are those for the rendering of services where the particular skill or experience of the contractor is of primary importance, or which involve a relationship of special trust and confidence between the County and the contractor. See OAR 125-020-0130 for guidance as to whether a proposed contract is one for personal or professional service as opposed to one for materials and service.

(2) Personal or professional service contracts shall not be used to engage persons who would be deemed County employees, rather than independent contractors. Two of the primary differences are the amount of control the County has the right to exercise over the individual and the method of payment. That a County employee supervises or has the right to supervise the individual (i.e., assign work, review work, review performance) is an indicator the individual would be an employee, not an independent contractor. That the individual is paid for time and services is an indicator the person is an employee, whereas, that he or she is paid for results or for a total project is an indicator the individual is an independent contractor. All personal and professional services contractors must meet the independent contractor standards of ORS ~~670.600701.025~~.

(3) Generally, all personal or professional services contracts shall require the contractor to defend, indemnify and hold the County, its officers, agents and employees harmless from all damages, losses and expenses including but not limited to attorney fees and to defend all claims, proceedings, lawsuits and judgments arising out of the contractor's performance or failure to perform the contract. When the Office of Legal Counsel determines the risk of a substantial judgment against the County is minimal, this provision may be waived.

(4) Care shall be taken in the use of personal or professional service contracts to insure they do not violate the terms of any collective bargaining agreement to which the County is a party. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.118 Selection of Personal or Professional Service Contractor.

Personal or professional service contracts are excluded from competitive bidding; however, the following selection procedures shall be utilized:

(1) Dollar Amount.

(a) \$5,000 or less. For contracts of \$5,000 or less, the Department Director or designated officer may negotiate a contract with any qualified contractor of his or her selection.

(b) Greater than \$5,000. For contracts greater than \$5,000 and for all retainer type contracts, the Department Director or designated officer shall solicit at least three prospective contractors who appear to meet the minimum requirements for the proposed contract, inform each in reasonable detail of the contract and determine the prospective contractor's interest and ability to perform the contract. For all retainer type contracts, quotations shall be solicited from appropriate minority, women and emerging small business enterprises certified by the State pursuant to ORS Chapter 200, and as specified through County administrative procedures.

(c) Greater than \$50,000. Where the contract is greater than \$50,000, the Department Director or designated officer shall conduct interviews of at least the two most qualified prospective contractors, if two or more are available. Interviews may be either by telephone, in person or by written questions. When the Department Director deems it appropriate, he or she may solicit prospective contractors by advertisement for bids or by a request for proposals process in LM 21.107 above, or by the following request for professional service (RFPS) process.

(d) Requests for Professional Services Greater than \$50,000.

(i) Description. A request for professional services (RFPS) is a selection procedure ~~which may be used in the discretion of the Department Director, on a project-by-project basis, used when the County requires the services of the most highly qualified professional based on demonstrated competence and qualifications, and qualifications, and where a fair and reasonable price rather than lowest competitive price is the focus. It may be used in the discretion of the Department Director, on a project-by-project basis, except a qualifications based process is required for selecting registered professional engineers, registered architects, or registered professional land surveyors for consulting services where:~~ used when the County requires the services of the most highly qualified professional based on demonstrated competence and qualifications, and where a fair and reasonable price rather than lowest competitive price is the focus. It may be used in the discretion of the Department Director, on a project-by-project basis, except a qualifications based process is required for selecting registered professional engineers, registered architects, or registered professional land surveyors for consulting services where:

(aa) The County receives grants, loans or moneys from the Oregon State Highway Fund or from the State that exceeds 35% of the value of the project, and

(bb) The value of the project exceeds \$400,000. ORS 279.057.

(ii) Requirements.

(aa) An advertisement shall appear at least once in at least one newspaper of general circulation in the area where the project is to be located, and shall briefly describe the project, the services sought, where copies of the solicitation may be obtained and the deadline for submitting a response.

(bb) The solicitation document shall contain, at a minimum, the information in LM 21.118(1)(d)(ii)(aa) above, a statement of estimated total cost of the project, ~~specifications, project requirements,~~ a statement of the particular professional qualifications for the project, the evaluation criteria, and the screening or evaluation method to be used. In addition, it may request information concerning the professional's particular capability to perform the services, a list of similar projects completed by the consultant with references concerning past performance, and any other information reasonably necessary to evaluate professional qualifications. It shall also

reserve the County's right, at any time during the solicitation or contract process, to reject any or all proposals or cancel the solicitation, without liability, if there is good cause or if doing so would be in the public interest. A sample of the contract expected to be executed should be included.

(cc) A screening and evaluation committee shall review, score and rank the proposals according to solicitation criteria and results of any oral interviews. Criteria may include, but is not limited to, **specialized experience, capabilities and technical competence to meet project requirements**, availability and ~~capability~~ ~~resources~~ to perform the work, experience of key staff, demonstrated ability to successfully complete similar projects, references and recommendations, history in meeting deadlines, submitting accurate estimates, producing quality work, meeting financial obligations, **contract administration** status of licensing, proposed solutions to any perceived design or construction problems, ~~compensation requirements~~, **availability and familiarity with project locale**, and **project management** approach. **Proposed compensation may be included as evaluation criteria except for projects and professional engineer, architect, and land surveyor services covered by ORS 279.057.**

(dd) Contract negotiations, **including refining scope of services**, with the highest ranked professional shall be directed toward an agreement on a ~~maximum, not to exceed price~~ **compensation level** which is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the professional services. **A department may solicit or use a compensation proposal for projects and services covered by ORS 279.057 only after evaluating and ranking candidates.**

(ee) If an agreement is not reached in a reasonable time, the County may terminate negotiations with the highest ranked proposer and begin with the second ranked, and then to the third, if applicable. If no agreement is reached, the solicitation may be terminated.

(ff) Contractor may protest the **contract** award in accordance with process in LM 21.105(11).

(2) Amendments. The selection procedures stated in LM 21.118(1) above shall be utilized for any amendment of a personal or professional services contract which is more than 50 percent of the original contract amount, or when the aggregate of amendments are more than 50 percent of the original amount. However, they need not be utilized if the scope of the amendment was clearly included in the original selection such that prospective contractors understood this amendment would occur.

(3) Criteria. The following criteria shall be considered, as appropriate, in the evaluation and selection of personal or professional service contractors:

(a) Specialized experience in the type of work.
(b) Capacity and capability to perform the work within necessary time and other limitations.

(c) Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules and contract administration.

(d) Availability to and familiarity with the area in which the specific work is located.

(e) Any other factors relevant to the particular contract.

(4) Waiver. The selection procedures described above may be waived by the County Administrator prior to selection of the personal or professional services contractor or to permit an amendment in excess of the 50 percent limit of LM 21.118(2) above for any of the following reasons:

- (a) An emergency exists which could not have been reasonably foreseen and which requires prompt execution of a contract, or
- (b) The contractor is the only person within a reasonable area who performs this type of work, or
- (c) When good cause is demonstrated to the County Administrator, such that he or she believes award of the contract without utilizing the selection procedures is in the public's interest. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.120 Requirements Contracts.

Requirements contracts provide for the establishing of unit prices for goods or services (including personal or professional services) when the County knows it will need them, but is unable to determine the quantity in advance. Generally, the vendor agrees to supply some or all of the County's requirements within a specified period of time. Competitive selection and contract/amendment execution authority is governed by the rules which apply to the underlying contract type, i.e., materials, materials and services, services, personal or professional services.

(1) In conducting competitive selection, the County shall inform all potential bidders/proposers:

(a) Whether it will consider awarding and executing more than one requirements contract for a single type of service or good; and

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

(2) All requirements contracts shall provide that:

(a) the County will purchase a specified minimum amount of goods or services; or

(b) a maximum, not to exceed amount of goods or services; and

(c) the contract may be canceled upon 30 days written notice by the County; and

(d) the term of the contract, including renewals, shall not exceed three years.

(3) When the price of goods and services has been established by a requirements contract, the County may purchase the goods and services from the supplier without subsequent competitive selection. In order to purchase or pay for goods and/or services under an executed requirements contract, the following steps apply:

(a) For a services/requirements contract, if the scope of work is originally defined in general terms, and the parties anticipate further defining of the work as it arises, i.e., professional services on a project by project basis, the additional defining of the scope of work shall be in writing, signed by both parties and processed as an amendment if the total anticipated dollar amount of work on the project exceeds \$50,000. If the total anticipated dollar amount of work on the project is \$50,000 or less, the definition of the scope of work shall be in writing, on or attached to a purchase order and processed as a purchase order.

(b) For all other requirements contracts where the services and/or goods are specifically defined in the original contract, i.e., delivery of rock, specific purchases may be made through a purchase order.

(4) The County departments shall determine the most reasonable estimate of the dollar amount of a requirements contract, including from all amendments, purchase orders, etc., throughout the term of the contract. That dollar figure shall be the basis for

determining contract/amendment execution authority. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.122 Revenue Contracts.

Revenue contracts must comply with all public contract laws and regulations and LM Chapter 21.

(1) The County Administrator and the Director of the Department of Management Services each individually are delegated the authority to execute certificates of title and bills of sale for County-owned personal property duly sold under established procedures and may further delegate this authority in writing.

(2) A revenue contract which involves elements of an interest in real property (for example, a caretaker or concessionaire agreement or a lease), may also have to comply with laws regarding the disposition of publicly owned real property. The Department considering such a contract should consult with the Office of Legal Counsel regarding appropriate procedures and contract terms.

(3) Disposition of personal property must comply with ~~OR~~ORS 279.015, 279.095 and LM 60.405. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.124 Intergovernmental Agreements.

(1) Intergovernmental agreements are exempt from competitive selection.

(2) Under the authority of Chapter II, Section 8 of the Lane County Home Rule Charter and ORS Chapter 190, it is the policy of Lane County to offer services to other public agencies where feasible. Lane County must be compensated for the complete cost of providing all intergovernmental services. An intergovernmental agreement should be utilized whenever possible as the implementing document. The Board in its discretion may approve waivers to the policy of complete compensation. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.126 Grants.

"Grant" means a federal, state or other agreement in which the County receives and disburses funding for purposes itemized in the grant, and subject to the conditions set forth in the grant. "Grants" include sub-grants through which the County merely passes through the grant funds received, in whole or in part, without modifying any terms or conditions of the original grant, except as related to County administration and oversight of the grant conditions. An agreement may not be a sub-grant if the County does modify, and may be more appropriately analyzed as a service contract, or a materials and service contract, intergovernmental agreement, etc. depending upon the subject matter. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.127 Amendments.

(1) Selection Procedures. All amendments including but not limited to change orders, extra work, and modifications, shall comply with public contract laws and regulations regarding competitive bidding and selection procedures. The selection procedures of LM 21.118(1) above shall not apply to amendments to personal services contracts, except when the total of all amendments exceed 50 percent of the original amount. A waiver of the selection procedure pursuant to LM 21.118(4) above may nonetheless be sought in those cases.

Generally, a contract amendment should include a reference to the original contract by title and/or date, terms of amendment including citation to specific provisions in the original contract being amended, and ending with a provision that "except as set forth

21.130 Standard Contract Provisions.

The following standard public contract clauses shall be included expressly or by reference where appropriate in every contract of the County.

(1) Contractor shall make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in the contract, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.

(2) Contractor shall pay promptly all contributions or amounts due to the State Industrial Accident Fund and the State Unemployment Compensation Fund from contractor or any subcontractor in connection with the performance of the contract.

(3) Contractor shall not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished, shall assume responsibility for satisfaction of any lien so filed or prosecuted and shall defend against, indemnify and hold County harmless from any such lien or claim.

(4) Contractor and any subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

(5) If contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the contractor or its surety from the obligation with respect to any unpaid claim. If the County is unable to determine the validity of any claim for labor or services furnished, the County may withhold from any current payment due contractor an amount equal to said claim until its validity is determined, and the claim, if valid, is paid by the contractor or the County. There shall be no final acceptance of the work under the contract until all such claims have been resolved.

(6) Contractor shall make payment promptly, as due, to any person, copartnership, association or corporation furnishing medical, surgical, hospital or other needed care and attention, incident to sickness or injury, to the employees of contractor, of all sums which the contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing payment for such service.

(7) For all public contracts, with certain exceptions listed below, contractor shall not require or permit any person to work more than 10 hours in any one day, or 40 hours in any one week except in case of necessity, emergency, or where public policy absolutely requires it, and in such cases the person shall be paid at least time and a half for:

(a) All overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday, or

(b) All overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday, and

(c) All work performed on the days specified in ORS 279.334.

For personal/professional service contracts as defined in ORS 279.051, instead of (a) and (b) above, a laborer shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Sections 201 to 209, from receiving overtime.

Contractor shall follow all other exceptions, pursuant to ORS 279.316 and ORS 279.334, including contracts for public improvements involving a collective bargaining agreement, contracts for services, and contracts for fire prevention or suppression.

Contractor must give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(8) The hourly rate of wage to be paid by any contractor or subcontractor to workers upon all public works shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279.348 to 279.365.

(9) The contractor, its subcontractors, if any, and all employers working under the contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, **or otherwise be exempt under ORS 656.126** ~~which requires them to provide workers' compensation coverage for all their subject workers.~~

(10) Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to those dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the contract. A list of entities who have enacted such laws or regulations is found in the Oregon Attorney General's Model Public Contract Rules Manual. **OAR 137-030-0010, Commentary 4.** If new or amended statutes, ordinances, or regulations are adopted, or the contractor encounters a condition not referred to in the bid document not caused by the contractor and not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws or regulations dealing with the prevention of environmental pollution or the preservation of natural resources, both the County and the contractor shall have all the rights and obligations specified in ORS 279.318 to handle the situation.

(11) The contract may be canceled at the election of County for any substantial breach, willful failure or refusal on the part of contractor to faithfully perform the contract according to its terms. The County may terminate the contract by written order or upon request of the contractor, if the work cannot be completed for reasons beyond the control of either the contractor or the County, or for any reason considered to be in the public interest other than a labor dispute, or by reason of any third party judicial proceeding relating to the work other than one filed in regards to a labor dispute, and when circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work. In either case, if the work is suspended but the contract not terminated, the contractor is entitled to a reasonable time extension, costs and overhead per ORS 279.328. Unless otherwise stated in the contract, if the contract is terminated, the contractor shall be paid per ORS 279.330.

(12) If the County does not appropriate funds for the next succeeding fiscal year to continue payments otherwise required by the contract, the contract will terminate at the end of the last fiscal year for which payments have been appropriated. The County will notify the contractor of such non-appropriation not later than 30 days before the beginning of the year within which funds are not appropriated. Upon termination pursuant to this clause, the County shall have no further obligation to the contractor for payments beyond the termination date. This provision does not permit the County to terminate the contract in order to provide similar services or goods from a different contractor.

(13) By execution of this contract, contractor certifies, under penalty of perjury that:

(a) To the best of contractor's knowledge, contractor is not in violation of any tax laws described in ORS 305.380(4), and

(b) Contractor has not discriminated against minority, women or small business enterprises in obtaining any required subcontracts.

(14) Contractor agrees to prefer goods or services that have been manufactured or produced in this State if price, fitness, availability or quality are otherwise equal.

(15) Contractor agrees to not assign this contract or any payments due hereunder without the proposed assignee being first approved and accepted in writing by County.

(16) Contractor agrees to make all provisions of the contract with the County applicable to any subcontractor performing work under the contract.

(17) The County will not be responsible for any losses or unanticipated costs suffered by contractor as a result of the contractor's failure to obtain full information in advance in regard to all conditions pertaining to the work.

(18) All modifications and amendments to the contract shall be effective only if in writing and executed by both parties.

(19) The contractor certifies he or she has all necessary licenses, permits, or certificates of registration (including Construction Contractors Board registration or Landscape Contractors Board license, if applicable), necessary to perform the contract and further certifies that all subcontractors shall likewise have all necessary licenses, permits or certificates before performing any work. The failure of contractor to have or maintain such licenses, permits, or certificates is grounds for rejection of a bid or immediate termination of the contract.

(20) Unless otherwise provided, data which originates from this contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the County. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights. Data which is delivered under the contract, but which does not originate therefrom shall be transferred to the County with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; provided that such license shall be limited to the extent which the contractor has a right to grant such a license. The contractor shall exert all reasonable effort to advise the County, at the time of delivery of data furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this contract. The County shall receive prompt written notice of each notice or claim of copyright infringement received by the contractor with respect to any data delivered under this contract. The County shall have the right to modify or remove any restrictive markings placed upon the data by the contractor.

(21) If as a result of this contract, the contractor produces a report, paper, publication, brochure, pamphlet or other document on paper which uses more than a total 500 pages of 8 1/2" by 11" paper, the contractor shall conform to the Lane County Recycled Paper Procurement and Use policy, LM 2.440 through 2.448, by using recycled paper with at least 25% post-consumer content which meets printing specifications and availability requirements.

(22) The Standard Specifications for Highway Construction adopted by the State of Oregon, and the Manual on Uniform Traffic Control Devices, each as is currently

in effect, shall be applicable to all road construction projects except as modified by the bid documents. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

AUTHORITY TO AWARD, EXECUTE, CANCEL

21.135 Contracts Which are Exempt from Bids and RFPs.

(1) The award of contracts which are exempt from competitive bids shall be made by the public officer delegated the authority to execute the contract or, if no delegation has been made, the Board.

(2) Generally, the award shall be made to the person or entity which has submitted the lowest responsible quote or proposal, in the case where the County is purchasing a good or service, or to the highest responsible quote or proposal, in the case where the County is selling a good or service. In the situation where interviews or substantive proposals have been sought, the award shall be made to the entity submitting the quote or proposal which best meets the needs of the County, in conformity with all prescribed selection procedures. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.137 Grant Applications.

(1) For grants from \$0 - \$50,000, the County Administrator is delegated authority to approve and execute all documents in the application process and the acceptance of the award.

(2) For grants over \$50,000, the Board shall approve the preliminary application and acceptance of the grant. This may be done in one Board action if the application contains complete information, and the grant is ultimately awarded without unusual conditions, or there may be separate Board actions to approve grant application submittal and grant award acceptance. The County Administrator is delegated authority to approve and execute all other grant documents in the application process.

(3) The County Administrator is delegated authority to approve and execute all documents to continue a grant that was approved by the Board pursuant to LM 21.137(2), so long as the continuation is substantially similar to the original proposal approved by the Board.

(4) The County Administrator may further delegate the authority in (1), (2) and (3) to a representative by a signed written agreement. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 02-1-30-1, 1.30.02)*

21.139 Fair Board.

Pursuant to ORS 565.230, the Fair Board has authority to award and execute all contracts relating to fairground facilities and operations, except those contracts which transfer an interest in real property. It is also delegated authority to cancel or terminate such contracts as provided in the contract or by law. The Fair Board may further delegate authority under this provision to a representative by signed written document. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.141 On-Site Construction Change Orders.

The Director of the Department of Public Works or his or her authorized representative, is delegated the authority to execute an on-site construction change order to a contract for the construction or renovation of roads or other transportation facilities and the Director of the Department of Management Services, or his or her representative, is delegated the authority to execute an on-site construction change order to a contract for the

construction, renovation, remodeling or repair of County facilities, if 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 or \$25,000, whichever is less,
- (2) The change order is necessary for completion of the contract,
- (3) Failure to immediately authorize the change could result in a work stoppage or severe slowdown, causing undue and unnecessary costs, or result in a hazard to the public and
- (4) It is in the best interest of the County to authorize the order and facilitate completion of the project. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.143 Cancellation of Award.

- (1) The Board reserves the right to cancel the award of any contract at any time prior to the execution of said contract by all parties without any liability against the Board or Lane County. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

COUNTY ADMINISTRATOR DELEGATED AUTHORITY CONTRACTS AND AMENDMENTS

21.145 Delegation of Authority to Execute Contracts.

(1) The County Administrator is delegated authority to execute the following types of contracts:

- (a) All contracts which have been competitively bid and awarded by the Board.
- (b) All contracts and agreements not exceeding \$50,000 nor three years in length.
- (c) Subcontracts and subgrants not exceeding \$50,000 which implement grants.
- (d) Amendments to contracts or modifications to grants, subgrants, and subcontracts as described in LM 21.147.
- (e) All computer software licenses not exceeding a purchase price of \$50,000 and which may be terminated upon discontinued use of software if longer than three years in length.
- (f) Insurance nonwaiver agreements and insurance endorsements to original policies.
- (g) Land use improvement agreements, Building Program Quick Start Agreements and acceptance and release of land use performance bonds.
- (h) Real property leases, licenses and permits, caretaker agreements involving the lease of property, and concessionaire agreements, not exceeding \$50,000 nor three years in length.
- (i) Emergency contracts which do not exceed \$50,000, with one exception, and which are executed within 60 days of the declaration of the emergency. See LM 20.255 and 20.260.
- (j) Contracts and assignments for the collection of County judgments.
- (k) All contracts implementing projects listed on the public improvements project list adopted pursuant to ORS 279.023, including those 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.

(l) All projects, services, materials/product purchases, contracts specifically listed as part of budget adoption order, or a supplemental budget adoption order.

(m) Any other type of contract the award of which has been expressly approved by the Board. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.147 Delegation of Authority to Execute Amendments.

The County Administrator is delegated authority to execute amendments which comply with LM 21.127(1) above as follows:

(1) For personal or professional services contracts where the original amount is equal to or less than \$500,000, the County Administrator may execute any individual amendment which does not exceed \$50,000, but the total of all amendments of that contract shall not exceed 50 percent of the original contract amount. For personal or professional services contracts where the original amount is greater than \$500,000, the County Administrator may execute any individual amendment which does not exceed 20 percent of the original contract amount, but the total of all amendments of that contract shall not exceed 50 percent of the original contract amount.

(2) For grants or sub-grants where the original amount is equal to or less than \$500,000, the County Administrator may execute any individual amendment which does not exceed \$50,000. For grants or sub-grants where the original amount is greater than \$500,000, the County Administrator may execute any individual amendment which does not exceed 20 percent of the original contract amount. The delegation of authority provided in LM 21.137(3) applies only to grant continuations which are substantially similar to the original proposal approved by the Board pursuant to LM 21.137(2); all other grant amendments are governed by this subsection.

(3) The County Administrator is delegated authority to execute all amendments which meet the conditions of LM 20.110.

(4) The County Administrator is delegated authority to execute an amendment when combined with all other amendments and the original contract amount total \$50,000 or less.

(5) For intergovernmental agreements and requirements contracts, the County Administrator is delegated authority to execute amendments based on either dollar amount of original contract or underlying subject matter, i.e., materials, services, materials/services, personal services, grant, etc.

(56) For contracts which include the subject matter in LM 21.145(1)(e), (f), (g), (h), (i), (j) above, or any other situation not covered by LM 21.147 (1), (2), (3), ~~(4)~~ or (5) above, the County Administrator is delegated authority to execute any amendment which does not exceed \$50,000 and which is less than three years in length. *(Revised by Order No. 98-12-2-4, Effective 12.2.98, 02-1-30-1, 1.30.02)*

21.149 Further Delegation and Termination.

(1) Contract Termination. The County Administrator is delegated the authority to cancel or terminate contracts including amendments, as provided in the contract or by law.

(2) Additional Delegation. The County Administrator may further delegate authority under LM 21.145 and 21.147 to a representative by signed written document. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

INSURANCE

||At right margin indicates changes
Bold indicates material being added
~~Strikethrough~~ indicates material being deleted
60.03060.030 Lane Manual

**LEGISLATIVE
FORMAT
60.40560.405**

- | | | | |
|-----|---------------------------------|---------------|--------------------|
| (2) | <u>Regional Disposal Sites.</u> | | Wednesday-Saturday |
| | (a) Cottage Grove | 8 a.m.-6 p.m. | |
| | (b) Creswell | 8 a.m.-6 p.m. | |
| | (c) Oakridge | 8 a.m.-6 p.m. | |
| | (d) Florence | 8 a.m.-6 p.m. | |
| (3) | <u>Rural Transfer Sites.</u> | | |
| | (a) London | 9 a.m.-5 p.m. | Saturday |
| | (b) Sharp's Creek | 9 a.m.-5 p.m. | Saturday |
| | (c) Vida | 9 a.m.-5 p.m. | Wednesday-Saturday |
| | (d) Low Pass | 9 a.m.-5 p.m. | Friday-Saturday |
| | (e) Walton | 9 a.m.-5 p.m. | Saturday |
| | (f) Mapleton | 9 a.m.-5 p.m. | Saturday |
| | (g) Swishhome | 9 a.m.-5 p.m. | Saturday |
| | (h) Marcola | 9 a.m.-5 p.m. | Wednesday-Saturday |
| | (i) Rattlesnake | 9 a.m.-5 p.m. | Wednesday-Saturday |
| | (j) Veneta | 8 a.m.-6 p.m. | Wednesday-Saturday |
| | (k) McKenzie Bridge | 9 a.m.-5 p.m. | Saturday |
| | | 1 p.m.-5 p.m. | Monday |
| | | 1 p.m.-5 p.m. | Thursday |

(Revised by Order No. 96-4-2-8, Effective 7.1.96)

60.030 Hardship Exceptions.

The Director of the Public Works Department or his or her designated representative may make special arrangements for access to Lane County Solid Waste Disposal Sites during hours or days other than those indicated in LM 60.025 or 60.026 above when strict adherence to those hours or days would result in a serious hardship situation. *(Revised by Order No. 96-4-2-8, Effective 7.1.96)*

60.405 Disposal of Unclaimed Personal Property in the County's Possession and County-Owned Surplus Property.

(1) Policy. Except as otherwise provided, unclaimed personal property in the County's possession and unneeded County-owned personal property shall be disposed of expeditiously under the centralized supervision of the County financial officer. Disposal shall be by auction, ~~advertising for sealed bids, direct sale,~~ grant to other governmental bodies or non-profit organizations, or discarding. The policies in this section expressly do not apply to unclaimed, lost or abandoned property coming into the possession of the County, where disposition is specifically subject to State Statutes e.g., vehicles, including bicycles, intangible personal property, stolen property where the owner is known, seized concealed weapons, and property of a deceased person taken into possession by the County.

(2) Certification of Inability to Determine Owner of Property. Before disposition of any unclaimed, lost or abandoned personal property not owned by the County but in possession of the County, the Director of the Department in possession of the property shall certify to the County financial officer that a reasonable effort to identify and locate the owner of the property has been unsuccessful. Upon such certification, and with the approval of the County financial officer, the certifying Department may retain any specified property as County property for County use. The County financial officer, or his or her designee, shall establish procedures for storage of

property certified to his or her Department for disposition by means other than retention by the certifying Department.

(3) Certification as Surplus Property. Before County-owned personal property may be disposed of as surplus, the appropriate Department Director shall certify that such property is surplus as to his or her Department to the County financial officer. The County financial officer, or his or her designee, shall establish procedures for storage of property so certified. If the certified surplus property consists of vehicles or motor-powered equipment in the possession of any Department, the County financial officer shall authorize sale by auction, sealed bid, direct sale, grant or discard by the possessing Department pursuant to LM 60.405(4) below.

(4) Disposal of Unclaimed Personal Property in the County's Possession and Certified County-Owned Surplus Property. The County financial officer or his or her designee, shall establish procedures for disposal of unclaimed, lost or abandoned personal property in the County's possession and certified County-owned surplus property to include at minimum the following:

(a) Circulating lists of selected items declared surplus to other County Departments, other governmental organizations, and non-profit groups. Cities and school districts located within Lane County shall receive preferential consideration for disposal of certified County-owned surplus vehicles and motor-powered equipment, as follows:

(i) The fair market value of the surplus vehicles and equipment shall be established by the Department Directors or their designee based upon prices obtained in prior years' auctions and upon other relevant information.

(ii) Before the final list of surplus vehicles and equipment for public sale is prepared, all of the school districts and incorporated cities within Lane County shall be notified in writing of the availability of such surplus vehicles and equipment.

(iii) The notice shall include, but need not be limited to, the list of surplus vehicles and equipment, the established fair market value for the surplus vehicles and equipment, the date by which an irrevocable school district or city offer to purchase surplus vehicles and/or equipment at the established fair market value must be submitted, and the date on which the purchase offers will be reviewed.

(iv) In the event that more than one city makes an offer on a vehicle or unit of equipment, the priority for approval of the purchase offers shall be in inverse order to the cities' populations. In the event that more than one school district makes an offer on a vehicle or unit of equipment, the priority for approval shall be in inverse order of the school district's enrollment. In the event that a city and a school district make an offer on a vehicle or unit of equipment, the city shall receive preference over the school district.

(v) The execution of certificates of title and bills of sale for surplus vehicles and equipment sold under this provision shall comply with LM 21.260 or 2.620(1)(h).

(vi) Once the school districts' and cities' offers have been met to the extent possible, any remaining offers shall be returned to the appropriate school districts and cities and the final list of any remaining surplus vehicles and equipment shall be prepared for public sale.

(b) By public auction, or:

(c) By advertising pursuant to LM 21.105(2), ~~in a paper of general circulation in Lane County~~ for the purpose of sealed bids. **For sales estimated at \$50,000 or less, a public opening of bids is not required as long as the department**

||At right margin indicates changes
Bold indicates material being added
~~Strikethrough~~ indicates material being deleted
60.40560.030

Lane Manual

LEGISLATIVE
FORMAT
60.40560.405

notifies bidders of its decision as soon as practicable within a reasonable time. Acceptance or rejection of the sealed bid price will be at the discretion of Lane County.

~~(d) Upon the final approval by the County Administrator, by direct sale pursuant to OAR 125-350-015(2) or (3) at a value set by an appraiser appointed for that purpose by the County financial officer.~~

(ed) By discarding when in the judgment of the County financial officer, or his or her designee, the property is of such little value that it should be discarded.

(5) Disposition of Firearms. The Sheriff will return all stolen firearms in the Sheriff's possession to the rightful owner if the owner can be identified and located through reasonable effort. All seized concealed weapons shall be disposed of in accordance with State statute. The sheriff shall dispose of all other firearms by any reasonable means chosen by the Sheriff, which may include sale at auction, destruction, and donation to other agencies for such purpose as training in hunter safety.

(6) County Employees. Surplus County supplies and equipment shall not be made available to any County employee, except through public auction or sealed bid.

(7) Warranties. No warranty or guarantee shall be made as to the condition of any item offered for sale. All surplus property is offered for sale "as is and where is," without recourse against the County.

(8) Terms of Purchase. All property shall be paid for in full during the sale and legal title of ownership shall pass from the County to purchaser prior to removal from the site. *(Revised by Order No. 93-1-19-14, Effective 1.19.93)*

FINDINGS TO SUPPORT LANE MANUAL CHAPTER 20 CONTRACT EXEMPTION AMENDMENTS

The purpose of these findings and conclusions, and any resulting Board Order, is to support certain amendments to Lane Manual Chapter 20 exemptions to competitive bidding. The statutory criteria is set forth in the accompanying Board agenda packet.

The only substantive change requested is to LM 20.170, covering election supplies and service. The Board should begin by considering that in 1998, it adopted an exemption for election supplies and services. The exemption currently states:

"The County is exempt from competitive bidding or quote requirements for the printing of polling place signs, ballots and sample ballots, including ballot pages and labeling of ballot cards."

In establishing this exemption, it adopted the following findings:

"The materials included within this exemption are specialty items that must be compatible with both state elections law and the type of equipment used by the county in processing ballots. Due to the technical complexity of the equipment and materials, there are only a limited number of vendors. In addition, the need to act quickly and to be able to rely on the most dependable contractor is critical. Thus, the purchase of these materials does not lend itself to a competitive process."

FINDINGS AND CONCLUSIONS

The proposed amendments to LM 20.170 are intended to reflect the recent change in Lane County from a punch card to an optical scan election system. The change includes deleting printing of "ballot pages" and "labeling of ballot cards" because they pertain to punch cards only. Because Lane County is no longer interested in purchasing these services, deleting them would not encourage favoritism in the awarding of contracts, substantially diminish competition, and there would be no impact on cost savings to the county. In addition, none of the eight "criteria to consider for these findings" set forth in the agenda cover memo, and incorporated into these findings, would be impacted by these deletions.

The proposed amendments to LM 20.170 add ballot envelopes and drop site signs to the exemption. The findings originally adopted in 1998 apply equally to these additions. Lane County Elections operates on the same timeframe for envelopes as with ballots. There are specific requirements for ballot envelopes that need to be preapproved by the post office. Both ballots and envelopes are ordered once the filing deadline arrives and there is sufficient information about what to include on the ballot, size of the ballot, size of envelopes and any statutorily required language to be printed on the envelopes. Currently, there is only one vendor that provides such ballot envelopes. In addition, drop site signs require certain text and size and there is a need to move quickly in locating drop sights, including the necessary signage. Due to the small expense (about \$50) per sign, it is not likely that a competitive process would even be required under Lane County's rules. The addition of envelopes and drop site signs to the exemption would not encourage favoritism or substantially diminish competition and

substantial cost savings would result in not being required to quickly complete a competitive selection process, assuming there is any competition or that it is necessary under Lane County rules. In addition, the public benefit would be promoted by allowing these changes to the elections exemption due to the ability to respond quickly to short election timeframes and cost savings in not spending additional funds for an expedited selection process (assuming a need for one). It is not likely that any of the remaining seven criteria would be impacted by these amendments.

The remaining proposed amendments to LM Chapter 20 are "housekeeping" or editing changes which do not substantially change any existing exemption. Accordingly, the original 1998 Board findings attached hereto continue to apply and support the housekeeping changes.

C. Findings which are used to support A. and B. include information regarding:

1. Operational, budget and financial data
2. Public benefits
3. Value engineering
4. Special expertise required
5. Public Safety
6. Market Conditions
7. Technical complexity
8. Funding sources.

D. In granting an exemption, the Board shall:

1. Where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern or innovative contracting and purchasing methods which are also consistent with the public policy of encouraging competition.

2. Require and approve or disapprove written findings that support the awarding of a particular public contract without the requirements of competitive bidding. The findings must show that the exemption complies with A and B above.

3. General Findings with Respect to Certain Criteria in C. Above

Funding sources is not a significant factor for this exemption request, which involves rules to exempt classes of contracts, with no particular contract at issue. Generally, it is anticipated that a majority of the contracts which are subject to these exemptions would be funded through the general County budget. It would be speculation to attempt to ascertain how funding sources for future contracts would impact a determination on whether to grant a class exemption.

In addition, it does not appear that public safety is a significant factor to a decision about whether to adopt exemption rules for certain classes of contracts where there is no direct connection to any specific public safety concern. Operational, budget and financial data would likely be more significant on the issue of cost savings to the public if there were specific contracts at issue. The classes in this request are general in many cases, and to attempt to apply this criteria without a more specific contract or set of contracts in mind would require speculation.

4. General Findings with Respect to Criteria in D 1. Above

The following exemption rules subject to this request explicitly include alternative competitive selection processes which result in avoidance of favoritism in the awarding of these public contracts, in substantial cost savings to the

County by not incurring the expense of a formal bid process and in not substantially diminishing competition:

- A. - LM 20.105 Dollar Amount of Contract Under \$50,000
- B. LM 20.130 Request for Proposal
- C. LM 20.135 Requirements Contracts
- D. LM 20.140 Sole Source
- E. LM 20.160 Construction Manager/General Contractor
- F. LM 20.180 Food Service Contracts
- G. LM 20.185 Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalts
- H. LM 20.190 Oil or Hazardous Material Removal
- I. LM 20.195 Office Copier Purchases
- J. LM 20.207 Purchases of Used Personal Property
- K. LM 20.225 Single Manufacturer or Service Provider
- L. LM 20.235 Insurance Contracts
- M. LM 20.255 Emergency Contracts Under ORS 279.015(2)
- N. LM 20.260 Emergency Contracts Under ORS 279.015(4)

5. Adoption of Findings of State to Support Substantially Similar Exemptions

The specific rules below are substantially similar to corresponding rules adopted by the State Department of Administrative Services. The facts, analysis, findings and conclusions considered in adopting the state rules are applicable to the situation that exists in Lane County and are adopted to support adoption of these Lane County exemption rules. These rules are:

- | | | |
|--------------|--------------|---------------|
| A. LM 20.105 | M. LM 20.180 | Y. LM 20.230 |
| B. LM 20.110 | N. LM 20.185 | Z. LM 20.235 |
| C. LM 20.115 | O. LM 20.190 | AA. LM 20.240 |
| D. LM 20.120 | P. LM 20.195 | BB. LM 20.245 |
| E. LM 20.125 | Q. LM 20.200 | CC. LM 20.255 |
| F. LM 20.130 | R. LM 20.205 | DD. LM 20.260 |
| G. LM 20.135 | S. LM 20.206 | EE. LM 20.265 |
| H. LM 20.140 | T. LM 20.207 | |
| I. LM 20.155 | U. LM 20.210 | |
| J. LM 20.165 | V. LM 20.215 | |
| K. LM 20.170 | W. LM 20.220 | |
| L. LM 20.175 | X. LM 20.225 | |

6. Specific Findings

In addition to the above general findings, the following more specific findings apply to the exemptions as identified in LM Chapter 20 for adoption:

A. 20.100(a) – (f) General Statutory Exemptions

The Oregon Legislature has already recognized these exemptions for all public contracts, including those of Lane County.

B. 20.105 Contracts Under \$50,000

Lane County's current exemption rule sets a limit at which less formal quotes must be obtained at \$2,500 and a limit of \$25,000 at which formal competitive bids must be obtained. This exemption rule was based on Oregon Department of Administrative Service exemption rules which had been in place since 1989. This state agency later increased the limitations to \$5,000/\$50,000, effective January, 1997. The County relies upon the facts and analysis included in County Counsel, Teresa Wilson's October 14, 1998 agenda memo to the Board concerning this increase. The rationale used by the state to support the increase also applies in Lane County and the County relies upon the findings and conclusions adopted by the state to support the statutory standards above. There has been general inflation since the Board adopted the \$2,500/\$25,000 limits and a commensurate increase in expense for processing contracts.

C. 20.110 Contract Amendments

This exemption is similar to the existing Lane County exemption rule. It would allow for change orders and extra work on projects already awarded per a competitive process. It encourages competition by allowing for additional work or goods up to certain dollar amounts without further competitive selection where additional work may not have been anticipated, where work (perhaps quite technical) is in progress, and where the public would benefit by allowing the contractor to complete performance without justifiable delay. The cost savings are substantial due to the time saved in project or performance completion, within dollar limitations. Any increases above the percentages in the rule would require additional competitive selection.

D. 20.115 Life Cycle Costing

This is a competitive value process that is used within a competitive selection process that allows for all costs of use, from the acquisition through disposition, to be considered. Substantial cost savings over the entire useful life of a product will accordingly be realized without substantially diminishing competition, because competitive bidding could still be used.

E. 20.120 Price Regulated Items or Services and 20.125 Price Set by Federal Contract

The County has no authority to alter prices established by federal or state law. Formal bids would not provide useful information since each would

be the same price. The County would incur unnecessary expenses with little or no benefit.

Since federal contracts are subject to similar public contracting requirements, any price set would have presumably arisen from a competitive selection process. The Oregon Legislature has decided that public agencies, such as the County, may use the competitive selection process of other public agencies under certain circumstances pursuant to ORS 279.015. The rationale applies equally to contracts executed by the federal government.

F. 20.130 Request for Proposal

The RFP process is used when other factors, besides cost alone, are of significant importance to a decision to award a contract. Specialized expertise, market conditions and technical complexity are integral elements to this process. Cost savings are realized through purchases that have higher quality, better service, operating efficiency and are more cost effective over the long term. Lane County has already established an alternative request for proposal process which includes substantially similar requirements as for formal bidding. See Lane Manual 21.107. There is an additional protection for competitors under the County's request for proposal process, i.e., appeal for protesting evaluation committee's recommendation, which is not required under a formal competitive bidding requirement. In other respects, the two processes, are nearly identical in Lane County. Accordingly, it is unlikely that this exemption will encourage favoritism or substantially diminish competition.

G. 20.135 Requirements Contracts

This exemption requires whichever competitive selection process is appropriate based on the underlying subject, including competitive bidding and other alternative processes. Thus, competition will not be substantially diminished and favoritism is avoided. The exemption also would allow the county to utilize another public agency's competitive selection process under certain conditions, thus competition will not be diminished. This exemption contemplates one competitive process with subsequent amendments issued, if necessary, based on the results of that process over a three year period. This eliminates the need to conduct duplicative competitive processes during that time period and results in cost savings to the County, both in terms of time and money. It allows the County to budget and plan for future needs. It encourages lowest cost over the life of a project while ensuring availability. It protects the County from unanticipated cost increases.

H. 20.140 Sole Source

Products and services that are available through only a single seller or provider are not subject to competitive supply. As no competitive market is

available, competitive bidding would be unnecessary and an unjustified use of county and public resources to prepare. Cost savings are not applicable. This exemption would require that the County take steps to confirm that the contractor is a sole source. If other competition were located, then the appropriate competitive selection process would be used. Competition would not be substantially diminished.

I. 20.155 Advertising Contracts

Advertising is limited to specific companies in given geographic locations and is further limited by the needs of the County. Further, state law requires the designation of an official newspaper for public notices. The rates for legal notices in many cases are regulated by statute. It may be necessary to target certain geographic areas or classes of members of the audience

J. 20.160 Construction Manager/General Contractor

This exemption allows the use of a request for proposal (RFP) process which reflects the specialized expertise required, and technical complexity of large construction projects for which a CMGC would be selected. The County's RFP process is so substantially similar to formal competitive bidding that there would not be significant effect on competition. There would be substantial cost savings to the public and the County through the selection of a high quality professional to meet this need.

K. 20.165 Copyrighted Materials

By definition, there is no alternative vendor and no competition. The County must ensure that all purchases are in accordance with federal and state laws protecting copyrighted or trademarked items.

L. 20.170 Election Supplies and Services

The materials included within this exemption are specialty items that must be compatible with both state elections law and the type of equipment used by the County in processing the ballots. Due to the technical complexity of the equipment and materials, there are only a limited number of vendors. In addition, the need to act quickly and to be able to rely on the most dependable contractor is critical. Thus, the purchase of these materials does not lend itself to a competitive process.

M. 20.175 Equipment Repair and Overhaul

Work performed under this exemption is in support of maintenance agreements or warranties that are obtained as part of a purchase process for new equipment. Often this maintenance is required in order to maintain warranty

coverage on the equipment. Warranty work is unique to the manufacturer of the equipment. Use of competitive bidding would invalidate the warranty coverage and cost the County more for maintenance work in the future. This would encourage competitors to deliver good quality products and to stand behind their products for the benefit of the public. It would discourage competitors who care less about quality.

N. 20.180 Food Service Contracts

The provision of food services to the County involves the review and analysis of factors other than cost to ensure a quality service and product. This exemption allows the County to solicit and review these factors through an RFP, instead of a bidding process. This extended review opportunity allows the County to provide and maintain a better level of service that is more cost effective for the users.

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

Prices for these items are highly volatile. The rule ensures continued competition utilizing the quotation process between many vendors of highly fungible product(s). Few, if any vendors would provide fixed price bids unless the price was sufficient to cover eventualities beyond the control of all parties.

P. 20.190 Oil or Hazardous Material Removal

This exemption applies when there is a state agency order requiring the County to act quickly and when a formal bidding process would likely result in violating that order and the imposition of monetary penalties. The rule requires alternative selection if feasible. Because of this and the limited application of the rule, competition would not be substantially reduced and there would be substantial cost savings as legally imposed penalties could be high.

PP. 20.195 Office Copier

This rule provides an alternative competitive process that reflects the nature of this good and the critical nature of these items to County operations. Service capabilities, specialized expertise, and technical expertise of vendors are of predominant importance and are difficult to ascertain through bidding.

Q. 20.200 Laboratory and Medical Supplies

Competition is not diminished as competitive bidding is still required. Generally, there are multiple vendors of such items, but there may be few or only one manufacturer, or individual health care practitioners may have a medical basis for specifying a certain manufacturer. The ability to split medical and laboratory supplies into multiple groupings will enhance competition by pro-

viding an opportunity to bid to specialized vendors in the field, or those that cannot maintain the necessary inventory to cover all needed supplies. Such enhancement will allow the County to obtain more competitive prices for those products requested.

R. 20.205 Purchases of Hospital and Medical Supplies and Equipment

The advantage of buying through a cooperative is that the public will benefit from cost savings after a paying a lower group rate, which is likely to be lower than any price proposed by a contractor through a single contract competitive selection. Thus, competition would not be substantially diminished.

S. 20.206 Library and Reading Materials

Many library circulation materials at the wholesale level are available through limited sources and are not subject to competitive supply. Books and periodicals are only published through one source. As no competitive market is available at the wholesale level, competitive bidding would not be appropriate and cost savings are not applicable. Libraries nationwide participate in a sophisticated computerized purchasing program designed to maximize efficiency and cost savings by providing up to date cost and availability data. While libraries may order many books at one time, only one or a few of each book is ordered from a particular publisher. Bids would be expensive and ineffective, and a process not in keeping with generally accepted practices.

T. 20.207 Purchases of Used Personal Property

Used personal property is available through limited market sources. Use of a quotation process as an alternate purchasing practice will continue to provide competition in the process while minimizing administrative costs to the County in terms of both time and money. Quality and availability are not as uniform as in new products making comparisons based on written information difficult. Generally, personal inspection is required and initial cost may not be the most important factor in long term cost savings.

U. 20.210 Specifying Brand Names or Products, 20.215 Brand Name Exemption Applications, 20.220 Copyrighted Materials, 20.225 Single Manufacturer

These exemptions allow for acquisition still using competitive bidding by brand, copyright, and/or single manufacturer. Cost savings are obtained by the efficient utilization of existing equipment and supplies and by obtaining products of the quality required.

V. 20.230 Product Pre-Qualification

Prequalification of products in certain circumstances simply reduces the amount of resources the county must expend to create design or performance specifications. There is an alternative selection process included which recognizes the value of competition in deciding which products to pre-qualify and includes a right to protest, which is similar to formal bidding.

W. 20.235 Insurance Contracts, 20.240 Employee Benefit Insurance, 20.245 Investment Contracts, 20.250 Litigation Services

Predominant factors for these exemptions include the specialized expertise required, the technical complexity of the subject matter, and the limited market once the County's special needs are considered. As to investment contracts, the market of stocks and bonds is quite volatile and not conducive to a formal competitive selection process. The contracts under this exemption would be considered professional service contracts and subject to the alternative selection process in LM Chapter 21.

X. 20.255 Emergency Contracts under ORS 279.015(2) and 20.260 Emergency Contracts under ORS 279.015(4)

The Oregon Legislature has adopted these as exemptions for all public contracts, including those of the County

Y. 20.265 LCRB Exemption for Other Contracts

This exemption recognizes a process for the Board to consider other exemption requests not included in these rules. This has no effect on competition at this time.

Z. 20.270 Bid Security and Performance Bond

These exemptions allow for waiving bonding requirements for certain bid projects and encourages competition due to less costs and paperwork being required by bidders. Cost savings are realized as more bidders will bid these certain projects and provide better pricing.

7. Conclusions

Based on all of the above, it is unlikely that the subject class exemptions will encourage favoritism in the awarding of public contracts, would not substantially diminish competition and awarding such contracts pursuant to these exemptions will result in substantial cost savings to the public and to Lane County.