

W.2.a.

## AGENDA COVER MEMO

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**AGENDA DATE:** February 13, 2008

**TO:** Board of Commissioners, sitting as Local Contract Review Board (LCRB) and as Local Contracting Agency

**DEPARTMENT:** Office of Legal Counsel

**PRESENTED BY:** Trina Laidlaw, Assistant County Counsel

**AGENDA TITLE:** In the Matter of Amending Lane Manual Chapters 20 and 21 Public Contracting Rules To Reflect Changes in Law, Roles and Current Practice

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### **I. MOTION**

Move to amend Lane Manual Chapters 20 and 21 public contracting rules to clarify roles of County Administrator and Board of Commissioners, to reflect changes in Oregon statutes and current practice, to make minor "housekeeping" or editing changes, and continue to "opt out" of Attorney General Model rules.

### **II. ISSUE OR PROBLEM**

Oregon statute requires the Oregon Attorney General to prepare and maintain model rules of procedure governing public contracting under the Oregon Public Contracting Code. After each legislative session the Attorney General is to review all laws that affect public contracting to determine whether the model rules should be amended. A local contracting agency, such as Lane County, may "opt out" of the Attorney General Model rules and adopt its own public contracting rules, but needs to review the model rule changes to determine whether it should modify its rules in order to comply with statutory changes. Certain LM Chapter 20 and 21 rules should be revised to reflect statutory changes.

### **III. DISCUSSION**

#### **A. Background**

Lane County has "opted out" of the Attorney General model rules, and adopted its own rules in LM Chapters 20, 21, and 60 (sale of personal/surplus property). The Attorney General has revised the model rules, and they became final in December 2007. The Board has delegated responsibility to the County Administrator, with the assistance of the Office of Legal Counsel, to review amendments to the Attorney General model rules. LM 20.085 and LM 21.100(5). If this evaluation suggests modification may be necessary, proposed amendments to LM Chapter 20 are to be submitted to the Local Contract Review Board (LCRB), and proposed amendments to LM Chapter 21 are to be submitted to the Local Contracting Agency. The Board of County Commissioners is both the LCRB and the Local Contracting Agency for Lane County. In addition, legal counsel

has reviewed statutory changes to Oregon's public contract law. Certain LM Chapter 20 and 21 rules should be amended to reflect statutory changes to Oregon public contracting law. In addition, it would be helpful to clarify certain practices and roles covered in LM Chapter 20 and 21 rules, and those proposed changes are also included in this Board item.

## **B. Analysis**

The analysis below includes a summary of the changes proposed in LM Chapters 20 and 21. As a preliminary matter, Lane County has traditionally maintained rules adopted by the LCRB in LM Chapter 20. These have primarily included class "exemptions" to formal competitive bidding, special "class" procurements, and several other matters. The Lane Manual Chapter 21 rules have primarily been procedural rules adopted by and covering Lane County upon Local Contracting Agency approval. The summary below covers the major changes.

### **1. Lane Manual Chapter 20**

There are two tests for the Board to apply in considering the revision to and readoption of LM Chapter 20 rules as amended. First, many of the provisions may be considered "exemptions" from formal competitive bidding for public improvement contracts. A public hearing is required when considering exemptions for the public improvement contracts. Second, many may be considered class special procurements for non-public improvement contracts. A person or entity may protest the request for special procurement rules in LM Chapter 20, and any protest is to be heard at the time set for considering the request for special procurement.

The test to apply in approving public works exemptions should be addressed in written findings:

- a. It is unlikely that such exemption will encourage favoritism in the awarding of public contracts, or;
- b. It is unlikely to substantially diminish competition for public contracts; and
- c. The awarding of public contracts pursuant to the exemption will likely result in substantial cost savings to the public contracting agency in considering the type, cost, amount of contract, number of persons available to bid and such other factors as may be deemed appropriate.
- d. More specific criteria to consider for the findings include:
  - i. Financial impact including estimated cost of the project, operational budget and financial data.
  - ii. Public benefits
  - iii. Value engineering
  - iv. Specialized expertise required
  - v. Public safety
  - vi. Market conditions
  - vii. Technical complexity
  - viii. Funding source

ix. Any other information identified by the County used to justify an exemption.

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

The test to apply in approving class special procurements for non-public improvement contracts includes:

a. The County submitting a written request to the LCRB that describes the proposed contracting procedure, the class of goods or services (including construction services) to be acquired through the special procurement and the circumstances that justify the use of a special procurement, and any other information the LCRB may require.

b. In order to authorize the class special procurement, the LCRB must make written findings that the procurement will:

i. Be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts, and

ii. Is reasonably expected to result in substantial cost savings to the County or to the public, or

iii. Otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under formal bidding, request for proposals, small procurement or intermediate procurement procedures.

Attached to this Board item are the proposed amendments to LM Chapter 20 exemptions and special class procurements. The proposed findings addressing the tests, criteria and information described above are attached as Exhibit A for review and consideration by the LCRB.

#### Chapter 20 – Summary of Changes

1. There is a minor modification proposed to LM 20.090 Findings to replace “Order 05-2-16-\_\_\_\_” with “Order 05-2-16-8”.

2. LM 20.105(1) (c) Dollar Amount of Contract – Not to Exceed \$100,000. These changes are covered in the Findings Exhibit A. The proposed changes reflect a change in Oregon statute raising the limit for conducting a competitive quote process for public improvement contracts for highways, bridges, and other transportation projects from \$50,000 to \$100,000.

3. LM 20.110(1) (b), (2), and adding a new (3). These proposed changes are not as a result of a change in Oregon statute. They are being proposed to clarify the intent of the existing rule and to fill in a gap which currently exists. This rule concerns the ability of the County to amend contracts up to certain percentages (25%, 33% depending on contract type, goods or services or building remodel and 50% for personal services) without doing an additional competitive selection. The issue is what base

amount to use to begin calculating these percentages. The rule suggests that the base is the amount accepted through the competitive selection “for the original contract” or “for the initial contract.” However, departments commonly want to draft initial contracts for a lower dollar amount than they have covered in their competitive selection. A typical example is a competitive selection covering a 3 year total dollar amount, and the contract is executed for 1 year with an option to renew for 2 additional years. A reasonable interpretation of the existing language the amount “...accepted through competitive selection for the initial contract” is that the higher competitive selection amount is the intended base. The proposed change would clarify that intent and allow departments to begin calculating the 25%, 33%, or 50% amendment increases from the competitive selection amount. The proposed change would also add a requirement that the competitive selection amount “not exceed a reasonable cost estimate by the County”. This language reflects actual practice.

LM 20.110(3) is new, and the purpose to fill a hole in the existing amendment rules. As stated above this rule covers the County’s ability to amend contracts up to certain percentages without additional competitive selection. But, once a department reaches the percentage limit, receives additional funds for a related service, does a competitive selection, if an existing subcontractor wins the competitive selection and an amendment is executed, the current rule is silent on calculating subsequent amendment increases. If a new contractor instead wins, an original contract would be executed, and the amendment increase percentages in the current rule would apply. The proposed new language in LM 20.110(3) would allow a department “to stack” competitive selected amounts for existing contractors for a new base amount, and the amendment percentage increase calculation would begin from the new base amount. With this change, the County would be treating existing and new contractors similarly by requiring a new competitive selection at the same point in the cycle of the County contract, at the points of increase beyond 25%, 33% or 50%.

4. LM 20.135 Requirements and Price Agreements. The proposed change is a result of a change in Oregon statutes and a need to be consistent with LM 21.112A. The County may join other governmental bodies in competitive selection or use the competitive process of another governmental body, without doing its own competitive selection. The proposed changes reflect this Oregon law.

5. LM 20.265 LCRB Exemption for Other Public Improvement Contracts and Special Procurements. This rule covers the process for the Local Contract Review Board to exempt contracts or classes of contracts from competitive bidding as they are identified in the future. The proposed changes are partly a result of changes in Oregon statute and partly “housekeeping” and reorganization of existing language for clarity. The proposed changes based on statutory changes include: a) changing the standard/test to be applied by the LCRB from “the awarding of public contracts pursuant to the exemption will result in substantial cost savings...” to “the awarding of public contracts pursuant to the exemption **will likely** result in substantial cost savings” for public works; and b) making a similar change in the standard/test for special procurements for goods and services from “result in substantial cost savings” to “reasonably expected to result in substantial cost savings”, and c) with regard to this “substantial cost savings” finding, adding an exception for pilot projects. There was no previous exception for pilot projects. Instead of requiring a finding that awarding of a contract pursuant to an exemption will result in substantial cost savings for a pilot project, the new law requires a finding that “the County intends to determine whether the

use of the alternate contracting method actually results in substantial cost savings to the County.

The remaining proposed changes are, essentially, a reorganization/clarification of existing rule provisions that do not need substantive amendment.

#### Chapter 21 – Summary of Changes

The following LM Chapter 21 rules had minor “housekeeping” changes: LM 21.101 Definitions; LM 21.105 Competitive Bidding (3)(b)(wording and format clarification); LM 21.105(8)(b)(correct citation); LM 21.105(8)(g)(delete extraneous words); LM 21.107 Requests for Proposals (2)(e) (eliminate old language); LM 21.107(9)(minor word change); LM 21.107(14)(citation correction); LM 21.107(15)(correct numbering); LM 21.113(2)(wording clarification to follow statutory language).

The following LM Chapter 21 rules have proposed changes that are substantive.

1. LM 21.105(5) (a) Bids. New language covering the County’s ability to post solicitation documents electronically for public improvement contracts reflects new statutory change. Beyond the statutory language, proposed changes would require the departments to notify potential bidders of the option to access documents electronically in the solicitation ad and require them to notify these potential bidders about how they will receive notice of addendums the County may later create to the solicitation documents.
2. LM 21.105(5) (d) Bids. New language covering the County’s ability to award multiple contracts reflects new statutory language.
3. LM 21.106(2) Payment and Performance Security. The proposed changes reflect a statutory change to expand the exceptions for requiring a Contractor or subcontractor to file a \$30,000 public works bond with the Construction Contractors Board. A Contractor or subcontractor may now elect not to file this bond if the project does not exceed \$100,000. The remaining changes proposed include reorganizing the existing sections, expanding the description of public works bond exemptions as set out in the statute, and requiring the Contractor and subcontractor to give the County notice if they believe they are exempt.
4. LM 21.107(3) adds language consistent with new statutory changes. For a public works contract, the statute now clarifies that the County may issue a request for information, a request for interest, a request for qualifications or other preliminary documents in order to obtain information in preparation for a request for proposals.
5. LM 21.107(14) Protest of Intent to Award/Evaluation Committee Recommendation.
  - A. Subsection 14 (d) covers the grounds and process for the Board to consider a protest to an RFP process. In order to be consistent with statute, the proposed changes would:

i) Add two additional grounds for a proposer to protest the evaluation committee's recommendation: The evaluation committee has failed to conduct the evaluation of proposals in accordance with the criteria and processes described in the solicitation materials, and all higher ranked proposals are nonresponsive.

ii) Add to an existing ground that the evaluation of proposals violated ORS 279B.

B. A proposed change to subsection 14(f) is also recommended to comply with the applicable statute. The statute requires that the response to a protest be in writing. New language would add to the Board's consideration of the protest at a public meeting, an acknowledgement that the "writing" is a Board Order referencing reasons for its decision on the protest. The department presenting the Board item may provide their recommended reasons for the protest decision in the agenda cover memo. The Board may decide to adopt that recommendation in the Board Order. The Board may want to make a different decision or the decision recommended but based on different reasons. The Board could request that the department prepare an amended order, including for presentation at the next Board meeting. A requirement that the County Administrator's response be in writing was added.

C. There are two changes to subsection 14(f) which are not based on a statutory change. One change is to clarify the options the Board and County Administrator inherently and statutorily have when considering a protest. The options include granting or denying the protest, rejecting proposals or canceling the solicitation, or remanding to the department or evaluation committee. If there is a remand, the department should report back to the decision maker as soon as reasonably possible. Another change clarifies the ability of the Board to not precisely follow the protest procedures. The current language states: "The protest 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." Because some of the procedures included in LM 21.104(14) are now covered by statute and some are simply up to the Board's discretion, there needs to be a clarification about which procedures the Board or County Administrator may not have to precisely follow. The statutory procedures are that the protest be in writing specifying grounds, timely filed, and the County's response needs to be in writing. The County is probably not able to disregard or not complete these procedures. The proposed change to this rule states that failure to follow/complete any other procedures does not invalidate the County's decision; the general goal is to provide a reasonable process to consider the protest. The proposed change continues to allow the decision maker some flexibility.

6. LM 21.110 Intermediate Procurements. The proposed changes reflect a statutory change, and are in line with the proposed change to LM 20.105. The Oregon Legislature changed the limit for doing a competitive quote process for public works contracts involving highways, bridges or other transportation projects from \$50,000 to \$100,000.

7. LM 21.112A. Special Procurements. The proposed change reflects a change in the statute. It used to be that before a party could protest a special procurement process or solicitation document, the LCRB's decision to approve the

special procurement had to be invalidated by a reviewing court. This requirement of first pursuing an appeal in court has been eliminated.

8. LM 21.118(6) Requests for Professional Services. The proposed change reflects a change in the statute to allow the County to avoid disclosure of proposals received for architectural, engineering, or land surveying services or related services during negotiation and up until notice of the intent to award. The County may continue to withhold trade secrets and information submitted in confidence after the intent to award.

9. LM 21.120 Requirements and Pricing Contracts. The proposed change is not a result of a change in statute. Sometimes departments have a Board (or County Administrator) approved requirements contract for a not-to-exceed total dollar amount which generally describes the work to be performed, and includes all of the standard County contract provisions, including those covering liability, insurance, termination, period of the contract, etc. What it lacks is a specific description of each project, how it will be accomplished, and a project cost. The current practice is to describe this remaining information later on a document such as Attachment B "Work Authorization Document."

The proposed rule change is that for contracts approved by the Board for a total dollar amount, including a general future project description and all standard contract provisions, the County Administrator be delegated authority to execute an amendment (or Work Authorization Document) once each project is better defined up to \$100,000. (Individual projects exceeding \$100,000 would go to the Board for approval). The proposed change is to further allow the County Administrator to delegate authority to execute the amendment/work authorization document up to \$50,000 for a \$300,000 contract and up to \$100,000 on a contract exceeding \$300,000 to the Department Director, Assistant Director or Manager responsible for decisions on the work and the costs, on certain conditions:

A. The amendment/work authorization states that the provisions of the main requirements contract continue to apply excepted as supplemented by the amendment, and

B. The amendment/work authorization can only cover topics such as scope of work, roles and responsibilities for the project, tasks, costs, names of persons assigned to each task, criteria for work acceptance, deliverables, due dates, and

C. There are no added provisions which affect risk to the County or to the public.

The County Administrator would include these limitations in a written delegation of authority in addition to any others, he feels necessary. This delegation could also occur for any amendments/work authorizations for County Administrator approved contracts.

11. LM 21.128 Emergency Contracts. The changes to this rule, as well as to the definitions in LM 21.101, are to reflect statutory changes for emergencies involving all construction services (including construction on "public improvements" and other construction such as minor alteration, ordinary repair/maintenance on a public

improvement). The statute requires that the County use competition that is reasonable and appropriate under the emergency circumstances and may make direct appointments without competitive selection in cases of extreme necessity. In addition, the statute allows the County to waive public works bonds in cases of emergency, and that has been added to the waiver of performance and payment bonds.

12. LM 21.130(8). This Lane Manual provision contains the County's standard contract provisions. The law has changed somewhat on the requirements for paying prevailing wages. The proposed change corrects citations, and adds language to better track the statute.

13. LM 21.147(3), (5) County Administrator's Delegation of Authority to Execute Amendments.

The proposed changes are not the result of a change in law. The proposed changes to this provision mirror the changes proposed to LM 20.110, establishing a new rule covering a department doing an additional competitive selection after they reach the 25%, 33%, or 50% amendment authority permitted without a new competitive selection. These changes clarify the authority which previously existed – the County Administrator may execute aggregate amendments which are within the 25%, 33%, or 50% - no change. The proposed change adds the authority to execute the same percentage aggregate increases after a new competitive selection is conducted if an existing contractor wins and the competitive selections are "stacked". After such a competitive selection, the County Administrator can execute a \$100,000 amendment for most types of contracts. That is not a change. The proposed changes clarify that if there is an amendment executed, it cannot extend a contract beyond 3 years unless permitted by another Lane Manual rule or Board decision.

There is a change to (4) to reflect current practice that the County Administrator can execute an amendment to extend a \$100,000 contract for an additional contract period. This is consistent with the current rule which allows the County Administrator to execute any contract which does not exceed \$100,000.

There is a minor wording change to "goods and services" from "materials and services" to better reflect a change in statutory terminology.

#### **IV. ALTERNATIVES/OPTIONS**

1. Approve the motion to amend Lane Manual Chapters 20 and 21 rules, and continue to "opt out" of the Attorney General's model rules.

2. Not approve the motion to amend some of the Lane Manual Chapter 20 and 21 rules and approve the motion as to others, and continue to "opt out of the Attorney General's model rules.

3. Not approving the motion would mean that the County's rules would not be consistent with Oregon statutes and that is not recommended.

#### **V. RECOMMENDATION**

Option 1, approve the motion



## **VI. ATTACHMENTS**

Order

Exhibit A Findings to LM Chapter 20 rule changes

Exhibit B Work Authorization Form

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON  
SITTING AS LOCAL CONTRACT REVIEW BOARD AND  
AS LOCAL CONTRACTING AGENCY

ORDER NO.

IN THE MATTER OF AMENDING LANE  
MANUAL CHAPTERS 20 AND 21 PUBLIC  
CONTRACTING RULES TO REFLECT  
CHANGES IN LAW, ROLES AND  
CURRENT PRACTICE

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 better reflect department practices, to clarify the County Administrator’s and Board’s roles, to reflect changes in Oregon statutes, and to make minor “housekeeping” or editing changes;

NOW, THEREFORE, sitting as both the local contract review board and local contracting agency 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, the Board of County Commissioners hereby 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 rules exemptions, and class special procurements, and approves the amendments and readopts Lane Manual Chapter 20 with the amendments.
2. Lane County has “opted out” of the State Attorney General’s Model Rules by adopting its own rules in Lane Manual Chapter 20, 21, and 60 and will continue to “opt out” including from January 8, 2008 forward. Lane County’s public contracting rules are those in Lane Manual Chapter 20, 21, and 60 as further amended and readopted 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.

AND FURTHER, the Board, sitting both as the local contract review board and local contracting agency, hereby orders that:

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

**REMOVE THESE SECTIONS**

20.090  
as located on page 20-1  
(a total of 1 page)

20.105 through 20.110  
as located on page 20-5  
(a total of 1 page)

20.135  
as located on pages 20-7  
(a total of 1 page)

20.265  
as located on pages 20-13 through 20-15  
(a total of 3 pages)

21.101, 21.105 and 21.107  
as located on pages 21-1 through 21-12  
(a total of 12 pages)

21.110  
as located on page 21-13  
(a total of 1 page)

21.112A  
as located on pages 21-14  
(a total of 1 page)

21.112B, 21.113  
as located on pages 21-14  
(a total of 1 page)

21.115  
as located on page 21-15 through 21-16  
(a total of 2 pages)

21.118, 21.120, 21.128 and 21.130  
as located on page 21-18 through 21-28  
(a total of 10 pages)

21.147  
as located on pages 21-30  
(a total of 1 page)

**INSERT THESE SECTIONS**

20.090  
as located on page 20-1  
(a total of 1 page)

20.105 through 20.110  
as located on page 20-5 through 20-6  
(a total of 2 pages)

20.135  
as located on page 20-7 through 20-8  
(a total of 2 pages)

20.265  
as located on pages 20-13 through 20-15  
(a total of 3 pages)

21.101, 21.105 and 21.107  
as located on pages 21-1 through 21-12  
(a total of 12 pages)

21.110  
as located on page 21-13  
(a total of 1 page)

None

21.112A, 21.113  
as located on pages 21-15  
(a total of 1 page)

21.115  
as located on page 21-15 through 21-16  
(a total of 2 pages)

21.118, 21.120, 21.128 and 21.130  
as located on page 21-19 through 21-28  
(a total of 10 pages)

21.147  
as located on pages 21-31  
(a total of 1 page)

Said sections are attached hereto and incorporated herein by reference. The purpose of these substitutions is to implement the revision and readoption of LM Chapters 20 and 21 to reflect statutory changes and department practices, and to clarify the County Administrator's and Board's roles.

The rules adopted by this order shall be effective \_\_\_\_\_

Adopted this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

\_\_\_\_\_  
Chair, Lane County Board of Commissioners

APPROVED AS TO FORM  
Date 2/1/08, Lane County  
J. Laidlaw  
OFFICE OF LEGAL COUNSEL

## LOCAL CONTRACT REVIEW BOARD

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

#### 20.085 General.

(1) Purpose and Authority. These rules establish public contract exemptions, class special procurements, designations, and rules for Lane County, Oregon (hereafter, the County). Except as otherwise provided in LM Chapter 20, the powers and duties of the local contract review board (LCRB) set forth in ORS 279A, B, and C shall be exercised and performed by the Lane County Board of County Commissioners on behalf of Lane County. The model rules adopted by the Oregon Attorney General do not apply to Lane County, unless specifically adopted in these rules. The applicable rules are those contained in LM Chapters 20, 21, and 60 (regarding sale of personal/surplus property). The County Administrator, with the assistance of the Office of Legal Counsel as requested, shall be delegated the authority to review future amendments to the Attorney General model rules to evaluate the need to modify these Chapter 20 rules in order to comply with statutory changes. If the evaluation suggests modification may be necessary, proposed amendments shall be submitted to the LCRB for consideration.

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

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

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

#### 20.090 Findings.

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

#### 20.091 Construction and Interpretation.

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

#### 20.095 Definitions.

As used hereafter, unless the context requires otherwise:

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

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

Board means the Board of Commissioners of Lane County.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Amendments that result from a separate competitive selection are not included in computing the aggregate amounts under subsection (1)(b) or (2) of this rule. The competitive selection used for the amendment should be appropriate based on the type of procurement and dollar amount of the amendment. See LM 21.105 (competitive bidding); LM 21.107 (requests for proposals); LM 21.108 (letters of interest); LM 21.109 (small procurements); LM 21.110 (intermediate procurements); LM 21.111 (sole source); LM 21.112A (special procurements); LM 21.112B (cooperative procurements); LM 21.118 (personal services). The competitively selected amendment amount(s) may

be added to the original competitively selected amount to determine a new base amount. The aggregate cost increase resulting from all amendments which have not been covered by a competitive selection cannot exceed the percentages listed above in (1)(b) and (2) of the new base amount. It is the department's responsibility to maintain documentation concerning the competitive selection used for any such amendments and for which time periods. *(Revised by Order No. 98-12-2-, Effective 12.2.98; 05-2-16-8, 2.28.05)*

#### **20.115 Life Cycle Costing.**

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

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

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

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

#### **20.120 Price Regulated Items or Services.**

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

#### **20.125 Price Set by Federal Contracts.**

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

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

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

#### **20.128 Client/Patient Services.**

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

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

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

(3) Will select a qualified provider from the list as a client need arises, based on criteria including, but not limited to, client and family needs, quality/type of appropriate

care, availability of service at the time it is needed, and cost. *(Revised by Order 02-12-4-4, Effective 12.04.02)*

### **20.130 Request for Proposal.**

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

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

### **20.135 Requirements and Price Agreements and Cooperative Purchases.**

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

- (a) The contract must be let by a competitive procurement process pursuant to the County's public contracting rules.
- (b) The term of the contract including renewals does not exceed three years.

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

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

- (a) It provides that the contract may be canceled upon 30 days written notice by the County at its discretion; and
- (b) Each specific purchase is considered separately for competitive selection pursuant to the applicable County public contracting rules.

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

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

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

(c) The County may participate in, sponsor, conduct or administer interstate cooperative procurements to establish contracts or price agreements for the



acquisition of goods or services or personal services that use source selection methods substantially equivalent to those set forth in ORS 279B.055 or ORS 279B.060.

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

**20.240 Employee Benefit Insurance.**

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

**20.245 Investment Contracts.**

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

**20.250 Litigation Services.**

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

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

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

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

**EXEMPTIONS AND AUTHORIZATIONS AS CIRCUMSTANCES ARISE****20.255 Emergency Contracts.**

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

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

(1) Subsections (2)-(4), and (13) below apply to public improvement contracts, and subsections (5)-(13) apply to non-public improvement contracts.

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

(a) The nature of the project;

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

- (c) Public benefits;
- (d) Value engineering;
- (e) Specialized expertise required;
- (f) Public safety;
- (g) Market conditions;
- (h) Technical complexity;
- (i) Funding sources;
- (j) Any other information identified by the County, in its discretion, and

used to justify the conclusion to except from competitive bidding.

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

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

(b) The awarding of public contracts pursuant to the exemption will likely result in substantial cost savings to the public contracting agency considering the type, cost, amount of the contract, number of persons available to bid and such other factors as may be deemed appropriate. Where an alternative contracting method has not been previously used, an alternative to this “substantial cost savings” finding is a finding that identifies the project as a pilot project for which the County intends to determine whether the use of the alternate contracting method actually results in substantial cost savings to the County.

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

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

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

- (a) A description of the goods or services or the class of goods or services to be acquired; and,
- (b) A description of the proposed contracting procedure; and,
- (c) A description of the circumstances that justify the use of a special procurement.

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

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

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

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

(8) Public Notice. Public notice of a request for special procurement shall be provided through the standard public notice for Lane County Board of Commissioners/LCRB meetings. Public notice of the approval of a special procurement shall be the date of the oral decision to approve at the LCRB meeting, unless otherwise provided by the LCRB.

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

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

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

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

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

## Chapter 21

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

(1) Nothing stated in this Chapter shall be construed contrary to the provisions of ORS Chapters 279 A, B, or C.

(2) Lane County shall be the “contracting agency” referenced in ORS Chapter 279A, B, and C and its powers and duties shall be exercised and performed by the Lane County Board of Commissioners, unless otherwise further delegated.

(3) The model rules adopted by the Oregon Attorney General pursuant to ORS 279A.065 do not apply to Lane County, unless specifically adopted in these rules.

(4) Any reference in this Chapter to OAR Chapter 137 provisions shall be for the purposes of aiding in interpretation in the event of ambiguity or of providing further explanation of the manner in which the County may interpret its rule. 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 Chapters 20, 21, and 60 (regarding sale of personal/surplus property).

(5) The County Administrator, with assistance of the Office of Legal Counsel as requested, is delegated authority to review the Attorney General’s model rules when modified and evaluate whether Lane County should modify its rules to ensure compliance with statutory changes. If the evaluation suggests this modification may be necessary, proposed amendments shall be submitted for Board consideration.

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

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

**21.101 Definitions.**

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

(a) Board. The Board of County Commissioners, sitting as the local contracting agency.

(b) Competitive bidding and competitive quotes. See LM 20.095.

(c) Goods or services. See ORS 279A.010.

(d) LCRB. The Lane County Board of County Commissioners, sitting as the local contract review board.

(e) Non-public improvement contract. Contracts including for goods and/or services, and contracts for emergency work, minor alteration, ordinary repair or maintenance of public improvements, and any other construction contract that is not defined as a “public improvement” under ORS 279A.010.

(f) Offeror. A general term to describe a person who submits a bid, proposal, quote (written or oral).

(g) ORPIN. The online electronic Oregon Procurement Information Network administered by the Oregon Department of Administrative Services, State Procurement Office.

(h) Personal Services Contract. See LM 20.097; LM 21.117.

(i) Public contract. See ORS 279A.010(1)(z). In addition, 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 acquisition or disposal of personal property or public improvements. It can also cover sales and purchases of services, including personal 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.

(j) Public improvement. See ORS 279A.010(1).

(k) Public officer. The County Administrator, and where otherwise delegated, Department Directors. This authority may be further delegated. The public officer is also any person authorized to conduct a procurement on the County's behalf.

(l) Request for Proposal. See LM 21.107.

(m) Responsible bidder or proposer. See ORS 279C.375, ORS 279B.110.

(n) Retainage. The difference between the amount earned by the contractor on a public contract and the amount paid, held to guarantee full performance. See ORS 279C.550. *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

### **21.102 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 279A, B, or C; 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. *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

### **21.103 Contract Execution and Processing.**

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

(2) 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; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05)*

## **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 279A, B, and C 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, a formal competitive bid process is required for all public contracts unless exempt or excepted pursuant to ORS Chapter 279 A, B or C, or an LM Chapter 20 exemption rule, or such authorities provide formal bidding as an option. Nothing in this rule is intended to prohibit the County, in its discretion, from using formal bidding even though it may not be required.

(2) In preparation for an invitation to bid, the County may issue a request for information, a request for interest or other preliminary documents. It may also develop and maintain a qualified products list in accordance with LM 20.230.

(3) Advertisements.

(a) The contents of advertisements for bids shall include:

(i) a description of the project, goods or services;

(ii) the office where the specifications for the project or purchase may be reviewed;

(iii) name, title and address of person authorized to receive bids;

(iv) if prequalification is required, a statement of the class or classes of work for which bidders must be pre-qualified and the filing deadline;

(v) scheduled bid submission deadline which shall not be less than 7 days after the date of the last publication of the ad;

(vi) scheduled bid opening (immediately after bid submission deadline for public improvement contracts);

(vii) if applicable, that the contract is for a public work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act.

(b) Departments may use either or both of the following advertising methods in (i) or (ii) except as provided in (iii):

(i) Publish at least once in at least one newspaper of general circulation in the Lane County area;

(ii) Publish electronically on a Lane County website or other electronic posting site (e.g. ORPIN) as long as the requirements of (iv) below are met.

(iii) For public improvement contracts estimated to exceed \$125,000, departments shall use: either or both methods in (i) and (ii); and, publication in at least one trade newspaper of general statewide circulation.

(iv) In considering whether to advertise by the method in (i) or (ii) for a particular project, Departments shall weigh advertising cost savings with the method likely to encourage the greatest competition, and decide based on the greatest competition. Nothing in this rule is intended to prohibit the County from using any other method of public notice in addition to (i) or (ii).

(v) In order to conduct an electronic advertisement, a Department shall publish weekly, for no less than 4 consecutive weeks, in at least one newspaper of general circulation, a notice that the Department may publish future advertisements (listing the types) by electronic advertisement, including the world wide web location(s) (i.e., Uniform Resource Locator or URL), and providing a contact person for questions or concerns. It is within the Department's discretion to decide if and how any concerns will be accommodated, subject to use of a method likely to encourage the greatest competition.

(4) 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 goods, 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 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" and "County" under this rule.

(c) The public officer to whom authority is delegated under this LM 21.105(4) may further delegate this authority to a representative by signed document.

(5) 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) An invitation to bid is used to initiate a sealed bidding solicitation. It shall contain the information required by ORS 279B.055(2) for non-public improvement contracts, and by ORS 279C.365 and ORS 279C.830 for public improvement contracts. The county may provide solicitation documents for a public improvement project by electronic means if notice is provided in the ad for the solicitation. The County department shall also develop a procedure for notifying potential bidders accessing electronic documents about addendums.

(b) The County may allow or require pre-qualification of bidders by setting forth the procedure and criteria in the invitation to bid. The public officer shall determine when a pre-qualification may be mandatory or permissive for a specific contract or class of contracts and the pre-qualification procedure, subject to requirements in this subsection (b) or applicable statutes. See ORS 279B.120, 279B.125, 279C.430.

(i) For public improvement contracts with mandatory pre-qualification, the Department shall include in the invitation to bid the time for submitting written pre-qualification applications, and the general description of the type and nature of the contracts to be awarded. For both mandatory and permissive pre-qualification, the Department shall also provide the standard form to be used.

(ii) In making a determination for non-public improvement contracts, the County will consider applicable standards of responsibility listed in ORS 279B.110(2) and discrimination pursuant to ORS 279A.110, and for public improvement contracts as set forth in ORS 279C.375(3) and ORS 279A.110. For all contracts, if a bidder fails to qualify for a mandatory pre-qualification, notice shall be provided of the reasons, length of proposed disqualification not to exceed three years, the right to a hearing before the LCRB by filing a timely notice of appeal within 3 days with the Department, waiver of the hearing if the deadline is missed, and reference to the sections of the County rules covering the appeal process. For non-public improvement contracts, the Department may revoke or revise and reissue a prequalification approval upon reasonable cause to believe there has been a substantial change in conditions or bidder is no longer qualified or less qualified by providing notice of the grounds and a right to a hearing.

(iii) The County, through the public officer, may also debar a prospective bidder based on standards in ORS 279B.130 and ORS 279C.440. The same procedure for disqualification above shall be followed.

(c) For non-public improvement contracts, the County may use a multi-step invitation to bid seeking technical unpriced bids after providing public notice, and later issue an invitation to bid limited to the bidders whom the public officer has determined to be eligible under criteria set forth in the initial solicitation. The multi-step procedure shall be described in the invitation to bid. Technical unpriced bids need not be opened publicly. The opportunity to protest the solicitation in accordance with (6) below shall be provided prior to the closing of phase one. Unsuccessful bidders may protest the intent to award a contract, which should include the opportunity for affected bidders to protest exclusion from the phase two. See OAR 137-047-0257.



(d) The County may award multiple contracts when specified in the invitation to bid.

(e) Correction, Withdrawal and Late Bids. 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 the initial invitation to bid. The County may release an unopened bid which has been withdrawn to the bidder or authorized representative after voiding any date and time stamp mark. The County will not consider bids received after the time and date indicated for bid opening in the invitation to bid. A bidder may not modify any bid after it has been deposited with the public officer, except for minor informalities. All decisions to permit correction or withdrawal of bids shall be supported by written reasons.

(f) Clarification. 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.

(g) Bids Irrevocable. 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 un-rejected 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.

(6) Protest of Process and Solicitation Document.

For non-public improvement contracts, a prospective bidder may protest the competitive selection process or provision(s) in the solicitation document if they believe the process is contrary to law, or that a solicitation document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name pursuant to requirements in ORS 279B.405(2)(a) and (4). Unless otherwise specified, the protest must be filed no later than 5 calendar days before bid opening. The County shall issue a written decision no less than three business days before bids are due, unless otherwise decided by the County. The County may exercise the response options set forth in OAR 137-047-0730(4) and (5). For public improvement contracts, a prospective bidder may protest specifications or contract terms and conditions pursuant to OAR 137-049-0260(3), (4) and (5). Unless otherwise specified in the invitation to bid, the protest shall be filed no later than 10 days before bid opening.

(7) Opening of Bids.

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. All bids submitted to the County will be opened publicly at the time, date and place designated in the invitation to bid and by the public officer. Any bid or modification received after the designated deadline shall be returned unopened to the bidder. To the extent practicable, the public officer shall read aloud the amount of the bid, the name of the bidder and such other information as the public officer considers appropriate, and record the same. The bid record for a public improvement contract shall be open to public inspection after the opening, with the exception of certain information covered by a public records exemption. The bid record for a non-public improvement contract shall be open to public inspection after the issuance of an intent to award, with the exception of certain information covered by a public records exemption. If the County receives a records request, including subpoena, covering information the bidder believes is covered by an

applicable public records exemption, it shall be the bidder's responsibility to defend and indemnify the County for any costs associated with establishing such an exemption. The bidder's act in submitting a bid constitutes its acceptance of this responsibility..

(8) 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 279B.055(6)(a), and LM Chapter 20. See also, OAR 137-049-0380.

(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 ORS 279A.120.

(c) The public officer shall, for the purpose of evaluating bids, apply any preference in ORS 279A.120 (resident bidder), ORS 279A.125 (preference for recycled materials) or ORS 282.210.

(d) The public officer shall make all necessary investigation to determine whether the apparent lowest responsible bidder has met responsibility requirements. See ORS 279C.375(3); ORS 279B.110.

(e) 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.

(f) Invitations to bid may solicit lump sum offers, unit price offers, or a combination of the two, as well as additive or deductive alternates. The County may use evaluation methods as described in OAR 137-049-0380(2) or any other method reasonably likely to result in similar comparisons.

(g) For public improvement contracts, if all responsive bids from responsible bidders exceed the County's cost estimate, the County may negotiate value engineering and other options (excluding those likely to affect the field of competition) with the lowest responsive, responsible bidder to attempt to bring the bid within the cost estimate. However, a negotiated contract under this provision shall not be awarded if there is significant change in the scope of the project from the original bid proposal. The County may discontinue the negotiation at any time. Nothing in this rule prohibits the County from conducting a new solicitation process. To the extent bidder's records used in the negotiation are public records, they are exempt from disclosure until after contract award or termination of the negotiation, and then subject to disclosure in accordance with ORS 192.410 through ORS 192.505. See OAR 137-049-0430.

(9) 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 137-049-0350 and OAR 137-047-0470.

(10) Rejection.

The County reserves the right to cancel a solicitation, or reject any or all bids in whole or in part when the cancellation or rejection is in the County's best interests as determined by the County. This includes rejecting any bid not in compliance with all prescribed public bidding procedures and requirements, and for good cause, rejecting all bids upon a finding that it is in the public interest to do so. See OAR 137-049-0440(5), OAR 137-047-0640, OAR 137-047-0650. If all bids are rejected in whole or in part, new bids may be called for as in the first instance or initial bids may be considered with

opportunity for supplemental submission. If there is partial rejection, the County may solicit supplemental information only from the bidders who submitted bids and may set an expedited deadline on the conditions that such deadline is within what could reasonably be expected as part of the original competitive process and that it is unlikely readvertising publicly would lead to greater competition. The public officer is delegated the authority to reject all bids, prepare findings of best interests 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 best interest of the County and public to do so. 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. In addition, if partial rejection under this rule occurs as a result of the filing of a protest, any portion of the protest not resolved in favor of the protestor shall proceed to the Board or County Administrator. The Board and County Administrator may also exercise authority to act in accordance with this provision.

(11) 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(11)(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) Generally, any award shall be made to the lowest responsible bidder consistent with bid documents, may be made by item, groups of items, or as a whole. LM 21.135(2).

(12) Notice of Intent to Award.

The County shall provide written notice of its intent to award to a particular bidder or bidders at least fourteen (14) days before the award, unless the County department determines that a shorter notice period is more practicable.

(13) Protests of Award.

Unless otherwise specified in the bid documents, all written protests of award must be filed within seven (7) days of the notice of intent to award. Protests of award shall be considered by the Board if it would approve and award the contract. Protests of award shall be handled by the County Administrator, or designee, for those contracts to be awarded by the County Administrator.

(a) The protest for a non-public improvement contract shall specify the applicable grounds for the protest as set forth in ORS 279B.410(1). The protest for a public improvement contract shall specify the applicable grounds for protest set forth in OAR 137-049-0450(4)(c) which is adopted.

(b) For contracts to be awarded by the Board, if the public officer determines there is sufficient merit to reject bids under LM 21.105(10), he or she may do so. If any portion of the protest remains, the Board shall be provided and may consider a complete copy of the written record, and any other evidence provided at a public meeting and shall issue its decision by Board Order. The Board may affirm, reverse, send back to the Department or revise the award.

(c) For County Administrator awarded contracts, the County Administrator has authority to reject bids pursuant to LM 21.105(10), and authority to affirm, reverse, send back to the Department or 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. The County Administrator shall deliver this

decision 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. If the Board elects review, a complete copy of the written record shall be delivered to the Board within a reasonable time period. 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, send back to department, or revise the decision of the County Administrator, or his or her designee. Upon adoption of the order, the decision will be final.

14. For public improvement contracts, the County shall submit a completed responsibility determination form covering the selected contractor, along with any attachments, to the Construction Contractors Board within 30 days after the contract award. *(Revised by Order No. 05-2-16-8, Effective 2.28.05; 05-12-14-9, 1.1.06)*

### **21.106 Bid, Payment 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 goods or services contract, any construction contract as defined in ORS 279C.320(1), and any public improvement contract not exceeding \$100,000 except a contract for highway, bridge, or other transportation projects which cannot exceed \$50,000. The public officer must reasonably believe:

(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) Payment and Performance Security.**

(a) All bid solicitation documents for public improvement and other construction contracts shall require a payment and performance bond be filed with the County in accordance with ORS 279C.380, unless exempt under LM 20.275. All bids for goods or services contracts may require a payment and performance bond, if the public officer determines it is in the County's best interest to do so.

(b) Payment and performance bonds are not required for public improvement and other construction contracts if the amount of the contract does not exceed \$100,000, except contracts for highway, bridge, or other transportation projects which do not exceed \$50,000 pursuant to LM 20.275.

(c) In cases of emergency or as described in ORS 279C.380(4), the requirement for a performance and payment bond may be excused if the declaration of such emergency is made in accordance with LM 21.128.

#### **(3) Public Works Bond.**

(a) The County's solicitation document shall require that each contractor and subcontractor have a public works bond on file with the Construction Contractors Board before starting work on the project unless exempt under ORS 279C.836(4) (not required to pay prevailing rates of wage), or ORS 279C.836(7) (disadvantaged minority, women, or emerging small business), or ORS 279C.836(8) (project price does not exceed \$100,000), or ORS 279C.836(9) (County excuses due to emergency). Except as

to emergencies, the Contractor shall notify the County before starting work if it is relying on an exemption to the public works bond requirement. The Contractor shall require each subcontractor to provide a similar notification to the Contractor and County. If requested by County, the contractor shall submit written documentation from the Construction Contractors Board or its website, evidencing the receipt of this bond and receipt of such bonds for any subcontractors. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.0; 05-12-14-9, 1.1.065)*

### **21.107 Requests for Proposals.**

(1) Description. Requests for proposals (hereinafter RFP) are a means of soliciting competitive proposals or offers for entering into a contract for personal services, goods, goods and services, equipment, non-public improvement construction related services (ORS 279C.320), or public improvement contracts for which an RFP process is appropriately authorized (ORS 279C.335(2)). Generally, an RFP is appropriate 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 services contracts.

(2) When Required and Requirements. Proposals submitted in response to an RFP are offers as are bids. See OAR 137-047-0310, 137-049-0280. Unless otherwise specified in ORS 279A, B, or C or these rules, references to "bids" and "bidder" and "invitation to bid" shall, to the extent practicable within the proposal process be deemed equally applicable to "proposals," "proposers," and "requests for proposals." The RFP process must generally comply with the requirements stated in LM 21.105 above, unless otherwise stated, and shall comply with any requirements in ORS 279B.060 and ORS 279C.400. In addition, all RFP documents shall state:

- (a) The composition and role of the evaluation committee;
- (b) The evaluation criteria to be used in awarding the contract and the weight assigned to each criterion;
- (c) Provide for an opportunity to protest the solicitation in accordance with LM 21.107 (6);
- (d) The contract terms;
- (e) Describe the right to protest as stated in LM 21.107(14);
- (f) Invite the submission of sealed, written offers to be publicly opened at a designated time and place;
- (g) Describe the method of contract selection, including award without negotiation, negotiation with highest ranked proposer, competitive negotiations, multiple-tiered competition or any combination of these methods or any other method authorized by these rules.
- (h) An RFP process, if appropriately authorized for a public improvement contract, is not required to include first-tier subcontractor disclosure and reciprocal preference for non-resident bidders.
- (i) Departments are encouraged to include diversity in the evaluation criteria in RFPs for contracts in which direct services are to be provided to the public. See Lane County Diversity Action Plan.

(3) The County may issue a request for information, a request for interest, a request for qualifications or other preliminary documents, or consult as set forth in ORS 279B.210 (for non-public improvement contracts) and ORS 279C.405(1) (for public works contracts), in order to obtain information in preparation of a request for proposals.

(4) Advertisements and Proposals. LM 21.105(3) and (5). References to "bid" or "bidder" there include "proposal" or "proposer."

(5) 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.

(6) Protest of Process and Solicitation Document. LM 21.105(6). References to "bid" or "bidder" there include "proposal" or "proposer."

(7) Opening. LM 21.105(7) above. References to "bid" or "bidder" there include "proposal" or "proposer." However, proposals need not be read aloud, and the County is only required to list and record the names of the proposers at the opening. It may record any additional information deemed necessary in its discretion.

(8) Evaluation of Proposals. The evaluation committee shall evaluate the proposals according to the criteria stated in the RFP, compliance with public contracting procedures, proposer responsibility, ethical practice, product acceptability, and ORS Chapter 279A, B, and C. The award shall be to the responsible proposer whose proposal is determined in writing to be the most advantageous to the County, not restricted to price, based on evaluation factors set forth in the RFP and any authorized negotiations. . 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 137-047-0262, OAR 137-049-0650.

(9) Methods of Selection. For non-public improvement contracts, the County may use any one or combination of methods of contractor selection set forth in ORS 279B.060. See OAR 137-047-0262 and 137-047-0261, except (2) and (6) are adopted. Prior to initial closing, the County shall provide an opportunity to protest as in LM 21.105(6); and after the notice of intent to award, an opportunity to protest the award as in LM 21.105(13) with the ability to protest exclusion from any phase of a multi-step or multi-tiered process based on criteria in OAR 137-047-0720(2) which is adopted, if such opportunity was not previously provided. In addition, the County may use portions of these methods of contractor selection to develop a multi-tiered competitive process designed to identify, at one or more stages, a class of proposers that fall within a competitive range based on criteria established for that stage, or to otherwise eliminate from consideration a class of lower ranked proposers. In doing so, the County shall provide notice of the method of selection in the RFP, evaluate all responsive proposals, and provide at least an opportunity to protest the solicitation process or document, and the award as set forth in this subsection.

(10) Bid, Payment and Performance Security. Unless otherwise provided in the RFP bid, payment and performance security requirements may be waived if the contract will not be a public improvement or other construction contract or if it will be for a public improvement contract not exceeding \$100,000 except for a highway, bridge or other transportation project which does not exceed \$50,000. Bid, payment and performance securities shall be provided if the contract will be for a public improvement exceeding these dollar amounts.

(11) Mistakes in Bids. See LM 21.105(9). References to "bid" includes "proposal."

(12) Rejection. See LM 21.105(10). 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."

(13) Notice of Intent to Award. LM 21.105(12). References to "bid" and "bidder" shall include "proposal" and "proposer." A notice of the recommendation of the evaluation committee is considered a notice of intent to award the contract, unless stated otherwise.

(14) Protest of Intent to Award/Evaluation Committee Recommendation.

Anyone responding to an RFP who is not recommended for award by the evaluation committee may protest the recommendation to the decision maker, either the Board or the County Administrator, depending upon which has authority to execute the contract pursuant to LM 21.105(13). References to "bid documents" include "request for proposal documents" and references to "bid" include "proposal," except for the grounds in LM 21.105(13)(a). The applicable grounds for this protest are set forth below.

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

(b) Unless otherwise stated in the RFP, the protest must be received by the department which issued the RFP not later than seven (7) calendar days after notice of the evaluation committee's decision was mailed. Upon receipt of the protest, the department shall notify the proposer recommended for award of the protest and the evaluation committee's recommendation. The proposer and the committee shall have three calendar days from the date the protest was filed to respond to the protest in writing if they so desire.

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

(d) The grounds for protest include any one or more of the following:

(i) The evaluation committee has failed to conduct the evaluation of proposals in accordance with the criteria or processes described in the solicitation materials.

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

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

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

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

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

(vii) The County abused its discretion in rejecting the protestor's proposal as nonresponsive.

(viii) The evaluation of the proposals is otherwise in violation of any provisions of ORS 279A or ORS 279B.

(ix) All higher ranked proposals are nonresponsive.

(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 protest 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 a protest is timely filed, the Board or County Administrator, as appropriate, shall consider the evaluation committee's recommendation and the allegations of the protest before rendering a final decision. The decision maker may grant or deny the protest, reject proposals, or cancel the solicitation pursuant to LM 21.107(12) or remand to the department or evaluation committee for further information or consideration. In the event of remand, the department will report back to the decision maker as soon as reasonably possible if the protest remains pending. The County Administrator's response to the protest will be in writing. If the Board is the decision

maker, it shall evaluate any protest before rendering a decision and shall state reasons and conclusions reached either in writing or on the record in a public meeting, with a Board Order referencing reasons for its decision on the protest. Any decision to overturn the recommendation shall be based on a finding that one of the criteria of LM 21.107(14)(d) above occurred to the substantial prejudice of the protestor. The protestor must be eligible and next in line to be awarded the contract if the protest was successful.

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

(15) 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. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05)*

### **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 20.096 and LM 21.111. 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 and/or electronically as authorized by LM 21.105(3) 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 Request for Personal Services (RFPS) pursuant to LM 21.118(6). 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; 05-2-16-8, 2.28.05)*

### **21.109 Small Procurements.**

The County may award a non-public improvement contract for goods or services, when the amount does not exceed \$5,000 or 3 years in length. See ORS 279B.065, ORS 279C.335. The County may award a public improvement contract when the amount is less than \$5,000 and does not exceed 3 years in length.

(1) The contract award may be direct without competitive selection subject to (2) below. Use of competitive quotes are encouraged, particularly for new purchases or projects.

(2) A small procurement contract should not be considered separately when it is a component of a larger purchase or project in one year, and when considered as a whole would require a competitive selection. Any contract terms should be consistent with the County's legal requirements and limitations, or as may be further described in procedures adopted by the County Administrator.

(3) The Department Directors and County Administrator are delegated the authority to award small procurement contracts, and such authority may be further delegated. *(Revised by Order No. 05-2-16-8, Effective 2.28.05; 05-12-14-9, 1.1.06)*

### **21.110 Intermediate Procurements.**

The County may award an intermediate procurement contract for goods or services, either related to a public improvement or non-public improvement, when the amount does not exceed \$100,000. The County may use any LM Chapter 21 procedures for obtaining information in preparation for soliciting quotes or prequalifying a product. The three quotes as required by LM 20.105(1)(c) may be either oral or written for non-public improvement contracts exceeding \$5,000 but not \$50,000, and for public improvement contracts equal to or greater than \$5,000 but not exceeding \$50,000. The County shall keep a written record of the source and amount of quotes received. For intermediate contracts exceeding \$50,000 but not \$100,000, the County department shall prepare a written solicitation, the quotes must be written, and unsuccessful quoters shall have the right to protest the award decision in accordance with LM 21.105(13)(a) and (b). The written solicitation shall provide notice of the right to protest the award. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. An intermediate procurement acquisition should not be made when it is a component of a larger purchase or project in any single year, and when considered as a whole would require a different competitive selection than as provided by this or another rule.

The award of any contract as an intermediate procurement under this rule shall be to the offeror whose quote or proposal will best serve the interests of the County, taking into account price as well as considerations including, but not limited to experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility. *(Revised by Order No. 05-2-16-8, Effective 2.28.05; 05-12-14-9, 1.1.06)*

### **21.111 Sole Source.**

For non-public improvement contracts, if there is only one source for goods or services, or a class of goods or services of the quality required by the County, a contract may be awarded to that source without competition.

(1) The County must make written findings which may include at least one of the following:

- (a) That the efficient utilization of existing goods requires acquisition of compatible goods or services;
- (b) That the goods or services are required for the exchange of software or data with other public or private agencies and are available from only one source;
- (c) That the goods or services are for use in a pilot or an experimental project; or
- (d) Other findings that support that the goods or services are available from only one source.

(2) Prior to awarding a contract under (1) above, the County shall make a reasonable effort to notify all known potential contractors of the intended purchase or project. The County may solicit information about the existence of any competition through informal telephone, written contacts or formal request for information. Where one or more known potential contractors are located within Lane County, the County should use a Letter of Interest (LOI) selection process as set forth in LM 21.108.

(3) If the County intends to make several purchases of the product or service from a particular seller or provider for a period not to exceed 3 years, it may so state in the documentation required in (1) above and such documentation shall be sufficient notice as to subsequent purchases.

(4) Department directors, or their designee, are delegated authority to make the written findings in (1) and (3) above for contracts equal to or less than \$50,000.

(5) For sole source contracts exceeding \$50,000, Departments shall provide the County Administrator with proposed written findings in (1) and (3) above. The proposed findings, and County Administrator determination shall be documented and maintained by the respective department.

(6) For contracts exceeding \$100,000, the County shall provide public notice within 7 days and in accordance with LM 21.105(3) of the County Administrator's determination that goods or services are available from only one source. Unless otherwise specified in the public notice of the sole source procurement, a person or entity whose interests are adversely affected must deliver a written protest within 7 days to the County Administrator and to be decided by the Board. The written protest shall include a detailed statement of the legal and factual grounds for the protest based on (1) above, a description of the resulting harm and the relief requested. The protest shall be set on the Board's agenda. It may consider the written record, and any other testimony provided at the public meeting and shall issue its decision by Board Order.

(7) To the extent practicable, the County shall negotiate with the sole source to obtain contract terms advantageous to the County. *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

### **21.112 Brand Name.**

This rule applies to non-public improvement contracts, and LM 20.210 and LM 20.215 applies to public improvement contracts. Specifications shall not expressly or implicitly require any product of a particular manufacturer or seller except pursuant to this rule or the class-specific authorizations in LM Chapter 20. The County may identify products by brand names so long as it includes language similar to "or equal," "or equivalent," or "equal or superior to." The County shall determine, in its sole discretion, whether an offeror's alternative product is "equal" or "equivalent," or "superior." The Department directors shall be delegated authority to determine that only an identified brand name will meet the County's need and shall document such decision in writing, subject to any review and reversal by the County Administrator, in his or her discretion. Any written decision must be based on one or more of the criteria in ORS 279B.215(2).

**21.112A Cooperative Procurements.**

The County may participate in, sponsor, conduct, or administer cooperative procurements as set forth in ORS 279A.200 through ORS 279A.225. *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

**TYPES OF CONTRACTS****21.113 Goods, Materials and/or Services Contracts.**

(1) A goods or materials contract (excluding personal services) 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 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 of goods, materials and services.

(2) Goods 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.

(5) Departments are encouraged to include a provision concerning equal access and treatment for diverse cultures for contracts in which direct services are to be provided to the public. See Lane County Diversity Action Plan. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 05-2-16-8, 2.28.05; 05-12-14-9, 1.1.06)*

**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 and Construction 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 279C.305 and LM 21.105(3) 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 279C.305.

(2) Public improvement and construction contracts must comply with a number of requirements. Care should be taken to see that any applicable requirements including, but not limited to, from those among the following list are met:

(a) Advertisement (including Asbestos Abatement) - ORS 279C.360 and LM 21.105(3) above. See, OAR 137-049-0210.

(b) Bid security - ORS 279C.365(4), LM 20.275, LM 21.106 above.

(c) Performance security - ORS 279C.380, LM 20.275, LM 21.106 above.

(d) Public Works Bond - LM 21.106.

(e) Responsibility Determination Form - ORS 279C.375, LM 21.105(14).

(f) Prevailing rates of wage - ORS 279C.800 to 279C.855.

(g) Retainage - For project completion, ORS 279C.555 to ORS 279C.565, LM 21.116 below. For untimely filed certified statements of payment of prevailing wages, ORS 279C.845.

(h) Prompt payment policies - ORS 279C.505, ORS 279C.515.

(i) Subcontractor clauses - see ORS 279C.515, ORS 279C.830, ORS 279C.580.

(j) Insurance - see LM 21.305 below.

(k) Exempt contracts over \$100,000 evaluation report required - see ORS 279C.355.

(l) 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 279C.505(2).

(m) First-tier subcontractor disclosure for contracts greater than \$100,000. ORS 279C.370.

(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; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05)*

### **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 279C.570(7).

#### **(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 137-049-0820(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

the County is a party. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05)*

### **21.118 Selection of Personal Service Contractor.**

Personal service contracts are excluded from competitive bidding; however, the following selection procedures should be utilized unless an exemption, special procurement, or other LM Chapter 20 or 21 rule would allow a different competitive selection under the circumstances:

(1) Direct Contracting.

(a) Dollar Amount \$10,000 or less. The County may contract directly with any qualified contractor without competitive selection, except as provided in (b) and (c) for architects, engineers, land surveyors, other related service providers, as applicable.

(b) Dollar Amount \$25,000 or less. The County may contract directly, and without competitive selection, with any qualified architect, engineer, land surveyor or provider of related services (as defined by ORS 279C.100(6)), for public improvement projects involving a highway, bridge or other transportation, except as in (c) .

(c) Qualification Based Selection Required Under ORS 279C.110(2). The County may not solicit or use pricing information to determine the architect's, engineer's, or land surveyor's compensation until after initially selecting a qualified consultant. For public improvement projects not meeting ORS 279C.110(2), the County may consider pricing information and qualifications in selecting this type of contractor.

(2) Dollar Amounts Greater Than (1) (a) or (b) But Equal to or Less Than \$50,000. For contracts greater than the amounts in (1)(a) or (b) above and up to \$50,000, 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. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. The contract should be awarded to the offeror whose quote or proposal will best serve the interests of the County, in the discretion of the County after considering any applicable criteria such as in (5) below. Pricing information may also be solicited and considered, except as provided below in this rule for architects, engineers, and land surveyors. For all such 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. The Department shall keep a written record of the prospective contractors contacted, their responses, and basis for recommending the award.

The same condition in (1)(c) applies to qualification based selection required under ORS 279C.110(2). For such contracts, the County will begin negotiating with the highest ranked proposer on a fair and reasonable price in addition to any other contract provisions the County believes is in its best interest to negotiate. If agreement is not reached within a reasonable time, the County may move to the second highest ranked proposer for similar negotiation, and continue the process with the next in line until agreement is reached. See OAR 137-048-0210(4).

(3) Dollar Amounts Greater than \$50,000 But Equal to or Less Than \$100,000. Where the contract is greater than \$50,000 and equal to or less than \$100,000, the Department Director or designated officer shall comply with (2) above, except that they will prepare a written solicitation, including but not limited to specification/scope of work and receive written offers. The contract should be awarded to the offeror whose quote or proposal will best serve the interests of the County, in the discretion of the County after considering any applicable criteria such as in (5) below. Pricing information may also be solicited and considered, except as provided below in this rule for architects, engineers, and land surveyors. The County shall keep the written solicitation and

response documents and written basis for recommending the award. Unsuccessful offerors shall have the right to protest the award decision to the Board of County Commissioners in accordance with procedures set forth in LM 21.105(13).

The same condition in (1)(c) applies to qualification based selection required under ORS 279C.110(2). For such contracts, the County will begin negotiating with the highest ranked proposer on a fair and reasonable price in addition to any other contract provisions the County believes is in its best interest to negotiate. If agreement is not reached within a reasonable time, the County may move to the second highest ranked proposer for similar negotiation, and continue the process with the next in line until agreement is reached. See OAR 137-048-0210(4).

(4) Greater Than \$100,000. Where the contract is greater than \$100,000, the Department Director or designated officer shall comply with (3) above, and 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. Unsuccessful quoters shall have the right to protest the award decision to the Board of County Commissioners in accordance with procedures set forth in LM 21.105(13).

(5) 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.

(6) Requests for Professional Services (RFPS).

(a) 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, registered professional land surveyors for public improvement projects where:

(i) The County receives grants, loans or moneys from the Oregon State Highway Fund or from the State that exceeds 10% of the value of the project, and

(ii) The value of the project exceeds \$900,000. ORS 279C.110(2).

(b) Requirements.

(i) 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/or published electronically in compliance with LM 21.105(2), and shall briefly describe the project, the services sought, where copies of the solicitation may be obtained and the deadline for submitting a response.

(ii) The solicitation document shall contain, at a minimum, the information in LM 21.118(6)(b)(i) 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. The contract terms should also be included. For a contract for architectural, engineering, or land surveying services or related services:

(A) Proposals may be opened so as to avoid disclosure of contents during, when applicable, the process of negotiation;

(B) Proposals are not required to be open for public inspection until after the notice of intent to award; however, the County may continue to withhold trade secrets as defined in ORS 192.501 and information submitted to a public body in confidence as described in ORS 192.502.

(iii) An 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, methodology to meet project requirements, availability and resources to perform the work, proportion of candidate staff's time spent on project, 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, ownership status and employment practices regarding minority, women and emerging small businesses or historically underutilized businesses; availability and familiarity with project locale, and project management approach. Proposed compensation may be included as evaluation criteria except for solicitations for professional \ engineers, architects, land surveyors services covered by ORS 279C.110.

(iv) 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 personal services. A department may solicit or use a compensation proposal for projects and services covered by ORS 279C.110 only after evaluating and ranking candidates.

(v) 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.

(vi) A prospective contractor may protest the solicitation process or document in accordance with LM 21.105(6). Contractor may protest the contract award in accordance with process in LM 21.105(13). A proposer submitting a protest of the award must demonstrate that the protesting proposer is the highest ranked proposer because the proposals of all higher ranked proposers failed to meet the requirements of the RFPs or because the higher ranked proposers otherwise are not qualified to perform the services. Untimely protests will not be considered.

(7) Other Competitive Processes. Except when qualification based selection is required, a Department may use other methods of selection for personal service contractors including, but not limited to, formal bid, RFP, sole source, emergency, special procurement, or any other exemption in LM Chapter 20.

(8) Amendments. The selection procedures stated in LM 21.118(1) - (7) above shall be utilized for any amendment of a personal 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 may occur. In addition, they need not be used if the project described in the personal service contract consists of work that has been substantially described, planned or otherwise previously studied or rendered in an earlier contract with the consultant that was awarded pursuant to LM Chapter 20 and 21 rules and the amendment (or new contract) is a continuation of that project. A contract may be awarded directly under this circumstance pursuant to the waiver criteria in (9) below.

(9) Waiver. The selection procedures described above may be waived by the County Administrator prior to selection of the personal services contractor or to permit an amendment in excess of the 50 percent limit of LM 21.118(8) 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; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05; 05-12-14-9, 1.1.06)*

### **21.120 Requirements and Pricing Contracts.**

Requirements contracts, or pricing agreements, provide for the establishing of unit prices for goods or services (including personal 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) The County departments shall determine a reasonable estimate of the total dollar amount of a requirements contract, including from all amendments, throughout the term of the contract. That dollar figure shall be the basis for determining contract/amendment execution authority under LM 21.145 and 21.147.

(4) When the price of goods and services has been established by a requirements contract including standard contract provisions such as County protection from risk and liability as appropriate, and has been processed and approved by the Board or County Administrator, 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., personal services on a project by project basis, the additional defining of the scope of work shall be in writing and executed as an amendment. For contracts approved by the Board, the County Administrator shall have authority to execute any amendment which does not exceed \$100,000. Subject to (b) below, for contracts with a total estimated cost of less than \$300,000, the County Administrator may delegate



authority to execute an amendment for a project not exceeding \$50,000 to a Director of the department originating the contract, or to an Assistant Director or Manager responsible for decisions on the work and the costs. Subject to (b) below, for contracts with a total estimated cost of \$300,000 or greater, the County Administrator may delegate authority to execute an amendment for a project not exceeding \$100,000 to a Director of a department originating the contract, or to an Assistant Director or Manager responsible for decisions on the work and the costs. For contracts approved by the County Administrator, the County Administrator may delegate authority to execute an amendment to the County employees designated above, subject to (b) below.

(b) The County Administrator may delegate authority in writing as set forth in (a) if the amendment:

(i) indicates that the provisions of the main requirements contract continue to apply except as supplemented by the amendment; and

(ii) the amendment covers only such topics as scope of work, roles and responsibilities, tasks, costs, names of persons assigned to each task, criteria for work acceptance, deliverables, and due dates that are within the time period of the main contract; and

(iii) there are no other added provisions which affect risk to the County or public. The County Administrator's written delegation shall include the limitations in this provision and any others deemed necessary, in his or her discretion.

(c) The delegation of authority in (a) and (b) applies only to amendments that are within the approved total contract amount. Authority to execute amendments that increase the total contract amount is governed by LM 21.147.

(d) For all other requirements contracts where the services and/or goods and costs are specifically defined in the original contract, i.e., delivery of rock, specific purchases may be made pursuant to the parties' agreement.

*(Revised by Order No. 98-12-2-4, Effective 12.2.98; 05-2-16-8, 2.28.05)*

### **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 LM 60.405. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04)*

### **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 ORS 279A.010(1)(i) and to the conditions set forth in the grant. A "Grant" includes a County sub-grant when the subcontractor was identified and approved by the grantor (including after any appropriate County competitive selection) and 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. A subcontract 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; 05-2-16-8, 2.28.05)*

**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) - (7) 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(9) above may nonetheless be sought in those cases.

(2) 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; 05-2-16-8, 2.28.05)*

**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 or is beyond the control of the County or its employees. If such an emergency exists which requires the prompt execution of a contract to remedy the situation, the provisions of LM 20.255 shall be appropriately followed.

(2) In exercising authority under LM 20.255, and in order to declare an emergency the County shall:

(a) Make written findings describing the circumstances which support a substantial risk of loss, damage, interruption of services or threat to public health or safety that could not have been reasonably foreseen or is beyond the control of the County or its employees; and describing the harm anticipated to result from failing to establish the contract on an expedited basis.

(b) For all construction services, the County shall use a competition that is reasonable and appropriate under the emergency circumstances. For other goods or services, the County shall to the extent reasonable under the circumstances, encourage competition by attempting to make informal quote solicitations from potential suppliers of goods or services. The County may make direct appointments without competition in cases of extreme necessity, as determined by the County in its discretion.

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

(d) Limit the work or subject of purchase under the resulting contract to what is necessary and appropriate, including a time period, to address the conditions creating the emergency. No dollar limit applies to emergency contracts.

(e) Execute the contract within 60 days following the declaration that an emergency exists, unless the LCRB grants an extension.

(f) Emergency contracts may be modified or amended to address the conditions described in the original declaration or the declaration may be amended to describe additional work or purchases which are necessary.

(g) For public improvement contracts, the emergency declaration may also state that the County waives the requirement of furnishing a performance or payment bond under ORS 279C.380(4) or public works bond under ORS 279C.836(9). Such bonding requirements are excused once the emergency is declared. *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

### **21.129 Purchase Orders.**

Purchase orders may be used to obtain goods, 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) 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 \$100,000 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. Appropriate selection procedures in LM Chapters 20 and 21 should be followed. Purchase orders shall not be utilized to circumvent the public contract law or regulations.

(3) A purchase order for goods, materials or services relating to public improvement and construction projects shall comply with and include all applicable contract provisions.

(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; 05-2-16-8, 2.28.05)*

## **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) For public improvement and construction contracts only, 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, co-partnership, 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) 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 279B.020(1) for non-public improvement contracts or ORS 279C.540(1) for public improvement contracts.

For personal/professional service contracts as designated under ORS 279A.055, 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 279B.235 (for non-public improvement contracts) and ORS 279C.540 (for public improvement contracts), including contracts involving a collective bargaining agreement, contracts for services, and contracts for fire prevention or suppression. For contracts other than construction or public improvements, this subsection (7) does not apply to contracts for purchase of goods or personal property.

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 employed workers or other persons doing or contracting to do all or part of the work contemplated by the public works contract shall be not less than the applicable 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 279C.838 and ORS 279C.840. For projects also covered by the federal Davis-Bacon Act (40 USC §3141 et seq.), contractors and subcontractors shall pay workers or others performing work contemplated by the contract

the higher of the state or federal prevailing rate of wage, as determined by the Commissioner of the Bureau of Labor and Industries in accordance with ORS 279C.830.

(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) As to public improvement and construction contracts, 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 279C.525 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, for public improvement contracts, if the work is suspended but the contract not terminated, the contractor is entitled to a reasonable time extension, costs and overhead per ORS 279C.655. Unless otherwise stated in the contract, if the contract is terminated, the contractor shall be paid per ORS 279C.660 for a public improvement contract.

(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.