

W.S.D.1.

AGENDA COVER MEMO

AGENDA DATE: June 9, 2010

TO: Board of County Commissioners, sitting 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 Chapter 21 Public Contracting Rules Relating to Contract Process and Provisions

I. MOTION

Move to amend Lane Manual Chapter 21 rules relating to standard public contract provisions and the process for including these standard provisions in contracts and other minor procedure changes.

II. ISSUE OR PROBLEM

Current LM 21.130 contains certain standard contract provisions approved by the BCC to be included in county contracts "as appropriate." It would be helpful to clarify the parameters for determining the appropriateness of specific contract provisions. In addition, there are some additional standard contract provisions which should be incorporated into Lane Manual 21.130 to standardize practice.

III. DISCUSSION/ANALYSIS

The following is an analysis and summary of the contract rule changes proposed to LM Chapter 21.

1. LM 21.104. There is a minor wording change to add "related services" to the exclusion from the cost and feasibility analysis. "Related services" would be inserted after "architects and engineers", and would be consistent with the statute which applies to "architectural, engineering,...and related services."

2. LM 21.130 and new LM 21.131. LM 21.130 is the current rule setting forth standard contract provisions for county contracts, where “appropriate.” The introductory paragraph would be amended to clarify that the standard contract provisions are to be included as appropriate “and as reflected in the main contract.” LM 21.131 would be added to clarify that there needs to be good reason and approval of Legal Counsel to find that a specific contract provision is not appropriate for a specific contract. One example of when this occurs is with computer software purchase contracts. There is a general provision in LM 21.130 covering the County’s ownership to intellectual property including computer programs obtained from the contract. Computer companies routinely want and receive a modified version of this provision to protect the intellectual rights to the access to the software they own. While the general provision may apply in some cases, this rule change would clarify the process for not including Lane County’s standard provision and instead agreeing to a modified version.

In the hopes of streamlining, the new LM 21.131 would also allow Legal Counsel to create templates for these standard contract provisions, in addition to others, based on type of contract. For example, a public improvement template for standard contract provisions would need some additional/different standard contract provisions than other “goods and services” contracts may need.

3. LM 21.130. There are some additional substantive provisions proposed to be added to LM 21.130. One provision would allow the County to exercise contractual remedies for a contractor’s failure to perform the scope of work or failure to meet performance standards. This would provide additional tools for the departments to enforce contracts. One provision would require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing “goods or services” or “personal services,” except where there is good cause not to apply this standard. This is consistent with the statute. A provision related to access to Contractor’s records for the purpose of audits, examinations and copies would be added pursuant to the suggestion of the Performance Auditor. A change requiring a certification from Contractor that they have not discriminated against veterans in awarding subcontracts would further support the legal requirement that such discrimination is prohibited.

IV. ALTERNATIVES/OPTIONS

1. Approve the motion to amend Lane Manual Chapter 21 rules relating to standard public contract provisions and the process for including these standard provisions in contracts, and other minor procedure changes.

2. Not approve the motion to amend Lane Manual Chapter 21 rules. This would mean that key contract provisions would not be standardized, rather would be dealt with on a department-by-department and contract-by-contract basis creating less efficiency.

V. **RECOMMENDATION**

Option 1, approve the motion

VI. **ATTACHMENTS**

Order

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.

IN THE MATTER OF AMENDING LANE MANUAL
CHAPTER 21 PUBLIC CONTRACTING RULES
RELATING TO CONTRACT PROCESS AND
PROVISIONS (LM 21.130, 21.131, 21.104)

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

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

DELETE THIS SECTION

21.104
as located on pages 21-2 through 21-3
(a total of 2 pages)

21.130
as located on pages 21-27 through 21-30
(a total of 4 pages)

NONE

INSERT THIS SECTION

21.104
as located on pages 21-2 through 21-3
(a total of 2 pages)

21.130
as located on pages 21-27 through 21-31
(a total of 5 pages)

21.131
as located on page 21.31
(a total of 1 page)

Said section is attached hereto and incorporated herein by reference. The purpose of this substitution and addition is to amending Lane Manual Chapter 21 Public Contracting Rules Relating to Contract Process and Provisions (LM 21.104, LM 21.130 and 21.131).

Effective this _____ day of _____ 2010.

William A. Fleenor, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM
Date 6/2/10 Lane County

J. Aidlaw
OFFICE OF LEGAL COUNSEL

21.104 Cost and Feasibility Analysis

(1) Before conducting a procurement for certain services covered by ORS 279B and estimated to exceed a \$250,000 contract amount, except as provided in (3) below of this rule, the County department will: prepare proposed written findings that performing the services with the County's own personnel and resources is not feasible or demonstrate by means of a proposed written cost analysis that performing the services by contract would cost less than performing the services with the County's own personnel and resources.

(2) The services subject to this rule are those covered by a contract where service supplier agrees to supply the County's service requirements that arise for a specified time period or an individual project, usually paid based on time and materials. The services are covered by a contract that calls primarily for the contractor's time and effort.

(3) Procurement of the following services are not covered by (1) of this rule:

- (a) Client services as described in OAR 125-246-0110,
- (b) Personal services purchased under County rules,
- (c) Services described in ORS 279C, including but not limited to contracts for architects, engineers, related services and public improvements.

(4) When determining whether or not using the County's personnel or resources is feasible, factors include but are not limited to the factors found in ORS 279B.036 including:

(a) The County lacks the specialized capabilities, experience or technical or other expertise necessary to perform the services, comparing the field most closely involved with a potential contractor's capability, experience or expertise in the same or similar field; or,

(b) A special circumstance requires the contracting agency to procure the services by contract as set forth in ORS 279B.036(1)(b). Special circumstances include, but are not limited to, services incidental to primary purchase or lease of real or personal property; services needed in an emergency or for urgent, temporary or occasional use such that use of County resources would delay and frustrate the purpose of the services or they will be completed in six months; where a grant funding source or state or federal law requires an independent contractor.

(5) Any cost analysis shall be conducted in accordance with ORS 279B.033.

(6) Prior to conducting the procurement, the County department will submit their proposed written findings or cost analysis, including the proposed basis for a decision to proceed, to the County Administrator. The County Administrator is delegated the authority to make the determination of how to proceed based on findings or cost analysis covered by this rule.

(7) The County Administrator shall collect and provide to the Board each quarter, copies of the record of the written findings or cost analyses, and the basis for the decision to proceed, for each procurement covered by this rule. Upon request, the County Administrator or a designee will consult with Oregon Department of Administrative Services in evaluating the process covered by this rule. *(Revised by Order No. 09-12-15-2, Effective 12.15.09)*

(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, and as reflected in the main contract.

(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) Unless otherwise provided by the contract or law, the County has a right to exercise the following remedies for a contractor's failure to perform the scope of work or failure to meet established performance standards:

(a) Reduce or withhold payment;

(b) Require Contractor to perform, at the Contractor's expense, additional work necessary to perform the identified scope of work or meet the established performance standards; or

(c) Declare a default, terminating the public contract and seeking damages and other relief available under the terms of the public contract or other applicable law.

(11) 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 Standard Specifications for Construction, Section 00170.01 currently in effect and published through Oregon Department of Transportation. 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, the contractor shall immediately give notice to the County. The County and the contractor shall have all the rights and obligations specified in ORS 279C.525 to handle the situation.

(12) 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.

(13) 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.

(14) Unless otherwise provided by the contract or law, Contractor agrees that County, and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts, copies and transcripts. Contractor shall retain and keep accessible such books, documents, papers, and records for a minimum period of (6) six years after County makes final payment on this Agreement. Copies of applicable records shall be made available upon request, and payment of copy costs is reimbursable by the County.

(15) 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 or one that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225.

(16) The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the goods or services or personal services

covered by this Agreement, except if the County has good cause and the contract provides otherwise.

(17) 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.

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

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

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

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

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

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

(24) The Oregon Standard Specifications for Construction adopted by the State of Oregon, and the Manual on Uniform Traffic Control Devices, each as is currently in effect, shall be applicable to all road construction projects except as modified by the bid documents.

(25) As to contracts for lawn and landscape maintenance, the contractor shall salvage, recycle, compost or mulch yard waste material in an approved site, if feasible and cost-effective.

(26) As to public improvement contracts for demolition, the contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

(27) When a public contract is awarded to a nonresident bidder and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment,

length of contract and such other information as the department may require before the County will make final payment on the contract. *(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; 08-2-13-1; 2.13.08; 09-12-15-2, 12.15.09)*

21.131 Approving Appropriateness and Format of Standard Contract Provisions

Based on good reason and advice from the Office of Legal Counsel, specific standard contract provisions in LM 21.130 may be determined not appropriate to a specific contract. In addition, a different format incorporating standard contract provisions in LM 21.130 based on contract type may be approved by the Office of Legal Counsel. Departments who wish to use the provisions in this alternate format may do so.

21.104 Cost and Feasibility Analysis

(1) Before conducting a procurement for certain services covered by ORS 279B and estimated to exceed a \$250,000 contract amount, except as provided in (3) below of this rule, the County department will: prepare proposed written findings that performing the services with the County's own personnel and resources is not feasible or demonstrate by means of a proposed written cost analysis that performing the services by contract would cost less than performing the services with the County's own personnel and resources.

(2) The services subject to this rule are those covered by a contract where service supplier agrees to supply the County's service requirements that arise for a specified time period or an individual project, usually paid based on time and materials. The services are covered by a contract that calls primarily for the contractor's time and effort.

(3) Procurement of the following services are not covered by (1) of this rule:

- (a) Client services as described in OAR 125-246-0110,
- (b) Personal services purchased under County rules,
- (c) Services described in ORS 279C, including but not limited to contracts for architects, engineers, **related services** and public improvements.

(4) When determining whether or not using the County's personnel or resources is feasible, factors include but are not limited to the factors found in ~~Section 4, Oregon Laws 2009, Chapter 880,~~
~~<http://www.lanecounty.org/Departments/CC/LaneManual/Documents/OregonLaws2009Chapter880.pdf>~~ **ORS 279B.036**, including:

(a) The County lacks the specialized capabilities, experience or technical or other expertise necessary to perform the services, comparing the field most closely involved with a potential contractor's capability, experience or expertise in the same or similar field; or,

(b) A special circumstance requires the contracting agency to procure the services by contract as set forth in ~~Section 4, Oregon Laws 2009, Chapter 880,~~
~~<http://www.lanecounty.org/Departments/CC/LaneManual/Documents/OregonLaws2009Chapter880.pdf>~~ **ORS 279B.036(1)(b)**. Special circumstances include, but are not limited to, services incidental to primary purchase or lease of real or personal property; services needed in an emergency or for urgent, temporary or occasional use such that use of County resources would delay and frustrate the purpose of the services or they will be completed in six months; where a grant funding source or state or federal law requires an independent contractor.

(5) Any cost analysis shall be conducted in accordance with ~~Section 2 and 3 of Oregon Laws 2009, Chapter 880,~~
~~<http://www.lanecounty.org/Departments/CC/LaneManual/Documents/OregonLaws2009Chapter880.pdf>~~ **ORS 279B.033**.

(6) Prior to conducting the procurement, the County department will submit their proposed written findings or cost analysis, including the proposed basis for a decision to proceed, to the County Administrator. The County Administrator is delegated the authority to make the determination of how to proceed based on findings or cost analysis covered by this rule.

(7) The County Administrator shall collect and provide to the Board each quarter, copies of the record of the written findings or cost analyses, and the basis for the decision to proceed, for each procurement covered by this rule. Upon request, the County Administrator or a designee will consult with Oregon Department of

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Bold indicates material being added
Strikethrough indicates material being deleted

LEGISLATIVE
FORMAT

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Lane Manual

~~21.10421-104~~

Administrative Services in evaluating the process covered by this rule. *(Revised by Order No. 09-12-15-2, Effective 12.15.09)*

(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, **and as reflected in the main contract.**

(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) Unless otherwise provided by the contract or law, the County has a right to exercise the following remedies for a contractor's failure to perform the scope of work or failure to meet established performance standards:

(a) Reduce or withhold payment;

(b) Require Contractor to perform, at the Contractor's expense, additional work necessary to perform the identified scope of work or meet the established performance standards; or

(c) Declare a default, terminating the public contract and seeking damages and other relief available under the terms of the public contract or other applicable law.

~~(1011)~~ 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 Standard Specifications for Construction, Section 00170.01 currently in effect and published through Oregon Department of Transportation. 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, the contractor shall immediately give notice to the County. The County and the contractor shall have all the rights and obligations specified in ORS 279C.525 to handle the situation.

~~(1112)~~ 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.

~~(1213)~~— 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.

(14) Unless otherwise provided by the contract or law, Contractor agrees that County, and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts, copies and transcripts. Contractor shall retain and keep accessible such books, documents, papers, and records for a minimum period of (6) six years after County makes final payment on this Agreement. Copies of applicable records shall be made available upon request, and payment of copy costs is reimbursable by the County.

~~(1315)~~ 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~~ **or one that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225.**

~~(1416)~~ **The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the goods or services or personal services covered by this Agreement, except if the County has good cause and the contract provides otherwise.** ~~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.~~

~~(1517)~~ 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.

~~(1618)~~ Contractor agrees to make all provisions of the contract with the County applicable to any subcontractor performing work under the contract.

~~(1719)~~ The County will not be responsible for any losses or unanticipated costs suffered by contractor as a result of the contractor's failure to obtain full information in advance in regard to all conditions pertaining to the work.

~~(1820)~~ All modifications and amendments to the contract shall be effective only if in writing and executed by both parties.

~~(1921)~~ The contractor certifies he or she has all necessary licenses, permits, or certificates of registration (including Construction Contractors Board registration or Landscape Contractors Board license, if applicable), necessary to perform the contract and further certifies that all subcontractors shall likewise have all necessary licenses, permits or certificates before performing any work. The failure of contractor to have or maintain such licenses, permits, or certificates is grounds for rejection of a bid or immediate termination of the contract.

~~(2022)~~ Unless otherwise provided, data which originates from this contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the County. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights. Data which is delivered under the contract, but which does not originate there from shall be transferred to the County with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; provided that such license shall be limited to the extent which the contractor has a right to grant such a license. The contractor shall exert all reasonable effort to advise the County, at the time of delivery of data furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this contract. The County shall receive prompt written notice of each notice or claim of copyright infringement received by the contractor with respect to any data delivered under this contract. The County shall have the right to modify or remove any restrictive markings placed upon the data by the contractor.

~~(2123)~~ If as a result of this contract, the contractor produces a report, paper, publication, brochure, pamphlet or other document on paper which uses more than a total 500 pages of 8 1/2" by 11" paper, the contractor shall conform to the Lane County

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

LEGISLATIVE
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Recycled Paper Procurement and Use policy, LM 2.440 through 2.448, by using recycled paper with at least 25% post-consumer content which meets printing specifications and availability requirements.

(~~2224~~) The Oregon Standard Specifications for Construction adopted by the State of Oregon, and the Manual on Uniform Traffic Control Devices, each as is currently in effect, shall be applicable to all road construction projects except as modified by the bid documents.

(~~2325~~) As to contracts for lawn and landscape maintenance, the contractor shall salvage, recycle, compost or mulch yard waste material in an approved site, if feasible and cost-effective.

(~~2426~~) As to public improvement contracts for demolition, the contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

(~~2527~~) When a public contract is awarded to a nonresident bidder and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the County will make final payment on the contract. *(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; 08-2-13-1; 2.13.08; 09-12-15-2, 12.15.09)*

21.131 Approving Appropriateness and Format of Standard Contract Provisions

Based on good reason and advice from the Office of Legal Counsel, specific standard contract provisions in LM 21.130 may be determined not appropriate to a specific contract. In addition, a different format incorporating standard contract provisions in LM 21.130 based on contract type may be approved by the Office of Legal Counsel. Departments who wish to use the provisions in this alternate format may do so.