

## Chapter 20 – CONTRACT POLICIES AND CONTRACT REVIEW BOARD

Lane Manual is undergoing a modernization process; the renumbering reference and redline versions that follow were prepared at the time of conversion, and have not been updated as the chapter has been revised.

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## Chapter 20– CONTRACT POLICIES AND LOCAL CONTRACT REVIEW BOARD

### **20.100 - PUBLIC CONTRACT AUTHORITY, RULES, AND INTERPRETATION**

#### **20.100.010 Purpose and Authority.**

- ~~(1)~~**A.** The Board of County Commissioners for Lane County is the Local Contract Review Board (LCRB) for Lane County, with the powers and duties of an LCRB set forth in ORS Chapters 279A, 279B, and 279C (the Public Contracting Code). The LCRB may delegate these powers and duties as long as not in conflict with the Public Contracting Code.
- ~~(2)~~**B.** The public contracting rules for Lane County are those rules in Lane Manual Chapter 20 and section ~~60.410~~**60.100.400** of ~~Chapter 60~~ regarding the sale of personal and surplus property ("County Rules") which implement County policy and the requirements of the Oregon Public Contracting Code.
- ~~(3)~~**C.** The model rules adopted by the Oregon Attorney General (OAR Chapter 137) do not apply to Lane County, unless specifically required by statute or adopted in the County Rules. When referenced in these Rules, OAR Chapter 137 may be used to further interpret the County Rules when an ambiguity exists or to further explain the manner in which the County may interpret its rule. When referenced, the reference is stated as: "See OAR \_\_\_\_\_."
- ~~(4)~~**D.** Authority
- ~~(a)~~**1.** Lane County's powers and duties as a contracting agency under the Public Contracting Code and "contracting agency" powers and duties may be exercised and performed by those employees who have been expressly delegated authority in the County Rules. These express delegations include, but are not limited to, authority to award and execute contract documents.
- ~~(b)~~**2.** Absent an express delegation, the County Administrator and those Department Directors authorized by the County Administrator may determine which public officers have authority to exercise the powers and duties of the contracting agency under the County Rules.
- ~~(c)~~**3.** Any delegation of authority under the County Rules may be further delegated by the delegee to a County employee. Such delegation should generally be evidenced by a writing.
- ~~(d)~~**4.** Nothing in this subsection is intended to modify the authority of the County Administrator and Department Directors for contract matters after contract execution.
- ~~(5)~~**E.** In addition to the specific delegations of authority contained in these County Rules, the County Administrator is delegated authority to adopt all procedures necessary to implement the provisions of the County Rules.
- ~~(6)~~**F.** An adversely affected party must file any available protest or appeal under LM Chapter 20 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. 15-09-01-05, Effective 10.15.15)

#### **20.100.015 Fair Board.**

- ~~(1)~~**A.** Pursuant to ORS 565.230, the Fair Board may conduct contracting activities for contracts relating to fairground facilities and operations, except those contracts which transfer an interest in real property.
- ~~(2)~~**B.** The Fair Board is delegated authority to cancel or terminate such contracts as provided in the contract or by law.
- ~~(3)~~**C.** The Fair Board may further delegate authority under this provision to a representative by signed written document.

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~~(4)D.~~ The Fair Board, in conducting contracting activities, must comply with the applicable requirements of the County Rules.

(Revised by Order No. 15-09-01-05, Effective 10.15.15)

**20.100.020 Definitions-**

As used in this Chapter, the following words and phrases **have the meaning given in this section:**

“Change Order”- **means Aa** written order authorizing a change in the contract, plans, specifications, quantities, price, or time.

“Competitive bidding”- **means Tt**he formal process of advertising, bidding, and bid opening required by the Public Contracting Code and these rules.

“Competitive quotes”- **means those** Offers made by competing offerors in response to an informal solicitation of offers by the County. A solicitation may be made by advertisement or by direct request to vendors.

“Competitive selection”- **means Tt**he process of selecting a vendor for goods and services based upon competition. Steps common to all competitive selection processes include:

- ~~(a)~~1. A method for identifying and encouraging multiple potential vendors,
- ~~(b)~~2. Providing each vendor with an adequate description of the County's requirements for offers on the quantity and type of goods and services requested, and the method by which a vendor will be chosen,
- ~~(e)~~3. Receiving proposals or bids in a controlled manner that prevents competing vendors from knowing the contents of competitors' offers until all proposals or bids are received, and
- ~~(d)~~4. A transparent process of making a selection from among properly-submitted proposals or bids that is based upon the selection method stated.

“Contract”- **means Aa**ny agreement to purchase, lease, sell, or provide goods or services. A purchase order, once accepted, is a Contract.

“County grant”- **means Aa**n agreement under which the County provides money, property, or other assistance, including loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the County is anticipated other than involvement associated with monitoring compliance with the grant conditions, as defined in ORS 279A.010(k)(ii). Distinguish from Grant.

“Goods”- **means Tt**angible or intangible items of personal property, whether furnished separately or combined with Services, such as installation, including both "goods" and "future goods" as defined in ORS 72.1050. See ORS 279A.010(i).

“Grant”- **means Aa**n agreement under which the County receives money, property, and other assistance, as defined in ORS 279A.010(k)(i). Distinguish from County Grant.

“Invitation to Bid”- **means Tt**he complete set of documents used to solicit and receive competitive bids, as defined in ORS 279B.005(1)(a).

“LCRB”- **means Tt**he Lane County Board of County Commissioners, sitting as the local contract review board.

“Offeror”- **means Aa** term used to describe a vendor or person that submits a bid, proposal, quote, or other type of offer.

“Personal property”- **means Pp**roperty, other than real estate, consisting generally of movable or temporary things, as defined in ORS 307.020.

“Personal services”- **means Tt**hose services described in LM ~~20.430(1)~~**20.300.210**.

“Procurement”- **means Tt**he process by which the County conducts its purchases of goods and services.

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“Project”- **means** ~~A~~ specific plan or undertaking with defined objectives or limits.

“Public contract”- ~~See~~ **has the meaning set forth in** ORS 279A.010(1)(z).

“Public improvement”- ~~has the meaning set forth in~~ **See** ORS 279A.010(1)(cc).

“Public officer”- **means** ~~A~~ any person authorized to conduct a procurement on the County’s behalf.

“Requirements contract”- **means** ~~A~~ an agreement in which the contractor agrees to supply to the County the specific goods or services identified in the agreement for a specific time period, based upon the quantity required or ordered by the County’s during the time period.

“Retainage”- **means** ~~T~~ the difference between the amount earned by a contractor on a public contract and the amount paid, held to guarantee full performance. *See* ORS 279C.550.

“Services”- **means** ~~W~~ work performed to meet a demand or need, as distinguished from Goods. *See* ORS 279A.010(1)(kk).

(Revised by Order No. 15-09-01-05, Effective 10.15.15)

### **~~CONTRACTING POLICIES~~**

#### **20.100.050 Policy on Competition-**

It is the policy of Lane County to encourage open and impartial competition in the procurement of goods and services, in accordance with the requirements of ORS Chapter 279 and the Public Contracting Code.

(Revised by Order No. 15-09-01-05, Effective 10.15.15)

#### **20.100.055 Policy on Electronic Procurement Procedures-**

~~(1)~~**A.** The LCRB has determined that it is more cost effective for the County to publicly advertise bids and all other public notices related to procurement processes using the internet, except where Oregon law requires advertising in a newspaper of general circulation in Lane County or a statewide trade publication.

~~(2)~~**B.** The County may, at its discretion, distribute all materials related to a procurement exclusively by electronic means, and may direct the receipt of all bids, proposals, and related documents exclusively by electronic means.

~~(3)~~**C.** The County may utilize third-party internet services for distribution of procurement-related materials and receipt of bids and proposals.

(Revised by Order No. 15-09-01-05, Effective 10.15.15; 21-06-08-02, 7.1.21)

#### **20.100.060 Policy on Performing Services for Other Public Agencies-**

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, providing that the County must be compensated for the complete cost of providing all intergovernmental services. The Board must approve any waiver of the policy for compensation.

(Revised by Order No. 15-09-01-05, Effective 10.15.15)

#### **20.100.065 Policy on Bid Security and Bonds.**

~~(1)~~**A.** Contracts, generally. All contracts, other than those for public improvements and construction contracts as defined in ORS 279C.320(1), are exempt from the bid security requirements of ORS

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279B.050 and performance and payment bond requirements, provided that the County may, in its discretion, require bid security or performance and payment security.

~~(2)~~**B.** Contracts for public improvements and construction. For contracts for public improvements and construction contracts as defined in ORS 279C.320(1):

~~(a)~~**1.** Except as provided in subsection ~~(b)~~**b.** below, the County will require that bidders and contractors for public improvements and construction contracts provide:

~~(i)~~**a.** Not less than 5% bid security meeting the requirements of ORS 279C.365(5), and

~~(ii)~~**b.** Performance and payment bonds meeting the requirements of ORS 279C.380.

~~(b)~~**2.** Bids and contracts which do not exceed \$100,000 (except for highway, bridge and other transportation projects which do not exceed \$50,000) are exempt from bid security, and performance and payment bond requirements, provided that the County may require such security in its discretion, regardless of this exemption.

(Revised by Order No. 15-09-01-05, Effective 10.15.15; 18-03-13-03, 3.13.18)

## ~~20.200 – GENERAL~~ EXEMPTIONS FROM COMPETITIVE SELECTION

### ~~20.200.140~~**100** General Statutory and Regulatory Exemptions and Exclusions.

County contracts are not required to be based upon a County competitive selection process if a state or federal statute or regulation provides otherwise, or directs that another selection process be used. Contracts exempt or excluded from competitive selection include:

~~(1)~~**A.** Contracts with the State of Oregon, other Oregon units of local government, other American states, or the federal government (Intergovernmental Agreements);

~~(2)~~**B.** Grants or County Grants;

~~(3)~~**C.** Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which County is or may become interested;

~~(4)~~**D.** Acquisitions or disposals of real property or interests in real property;

~~(5)~~**E.** Sole source expenditures when rates are set by law or ordinance for purposes of source selection;

~~(6)~~**F.** Contracts for employee benefit plans as provided in ORS 243.105(1), 243.125(4), 243.221, 243.275, 243.291, 243.303 and 243.565;

~~(7)~~**G.** Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145;

~~(8)~~**H.** Contracts for repair, maintenance, improvement or protection of property obtained by the Director of Veterans' Affairs under ORS 407.135 and 407.145(1);

~~(9)~~**I.** Contracts specifically exempt or authorized as a special procurement under LM Chapter 20 or under state law;

~~(10)~~**J.** Contracts in which County is permitted to award without bidding or request for proposals provided that it adopts its own rules covering the selection process.

(Revised by Order No. 15-09-01-05, Effective 10.15.15)

~~20.145~~**K.** Products or Services of Qualified Rehabilitation Facilities. If the product or service meeting the County's requirements is available from a Qualified Rehabilitation Facility (QRF), the County must purchase such products or services from a QRF, in accordance with ORS 279.835 through 279.855.

(Revised by Order No. 15-09-01-05, Effective 10.15.15)



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~~20.120L.~~ 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. 15-09-01-05, Effective 10.15.15)

~~20.125M.~~ Price Set by Federal Contracts. 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.

(Revised by Order No. 15-09-01-05, Effective 10.15.15)

~~20.130N.~~ Future Purchase and Retainer Agreements. The County may without competitive bidding enter into a contract that establishes general terms for the future purchase of goods or services, the terms of which will only apply if subsequent purchases are made, provided that:

~~(1)~~1. The contract is non-exclusive,

~~(2)~~2. The contract by its terms may be canceled upon 30 days written notice by the County at its discretion, and

~~(3)~~3. Each specific purchase is considered separately for competitive selection pursuant to the applicable County Rules.

(Revised by Order No. 15-09-01-05, Effective 10.15.15)

~~20.135O.~~ Cooperative Procurements. ~~(4)~~The County may participate in, sponsor, conduct, or administer joint cooperative procurements pursuant to ORS 279A.200 through 279A.225.

~~(2)~~1. 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. 15-09-01-05, Effective 10.15.15)

#### **20.200.110 SPECIFIC EXEMPTIONS FROM COMPETITIVE SELECTION**

~~20.210A.~~ Advertising. The County may purchase advertising without competitive selection. This includes, but is not limited to, advertising and legal notices placed in general communications media such as newspapers, publications, radio, television, and on the internet.

(Revised by Order No. 15-09-01-05, Effective 10.15.15)

~~20.215B.~~ Publications and Copyrighted Materials

—~~(1)~~1. The County may purchase library circulation materials, such as books and recordings, whether delivered in hard copy or electronically, without competitive selection.

—~~(2)~~2. The County may purchase subscriptions for newspapers and periodicals, whether delivered in hard copy or electronically, without competitive selection.

—~~(3)~~3. The County may purchase copyrighted materials without competitive selection when there is only one known supplier.

(Revised by Order No. 15-09-01-05, Effective 10.15.15)

~~20.220C.~~ Election Supplies and Services



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The County may purchase elections supplies and services without competitive selection. This includes, but is not limited to, printing of official ballots, sample or test ballots, ballot envelopes, ballot counting equipment and software, and signs.

*(Revised by Order No. 15-09-01-05, Effective 10.15.15)*

**20.225D.** Equipment Repair and Overhaul

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

- ~~(a)~~**1.** The service and/or parts required are unknown, and the cost cannot be determined without extensive preliminary dismantling or testing; or
- ~~(b)~~**2.** The service and/or parts required are for equipment for which specially trained personnel are required, and such personnel are available from only one source.
- ~~(2)~~**3.** If a contract under this exemption exceeds \$150,000, the County shall document in its procurement file the reasons why competitive bids or quotes were deemed to be impractical.

*(Revised by Order No. 15-09-01-05, Effective 10.15.15; 19-05-21-03, 05-21-19)*

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

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

- ~~(1)~~**1.** The County has solicited a minimum of three (3) competitive quotes,
- ~~(2)~~**2.** Makes its purchases from the least expensive source, taking into consideration the costs of delivery or transportation, and
- ~~(3)~~**3.** Retains written justification for the source selected for the purchase.

*(Revised by Order No. 15-09-01-05, Effective 10.15.15)*

**20.235F.** Client and Patient Services

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

- ~~(1)~~**1.** Reasonably believes, after inquiring that no qualified providers are likely to participate in competitive selection; and
- ~~(2)~~**2.** Will include on a list all qualified providers willing to consider taking client referrals on an as-needed basis; and
- ~~(3)~~**3.** Will select a qualified provider from the list as a client need arises, based on criteria including, but not limited to, client and family needs, quality and type of appropriate care, availability of service at the time it is needed, and cost.

*(Revised by Order No. 15-09-01-05, Effective 10.15.15)*

**20.240G.** Laboratory and Medical Supplies

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

- ~~(1)~~**1.** The purchase is made from the lowest priced vendor for the specific product and brand, and
- ~~(2)~~**2.** The County has a reasonable medical or scientific basis for the selection.

*(Revised by Order No. 15-09-01-05, Effective 10.15.15)*

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~~20.250~~**H.** Used Personal Property

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

- ~~(1)~~**1.** The County has determined that the direct purchase without competitive bidding will result in cost savings, and
- ~~(2)~~**2.** For purchases of used personal property over \$50,000, at least 3 competitive quotes have been obtained, if available. If 3 quotes are not available, a written record must be made of the attempt to obtain quotes.

*(Revised by Order No. 15-09-01-05, Effective 10.15.15)*

~~20.255~~**I.** Litigation Services

Subject to the limitations of LM ~~61.04061.010.025~~, the County may contract for personal services related to litigation or legal matters without competitive selection when County Counsel deems it necessary to do so. Such services may include, but are not limited to, outside legal representation, expert witnesses, consultants, arbitrators, mediators, investigators, or other specialized personnel. Notwithstanding the provisions of LM ~~20.67020.600.330~~, the County Counsel's authority to contract for such services is not limited by amount or duration. However, County Counsel must advise the Board and the department of the status of such matters on a regular basis, not less than quarterly, including costs related to representation.

*(Revised by Order No. 15-09-01-05, Effective 10.15.15; 19-08-20-03, 08-20-19)*

~~20.260~~**J.** Employee Benefit Insurance.

The County may purchase employee benefit insurance without competitive selection.

*(Revised by Order No. 15-09-01-05, Effective 10.15.15)*

~~20.265~~**K.** Investments

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

*(Revised by Order No. 15-09-01-05, Effective 10.15.15)*

~~20.270~~**L.** Insurance.

~~(1)~~The County may purchase insurance without a formal competitive selection when the annual or aggregate premium is less than or equal to \$100,000. ~~(2)~~Contracts for insurance where either the annual or aggregate premium exceeds \$150,000 must be let by competitive selection or through an agent of record.

~~(3)~~**1.** Agent of Record. The County may appoint a licensed insurance agent as its agent of record to perform insurance services in connection with more than one insurance contract, including the securing of proposals from insurance carriers for all coverages for which the agent of record is given responsibility, provided that:

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

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

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

*(Revised by Order No. 15-09-01-05, Effective 10.15.15; 19-05-21-03, 05-21-19)*

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~~20.275M.~~ Oil or Hazardous Material Removal.

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

- ~~(1)~~1. The order necessitates the prompt establishment and performance of the contract in order to comply with the statutes regarding spill or release of oil or hazardous material that have created an emergency condition;
- ~~(2)~~2. The order contains time limitations that do not permit hiring a contractor under the usual competitive selection procedures;
- ~~(3)~~3. To the extent reasonable under the circumstances, the County has encouraged competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services, and
- ~~(4)~~4. The cleanup is conducted in accordance with the rules set forth at OAR 340-122-0205 to 340-122-0360.

*(Revised by Order No. 15-09-01-05, Effective 10.15.15)*

~~20.280N.~~ Disposal of Recyclable and Non-recyclable Waste Materials

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

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

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

~~CONDITIONAL EXEMPTIONS FROM COMPETITIVE SELECTION~~

**20.200.120 - Conditional Exemptions from Competitive Selection**

~~20.310A.~~ Small Procurements

- ~~(1)~~1. Where possible, selection of a vendor for small procurements should be made by competitive selection, unless impracticable. However, the County may award a contract for goods or services without competitive selection, provided that:
  - ~~(a)~~a. For public improvement projects, the amount does not exceed \$5,000 or 3 years in length, pursuant to ORS 279C.335.
  - ~~(b)~~b. For all other small procurements, the amount does not exceed \$10,000 or 3 years in length.

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

*(Revised by Order No. 15-09-01-05, Effective 10.15.15)*

~~20.315~~**B.** Sole Source Contracts

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

- ~~(1)~~**1.** The County makes a reasonable effort to identify and notify any potential offerors regarding the intended purchase or project. Such efforts may include, but are not limited to: direct vendor contacts, requests for information, requests for letters of interest, or requests for qualifications. If the County intends to make multiple purchases of the product or services over a period of time, that information must be included in any information given to potential offerors.
- ~~(2)~~**2.** A sole source determination is made based on written findings, pursuant to ORS 279B.075(2). Authority to make the determination is granted to:
  - ~~(a)~~**a.** For contracts not greater than \$50,000, to the Department directors or their designees.
  - ~~(b)~~**b.** For contracts not greater than \$150,000, to the County Administrator, based upon proposed written findings prepared by the Department, along with such other information as the Administrator may require.
  - ~~(c)~~**c.** For contracts in excess of \$150,000, public notice of the proposed determination must be published electronically on the website designated by the County for advertisements for bids or through another public notice placed so as to be reasonably able to reach potential offeror of such goods or services. The notice must provide that any person that believes its interests would be adversely affected by the determination must deliver a written protest to the County Administrator and within 5 days of the public notice. The written protest shall include a detailed statement of the legal and factual grounds for the protest, a description of the resulting harm, and the relief requested. Unless otherwise specified in the public notice of the sole source procurement, the LCRB may consider the written record, and any other testimony provided at the public meeting and must make its determination by Board Order.
- ~~(3)~~**3.** Following a determination under part (2) of this rule, the County negotiates with the sole source to obtain contract terms advantageous to the County, to the extent practicable.
- ~~(4)~~**4.** To the extent purchases under this rule are part of an approved special procurement under LM 20.240 through 20.254, the terms of the special procurement prevail over this rule.

*(Revised by Order No. 15-09-01-05, Effective 10.15.15; 19-05-21-03, 05-21-19)*

~~20.320~~**C.** Emergency Contracts

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

- ~~(1)~~**1.** As used in this section, an emergency is generally defined as circumstances that could not have been reasonably foreseen, and create a substantial risk of loss, damage, or interruption of services, or a threat to property, public health, or safety. ORS 279A.010(f).
- ~~(2)~~**2.** A written determination must be made documenting the nature of the emergency, the method of contractor selection, and designating the contract(s) to be awarded. The County Administrator is delegated authority to make the determination for one or more contracts, in an

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aggregate amount not to exceed \$150,000 for a single occurrence or event. A determination for emergency contracts in excess of \$150,000 for a single occurrence or event must be made by the LCRB.

- ~~(3)~~**3.** The County must ensure competition for the contract that is reasonable and appropriate under the emergency circumstances, which may include, but are not limited to:
  - ~~(a)~~**a.** Limiting the scope or duration of the contract to the amount necessary under the emergency conditions,
  - ~~(b)~~**b.** Providing a limited solicitation period and limiting required documentation, and
  - ~~(c)~~**c.** Waiver of a performance or payment bond pursuant to ORS 279C.380(4) or of a public works bond pursuant to ORS 279C.836(9).

*(Revised by Order No. 15-09-01-05, Effective 10.15.15; 19-05-21-03, 05-21-19)*

~~20.325-D.~~ Personal Services Contracts

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

- ~~(1)~~**1.** The Department Director makes a written determination that the services to be provided in the particular contract are personal services, as defined in LM ~~20.430(1)~~**20.300.210**, and
- ~~(2)~~**2.** The County has made a finding that direct contracting is in the best interests of the County for the contract. Authority to make the finding is granted to:
  - ~~(a)~~**a.** Each Department Director, for contracts not greater than \$50,000.
  - ~~(b)~~**b.** The County Administrator, for contracts not greater than \$150,000.
  - ~~(c)~~**c.** The LCRB, for contracts greater than \$150,000.

*(15-09-01-05, Effective 10.15.15; 19-05-21-03, 05-21-19)*

~~20.200.130 EXEMPTIONS FROM COMPETITIVE SELECTION FOR ALTERNATIVE CONTRACTING METHODS~~**Exemptions from Competitive Selection for Alternate Contracting Methods**

~~20.350A.~~ Individual and Class Special Procurements

~~(1)~~**1.** For contracts that are not related to public improvements under ORS chapter 279C, the County may utilize a special procurement for a particular contract, or a class of contracts, to allow procurement other than through an otherwise applicable process including competitive bidding (ORS 279B.055), request for proposals (ORS 279B.060), small procurement (ORS 279B.070), and intermediate procurement (ORS 279B.070). Approval of a special procurement must be made in accordance with the requirements of ORS 279B.085 (4) and (5), and any protest of such approval must be made in accordance with ORS 279B.400.

- ~~(2)~~**2.** Authority to approve an individual special procurement is granted to:
  - ~~(a)~~**a.** Each Department ~~D~~director, for contracts not greater than \$50,000.
  - ~~(b)~~**b.** The County Administrator, for contracts not greater than \$150,000.
  - ~~(c)~~**c.** The LCRB, for contracts greater than \$150,000.
- ~~(3)~~**3.** Authority to approve a class special procurement is granted to:
  - ~~(a)~~**a.** The County Administrator, for classes of contracts where the total of all contracts within the class is not greater than \$150,000.

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- ~~(b)~~**b.** The LCRB, for classes of contracts where the total of all contracts within the class is greater than \$150,000.

*(Revised by Order No. 15-09-01-05, Effective 10.15.15; 21-06-08-02, 7.1.21)*

**20.355B.** Competitive Bidding Exemptions for Public Improvement Contracts

~~(1)~~**1.** Contracts Subject to Exemption

Upon approval of the findings in ~~(2)(c)~~**2.c** below, the LCRB may authorize an exemption from competitive bidding requirements for any of the following types of public improvement contracts:

- ~~(a)~~**a.** Construction Manager/General Contractor (CM/GC), as defined in ORS 279C.332 and OAR 137-049-0610;
- ~~(b)~~**b.** Design Build, as defined in OAR 137-049-0610; and
- ~~(c)~~**c.** Energy Savings Performance Contracting (ESPC), as defined in ORS 279A.010 and OAR 137-049-0610.

~~(2)~~**2.** Approval of Findings

Prior to exempting a contract from competitive bidding requirements, the LCRB must:

- ~~(a)~~**a.** Hold a public hearing, in accordance with ORS 279C.335(5);
- ~~(b)~~**b.** Give at least 14 days' notice of the public hearing, in accordance with ORS 279C.335(5)(b) and (c), and
- ~~(c)~~**c.** Approve written findings that:
  - ~~(i)~~**i.** It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts, and
  - ~~(ii)~~**ii.** The awarding of public improvement contracts under the exemption will likely result in substantial cost savings to the County or the public. In making this finding, the LCRB may consider the type, cost and amount of the contract, the number of persons available to bid, and must consider all required factors in ORS 279C.335(2)(b), to the extent applicable.

- ~~(3)~~**3.** Post Project Evaluation. Upon completion and final payment for any public improvement project in excess of \$150,000 for which an exemption was authorized under this section, the contracting Department shall prepare and deliver to the LCRB an evaluation of the public improvement contract. The evaluation must, at a minimum, meet the requirements of ORS 279C.335(b) and (c), and should include: financial information including comparing estimates with actual cost; any Guaranteed Maximum Price (GMP); changes and actual costs; successes and failures during design, engineering and construction; and assessment of the use of method as compared to any exemption findings.

*(Revised by Order No. 15-09-01-05, Effective 10.15.15; 19-05-21-03, 05-21-19; 21-06-08-02, 7.1.21)*

**20.360C.** Construction Manager/General Contractor

If the County conducts a procurement for a Construction Manager/General Contractor pursuant to an exemption granted under LM ~~20.355~~**20.200.130 B.**, the procurement must be conducted in accordance with the model rules adopted by the Attorney General under ORS 279A.065(3).

*(Revised by Order No. 15-09-01-05, Effective 10.15.15)*

**20.365D.** Design-Build



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If the County conducts a procurement for a Design-Build contractor pursuant to an exemption granted under LM ~~20.355~~**20.200.130 B.**, the procurement may be conducted following a request for proposal procedure in accordance with LM ~~20.420(4)~~**20.200.300 A.2.** and utilizing the criteria in OAR 137-049-0670.

*(Revised by Order No. 15-09-01-05, Effective 10.15.15)*

~~20.370E.~~ Energy Savings Performance Contracting

If the County conducts a procurement for a an Energy Savings Performance Contractor (ESPC) pursuant to an exemption granted under LM ~~20.355~~**20.200.130 B.**, the procurement may be conducted following a request for proposal procedure in accordance with LM ~~20.420~~**20.200.300 A.2.** and utilizing the criteria in OAR 137-049-0680.

*(Revised by Order No. 15-09-01-05, Effective 10.15.15)*

## ~~20.030~~**20.300 - SOLICITATION PROCEDURES**

### ~~20.300.410~~**100 Preliminary Procedures and Prequalification**

In preparation for competitive selection, the County may:

- ~~(a)~~**A.** Issue a request for information, request for letters of interest, request for qualifications, or other preliminary documents, for the purpose of determining the availability and interest of possible vendors for the goods or services proposed.
- ~~(2)~~**B.** Allow or require prequalification of bidders or proposers, either through an advertised process setting forth the procedure and criteria for prequalification prior to issuance of competitive procurement, or by inclusion of the requirements in the invitation to bid. The public officer has authority to determine when prequalification may be required for a specific contract or class of contracts, and may determine the prequalification procedure in accordance with the requirements of ORS 279B.120 and 279B.125, and the requirements of ORS 279C.430 for public improvements projects. Determination of prequalification must be made in accordance with ORS 279B.120(2), or the requirements of ORS 279C.375(3)(b) for public improvements projects.

*(Revised by Order No. 15-09-01-05, Effective 10.15.15)*

### ~~20.300.420~~**200 Methods of Source Selection**

Unless exempted under LM ~~20.110~~**20.200.100** to ~~20.450~~**20.200.120**, all contracts for goods or services must be awarded by competitive selection. Notwithstanding such exemption, the public officer may use competitive selection to select a vendor for any type of goods or services except those relating to purchases from qualified rehabilitation facilities in accordance with LM ~~20.115~~**20.200.100 K.**

#### ~~(1)~~**A.** Competitive Selection

The County may use any of the following procedures to procure goods and services through competitive selection:

- ~~(a)~~**1.** Competitive Bidding pursuant to the requirements for competitive sealed bidding in ORS 279B.055.
- ~~(b)~~**2.** Request for Proposals (RFP) pursuant to the requirements for competitive sealed proposals in ORS 279B.060.
- ~~(c)~~**3.** Competitive Quotes (CQ) pursuant to the requirements for intermediate procurements in ORS 279B.070. CQs for contracts greater than \$50,000 in value, the County must prepare a written solicitation document.

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~~(2)~~**B.** Direct Selection Subject to an Exemption

For procurement of goods or services that are exempt from the requirement for competitive selection pursuant to the requirements of LM ~~20.440~~**20.200.100** to ~~20.450~~**20.200.120**, the public officer is authorized to make the selection that best serves the County's interests, taking into account price, qualifications, schedule, and other factors.

~~(3)~~**C.** Contracts Relating to Public Improvements

Specific requirements apply to procurements and contracts relating to both the design and the construction of public improvements:

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

~~(b)~~**2.** Building Construction. Procurements for building construction contracts must comply with the requirements of the Board's Community Benefits Bidding policy, if applicable to the procurement.

~~(c)~~**3.** Design-Related Services. Contracts relating to the design of public improvements must comply with the requirements of ORS 279C.100 through 279C.120, in addition to the requirements of the County Rules.

(Revised by Order No. 15-09-01-05, Effective 10.15.15; 19-05-21-03, 5-21-19; 21-06-08-02, 7.1.21)

**20.300.430210 Personal Services Contract Selection Procedures**

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

~~(a)~~**1.** Contracts that may be designated personal service contracts include, but are not limited to, contracts for: expert consulting, appraisal, timber cruising, licensed professionals (including attorneys, auditors, accountants, physicians, physician assistants, nurse practitioners, nurses, therapists, realtors and engineers), research, polling, education, and artwork.

~~(b)~~**2.** Contracts for services relating to planning, designing, engineering, or overseeing of public improvements are not subject to the requirements of this section. Selection procedures for selection of consultants for such services must be made in the manner provided in section LM ~~20.435~~**200.300.220**.

~~(c)~~**3.** Contracts that are not personal services contracts include contracts for services that can generally be performed by an experienced competent person, whether the person is required to be licensed or not, including but not limited to contracts for: trade-related activity (including plumbing and electrical work), custodial services, document filing and storage, general labor, and repairs and maintenance services for buildings or equipment.

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

~~(a)~~**1.** Evaluation factors should include, but not limited to, the proposed contractor's qualifications, abilities, licenses and certifications, capacity and capability, past record of performance, cost control, quality of work, financial resources, availability, and familiarity with the area.



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

(Revised by Order No. 15-09-01-05, Effective 10.15.15; 19-05-21-03, 05-21-19; 21-06-08-02, 7.1.21)

### **20.300.435220 Selection Procedures for Planning, Designing, Engineering, and Overseeing of Public Improvements**

Pursuant to ORS 279C.100 through 279C.120, solicitations and contracting with a consultant for architectural, engineering, photogrammetric mapping, transportation planning, land surveying, and related services as defined in ORS 279C 100(8) in accordance with the following procedures:

- ~~(1)~~**A.** The County may contract directly with a consultant if the estimated fee to be paid under the contract does not exceed \$100,000.
- ~~(2)~~**B.** The County may contract with a consultant using the Informal Selection Procedure set forth in OAR 137-048-0210 if the estimated fee to be paid under the contract does not exceed \$250,000.
- ~~(3)~~**C.** The County may contract with a consultant through a Price Agreement established in the manner set forth in OAR 137-048-270.
- ~~(4)~~**D.** The County may contract with a consultant following the selection procedures set forth in ORS 279C.110.

(Revised by Order No. 21-06-08-02, Effective 7.1.21)

### **20.300.440230 Requirements Contract Selection Procedures**

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

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

(Revised by Order No. 15-09-01-05, Effective 10.15.15)

### **20.300.450300 Bidding and Proposal Procedures**

The bidding and proposal procedures in this section are applicable to Competitive Bidding, RFPs, and CQs under LM ~~20.520(1)~~**200.300.200 A**. When applied to the procedures for RFPs or CQs, the terms related to "proposals" or "quotes" must be substituted for the terms related to "bids" as used in this section.

- ~~(1)~~**A.** Clarifications to Bid Documents

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If a bidder finds discrepancies or omissions in the bid documents, or is in doubt as to their meaning, the bidder must immediately notify the public officer. If the public officer believes a clarification is necessary, an addendum will be issued in writing not less than 72 hours prior to the deadline for bid, unless the public officer determines that a shorter period is in the public interest. The terms of any addenda issued are to be included in the bidder's proposal, and will become part of the contract documents.

~~(2)~~**B.** Submission and Receipt of Bids

- ~~(a)~~**1.** To be received and considered, all bids must be in writing and signed by the bidder or the bidder's authorized representative. Bids must be submitted in the manner specified in the bid documents.
- ~~(b)~~**2.** By signing and returning a bid, the bidder acknowledges that the bidder has read and understands the terms and conditions applicable to the bid documents and that the bidder accepts and agrees to be bound by the terms and conditions of the contract, including to perform the scope of work and meet the performance standards.
- ~~(c)~~**3.** A bidder may not modify its bid after submission. A bidder may withdraw its bid at any time prior to the deadline set for receipt of bids, and may submit a replacement bid in accordance with the required bid submission procedures.
- ~~(d)~~**4.** The County will not consider any bid received after the time and date stated in the bid documents for receipt of bids.
- ~~(e)~~**5.** All bids must be irrevocable for not less than 30 days from the time of bid opening, unless otherwise stated in the bid documents. The bids of all bidders will remain irrevocable and binding, and any bid securities will be retained by the public officer, until a contract has been executed and the contractor has provided any and all required performance bonds and insurance certificates.

~~(3)~~**C.** Opening of Bids and Proposals

- ~~(a)~~**1.** The public officer may not examine any bid prior to opening. Bids properly submitted will be opened publicly by the public officer at the time, date and place designated in the bid documents. To the extent practicable, the public officer will read aloud the amount of the bid, the name of the bidder and such other information as the public officer considers appropriate, record the same, and post the bid results. If the offers are a proposals submitted in response to an RFP, the proposals may be opened in a manner to avoid revealing contents to competing proposers in accordance with ORS 279B.060(6)(a).
- ~~(b)~~**2.** All bids submitted are subject to public inspection, with the exception of:
  - ~~(i)~~**a.** Information covered by an exception in public records law pursuant to ORS 279B.055(5)(c). Each bidder, by submitting a bid, acknowledges that it is 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.
  - ~~(ii)~~**b.** Proposals submitted in response to a request for proposals under LM ~~21-113200.300.200 A.2~~, in accordance with ORS 279B.060(6).
- ~~(c)~~**3.** The bid record must be open to public inspection immediately following the issuance of a notice of intent to award.

~~(4)~~**D.** Evaluation of Bids and Proposals

Bid evaluation will be conducted by the public officer in cooperation with the department requesting the bid, if any, based on compliance with the requirements established in the bid documents and these Rules, including:

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- ~~(a)~~1. Application of preferences for Oregon goods and services, resident bidders, recycled goods, and printing, pursuant to ORS 279A.120 to 279A.128 and ORS 282.210.
- ~~(b)~~2. Investigation and determination of responsibility requirements pursuant to ORS 279B.110.
- ~~(c)~~3. Where the bid includes more than one price or alternative, any calculation and evaluation necessary to determine the lowest responsive bid. The County may use the methods described in OAR 137-049-0380(2) or such other method as the public officer deems reasonable.
- ~~(d)~~4. For public improvement contracts, the bidder responsibility criteria enumerated in ORS 279C.375.
- ~~(e)~~5. Proposals submitted in response to an RFP will be evaluated in accordance with the criteria stated in the RFP.

~~(5)~~E. 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.

~~(6)~~F. Cancellation of Solicitation or Rejection of Bids.

~~(a)~~1. 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.

~~(b)~~2. If all bids are rejected in whole or in part, the County may:

~~(i)~~a. Advertise for new bids, or

~~(ii)~~b. Solicit supplemental information only from those bidders that submitted bids, if in the public officer's judgment it is unlikely re-advertising publicly would lead to greater competition.

~~(7)~~G. Award

The County will award contracts only to responsible contractors possessing the ability to perform. In determining whether a contractor is responsible, the County will consider the contractor's record of integrity, compliance with public policy, past performance, and technical and financial resources.

~~(8)~~H. Notice of Intent to Award

The County must provide written notice of its intent to award a contract to a particular bidder or bidders at least ~~seven~~(7) days before the award, unless the public officer determines that a shorter notice period is necessary under the circumstances. The notice of intent may be given by electronic posting or may be sent directly to all bidders that submitted bids.

~~(9)~~I. Retention of Records

The contracting department must maintain records sufficient to detail the history of each procurement, and maintain such records for the period required in OAR 166-150-0005 et seq. Such records include, but are not limited to: the rationale for the method of procurement, determination of exemptions or exceptions, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(Revised by Order No. 15-09-01-05, Effective 10.15.15; 21-06-08-02, 7.1.21)

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## **20.400 –~~TYPES OF~~ CONTRACT TYPES AND AGREEMENTS~~TERMS~~**

### **20.400.540200 County Contracts, Generally**

Except for small purchases, all County contracts require a written contract signed by a duly authorized delegate, or a purchase order authorized under these rules.

#### **(1)A** Identification of Contract Parties.

~~(a)~~1. The name "Lane County" must be used as the County's title when entering into any agreement, preferably followed by the words, "a political subdivision of the State of Oregon". If the circumstances of the contract require that the name of the County Department be included as part of the County's name, the correct form is: "Lane County, acting through its \_\_\_\_\_ Department".

~~(b)~~2. The County requires that the name of the party or parties with whom the County is entering into a contract be the parties' correct legal names. Verification of parties' legal names through the Oregon Secretary of State's website is encouraged.

#### ~~(2)~~**B**. Mandatory Contract Terms.

~~(a)~~1. All contracts must contain, either expressly or by reference, the County's standard contract provisions contained in LM ~~20.590~~**20.500.100**, except as approved by the Office of Legal Counsel.

~~(b)~~2. All contracts funded in whole or in part by federal or state funds must contain all contract conditions required by the agency or agencies contributing such funds, in the form required by the funding.

#### ~~(3)~~**C**. Contract Considerations.

~~(a)~~1. Consideration should be given, in all contracts, to the risks involved in the specific work of the contract. Consultation with the County's Risk Manager is advised concerning the County's insurance requirements for a specific contract.

~~(b)~~2. Title to all personal property obtained through a contract must be described on all formal title documents and bills of sale as: Lane County, Lane County Public Service Building, 125 E. 8th Avenue, Eugene, Oregon 97401.

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

(Revised by Order No. 15-09-01-05, Effective 10.15.15)

### **20.400.545210 Purchase Orders**

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

~~(2)~~2. Authority to approve issuance of Purchase Orders for County Purchases is subject to the limitations on contract amount and delegated authority contained in LM ~~20.630~~**20.600.230**, ~~20.660~~**20.600.310**, **200.600.320** and ~~20.670~~**20.600.330**.

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

(Revised by Order No. 15-09-01-05, Effective 10.15.15; 19-05-21-03, 05-21-19)

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**20.400.520220 Goods and/or Services Contracts**

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

(Revised by Order No. 15-09-01-05, Effective 10.15.15)

**20.400.525230 Construction and Public Improvement Contracts**

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

~~(2)~~**B.** All contracts relating to construction must contain, either by inclusion or by reference, the County's standard contract provisions contained in LM ~~20-590~~**200.500.200** and the standard contract provisions for construction contained in LM ~~20-595~~**200.500.210**, except as approved by the Office of Legal Counsel.

(Revised by Order No. 15-09-01-05, Effective 10.15.15)

**20.400.530240 Requirements Contracts and Price Agreements**

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

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

~~(a)~~**1.** If set prices for defined goods or services are stated in the contract, the County may purchase such goods and services from the contractor

~~(b)~~**2.** If the goods or scope of work to be purchased are described in general terms in the contract, requiring further definition for a specific scope or project, such additional definition must be made in writing and executed as an amendment to the contract.

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

(Revised by Order No. 15-09-01-05, Effective 10.15.15)

**20.400.535250 Future Purchase and Retainer Contracts**

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

~~(1)~~**A.** Each contract must comply with the requirements of LM ~~20-130~~**200.200.100 N.**, and:

~~(a)~~**1.** Contain a description of the method that the County will use to initiate a purchase under the agreement, which must include a writing, and

~~(b)~~**2.** State that the County makes no guarantee that any purchase will be made or any minimum amount paid under the contract.

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

~~(3)~~**C.** Any purchase made under the agreement must be considered separately for requirements for competitive selection, unless exempt from competitive selection under these Rules.

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(Revised by Order No. 15-09-01-05, Effective 10.15.15)

**20.400.540260 Intergovernmental Agreements**

Intergovernmental agreements (IGA) are contracts made between the County and other agencies of State, local, or federal government. IGAs are exempt from competitive selection, and generally do not require inclusion of the standard terms required for public contracts. IGAs involving significant obligations of funds, services, property, or allocation of risks must be made in writing, and are subject to the same approval and authorization as other County contracts.

(Revised by Order No. 15-09-01-05, Effective 10.15.15)

**20.400.545270 Memoranda of Understanding**

A memorandum of understanding (MOU) is an agreement, generally between the County or a County Department and another agency, that captures the agencies' common desire to work together to pursue specified common objectives. An MOU can be entered into with multiple parties, and the parties may include different County departments. Use of an MOU is appropriate when there is no exchange of funds, goods, or services between the parties.

(Revised by Order No. 15-09-01-05, Effective 10.15.15)

**20.400.550280 Grant and Sub-Grant Agreements**

- ~~(1)~~**A.** Grant agreements. The County may enter into agreements with public agencies or private parties in which the County receives and disburses funding for purposes specified in the grant agreement, and subject to the conditions set forth in the grant.
- ~~(2)~~**B.** Compliance with the Uniform Guidance (UG) and grant requirements. The County department accepting the grant must comply with all applicable federal, state, and grantor requirements, in accordance with the policy established in the Administrative Procedures Manual for grant administration.
- ~~(3)~~**C.** Sub-grants.
  - ~~(a)~~**1.** The terms of a grant agreement may specify that specific sub-grants be entered into by the County with third parties identified in the grant application or agreement. The grant may provide that 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.
  - ~~(b)~~**2.** If the terms of a grant do not specify the sub-grantees, and the County is entering into an agreement with a vendor to perform services defined by the County, then that agreement between the County and the vendor generally will be a goods and/or services contract or, if with a public agency, an intergovernmental agreement.

(Revised by Order No. 15-09-01-05, Effective 10.15.15)

**20.400.555285 County Grants**

The County may grant funds to a private entity for the purposes of supporting objectives or activities proposed by the entity. If the County requires no further obligation from the grantee beyond use of the funds in compliance with the restrictions placed upon the use of the funds, documentation of the County Grant may be provided in the grant award letter, in a form approved by the Office of Legal Counsel.

(Revised by Order No. 15-09-01-05, Effective 10.15.15; 19-08-20-03, 8-20-19)



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**20.400.560290 Revenue Contracts**

The County may enter into contracts to provide services in exchange for payment using an agreement appropriate for the type of services to be provided, in a form approved by the Office of Legal Counsel. However, a contract that includes obligations of the other party that extend beyond payment or documentation must include the County's standard contract conditions.

(Revised by Order No. 15-09-01-05, Effective 10.15.15)

**20.500 – STANDARD CONTRACT PROVISIONS**

**20.500.585100 Standard Lane County Contract Provisions**

The Office of Legal Counsel will establish standard contract provisions to be included in County contracts, and must publish the standard contract provisions on the Department's Intranet webpage.

(Revised by Order No. 21-06-08-02, Effective 7.1.21)

**20.500.590200 Standard Public Contract Provisions**

The following standard public contract clauses must be included expressly or by reference in every County contract:

~~(1)~~**A.** Pursuant to ORS 279B.220 or ORS 279C.505, as applicable, Contractor must:

- ~~(a)~~**1.** Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.
- ~~(b)~~**2.** Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.
- ~~(c)~~**3.** Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.

~~(2)~~**B.** Pursuant to ORS 279B.230 and 279C.530, as applicable:

- ~~(a)~~**1.** Contractor must promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
- ~~(b)~~**2.** All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

~~(3)~~**C.** Pursuant to ORS 279B.235, 279C.520, and 279C.540, as applicable, in performing the work of this Contract:

- ~~(a)~~**1.** A person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, the employee shall be paid at least time and a half pay:
  - ~~(i)~~**a.** For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or
  - ~~(ii)~~**b.** For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
  - ~~(iii)~~**c.** For all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

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- ~~(b)~~2. An employer must give notice in writing to employees who work on a public contract, 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.
- ~~(e)~~3. If this Contract is for personal services as described in ORS 279A.055, an employee 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 personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.
- ~~(d)~~4. If this Contract is for services at a county fair or for other events authorized by a county fair board, employees must be paid at least time and a half for work in excess of 10 hours in any one day or 40 hours in any one week. An employer shall give notice in writing to employees who work on such a contract, 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 employees may be required to work.
- ~~(e)~~5. Except as provided in subsection ~~(e)4~~ of this **sub**section, if this Contracts is for services, all persons employed under the Contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater. An employer shall give notice in writing to employees who work on a contract for services, 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.
- ~~(f)~~6. This **section (3) subsection C** does not apply if the Contract is strictly for goods or personal property.
- ~~(4)~~D. Contractor may 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 the County harmless from any such lien or claim.
- ~~(5)~~E. Contractor and any subcontractor must pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- ~~(6)~~F. Contractor, any subcontractors, and all employers working under the contract are subject employers under the Oregon Workers' Compensation Law and must comply with ORS 656.017, unless exempt under ORS 656.027.

(Revised by Order No. 15-09-01-05, Effective 10.15.15; 21-06-08-02, 7.1.21)

### **20.500.595210 Standard Public Contract Provisions for Public Improvements**

The following standard public contract clauses must be included expressly or by reference in every County contract for public improvements.

- ~~(1)~~A. Pursuant to ORS 279C.505, Contractor must:
  - ~~(a)~~1. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
  - ~~(b)~~2. Demonstrate that an employee drug testing program is in place.
- ~~(2)~~B. Pursuant to ORS 279C.510(1), Contractor must salvage or recycle construction waste and demolition debris, if feasible and cost-effective.
- ~~(3)~~C. Pursuant to ORS 279C.515:



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- ~~(a)~~**1.** If Contractor fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to the contractor or a subcontractor in connection with the public improvement contract as the claim becomes due, the County may pay the amount of the claim to the person that provides 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.
- ~~(b)~~**2.** If Contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from the contracting agency or Contractor, Contractor or first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is 9 percent per annum. The amount of interest may not be waived.
- ~~(c)~~**3.** If Contractor or a subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- ~~(d)~~**4.** Paying a claim in the manner authorized in this section does not relieve the contractor or the contractor's surety from obligation with respect to an unpaid claim.
- ~~(4)~~**D.** Pursuant to ORS 279C.540, a person may not be required or permitted to labor more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity or emergency or when the public policy absolutely requires it, in which event, the person so employed for excessive hours shall receive at least time and a half pay in accordance with ORS 279C.540(1) to (5).
- ~~(5)~~**E.** 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 that 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 Contractor encounters a condition not referred to in the bid document not caused by 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, Contractor shall immediately give notice to the County. The County and Contractor will have all the rights and obligations specified in ORS 279C.525 to handle the situation.
- ~~(6)~~**F.** If the County suspends Contractor's work but does not terminate the contract, Contractor is entitled to a reasonable time extension, costs and overhead in accordance with ORS 279C.655. If the contract is terminated by mutual agreement, Contractor will be paid in accordance with ORS 279C.660.
- ~~(7)~~**G.** 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, are applicable to all non-building construction projects, except as modified by the bid documents.
- ~~(8)~~**H.** Retainage of five percent (5%) of the amount of any progress payment on a public improvement contracts will be reserved until the project is at least 50 percent complete, after which the retainage may be reduced, upon the approval of the Department Director, in accordance with ORS 279C.570(7). The accumulated retainage withheld, less any costs as allowed by statute, will be paid as part of final payment to the contractor in accordance with ORS 279C.570(8).
- ~~(a)~~**1.** Deposit of Retainage in Interest Bearing Account. Upon request of the contractor, the County will deposit the accumulated retainage accumulated in an interest-bearing account in accordance with ORS 279C.560(5). Any interest earned on the retainage deposited will accrue to the contractor.

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- ~~(b)~~2. Surety Bond in Lieu of Retainage. The County may, at its discretion, accept a surety bond from the contractor for all or a portion of the retainage, in accordance with ORS 279C.560(7).
- ~~(c)~~3. Deposit of Securities in Lieu of Retainage. The County will reduce the retainage amount in an amount equal to the market value of bonds, securities, or other instruments deposited by the contractor in accordance with ORS 279C.560(1), in a manner acceptable to the Finance Director.

(Revised by Order No. 15-09-01-05, Effective 10.15.15; 21-06-08-02, 7.1.21)

#### **20.500.597300 Modification of Standard Contract Provisions**

Except as required by Oregon or federal law, the Office of Legal Counsel is delegated authority to waive one or more of the Standard County Contract Provisions contained in LM ~~20-599~~**20.500.200** and ~~20-595~~**20.500.210** when it is in the best interests of the County to do so.

(Revised by Order No. 19-05-21-03, Effective 05-21-19)

#### **20.600 - ~~AUTHORITY TO AWARD, APPROVAL, AND CANCELLATION, AND EXECUTION OF CONTRACTS AND AMENDMENTS~~**

##### **20.600.640100 Contract Award and Approval**

- ~~(1)~~A. Contract award may be made by the public officer delegated the authority to execute the contract or, if no delegation has been made, by the Board.
- ~~(2)~~B. All contracts must be processed through procedures prescribed by the County Administrator, including review by legal, risk management, budget and other staff, except as expressly stated otherwise by these rules.
- ~~(3)~~C. Contracts for personal services for, or related to, legal services and investigations will be processed and archived in the Office of Legal Counsel. However, the authority to execute or amend such contracts must be exercised in accordance with the requirements of LM ~~20-650~~**20.600.300** through ~~20-670~~**20.600.330**.

(Revised by Order No. 15-09-01-05, Effective 10.15.15)

##### **20.600.645110 Cancellation of Award**

The County may cancel the award of any contract at any time prior to the execution of said contract by all parties without any liability to the County.

(Revised by Board Order No. 15-09-01-05, Effective 10.15.15)

#### **~~CONTRACT AMENDMENTS AND ACCEPTANCE~~**

##### **20.600.625210 Requirements for Contract Amendments**

- ~~(1)~~A. Each contract amendment must include, at a minimum, the title of the original contract, names of the parties, clear references to the original contract or prior amendment terms that are being modified, and execution of the amendment by all parties.
- ~~(2)~~B. Each contract amendment should include, in addition, the date of original contract, the number of prior amendments and number of the current amendment, a restated contract amount and completion date, and a provision that "except as set forth above, all provisions of the original contract remain unchanged."

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(Revised by Order No. 15-09-01-05, Effective 10.15.15)

**20.600.630220 Limitations on Contract Amendments**

A contract may only be amended if the amendment, taken together with all prior amendments, does not result in a final contract that no longer bears a reasonable relationship to the contract contemplated in the original procurement.

~~(1)~~**A.** Limitations on Cumulative Amount of Contract Amendments. In addition to the limitations on execution authority contained in LM ~~20.665~~**20.600.320** and ~~20.670~~**20.600.330**, all contracts are subject to limitations on the cumulative amount that a contract can be amended, after which a new contract must be awarded in accordance with these Rules, unless exempted under subsection ~~(3)~~**C.** of this section. These limitations apply to:

Small Procurement, if awarded without competitive procurement	\$12,500 total contract amount
Intermediate Procurement, if award using competitive quotes under LM <del>20.420</del> <del>(1)</del> <b>200.300.200 A.3.</b>	200% of original amount or \$150,000, whichever is less
All other contracts	200% of original amount

~~(2)~~**B.** Limitations on Amendments to Public Improvements Contracts. Contracts for public improvements are subject to statutory limitations on amendments:

- ~~(a)~~**1.** A public improvement contract awarded as a small procurement under ORS 279C.335 may not be amended to an amount of \$5,000 or greater.
- ~~(b)~~**2.** A public improvement contract with an original contract amount of \$50,000 or less may not be amended to exceed \$50,000 unless the requirements of ORS 279C.800 through 279C.870 regarding the payment of prevailing wage rates are incorporated into the contract.

~~(3)~~**C.** Exceptions to Limitations on the Cumulative Amount of Contract Amendments:

- ~~(a)~~**1.** Contracts awarded under a specific exemption to competitive procurement pursuant to LM ~~20.110~~~~20.200.100~~ to ~~20.370~~~~20.200.130~~ are not subject to the limitations stated in ~~Subsections (1) to (3) of~~ this section.
- ~~(b)~~**2.** The Finance Director or the Director's delegee may authorize execution of an amendment to a contract that exceeds the limits in this section when, in the Director or Director's delegee's judgment, the increase in the contract amount is reasonable and necessary.

(Revised by Order No. 15-09-01-05, Effective 10.15.15; 21-06-08-02, 7.1.21)

**20.600.640230 Construction Change Orders**

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

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

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(15-09-01-05, Effective 10.15.15)

**20.600.645240 Contract Completion and Acceptance**

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

(Revised by Order No. 15-09-01-05, Effective 10.15.15)

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

**20.600.650300 Delegation of Authority to Execute Grant Applications and Accept Grants**

- ~~(1)~~A. Each Department Director is delegated the authority to approve and execute all documents in application for or acceptance of a grant not exceeding \$50,000.
- ~~(2)~~B. The County Administrator is delegated authority to approve and execute all documents in application for and acceptance of a grant not exceeding \$150,000.
- ~~(3)~~C. The County Administrator is delegated authority to approve and execute all documents in application for a grant in excess of \$150,000, provided that the application does not obligate the County to accept the grant if awarded.
- ~~(4)~~D. The Board must approve the acceptance of a grant exceeding \$150,000. If an application for a grant in excess of \$150,000 obligates the County to accept the award as a condition of application, the Board must approve the application for the grant. Following Board approval of a grant or grant application, the Administrator is delegated authority to approve and execute all other grant documents.
- ~~(5)~~E. The County Administrator is delegated authority to approve and execute all documents to continue a grant that was approved by the Board, so long as the continuation is substantially similar to the original grant approved by the Board.
- ~~(6)~~F. Notwithstanding the limits on the County Administrator's authority contained in this section, the County Administrator may approve grant applications and accept grants when necessary to secure the full benefit of the grant to the County, provided that:
  - ~~(a)~~1. In the Administrator's judgment, and with the concurrence of County Counsel and the budget and financial planning office, the grant applications or grants require execution prior to the time when they could reasonably be approved by the Board at a regularly-scheduled meeting; and
  - ~~(b)~~2. A description of the grant applications and grants, including the amounts, duration, and reason for prompt execution, is submitted to the Board for ratification on its consent agenda item following execution.

(Revised by Order No. 15-09-01-05, Effective 10.15.15; 19-05-21-03, 05-21-19; 21-06-08-02, 7.1.21)

**20.600.660310 County Administrator's Authority to Execute Contracts**

- ~~(1)~~A. The County Administrator is delegated authority to execute all contracts and agreements that do not exceed \$150,000 in cost or revenue nor three years in length.
- ~~(2)~~B. The County Administrator is further delegated authority to execute contracts that exceed three years in length, or are by their terms self-renewing, but only if:
  - ~~(a)~~1. The cost or revenue for the first three years does not exceed \$50,000, and
  - ~~(b)~~2. The contract contains a provision allowing the County to terminate the contract upon not more than one year's notice.

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- ~~(3)~~**C.** The County Administrator is further delegated authority to execute, without limitation of amount or length:
- ~~(a)~~**1.** All contracts that have been awarded or expressly approved by the Board.
  - ~~(b)~~**2.** Contracts specifically identified in a budget adoption order or supplemental budget order approved by the Board.
  - ~~(c)~~**3.** Insurance nonwaiver agreements and insurance endorsements to original policies.
  - ~~(d)~~**4.** Land use improvement agreements, Building Program Quick Start Agreements and acceptance and release of land use performance bonds.
  - ~~(e)~~**5.** Contracts and assignments for the collection of County judgments.
  - ~~(f)~~**6.** All contracts that implement public improvement projects described on the adopted Lane County Capital Improvement Plan and the Public Works and County Administration public improvement lists prepared for filing with the Commissioner of the Bureau of Labor and Industries (BOLI) pursuant to ORS 279C.305. This delegation includes, without limitation, contracts to prepare for, design, administer, and construct listed projects, as well as those contracts reflecting the County paid portion of the project, those reflecting any amount to be paid by other governmental agencies or housing development entities for assisted housing projects, and those covering environmental mitigation responsibility.
- ~~(4)~~**D.** Notwithstanding the limits on the County Administrator's authority contained in this section and ~~section 20.665~~**LM 20.600.320**, the County Administrator may execute contracts and amendments when necessary to secure the full benefit of the contract to the County, provided that:
- ~~(a)~~**1.** In the Administrator's judgment, and with the concurrence of County Counsel and the budget and financial planning office, the contacts require execution prior to the time when they could reasonably be approved by the Board at a regularly-scheduled meeting; and
  - ~~(b)~~**2.** A description of the contracts or amendments, including the amounts, duration, and reason for prompt execution, is submitted to the Board for ratification on its consent agenda item following execution.

(Revised by Order No. 15-09-01-05, Effective 10.15.15; 19-05-21-03, 05-21-19; 19-08-20-03, 08-20-19; 21-06-08-02, 7.1.21)

### **20.600.665320 County Administrator's Authority to Execute Amendments**

Subject to the limitations on cumulative contract amount in LM ~~20.630~~**20.600.220**, the County Administrator is delegated authority to:

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

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(Revised by Order No. 15-09-01-05, Effective 10.15.15; 19-05-21-03, 05-21-19)

**20.600.670330 Department Directors' Authority to Execute Contracts and Amendments**

- ~~(1)~~**A.** Each Department Director is delegated authority to execute contracts that do not exceed \$50,000 or three years in length.
- ~~(2)~~**B.** Each Department Director is further delegated authority to execute contracts that exceed three years in length, or are by their terms self-renewing, but only if:
  - ~~(a)~~**1.** The cost or revenue for the first three years does not exceed \$50,000, and
  - ~~(b)~~**2.** The contract contains a provision allowing the County to terminate the contract upon not more than one year's notice.
- ~~(3)~~**C.** Subject to the limitations on cumulative contract amount in LM ~~20.630~~**20.600.220**, each Department Director is delegated authority to execute amendments that do not exceed \$50,000, subject to the following limitations:
  - ~~(a)~~**1.** The amendment, in combination with all prior amendments, does not cause the contract amount to exceed \$150,000 in cost or revenue nor three years in length, and
  - ~~(b)~~**2.** The amendment, in combination with all prior amendments, does not exceed \$50,000, or 50% of the contract amount approved by the Board, whichever is greater.

(Revised by Order No. 15-09-01-05, Effective 10.15.15; 19-05-21-03, 05-21-19)

**20.600.680340 County Administrator's Authority to Cancel Awards and Terminate Contracts**

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

(Revised by Order No. 15-09-01-05, Effective 10.15.15)

**20.600.685350 Further Delegation**

The County Administrator and each Department Director's authority under LM ~~20.650, 20.655, 20.660, 20.665, and 20.670~~**20.600.300 through 20.600.340** may only be delegated through a writing.

(Revised by Order No. 15-09-01-05, Effective 10.15.15)

**20.700 - PROTESTS OF PREQUALIFICATION, DEBARMENT, AND DISQUALIFICATION**

**20.700.740100 Protest of Solicitation Process**

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

(Revised by Order No. 15-09-01-05, Effective 10.15.15; 19-05-21-03, 05-21-19)

**20.700.720120 Protest of Award Based Upon Competitive Bidding or Quotes**

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



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other protests of intent of award will be considered by the County Administrator, or the Administrator's designee.

~~(1)~~**A.** Requirements for protest.

- ~~(a)~~**1.** A protest of award of a public improvement contract must specify the applicable grounds for protest set forth in OAR 137-049-0450(4)(c), which is hereby adopted into this rule.
- ~~(b)~~**2.** All other protests of award must be in writing and specify the applicable grounds for the protest as set forth in ORS 279B.410(1).
- ~~(c)~~**3.** Any protest not in compliance with these rules may be rejected.

~~(2)~~**B.** Review and determination.

- ~~(a)~~**1.** Contracts Requiring Board Action to Award. If the public officer determines there is sufficient merit to reject bids, the public officer may do so. If, following any action by the public officer, any portion of the protest remains, the LCRB must be provided with, and may consider, a complete copy of the written record, and any other evidence provided, at a public meeting. The LCRB may affirm, reverse, or revise an award, or may send the matter back to the Department for further action, and must issue its decision by Board Order.
- ~~(b)~~**2.** Contracts Not Requiring Board Action to Award. The County Administrator has authority to reject bids, or to affirm, reverse, or revise the award, or send the matter back to the department for further action. The Administrator must deliver this decision to the LCRB. If, within ~~seven~~ 7 days, the LCRB elects to review the matter, the LCRB must be provided with and may consider a complete copy of the written record, and any other evidence provided, at a public meeting. The LCRB may affirm, reverse, or revise an award, or may send the matter back to the Department for further action, and must issue its decision by Board Order. If the LCRB does not elect to review the matter within ~~seven~~ 7 days, the Administrator's decision will be final.

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

(Revised by Order No. 15-09-01-05, Effective 10.15.15; 19-05-21-03, 05-21-19)

~~20.730~~**20.130** Protest of Award Based Upon a Request for Proposals (RFP)

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

~~(1)~~**A.** Requirements for protest.

- ~~(a)~~**1.** A protest of award of a public improvement contract must specify the applicable grounds for protest set forth in OAR 137-049-0450(4)(c), which is hereby adopted into this rule.
- ~~(b)~~**2.** All other protests of award must be in writing and specify the applicable grounds for the protest as set forth in ORS 279B.410(1).
- ~~(c)~~**3.** Any protest not in compliance with these rules may be rejected.

~~(2)~~**B.** Review and determination.

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- ~~(a)~~1. Upon receipt of a protest, the department must promptly notify both the evaluation committee and the proposer recommended for award that a protest has been received, and furnish each with a copy of the protest. Both the recommended proposer and the committee may, within three 3 calendar days from the date the protest was received, respond to the protest in writing.
  - ~~(b)~~2. After a protest has been received, the Department that issued the RFP must prepare a written analysis of the protest and make a recommendation to the decision maker as to appropriate action to be taken.
  - ~~(c)~~3. Contracts Requiring Board Action to Award. If the public officer determines there is sufficient merit to reject proposals, the public officer may do so. If, following any action by the public officer, any portion of the protest remains, the LCRB must be provided with, and may consider, a complete copy of the written record, and any other evidence provided, at a public meeting. At the public meeting the LCRB may, at the LCRB's discretion, allow the department that issued the RFP and the appellant an opportunity to address the protest. The LCRB may affirm, reverse, or revise an award, or may send the matter back to the Department for further action, and must issue its decision by Board Order.
  - ~~(d)~~4. Contracts Not Requiring Board Action to Award. The County Administrator has authority to reject proposals, or to affirm, reverse, or revise the award, or send the matter back to the department for further action. The Administrator must deliver this decision to the LCRB. If, within **seven** 7 days, the LCRB elects to review the matter, the LCRB must be provided with and may consider a complete copy of the written record, and any other evidence provided, at a public meeting. The LCRB may affirm, reverse, or revise an award, or may send the matter back to the Department for further action, and must issue its decision by Board Order. If the LCRB does not elect to review the matter within **seven** 7 days, the Administrator's decision will be final.
- ~~(3)~~C. The procedures in this rule are mandatory to the extent they establish the time and manner for protests to be submitted to the County, including that the protest be in writing specifying the grounds and timely filed, and that there be a written response. The other protest procedures above are directory, and failure to follow or complete the action in the manner provided will not invalidate the County's decision.

(Revised by Order No. 15-09-01-05, Effective 10.15.15)

## **20.700.740140 Appeals of Prequalification, Debarment, and Disqualification**

A prospective bidder or proposer may appeal a department's decision to debar (non-public improvement) or disqualify (public improvement), or deny, revise or revoke prequalification. See ORS 279B.425 and ORS 279C.450.

- ~~(1)~~A. A prospective bidder or proposer must file a written appeal, including a detailed statement of the grounds for the appeal, within 3 days after receiving notice of the County's decision.
- ~~(2)~~B. The department must schedule the appeal to be heard before the LCRB, or its designee, as soon as reasonably possible, and notify the appellant of the time and place for the hearing.
- ~~(3)~~C. The Department must prepare a written response, provide a copy to the appellant and to the LCRB, and submit the written record to the LCRB.
- ~~(4)~~D. The LCRB must provide a de novo review of the notice of denial, revocation or revision of prequalification or notice of debarment or disqualification and any evidence provided by the parties, and apply the standards of responsibility in deciding an appeal of a denial, revision or revocation of a prequalification in **(5)subsection E** below and criteria for debarment or disqualification in ~~(6)~~ **subsection F** below.



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

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

(Revised by Board Order No. 15-09-01-05, Effective 10.15.15)

**20.700.780150 Other Protests Referred to the LCRB**

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

(Revised by Order No. 15-09-01-05, Effective 10.15.15)