

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

PASSED

ORDER NO.

05-12-14-9

IN THE MATTER OF AMENDING LANE MANUAL
CHAPTERS 20 and 21 TO REFLECT CHANGES IN
LAW AND CLARIFY AND IMPROVE COUNTY
PROCEDURES

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

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

WHEREAS, certain amendments in Lane County's public contracting rules are necessary to reflect changes in statutes and clarify and improve county procedures;

NOW, THEREFORE, sitting as the local contract review board for Lane County, the Board hereby orders:

1. Approval of the amendments to Lane Manual Chapter 20 rules, effective for contracts first advertised or entered into after January 1, 2006;
2. Lane County will continue to "opt out" of the state Attorney General's Model Rules, including those currently in effect, those made available on December 2, 2005, and as they may be further amended in the future;
3. The County Administrator shall take all necessary actions to implement these rules.

NOW, THEREFORE, sitting both as the local contracting agency and as the local contract review board for Lane County, the Board hereby orders:

1. Approval of the amendments to Lane Manual Chapter 21 rules, effective for contracts first advertised or entered into after January 1, 2006.
2. Lane Manual Chapters 20 and 21 are hereby amended by deleting, substituting, and adding the following rules:

DELETE THESE SECTIONS

20.100
as located on page 20-4
(a total of 1 page)

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

INSERT THESE SECTIONS

20.100
as located on page 20-4
(a total of 1 page)

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

DELETE THESE SECTIONS

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

21.105 through 21.106
as located on pages 21-2 through 21-7
(a total of 6 pages)

21.109 through 21.110
as located on page 21-12
(a total of 1 page)

21.113
as located on page 21-14
(a total of 1page)

21.118
as located on pages 21-18 through 21-21
(a total of 4 pages)

21.130
as located on pages 21-24 through 21-27
(a total of 4 pages)

21.300
as located on page 21-30
(a total of 1 page)

INSERT THESE SECTIONS

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

21.105 through 21.106
as located on pages 21-2 through 21-8
(a total of 7 pages)

21.109 through 21.110
as located on pages 21-12 through 21-13
(a total of 2 pages)

21.113
as located on page 21-15
(a total of 1 page)

21.118
as located on pages 21-18 through 21-21
(a total of 4 pages)

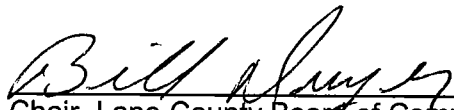
21.130
as located on pages 21-18 through 21-21
(a total of 4 pages)

21.300
as located on page 21-31
(a total of 1 page)

Said sections are attached hereto and incorporated herein by reference. The purpose of these substitutions is to implement the amendments to LM Chapter 20 ordered by the local contract review board above, and to amend LM Chapter 21 to make changes to reflect statutory changes and to clarify and improve county procedures.

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

Adopted this 14th day of December 2005.



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

APPROVED AS TO FORM
Date 12/5/05 Lane County



OFFICE OF LEGAL COUNSEL

LOCAL CONTRACT REVIEW BOARD

PUBLIC CONTRACT EXEMPTIONS, DESIGNATIONS, SPECIAL PROCUREMENTS, AND RULES

20.085 General.

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

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

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

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

20.090 Findings.

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

20.091 Construction and Interpretation.

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

20.095 Definitions.

As used hereafter, unless the context requires otherwise:

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

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

Board means the Board of Commissioners of Lane County.

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

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

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

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

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

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

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

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

Non-Public Improvement Contract. See LM 21.101(1).

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

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

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

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

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

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

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

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

Service Contract means a contract that calls primarily for a contractor's time and effort rather than for an end product.

Special Procurement means a contracting procedure for non-public improvement contracts that differs from bidding, request for proposals, small procurements, and intermediate procurements which might otherwise apply. It refers to "class special procurement" and "contract-specific" special procurement as defined in ORS 279B.085,

unless otherwise specified. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05; 05-3-9-21; 3.9.05)*

DESIGNATIONS, EXEMPTIONS AND AUTHORIZATIONS

20.096 Sole Source Designation.

A contract for a public improvement project may be awarded based on sole source when covered by another LM Chapter 20 exemption or in accordance with LM 20.265(1). For non-public improvement contracts, if there is only one source for goods or services, or a class of goods or services of the quality required by the County, a contract may be awarded to that source without competition. Department Directors are delegated authority to make sole source determinations for contracts equal to or less than \$50,000, subject to any review and reversal by the County Administrator, in his or her discretion. This authority may be further delegated. The County Administrator, or his or her designee, is delegated authority to make sole source determinations for contracts exceeding \$50,000. Sole source determinations shall be made in accordance with procedures established in LM 21.111. *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

20.097 Personal Service Contracts Designation.

Personal service contracts are and shall be designated in accordance with this rule, and the procedures for screening and selection in LM 21.117 and 21.118 shall be followed. The Department Directors shall be delegated the authority to determine whether a particular type of contract or service falls within the following, except that the County Administrator may in his or her discretion, review and reverse a Department's determination.

(1) Pursuant to ORS 279A.055, a personal service contract is one:

(a) Primarily based on a special trust and confidence between the County and contractor; or

(b) Where the services the County or contractor seek for themselves are primarily based on the special or unique expertise or knowledge; particular experience; or the exercise of discretionary judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider; or

(c) Where the County is purchasing services for clients and (a) and (b) above are met for the client, rather than County.

Examples of personal service contractors include, but are not limited to: consultants with special expertise in a particular area; architects; engineers; land surveyors; landscape architects; professionals providing facilities or land use planning services, environmental impact testing and analysis, construction management services, appraisals, timber cruise services; attorneys; auditors; accountants; medical personnel (including physicians, physician assistants, nurse practitioners, and nurses), licensed mental health therapists; artists, designers, data processing consultant; contracts for services of a specialized, creative and research-oriented nature; educators; investigators.

(3) The following are examples which are not considered personal services: a contract, even though in a professional capacity, if predominately for a product; a service to supply labor which is of a type that can generally be done by a competent person or is primarily a custodial care service; a contract for a trade-related activity such as repair or maintenance for buildings or equipment. *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

20.098 Electronic Advertising.

It is likely to be more cost effective for the County to publicly advertise bid and request for proposal competitive processes, including for public improvement contracts, by

publishing the ad electronically on the web, rather than paying the cost of advertising in a newspaper of general circulation in Lane County. The same conclusion applies to other public notices required to be provided under LM Chapter 20 or LM Chapter 21. The County is authorized to electronically advertise as long as procedures in LM 21.105(3) are followed. *(Revised by Order No. 05-2-16-8, Effective 2.28.05; 05-3-9-21; 3.9.05)*

GENERAL EXEMPTIONS

20.100 General Statutory/Regulatory Exemptions and Exclusions.

- (1) County contracts are not required to be based upon a County competitive bidding or request for proposal process if a state or federal statute or regulation provides otherwise, or directs that another selection process be used. The County will comply with any limits or conditions to competitive selection required by state or federal law or regulation. Examples of such contracts include, but are not limited to the following:
- (a) Contracts between contracting agencies or between contracting agencies and the federal government;
 - (b) Contracts between entities covered by ORS 190.010, or intergovernmental agreements.
 - (c) Contracts for public improvements if the value of the contract is less than \$5,000;
 - (d) Public improvement contracts not exceeding \$100,000, or \$50,000 in the case of a contract for a highway, bridge or other transportation project made pursuant to competitive quotes;
 - (e) Intermediate procurements;
 - (f) Grants;
 - (g) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which a public body is or may become interested;
 - (h) Acquisitions or disposals of real property or interests in real property;
 - (i) Sole source expenditures when rates are set by law or ordinance for purposes of source selection;
 - (j) 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;
 - (k) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145;
 - (l) Contracts for repair, maintenance, improvement or protection of property obtained by the Director of Veterans' Affairs under ORS 407.135 and 407.145(1).
 - (m) Contracts specifically exempt or authorized as a special procurement under LM Chapter 20 or under state law.
 - (n) Cooperative procurements covered by ORS 279A.200 - ORS 279A.220.
 - (o) Personal service contracts. See ORS 279B.050(4); ORS 279A.070.
 - (p) Contracts in which a public entity such as Lane County is permitted to award without bidding or request for proposals provided the entity adopts its own rules covering the selection process (e.g., ORS 279B.065 (small procurements), ORS 279C.335(5) (emergency), ORS 279A.180 (purchases through certain federal government programs)). *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05)*

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

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

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

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

(c) When the amount of the contract exceeds the amounts in (b), but do not exceed \$100,000 (except for public improvement contracts for highway, bridge or other transportation projects), the County shall obtain a minimum of three (3) competitive quotes or proposals, subject to the requirements and procedures in LM 21.110. For highway, bridge or other transportation projects a minimum of three competitive quotes is required for contracts \$5,000 or greater but not exceeding \$50,000 pursuant to LM 21.110 procedures. If three (3) quotes are not available for purchases covered by this rule, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. The County shall keep a written record of the source and amount of quotes received.

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

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

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

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

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

(2) Subject to any waiver, an amendment to a personal service contract may be executed without further competitive process when it is equal to or less than 50 percent of the original contract amount, or in the event of multiple amendments, where the aggregate of the amendments is equal to or less than 50 percent. In addition, if the amendment is related to continuation of a project as provided in LM 21.118(8), no additional competitive process is required. *(Revised by Order No. 98-12-2-, Effective 12.2.98; 05-2-16-8, 2.28.05)*

20.115 Life Cycle Costing.

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

20.115(2) below. As used in this rule, life cycle costing means determining the cost of a product for its useful life.

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

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

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

20.120 Price Regulated Items or Services.

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

20.125 Price Set by Federal Contracts.

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

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

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

20.128 Client/Patient Services.

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

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

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

(3) Will select a qualified provider from the list as a client need arises, based on criteria including, but not limited to, client and family needs, quality/type of appropriate care, availability of service at the time it is needed, and cost. *(Revised by Order 02-12-4-4, Effective 12.04.02)*

20.130 Request for Proposal.

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

(1) Procuring goods or services relating to non-public improvement contracts for any amount, or

(2) Personal service contracts, except as otherwise required for qualification based selection, or

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

20.135 Requirements and Price Agreements.

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

(a) The contract must be let by a competitive procurement process pursuant to the County's public contracting rules.

(b) The term of the contract including renewals does not exceed three years.

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

(3) The County may use the requirements contract between a contractor and another public contracting agency when a formal interagency agreement exists between the two public agencies, or

(4) The County may execute its own requirements contract directly with a contractor, relying upon a prior competitive selection process used by another public agency to select the same contractor for a similar purpose as long as:

(a) The prior solicitation documents or contract explicitly allows for other public agency use; and

(b) The County verifies the validity of the prior process with respect to its own contracting need, and

(c) The prior competitive selection process occurred within the past 3 years.

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

(a) It provides that the contract may be canceled upon 30 days written notice by the County at its discretion; and

(b) Each specific purchase is considered separately for competitive selection pursuant to the applicable County public contracting rules. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05)*

EXEMPTIONS AND AUTHORIZATIONS BY TOPIC

20.155 Advertising Contracts.

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

20.160 Construction Manager/General Contractor.

The County may use a request-for-proposal procedure for the selection of construction manager/general contractor firms (CM/GC) who will be required to establish guaranteed

maximum prices for constructing public improvements, subject to the following conditions:

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

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

20.165 Copyrighted Materials.

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

20.170 Election Supplies and Services.

The County is exempt from competitive bidding or quote requirements for the printing of official ballots, including sample and test ballots, ballot envelopes, and including polling place and drop site signs. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12, 6.30.04)*

20.175 Equipment Repair and Overhaul.

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

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

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

(2) If the contract exceeds \$100,000, the County shall document in its procurement file the reasons why competitive bids or quotes were deemed to be impractical. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05)*

20.180 Food Service Contracts.

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

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

(a) Prior to the selection of a contractor, the County has made reasonable efforts to inform known companies providing food services of the subject matter of the contract and solicits proposals including public advertisement pursuant to LM 21.105(3).

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

(3) Contracts for jail and juvenile detention facility food items are exempt from competitive bidding. The County should, where feasible, obtain competitive quotes. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05)*

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

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

20.190 Oil or Hazardous Material Removal.

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

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

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

(c) Record the measures taken under LM 21.111(2) above to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the contractor selected.

(2) The County shall not contract pursuant to this exemption in the absence of an order from the Department of Environmental Quality to cleanup a site with a time limitation that would not permit hiring a contractor under the usual competitive bidding procedures. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05)*

20.195 Office Copier Purchases.

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

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

20.200 Laboratory and Medical Supplies.

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

20.205 Purchases of Hospital and Medical Supplies and Equipment.

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

20.206 Library and Reading Materials.

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

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

20.207 Purchases of Used Personal Property.

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

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

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

(2) If there is no other practical method of specification, the County may designate a particular brand name, make, or product supplied by, or "approved equal," or "equivalent," or similar language, "or equal," but this practice should be avoided whenever practicable. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05)*

20.215 Brand Name or Mark Exemption Applications.

(1) LM 21.112 covers brand name procedures for non-public improvement contracts. This rule covers the LCRB granting an exemption for a brand name or make for current and contemplated future purchases for public improvement contracts. Applications shall contain the following information:

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

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

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

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

(a) The exemption is not likely to encourage favoritism in awarding public improvement contracts or substantially diminish competition, or

(b) The specification of a product by brand name or mark, or the product of a particular manufacturer or seller would result in substantial cost savings to the County, or

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

(d) Efficient utilization of existing equipment or supplies requires acquisition of compatible equipment or supplies. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05)*

20.220 Copyrighted Materials.

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

20.225 Single Manufacturer or Service Provider.

(1) If there is only one manufacturer or seller of a product or service of the quality required or if the efficient utilization of the existing equipment or supplies requires a compatible product of a particular manufacturer or seller, the County may specify such particular product subject to the following conditions:

(a) The product is selected on the basis of the most competitive offer considering quality and cost.

(b) It follows the procedure in LM 20.111(2). *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05)*

20.230 Product Pre-Qualification.

(1) When it is impractical to create specific design or performance specifications for a type of product to be purchased, the County may specify a list of approved products by reference to particular manufacturers or sellers in accordance with the following product pre-qualification procedure:

(a) The County has made reasonable efforts to notify known manufacturers or vendors of competitive products of its intention to accept applications for inclusion in its list of pre-qualified products. Notification shall be in accordance with LM 21.105(3) and may include advertisement in a trade journal of statewide distribution when possible. In lieu of advertising, the County may notify vendors and manufacturers appearing on an appropriate list maintained by the County.

(b) The County permits application for pre-qualification of similar products up to 5 days prior to advertisement for bids on the product.

(2) Manufacturers and vendors shall have the opportunity to submit goods where testing or examination is necessary or desirable. The decision to pre-qualify the goods shall be based on the results of tests or examinations. If an application for inclusion in a list of pre-qualified products is denied, or an existing pre-qualification is revoked, the County shall notify the applicant in writing. The applicant may appeal to the County Administrator. The appeal must be filed with the department soliciting the product within 5 days of mailing of the denial or revocation. The appeal must state the grounds for appeal. The County Administrator shall decide the matter on the written record within 7 days. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05)*

COUNTY ADMINISTRATIVE SERVICES

20.235 Insurance Contracts.

(1) Contracts for insurance where either the annual or aggregate premium exceeds \$100,000 must be let by formal competitive bidding or by one of the following:

(a) Agent of Record: The public contracting agency may appoint a licensed insurance agent (agent of record) to perform insurance services in connection

with more than one insurance contract. Among the services to be provided is the securing of competitive proposals from insurance carriers for all coverages for which the agent of record is given responsibility:

(i) Prior to the selection of an agent of record, the County shall make reasonable efforts to inform known insurance agents in the competitive market area that it is considering such selection. These efforts shall include a public advertisement pursuant to LM 21.105(3). The advertisement shall generally describe the nature of the insurance that the public contracting agency will require. If the amount of the annual premium for insurance, other than employee benefits insurance, is likely to exceed \$100,000 per year, such notice shall also include a public advertisement in at least one insurance trade publication of general circulation in the state;

(ii) Any appointment period shall not exceed three years. Agents may serve more than one appointment period. Agents must qualify for appointment prior to each period as if each appointment period were the first;

(iii) In selecting an agent of record, the County shall select the agent(s) most likely to perform the most cost-effective services.

(b) Specific Proposals for Insurance Contracts: The County may solicit proposals from licensed insurance agents for the purpose of acquiring specific insurance contracts subject to the following conditions:

(i) The County shall make reasonable efforts to inform known insurance agents in the competitive market area of the subject matter of the contract, and to solicit proposals for providing the services required in connection with the contract. Such efforts shall include public advertisements pursuant to LM 21.105(3). If the amount of annual premium for insurance, other than employee benefits insurance is likely to exceed \$100,000 per year, such notice shall also include a public advertisement in at least one insurance trade publication of general circulation in the state;

(ii) The County shall select an agent on the basis of the most competitive offer considering coverage, premium cost, and service to be provided.

(2) Contracts for insurance where either the annual or aggregate premium is less than or equal to \$100,000 may be let by informal quotes. *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

20.240 Employee Benefit Insurance.

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

20.245 Investment Contracts.

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

20.250 Litigation Services.

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

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

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

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

EXEMPTIONS AND AUTHORIZATIONS AS CIRCUMSTANCES ARISE

20.255 Emergency Contracts.

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

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

(1) The LCRB may exempt a particular public improvement contract, or a category of contracts, from the bidding requirements of ORS 279C.335, which are not otherwise exempt under these rules. The request for exemption shall contain the following information and draft findings where appropriate:

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

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

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

(3) Consideration of the applicable information in LM 20.265(1) and (2) will be documented in findings and include the following standard:

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

(b) The awarding of public contracts pursuant to the exemption will result in substantial cost savings to the public contracting agency considering the type, cost, amount of the contract, number of persons available to bid and such other factors as may be deemed appropriate.

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

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

(a) A description of the goods or services or the class of goods or services to be acquired; and,

(b) A description of the proposed contracting procedure; and,

(c) A description of the circumstances that justify the use of a special procurement.

(6) The LCRB may require such additional information as it deems necessary to determine whether a specific contract, or category of contracts under (4), should be procured by a process other than one that would be applicable.

(7) Application of the information in LM 20.265(4) and (5) must demonstrate that the special procurement would meet the following standard:

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

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

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

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

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

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

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

including but not limited to, any County department analysis and submissions by the affected person or entity, and any oral testimony. The LCRB may revise the special procurement, in whole or in part, or deny or sustain the protest.

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

APPEAL FROM PREQUALIFICATION DECISION OR DEBARMENT

20.270 Prequalification and Debarment Appeals.

A prospective bidder or proposer may appeal a Department's decision to debar or disqualify, or revise or revoke prequalification. See ORS 279B.425 and ORS 279C.450.

(1) A prospective bidder or proposer shall file a written appeal within 3 days after receiving notice of the County's decision. The appellant shall include a detailed statement of the grounds for the appeal.

(2) The Department shall schedule the appeal to be heard before the LCRB, or a designee, as soon as reasonably possible, notify the appellant of the time and place for the hearing, prepare a written response, and provide it to the appellant and to the LCRB. The Department shall also submit the written record to the LCRB.

(3) There shall be a de novo review of the notice of denial, revocation or revision of prequalification or notice of debarment and any evidence provided by the parties. The LCRB shall apply the standards of responsibility in determining disqualification in (5) below or criteria for debarment in (6) below.

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

(5) In determining whether the standards of responsibility have been met, the LCRB shall consider whether one or more of the following criteria have been met:

(a) Non-availability of appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain resources and expertise necessary to indicate capability to meet contractual responsibilities;

(b) Unsatisfactory record of performance;

(c) Unsatisfactory record of integrity;

(d) Not legally qualified to contract;

(e) Failure to supply all necessary information in connection with the inquiry concerning responsibility;

(f) Whether contractor has been debarred.

(6) In determining whether to debar a prospective bidder or proposer from consideration of award of the County's contracts for up to 3 years, the decision-maker shall consider whether one or more of the following have been met:

(a) Conviction of a criminal offense as an incident in obtaining or attempting to obtain or performing pursuant to a public or private contract or subcontract;

(b) Conviction under state or federal law or embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating lack of business integrity or business honesty that currently, seriously and directly affects responsibility as a contractor;

(c) Conviction under state or federal antitrust statutes;

(d) Violation of a contract provision and debarment was listed as a potential penalty in the terms of the contract;

(e) Failure to carry workers' compensation or unemployment insurance as required by statute. *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

BID SECURITY AND BONDS

20.275 Bid Security and Bonds.

(1) 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 279B.050 and performance and payment bond requirements provided that the County may require bid, performance, or payment security, in its discretion, regardless of this exemption.

(2) Contracts for public improvements and construction contracts as defined in ORS 279C.320(1) 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. ORS 279C.390. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05; 05-3-9-21; 3.9.05)*

Chapter 21

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

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

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

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

(4) Any reference in this Chapter to OAR Chapter 137 provisions shall be for the purposes of aiding in interpretation in the event of ambiguity or of providing further explanation of the manner in which the County may interpret its rule. When used as such, the reference shall be: “See OAR ____.” Unless otherwise specifically noted, these OAR provisions are not adopted as rules applicable to County contracts. The applicable rules are those contained in LM Chapters 20, 21, and 60 (regarding sale of personal/surplus property).

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

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

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

21.101 Definitions.

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

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

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

(c) Goods or services. See ORS 279B.005(b).

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

(e) Lowest responsible bidder or proposer. See ORS 279C.375, ORS 279B.110.

(f) Non-public improvement contract. Contracts including “goods or services” as defined by ORS 279B.005(1)(b), and contracts for minor alteration, ordinary repair or maintenance of public improvements, and any other construction contract that is not defined as a “public improvement” under ORS 279A.010.

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

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

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

(j) Public contract. See ORS 279A.010(1)(x). In addition, a public contract is any written document which sets forth the promises of the parties, one of whom is the County. More specifically, a public contract can cover purchases, sales, leases, or other acquisition or disposal of personal property or public improvements. It can also cover sales and purchases of services, including personal services. Net financial effect for the County is not a factor in determining whether a public contract exists. A public contract may bind the County to incur a financial obligation, may produce revenue, or may have little or no financial implications.

(k) Public improvement. See ORS 279A.010(1)(aa).

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

(m) Request for Proposal. See LM 21.107.

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

21.102 Policy on Competition.

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

All public contracts shall be awarded by competitive procurement, except as otherwise allowed or required in ORS 279A, B, or C; ORS 282.210; or the County's public contracting policies and exemption rules. If federal funds are involved, federal laws, rules and regulations shall govern, in the event of conflict. *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

21.103 Contract Execution and Processing.

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

(2) All contracts shall be processed through procedures prescribed by the County Administrator for review by legal, risk management and budget staff, except where expressly stated otherwise by the County Administrator or these rules. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05)*

COMPETITIVE SELECTION

21.105 Competitive Bidding.

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

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

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

(3) Advertisements.

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

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

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

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

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

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

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

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

(b) Departments may use either or both of the following advertising methods (in (i), (ii)):

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

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

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

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

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

(4) Delegations and Authority to Act.

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

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

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

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

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

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

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

(5) Bids.

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

(a) An invitation to bid is used to initiate a sealed bidding solicitation. It shall contain the information required by ORS 279B.055(2) for non-public improvement contracts, and by ORS 279C.365 and ORS 279C.830 for public improvement contracts.

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

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

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

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

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

(d) Correction, Withdrawal and Late Bids. A bidder may withdraw the bid at any time prior to the deadline set for receipt of bids and deposit a new, sealed bid in accordance with the initial invitation to bid. The County may release an unopened bid which has been withdrawn to the bidder or authorized representative after voiding any date and time stamp mark. The County will not consider bids received after the time and

date indicated for bid opening in the invitation to bid. A bidder may not modify any bid after it has been deposited with the public officer, except for minor informalities. All decisions to permit correction or withdrawal of bids shall be supported by written reasons.

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

(f) Bids Irrevocable. All bids shall be irrevocable for 30 days from the time of opening unless otherwise stated in the bid documents. Further, the bids of the three lowest un-rejected bidders shall be irrevocable and binding and the bid securities shall be retained by the public officer until there is an executed contract and the contractor has provided all required satisfactory performance bonds. All other bid securities shall be returned promptly upon award of the contract or rejection of all bids.

(6) Protest of Process and Solicitation Document.

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

(7) Opening of Bids.

The public officer will not examine any bid prior to opening. The officer shall note on the envelope containing the bid the date and hour received. All bids submitted to the County will be opened publicly at the time, date and place designated in the invitation to bid and by the public officer. Any bid or modification received after the designated deadline shall be returned unopened to the bidder. To the extent practicable, the public officer shall read aloud the amount of the bid, the name of the bidder and such other information as the public officer considers appropriate, and record the same. The bid record for a public improvement contract shall be open to public inspection after the opening, with the exception of certain information covered by a public records exemption. The bid record for a non-public improvement contract shall be open to public inspection after the issuance of an intent to award, with the exception of certain information covered by a public records exemption. If the County receives a records request, including subpoena, covering information the bidder believes is covered by an applicable public records exemption, it shall be the bidder's responsibility to defend and indemnify the County for any costs associated with establishing such an exemption. The bidder's act in submitting a bid constitutes its acceptance of this responsibility..

(8) Evaluation of Bids.

(a) Evaluation of bids will be conducted by the public officer in cooperation with the department requesting the bid, if any, and shall be based on minimum requirements established by the bid documents, compliance with public

bidding procedures, bidder responsibility, ethical practice, product acceptability, ORS 279B.055(6)(a), and LM Chapter 20. See also, OAR 137-049-0380.

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

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

(d) The public officer shall make all necessary investigation to determine whether the apparent lowest responsible bidder has met responsibility requirements. See ORS 279C.0375(3); ORS 279B.110.

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

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

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

(9) Mistakes in Bids.

Minor informalities may be waived. Mistakes discovered in bids after opening where the intended correct bid is clearly evident or properly substantiated may be corrected. Where the intended correct bid is not clearly evident or cannot be substantiated by accompanying documents, the bid may not be accepted. The County reserves the right to waive technical defects, discrepancies and minor irregularities, and to not award a contract when it finds such action to be in the public interest. See OAR 137-049-0350 and OAR 137-047-0470.

(10) Rejection.

The County reserves the right to cancel a solicitation, or reject any or all bids in whole or in part when the cancellation or rejection is in the County's best interests as determined by the County. This includes rejecting any bid not in compliance with all prescribed public bidding procedures and requirements, and for good cause, rejecting all bids upon a finding that it is in the public interest to do so. See OAR 137-049-0440(5), OAR 137-047-0640, OAR 137-047-0650. If all bids are rejected in whole or in part, new bids may be called for as in the first instance or initial bids may be considered with opportunity for supplemental submission. If there is partial rejection, the County may solicit supplemental information only from the bidders who submitted bids and may set an expedited deadline on the conditions that such deadline is within what could reasonably be expected as part of the original competitive process and that it is unlikely readvertising publicly would lead to greater competition. The public officer is delegated the authority to reject all bids, prepare findings of best interests and provide written notice of rejection of all bids including the reasons therefore to all bidders. The public

officer is further delegated authority to reject any bid which does not conform to prescribed public contract procedures and requirements and to reject for good cause any bid upon a written finding it is in the best interest of the County and public to do so. However, if the rejection is of what initially appears to be the successful bid, the Board or the County Administrator, depending upon authority to execute the contract, shall exercise the right to reject the apparent successful bid. In addition, if partial rejection under this rule occurs as a result of the filing of a protest, any portion of the protest not resolved in favor of the protestor shall proceed to the Board or County Administrator.

(11) Authority to Award Contract Subject to Bid.

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

(b) Other than as delegated in LM 21.105(11)(a), the Board shall award contracts which have been bid in a public meeting. Generally, public testimony will not be received unless the Board specifically determines otherwise.

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

(12) Notice of Intent to Award.

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

(13) Protests of Award.

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

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

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

(c) For County Administrator awarded contracts, the County Administrator has authority to reject bids pursuant to LM 21.105(10), and authority to affirm, reverse, send back to the Department or revise the award of the contract in order to correct any errors made in the original award, so that the contract is awarded to the bidder legally entitled to receive an award pursuant to public contract law and regulations and the criteria stated in the documents. The County Administrator shall deliver this decision to the Board. The decision shall be final seven days after it is delivered to the Board, unless within that time the Board elects to review the matter. If the Board elects review, a complete copy of the written record shall be delivered to the Board within a reasonable time period. The Board may consider this written record, and any other evidence provided at a public meeting and shall issue its decision by Board Order. The Board may affirm, reverse, send back to department, or revise the decision of the County Administrator, or his or her designee. Upon adoption of the order, the decision will be final.

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

21.106 Bid, Payment and Performance Securities.

(1) Bid Security.

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

(b) The public officer is delegated the authority to waive the bid security requirement described above prior to bid opening for any goods or services contract, any construction contract as defined in ORS 279C.320(1), and any public improvement contract not exceeding \$100,000 except a contract for highway, bridge, or other transportation projects which cannot exceed \$50,000. The public officer must reasonably believe:

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

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

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

(2) Payment and Performance Security.

(a) All bid solicitation documents for public improvement and other construction contracts shall require a payment and performance bond be filed with the County in accordance with ORS 279C.380, unless exempt under LM 20.275. In addition, the solicitation document shall require that each contractor and subcontractor have a public works bond on file with the Construction Contractors Board before starting work on the project in accordance with ORS 279C.830(3), except if the contractor or subcontractor is a disadvantaged, minority, women, or emerging small business and has established an exemption through notice to the Construction Contractors Board and County. All bids for goods or services contracts may require a payment and performance bond, if the public officer determines it is in the County's best interest to do so.

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

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

(3) Public Works Bond.

(a) Before starting work on a contract for a public works project which requires payment of a prevailing wage, the Contractor and any subcontractor must have a public works bond in the amount of \$30,000 filed with the Construction Contractor's Board unless an exemption is established as a disadvantaged, minority, women, or emerging small business enterprise. If requested by County, the contractor shall submit written documentation from the Construction Contractors Board or its website, evidencing the receipt of this bond and receipt of such bonds for any subcontractors. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05)*

21.107 Requests for Proposals.

(1) Description. Requests for proposals (hereinafter RFP) are a means of soliciting competitive proposals or offers for entering into a contract for personal services, goods, goods and services, equipment, non-public improvement construction related services (ORS 279C.320), or public improvement contracts for which an RFP process is appropriately authorized (ORS 279C.335(2)). Generally, an RFP is appropriate when price and specification will not necessarily be the predominant basis for award. An RFP process is one, but not the only means of competition for personal services contracts.

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

- (a) The composition and role of the evaluation committee;
- (b) The evaluation criteria to be used in awarding the contract and the weight assigned to each criterion;
- (c) Provide for an opportunity to protest the solicitation in accordance with LM 21.107 (6);
- (d) The contract terms;
- (e) Describe the right of appeal as stated in LM 21.107(13) and to protest pursuant to LM 21.107(16) below;
- (f) Invite the submission of sealed, written offers to be publicly opened at a designated time and place;
- (g) Describe the method of contract selection, including award without negotiation, negotiation with highest ranked proposer, competitive negotiations, multiple-tiered competition or any combination of these methods or any other method authorized by these rules.
- (h) An RFP process, if appropriately authorized for a public improvement contract, is not required to include first-tier subcontractor disclosure and reciprocal preference for non-resident bidders.
- (i) Departments are encouraged to include diversity in the evaluation criteria in RFPs for contracts in which direct services are to be provided to the public. See Lane County Diversity Action Plan.

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

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

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

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

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

(8) Evaluation of Proposals. The evaluation committee shall evaluate the proposals according to the criteria stated in the RFP, compliance with public contracting procedures, proposer responsibility, ethical practice, product acceptability, and ORS Chapter 279A, B, and C. The award shall be to the responsible proposer whose proposal is determined in writing to be the most advantageous to the County, not restricted to price, based on evaluation factors set forth in the RFP and any authorized negotiations. . The department responsible for issuing the RFP shall mail notice of the evaluation committee recommendation to the proposers within two days of the committee's decision unless otherwise stated in the RFP. Negotiations with proposers regarding contract terms may occur only after the award or only as provided in the RFP. See OAR 137-047-0262, OAR 137-049-0650.

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

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

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

(12) Rejection. See LM 21.105(10). References to "bid" includes "proposal." References to "bidders" includes "proposers." References to "bid documents" include "request for proposal documents." References to "opening bids" include "opening proposals."

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

(14) Protest of Intent to Award/Evaluation Committee Recommendation. Anyone responding to an RFP who is not recommended for award by the evaluation committee may protest the recommendation to the decision maker, either the Board or the County Administrator, depending upon which has authority to execute the contract pursuant to LM 21.105(13). References to "bid documents" include "request for proposal

documents” and references to “bid” include “proposal,” except for the grounds in LM 21.105(13)(a). The applicable grounds for this protest are set forth below.

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

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

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

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

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

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

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

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

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

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

(vii) The evaluation of the proposals is otherwise in violation of any application provisions of ORS 279A.

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

(f) If a protest is timely filed, the Board or County Administrator, as appropriate, shall consider the evaluation committee's recommendation and the allegations of the protest before rendering a final decision. If the Board is the decision maker, it shall carefully evaluate any protest before rendering a decision and shall state the conclusions reached and reasons either in writing or on the record in a public meeting. Any decision to overturn the recommendation shall be based on a finding that one of the criteria of LM 21.107(13)(d) above occurred to the substantial prejudice of the protestor. The protestor must be eligible and next in line to be awarded the contract if the protest was successful.

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

(14) Authority to Award Contract Subject to RFP.

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

(b) All decisions to award a contract following a request for proposals shall be based on the criteria stated therein, substantial compliance with public contract laws, rules and procedures, and the best interests of the County. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05)*

21.108 Letters of Interest.

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

(2) When Applicable.

(a) LOIs may be used as a means of determining whether a potential contractor is a sole source under LM 20.096 and LM 21.111. This contemplates a situation where the fundamental nature of the good or service is so limiting that it seems likely that only one seller/provider exists. Because it is the County's policy to encourage competition whenever possible, it is not permissible to describe a fundamentally broad need in a narrow or limiting way in order to use this process. The expectation of the funding source is one important factor in determining the fundamental nature of a good or service. There may be additional facts to support sole source.

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

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

(a) An advertisement must be run in a newspaper of general countywide circulation and/or electronically as authorized by LM 21.105(3) at least once and not less than five days before the LOIs are due. Additional advertisements may also be published in other newspapers.

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

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

(d) If the County receives more than one LOI response, all parties responding shall receive an opportunity to compete for the contract pursuant to a bid invitation, RFP, or Request for Personal Services (RFPS) pursuant to LM 21.118(6). If this occurs, the competition must be open to all potential competitors, and not just those submitting LOIs. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 05-2-16-8, 2.28.05)*

21.109 Small Procurements.

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

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

(2) A small procurement contract should not be considered separately when it is a component of a larger purchase or project in one year, and when considered as a