

BOOK 161 PAGE 1209

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

**PASSED**

ORDER NO  
98-12-2-1

) IN THE MATTER OF AMENDING CHAPTER 20 OF LANE MANUAL  
) TO ADOPT RULES EXEMPTING CERTAIN CONTRACTS FROM  
) FORMAL COMPETITIVE BIDDING, ADOPTING FINDINGS OF FACT  
) AND AUTHORIZING THE COUNTY ADMINISTRATOR TO  
) IMPLEMENT

WHEREAS, the Board, sitting as the local contract review board in accordance with ORS 279.015 adopted certain provisions of the Oregon Administrative Regulations Chapters 125 and 137 which were in effect on November 30, 1994 as the contract exemption rules governing public contracts for Lane County until further modified, pursuant to LM 20.100.

WHEREAS, the Board, sitting as the local contract review board, having examined and considered findings of fact in Exhibit A, incorporated by this reference, and having considered any evidence submitted at the duly noticed public hearing scheduled this date to address this matter, in determining whether to adopt its own rules exempting certain classes of contracts from formal competitive bidding,

WHEREAS, the Board, sitting as the local contract review board, has now decided to modify the contract exemption rules for Lane County to reflect the adoption of its own rules,

NOW, THEREFORE, sitting as both the local contract review board, and as the Board of County Commissioners, the Board hereby ORDERS that

1. Lane Manual Chapter 20 is hereby amended by removing and substituting the following pages:

REMOVE THIS PAGE

20.100 - 20.100(2),  
i.e. 20-1  
(a total of one page)

INSERT THESE PAGES

20.085 - 20.095(6) to  
20.270 - 20.270(2),  
i.e. 20-1 to 21-16  
(a total of 16 pages)

Said pages are attached hereto and incorporated herein by reference. The purpose of this substitution is to adopt the Contract Review Board Public Contract Exemptions and Rules. They shall apply to Lane County contracts until further modified.

2. On the basis of the record submitted, including any evidence provided at the public meeting the Board adopts as findings and conclusions in support of these class exemptions and rules, the findings and conclusions attached as Exhibit "A".

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

Adopted this 2nd day of December, 1998.

*[Signature]*  
Chair, Lane County Board of Commissioners

*[Stamp]*

DEC 07 1998

COUNTY CLERK

*[Signature]*

APPROVED AS TO FORM

Date 11-23-98 Lane County

*[Signature]*  
OFFICE OF LEGAL COUNSEL

**CONTRACT REVIEW BOARD**  
**PUBLIC CONTRACT EXEMPTIONS AND RULES**

20.085 Purpose and Statutory Authority.

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

(2) Statutory Authority. These rules are authorized by ORS 279.015(2) and ORS 279.017(2) and the Lane County Charter.

20.090 Findings. Adoption of these rules and the exemptions herein are supported by the findings of the Board of County Commissioners adopted by Order 98-12-2-1.

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

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

(a) OAR 125 Divisions 31, 300, 310, 320, 340, 350, 360, OAR 125-30-070.

(b) OAR 137 Divisions 30 and 40.

20.095 Definitions. As used hereafter, unless the context requires otherwise:

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

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

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

(4) "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.

(5) "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.

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

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

(8) "Extra 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.

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

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

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

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

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

(14) "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.

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

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

(17) "Requirements 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.

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

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

**GENERAL EXEMPTIONS****20.100 General Statutory Exemptions and Exclusion.**

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

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

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

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

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

(iii) The original contracting public agency concurs.

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

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

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

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

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

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

(2) Personal and professional service contracts are excluded from the definition of public contract and are not subject to a formal competitive selection requirement selection procedures for these are covered in LM Chapter 21.

**20.105 Dollar Amount of Contract - Under \$50,000.**

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

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

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

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

(2) The County may let public contracts for trade related projects, i.e., building or road construction, maintenance, repair, or similar labor and materials contracts under the applicable provision in LM 20.105(1)(a), (b), and (c) above if it will result in cost savings. However, all other applicable public improvement contract requirements must be met.

20.110 Contract Amendments (Including Change Orders under Extra Work). Any contract amendment or change order (excluding for personal or professional services) which increases the original contract price, may be made with the contractor without further competitive process if either of the following conditions are met:

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

(2) The amount of the aggregate cost increase resulting from all amendments does not exceed 20 percent of the amount proposed and accepted through competitive selection for the initial contract; with the exception of contracts for the renovation or remodelings of buildings which may have aggregate amendments not exceeding 33 percent of this amount. Amendments made pursuant to LM 20.110(1) above of this rule are not included in computing the aggregate amount under this section.

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.

**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.

**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.

**20.130 Request for Proposal.** The County may, at its discretion, use a request-for-proposal competitive selection process for any contract otherwise subject to formal competitive bidding. The RFP process is set forth in LM 21.107.

**20.135 Requirements Contracts.**

(1) The County may enter into requirements contracts whereby it is agreed 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 bidding.

(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.

#### 20.140 Sole Source.

(1) Subject to the requirements of LM 20.140(3) below, the County may purchase a product without competitive bidding or quotes, if there is only one seller of a product of the quality required, or if the efficient utilization of existing equipment or supplies requires specification of a compatible product for which there is only one seller.

(2) Subject to the requirements of LM 20.140(3) below, the County may purchase services without competitive bidding or quotes if there is only one provider of the particular service.

(3) Prior to awarding a contract under LM 20.140(1) or (2) above, the County shall make a reasonable effort to notify all known potential contractors of the intended purchase or project. The County may solicit information about the existence of any competition through informal telephone, written contacts or formal request for information. Where one or more known potential contractors are located within Lane County, the County should use a Letter of Interest (LOI) selection process as set forth in LM Chapter 21.

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

(5) If the County intends to make several purchases of the product or service of a particular seller or provider for a period not to exceed 3 years, it may so state in the documentation required in LM 20.140(4) above and such documentation shall be sufficient notice as to subsequent purchases.

**EXEMPTIONS BY TOPIC**

20.155 Advertising Contracts. The County may purchase advertising without competitive bidding or quotes. This includes, but is not limited to, space for advertising and legal notices in newspapers and other publications, and radio and television spots.

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.

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.

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

20.175 Equipment Repair and Overhaul.

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

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

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

(2) If the contract exceeds \$50,000, the County shall document in its procurement file the reasons why competitive bids or quotes were deemed to be impractical.

**20.180 Food Service Contracts.**

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

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

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

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

(3) Contracts for jail and juvenile detention facility food items are exempt from competitive bidding. The County should, where feasible, obtain competitive quotes.

**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.

**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 340-122-205 to 340-122-360. In exercising its authority under this exemption the County shall:

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

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

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

(2) The County shall not contract pursuant to this exemption in the absence of an order from the Department of Environmental Quality to cleanup a site with a time limitation that would not permit hiring a contractor under the usual competitive bidding procedures.

**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.

**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.

**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.

**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.

**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.

**PRODUCTS SPECIFYING BRAND NAME**

**20.210 Specification of Particular Brand Names or Products.**

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

**20.215 Brand Name or Mark Exemption Applications.**

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

- (a) A brief description of the contract or contracts to be covered. The description should include contemplated future purchases.
- (b) The brand name, mark, or product to be specified.
- (c) The reasons the County is seeking the exemption.

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

- (a) The exemption is not likely to encourage favoritism in public contracts or substantially diminish competition and will result in substantial cost savings to the County.
- (b) There is only one manufacturer or seller of the product of the quality required, or efficient utilization of existing equipment or supplies requires acquisition of compatible equipment or supplies.
- (c) The exemption is requested for the purchase of a particular product to be used in an experimental project.

**20.220 Copyrighted Materials.** The County may specify a copyrighted product. This exemption does not include patented or trademark goods.

**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 20.140 above.

**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 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) 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.

**COUNTY ADMINISTRATIVE SERVICES****20.235 Insurance Contracts.**

(1) Contracts for insurance where either the annual or aggregate premium exceeds \$50,000 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 in at least one newspaper of general circulation in the area where the contract is to be performed. 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 \$50,000 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 in at least one newspaper of general circulation in the area where the public contracting agency is located. If the amount of annual premium for insurance, other than employee benefits insurance is likely to exceed \$50,000 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 \$50,000 may be let by informal quotes.

20.240 Employee Benefit Insurance. The County may purchase employee benefit insurance without competitive bidding or quotes.

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.

20.250 Litigation Services.

(1) The County may retain, without competitive bidding or quotes, expert witnesses, consultants, or other specialized personnel when County Counsel deems it necessary to do so in the defense or prosecution of claims and litigation involving the County.

(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.

**EXEMPTIONS AS CIRCUMSTANCES ARISE****20.255 Emergency Contracts Under ORS 279.015(2).**

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

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

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

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

(2) The County shall not contract pursuant to this exemption in the absence of a substantial risk of loss damage or interruption of services that would occur if contract performance awaited the time necessary given the complexity of the project to solicit, receive and analyze bids or proposals.

**20.260 Emergency Contracts Under ORS 279.015.**

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

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

(3) Any contract awarded under this exemption shall be awarded within 60 days following declaration of the emergency unless an extension is granted pursuant to ORS 279.015(4).

**20.265 LCRB Exemption for Other Contracts.**

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

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

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

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

- (a) It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and
- (b) The awarding of public contracts pursuant to the exemption will result in substantial cost savings to the public contracting agency considering the type, cost, amount of the contract, number of persons available to bid and such other factors as may be deemed appropriate.

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

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

(2) Contracts for public improvements which are equal to or less than \$50,000 are exempt from bid and performance security requirements provided that the County may require such security in its discretion, regardless of this exemption.

EXHIBIT A

LOCAL CONTRACT REVIEW BOARD  
FINDINGS ON PUBLIC CONTRACT EXEMPTIONS AND RULES  
FOR LANE COUNTY

1. Nature of Project

In entering into contracts with third parties, Lane County has been utilizing certain contract exemptions and rules originally adopted the Board of County Commissioners, acting as the local contract review board (LCRB). The LCRB simply adopted the exemption rules adopted by the by the Department of General Services for the State of Oregon which were in effect on November 30, 1994. These were formally adopted as the exemption rules for Lane County contracts in Lane Manual 20.100, "until further modified by the Contract Review Board." In short, these contract exemptions and rules have set forth exceptions to formal competitive bidding for certain classes of contracts. While formal competitive bidding is favored, there are certain classes of contracts for which such a formal and expensive process may not be needed or warranted as a cost to the public.

The purpose of these findings and conclusions, and any resulting Board Order, is to update existing exemption rules, add additional exemptions to reflect the current business environment and the specific needs of Lane County departments while recognizing the value of open and fair competition, as well as to adopt a set of rules for Lane County which stand alone from the state counterpart above.

2. Standard

The LCRB is authorized to grant contract class exemptions pursuant to ORS 279.015. The findings which the Board must approve in order to grant such exemptions include:

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. In making such findings the Board may consider the type, cost, amount of the contract, number of persons available to bid and such other factors as may be deemed appropriate.

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

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

D. In granting an exemption, the Board shall:

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

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

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

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

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

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

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

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

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

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

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

- |              |              |               |
|--------------|--------------|---------------|
| A. LM 20.105 | M. LM 20.180 | Y. LM 20.230  |
| B. LM 20.110 | N. LM 20.185 | Z. LM 20.235  |
| C. LM 20.115 | O. LM 20.190 | AA. LM 20.240 |
| D. LM 20.120 | P. LM 20.195 | BB. LM 20.245 |
| E. LM 20.125 | Q. LM 20.200 | CC. LM 20.255 |
| F. LM 20.130 | R. LM 20.205 | DD. LM 20.260 |
| G. LM 20.135 | S. LM 20.206 | EE. LM 20.265 |
| H. LM 20.140 | T. LM 20.207 |               |
| I. LM 20.155 | U. LM 20.210 |               |
| J. LM 20.165 | V. LM 20.215 |               |
| K. LM 20.170 | W. LM 20.220 |               |
| L. LM 20.175 | X. LM 20.225 |               |

6. Specific Findings

In addition to the above general findings, the following more specific findings apply to the exemptions as identified in LM Chapter 20 for adoption:

A. 20.100(a) – (f) General Statutory Exemptions

The Oregon Legislature has already recognized these exemptions for all public contracts, including those of Lane County.

B. 20.105 Contracts Under \$50,000

Lane County's current exemption rule sets a limit at which less formal quotes must be obtained at \$2,500 and a limit of \$25,000 at which formal competitive bids must be obtained. This exemption rule was based on Oregon Department of Administrative Service exemption rules which had been in place since 1989. This state agency later increased the limitations to \$5,000/\$50,000, effective January, 1997. The County relies upon the facts and analysis included in County Counsel, Teresa Wilson's October 14, 1998 agenda memo to the Board concerning this increase. The rationale used by the state to support the increase also applies in Lane County and the County relies upon the findings and conclusions adopted by the state to support the statutory standards above. There has been general inflation since the Board adopted the \$2,500/\$25,000 limits and a commensurate increase in expense for processing contracts.

C. 20.110 Contract Amendments

This exemption is similar to the existing Lane County exemption rule. It would allow for change orders and extra work on projects already awarded per a competitive process. It encourages competition by allowing for additional work or goods up to certain dollar amounts without further competitive selection where additional work may not have been anticipated, where work (perhaps quite technical) is in progress, and where the public would benefit by allowing the contractor to complete performance without justifiable delay. The cost savings are substantial due to the time saved in project or performance completion, within dollar limitations. Any increases above the percentages in the rule would require additional competitive selection.

D. 20.115 Life Cycle Costing

This is a competitive value process that is used within a competitive selection process that allows for all costs of use, from the acquisition through disposition, to be considered. Substantial cost savings over the entire useful life of a product will accordingly be realized without substantially diminishing competition, because competitive bidding could still be used.

E. 20.120 Price Regulated Items or Services and 20.125 Price Set by Federal Contract

The County has no authority to alter prices established by federal or state law. Formal bids would not provide useful information since each would

be the same price. The County would incur unnecessary expenses with little or no benefit.

Since federal contracts are subject to similar public contracting requirements, any price set would have presumably arisen from a competitive selection process. The Oregon Legislature has decided that public agencies, such as the County, may use the competitive selection process of other public agencies under certain circumstances pursuant to ORS 279.015. The rationale applies equally to contracts executed by the federal government.

F. 20.130 Request for Proposal

The RFP process is used when other factors, besides cost alone, are of significant importance to a decision to award a contract. Specialized expertise, market conditions and technical complexity are integral elements to this process. Cost savings are realized through purchases that have higher quality, better service, operating efficiency and are more cost effective over the long term. Lane County has already established an alternative request for proposal process which includes substantially similar requirements as for formal bidding. See Lane Manual 21.107. There is an additional protection for competitors under the County's request for proposal process, i.e., appeal for protesting evaluation committee's recommendation, which is not required under a formal competitive bidding requirement. In other respects, the two processes, are nearly identical in Lane County. Accordingly, it is unlikely that this exemption will encourage favoritism or substantially diminish competition.

G. 20.135 Requirements Contracts

This exemption requires whichever competitive selection process is appropriate based on the underlying subject, including competitive bidding and other alternative processes. Thus, competition will not be substantially diminished and favoritism is avoided. The exemption also would allow the county to utilize another public agency's competitive selection process under certain conditions, thus competition will not be diminished. This exemption contemplates one competitive process with subsequent amendments issued, if necessary, based on the results of that process over a three year period. This eliminates the need to conduct duplicative competitive processes during that time period and results in cost savings to the County, both in terms of time and money. It allows the County to budget and plan for future needs. It encourages lowest cost over the life of a project while ensuring availability. It protects the County from unanticipated cost increases.

H. 20.140 Sole Source

Products and services that are available through only a single seller or provider are not subject to competitive supply. As no competitive market is

available, competitive bidding would be unnecessary and an unjustified use of county and public resources to prepare. Cost savings are not applicable. This exemption would require that the County take steps to confirm that the contractor is a sole source. If other competition were located, then the appropriate competitive selection process would be used. Competition would not be substantially diminished.

I. 20.155 Advertising Contracts

Advertising is limited to specific companies in given geographic locations and is further limited by the needs of the County. Further, state law requires the designation of an official newspaper for public notices. The rates for legal notices in many cases are regulated by statute. It may be necessary to target certain geographic areas or classes of members of the audience

J. 20.160 Construction Manager/General Contractor

This exemption allows the use of a request for proposal (RFP) process which reflects the specialized expertise required, and technical complexity of large construction projects for which a CMGC would be selected. The County's RFP process is so substantially similar to formal competitive bidding that there would not be significant effect on competition. There would be substantial cost savings to the public and the County through the selection of a high quality professional to meet this need.

K. 20.165 Copyrighted Materials

By definition, there is no alternative vendor and no competition. The County must ensure that all purchases are in accordance with federal and state laws protecting copyrighted or trademarked items.

L. 20.170 Election Supplies and Services

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

M. 20.175 Equipment Repair and Overhaul

Work performed under this exemption is in support of maintenance agreements or warranties that are obtained as part of a purchase process for new equipment. Often this maintenance is required in order to maintain warranty

coverage on the equipment. Warranty work is unique to the manufacturer of the equipment. Use of competitive bidding would invalidate the warranty coverage and cost the County more for maintenance work in the future. This would encourage competitors to deliver good quality products and to stand behind their products for the benefit of the public. It would discourage competitors who care less about quality.

N. 20.180 Food Service Contracts

The provision of food services to the County involves the review and analysis of factors other than cost to ensure a quality service and product. This exemption allows the County to solicit and review these factors through an RFP, instead of a bidding process. This extended review opportunity allows the County to provide and maintain a better level of service that is more cost effective for the users.

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

Prices for these items are highly volatile. The rule ensures continued competition utilizing the quotation process between many vendors of highly fungible product(s). Few, if any vendors would provide fixed price bids unless the price was sufficient to cover eventualities beyond the control of all parties.

P. 20.190 Oil for Hazardous Material Removal

This exemption applies when there is a state agency order requiring the County to act quickly and when a formal bidding process would likely result in violating that order and the imposition of monetary penalties. The rule requires alternative selection if feasible. Because of this and the limited application of the rule, competition would not be substantially reduced and there would be substantial cost savings as legally imposed penalties could be high.

PP. 20.195 Office Copier

This rule provides an alternative competitive process that reflects the nature of this good and the critical nature of these items to County operations. Service capabilities, specialized expertise, and technical expertise of vendors are of predominant importance and are difficult to ascertain through bidding.

Q. 20.200 Laboratory and Medical Supplies

Competition is not diminished as competitive bidding is still required. Generally, there are multiple vendors of such items, but there may be few or only one manufacturer, or individual health care practitioners may have a medical basis for specifying a certain manufacturer. The ability to split medical and laboratory supplies into multiple groupings will enhance competition by pro-

viding an opportunity to bid to specialized vendors in the field, or those that cannot maintain the necessary inventory to cover all needed supplies. Such enhancement will allow the County to obtain more competitive prices for those products requested.

R. 20.205 Purchases of Hospital and Medical Supplies and Equipment

The advantage of buying through a cooperative is that the public will benefit from cost savings after a paying a lower group rate, which is likely to be lower than any price proposed by a contractor through a single contract competitive selection. Thus, competition would not be substantially diminished.

S. 20.206 Library and Reading Materials

Many library circulation materials at the wholesale level are available through limited sources and are not subject to competitive supply. Books and periodicals are only published through one source. As no competitive market is available at the wholesale level, competitive bidding would not be appropriate and cost savings are not applicable. Libraries nationwide participate in a sophisticated computerized purchasing program designed to maximize efficiency and cost savings by providing up to date cost and availability data. While libraries may order many books at one time, only one or a few of each book is ordered from a particular publisher. Bids would be expensive and ineffective, and a process not in keeping with generally accepted practices.

T. 20.207 Purchases of Used Personal Property

Used personal property is available through limited market sources. Use of a quotation process as an alternate purchasing practice will continue to provide competition in the process while minimizing administrative costs to the County in terms of both time and money. Quality and availability are not as uniform as in new products making comparisons based on written information difficult. Generally, personal inspection is required and initial cost may not be the most important factor in long term cost savings.

U. 20.210 Specifying Brand Names or Products, 20.215 Brand Name Exemption Applications, 20.220 Copyrighted Materials, 20.225 Single Manufacturer

These exemptions allow for acquisition still using competitive bidding by brand, copyright, and/or single manufacturer. Cost savings are obtained by the efficient utilization of existing equipment and supplies and by obtaining products of the quality required.

V. 20.230 Product Pre-Qualification

Prequalification of products in certain circumstances simply reduces the amount of resources the county must expend to create design or performance specifications. There is an alternative selection process included which recognizes the value of competition in deciding which products to pre-qualify and includes a right to protest, which is similar to formal bidding.

W. 20.235 Insurance Contracts, 20.240 Employee Benefit Insurance, 20.245 Investment Contracts, 20.250 Litigation Services

Predominant factors for these exemptions include the specialized expertise required, the technical complexity of the subject matter, and the limited market once the County's special needs are considered. As to investment contracts, the market of stocks and bonds is quite volatile and not conducive to a formal competitive selection process. The contracts under this exemption would be considered professional service contracts and subject to the alternative selection process in LM Chapter 21.

X. 20.255 Emergency Contracts under ORS 279.015(2) and 20.260 Emergency Contracts under ORS 279.015(4)

The Oregon Legislature has adopted these as exemptions for all public contracts, including those of the County

Y. 20.265 LCRB Exemption for Other Contracts

This exemption recognizes a process for the Board to consider other exemption requests not included in these rules. This has no effect on competition at this time.

Z. 20.270 Bid Security and Performance Bond

These exemptions allow for waiving bonding requirements for certain bid projects and encourages competition due to less costs and paperwork being required by bidders. Cost savings are realized as more bidders will bid these certain projects and provide better pricing.

7. Conclusions

Based on all of the above, it is unlikely that the subject class exemptions will encourage favoritism in the awarding of public contracts, would not substantially diminish competition and awarding such contracts pursuant to these exemptions will result in substantial cost savings to the public and to Lane County.

~~REDEFINING~~ indicates material being added  
~~STRIKEOUT~~ indicates material being deleted

LEGISLATIVE  
 FORMAT

~~20.100(1)~~ Lane Manual ~~20.100(2)~~

~~Contract Review Board~~

~~Public Contractors Rules and Exemptions~~

~~20.100 Generally:~~

~~(1) The following provisions of OAR Chapter 125 and 137 which were in effect on November 30, 1994 are the rules governing public contracts until further modified by the Contract Review Board:~~

~~(a) OAR 125 Divisions 10, 31, 300, 310, 320, 340, 350, and 360; OAR 125-30-050 and 125-30-070.~~

~~(b) OAR 137 Divisions 30 and 40.~~

~~(2) Any reference in the Lane Manual, or in any bid or contract governed by these rules, to OAR Chapter 125 or 137 shall be deemed to be to the version described in subsection (1) above.~~

**CONTRACT REVIEW BOARD  
PUBLIC CONTRACT EXEMPTIONS AND RULES**

**20:085 Purpose and Statutory Authority:**

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

(2) **Statutory Authority.** These rules are authorized by ORS 279.015(2) and ORS 279.017(2) and the Lane County Charter.

**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 \_\_\_\_\_.

**20:091 Construction and Interpretation.** The following state administrative authorities may be used to further interpret Lane Manual Public Contracting Rules and Exemptions and Policies, Chapters 20 and 21, when an ambiguity exists:

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

(a) OAR 125 Divisions 31, 300, 310, 320, 340, 350, 360; OAR 125-30-070.

(b) OAR 137 Divisions 30 and 40.

**20:095 Definitions.** As used hereafter, unless the context requires otherwise:

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

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

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

(4) "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.

(5) "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.

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

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

(8) "Extra 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.

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

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

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

(12) "Personal service agreements" means the types of agreements described in EM Chapter 21.

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

(14) "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.

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

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

(17) "Requirements 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.

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

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

**GENERAL EXEMPTIONS****20.100 General Statutory Exemptions and Exclusion:**

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

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

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

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

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

(iii) The original contracting public agency concurs;

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

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

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

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

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

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

(2) Personal and professional service contracts are excluded from the definition of public contract and are not subject to a formal competitive selection requirement; selection procedures for these are covered in LM Chapter 21.

**20.105 Dollar Amount of Contract - Under \$50,000:**

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

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

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

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

(2) The County may let public contracts for trade related projects, i.e., building or road construction, maintenance, repair, or similar labor and materials contracts under the applicable provision in LM 20:105(1)(a), (b), and (c) above if it will result in cost savings. However, all other applicable public improvement contract requirements must be met.

**20:110 Contract Amendments (Including Change Orders under Extra Work):** Any contract amendment or change order (excluding for personal or professional services) which increases the original contract price, may be made with the contractor without further competitive process if either of the following conditions are met:

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

(2) The amount of the aggregate cost increase resulting from all amendments does not exceed 20 percent of the amount proposed and accepted through competitive selection for the initial contract, with the exception of contracts for the renovation or remodelings of buildings which may have aggregate amendments not exceeding 33 percent of this amount. Amendments made pursuant to LM 20:110(1) above of this rule are not included in computing the aggregate amount under this section.

**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 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;

(6) 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.

**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.

**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.

**20.130 Request for Proposal.** The County may, at its discretion, use a request-for-proposal competitive selection process for any contract otherwise subject to formal competitive bidding. The RFP process is set forth in LM 21.107.

**20.135 Requirements Contracts.**

(1) The County may enter into requirements contracts whereby it is agreed 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 bidding.

(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.

#### 20.140 Sole Source.

(1) Subject to the requirements of LM 20.140(3) below, the County may purchase a product without competitive bidding or quotes, if there is only one seller of a product of the quality required, or if the efficient utilization of existing equipment or supplies requires specification of a compatible product for which there is only one seller.

(2) Subject to the requirements of LM 20.140(3) below, the County may purchase services without competitive bidding or quotes if there is only one provider of the particular service.

(3) Prior to awarding a contract under LM 20.140(1) or (2) above, the County shall make a reasonable effort to notify all known potential contractors of the intended purchase or project. The County may solicit information about the existence of any competition through informal telephone, written contacts or formal request for information. Where one or more known potential contractors are located within Lane County, the County should use a Letter of Interest (LOI) selection process as set forth in LM Chapter 21.

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

(5) If the County intends to make several purchases of the product or service of a particular seller or provider for a period not to exceed 3 years, it may so state in the documentation required in LM 20.140(4) above and such documentation shall be sufficient notice as to subsequent purchases.

**EXEMPTIONS BY TOPIC**

**20:155 Advertising Contracts.** The County may purchase advertising without competitive bidding or quotes. This includes, but is not limited to, space for advertising and legal notices in newspapers and other publications, and radio and television spots.

**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.

**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.

**20:170 Election Supplies and Services.** The County is exempt from competitive bidding or quote requirements for the printing of polling place signs, ballots and sample ballots, including ballot pages and labeling of ballot cards.

**20:175 Equipment Repair and Overhaul.**

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

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

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

(2) If the contract exceeds \$50,000, the County shall document in its procurement file the reasons why competitive bids or quotes were deemed to be impractical.

**20.180 Food Service Contracts:**

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

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

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

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

(3) Contracts for jail and juvenile detention facility food items are exempt from competitive bidding. The County should, where feasible, obtain competitive quotes.

**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.

**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 340-122-205 to 340-122-360. In exercising its authority under this exemption the County shall:

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

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

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

(2) The County shall not contract pursuant to this exemption in the absence of an order from the Department of Environmental Quality to clean up a site with a time limitation that would not permit hiring a contractor under the usual competitive bidding procedures.

#### 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.

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.

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.

#### 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.

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.

**PRODUCTS SPECIFYING BRAND NAME**

**20:210 Specification of Particular Brand Names or Products**

(1) Specifications for public contracts shall not expressly or implicitly require any product of any particular manufacturer or seller except pursuant to an exemption under LM 20:215 below (Brand Name or Mark Exemption Applications), LM 20:220 below (Copyrighted Materials), LM 20:225 below (Single Manufacturer or Compatible Products), LM 20:230 below (Product Pre-qualification), and LM 20:195 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.

**20:215 Brand Name or Mark Exemption Applications**

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

- (a) A brief description of the contract or contracts to be covered. The description should include contemplated future purchases.
- (b) The brand name, mark, or product to be specified.
- (c) The reasons the County is seeking the exemption.

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

- (a) The exemption is not likely to encourage favoritism in public contracts or substantially diminish competition and will result in substantial cost savings to the County.
- (b) There is only one manufacturer or seller of the product of the quality required, or efficient utilization of existing equipment or supplies requires acquisition of compatible equipment or supplies.
- (c) The exemption is requested for the purchase of a particular product to be used in an experimental project.

**20:220 Copyrighted Materials.** The County may specify a copyrighted product. This exemption does not include patented or trademark goods.

**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 20:140(3) above.

**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 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) 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.

**COUNTY ADMINISTRATIVE SERVICES****20:235 Insurance Contracts**

(1) Contracts for insurance where either the annual or aggregate premium exceeds \$50,000 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 in at least one newspaper of general circulation in the area where the contract is to be performed. 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 \$50,000 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 in at least one newspaper of general circulation in the area where the public contracting agency is located. If the amount of annual premium for insurance, other than employee benefits insurance is likely to exceed \$50,000 per year, such notice shall also include a public advertisement in at least one insurance trade publication of general circulation in the state;

(n) 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 \$50,000 may be let by informal quotes.

20.240 **Employee Benefit Insurance.** The County may purchase employee benefit insurance without competitive bidding or quotes.

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.

20.250 **Litigation Services.**

(1) The County may retain, without competitive bidding or quotes, expert witnesses, consultants, or other specialized personnel when County Counsel deems it necessary to do so in the defense or prosecution of claims and litigation involving the County.

(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.

**EXEMPTIONS AS CIRCUMSTANCES ARISE**

**20.255 Emergency Contracts Under ORS 279.015(2)**

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

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

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

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

(2) The County shall not contract pursuant to this exemption in the absence of a substantial risk of loss, damage or interruption of services that would occur if contract performance awaited the time necessary given the complexity of the project to solicit, receive and analyze bids or proposals.

**20.260 Emergency Contracts Under ORS 279.015**

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

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

(3) Any contract awarded under this exemption shall be awarded within 60 days following declaration of the emergency unless an extension is granted pursuant to ORS 279.015(4).

**20.265 LCRB Exemption for Other Contracts**

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

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

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

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

- (a) It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and
- (b) The awarding of public contracts pursuant to the exemption will result in substantial cost savings to the public contracting agency considering the type, cost, amount of the contract, number of persons available to bid and such other factors as may be deemed appropriate.

**BID SECURITY AND PERFORMANCE BOND**

**20:270 Bid and Performance Security:**

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

(2) Contracts for public improvements which are equal to or less than \$50,000 are exempt from bid and performance security requirements provided that the County may require such security in its discretion, regardless of this exemption.