

effect, shall be applicable to all road construction projects except as modified by the bid documents.

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

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

(25) When a public contract is awarded to a nonresident bidder and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the County will make final payment on the contract. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05)*

AUTHORITY TO AWARD, EXECUTE, CANCEL

21.135 Contracts Which are Exempt from Bids and RFPs.

(1) The award of contracts which are exempt from competitive bids shall be made by the public officer delegated the authority to execute the contract or, if no delegation has been made, the Board.

(2) Generally, the award shall be made to the person or entity which has submitted the lowest responsible quote or proposal, in the case where the County is purchasing a good or service, or to the highest responsible quote or proposal, in the case where the County is selling a good or service. In the situation where interviews or substantive proposals have been sought, the award shall be made to the entity submitting the quote or proposal which best meets the needs of the County, in conformity with all prescribed selection procedures. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.137 Grant Applications.

(1) For grants from \$0 - \$ 5,000, the Department Directors are delegated authority to approve and execute all documents in the application process and the acceptance of the award. For grants exceeding \$5,000 - \$100,000, the County Administrator is delegated authority to approve and execute all documents in the application process and the acceptance of the award.

(2) For grants over \$100,000, the Board shall approve the preliminary application and acceptance of the grant. This may be done in one Board action if the application contains complete information, and the grant is ultimately awarded without unusual conditions, or there may be separate Board actions to approve grant application submittal and grant award acceptance. The County Administrator is delegated authority to approve and execute all other grant documents in the application process.

(3) The County Administrator is delegated authority to approve and execute all documents to continue a grant that was approved by the Board pursuant to LM 21.137(2), so long as the continuation is substantially similar to the original proposal approved by the Board.

(4) The County Administrator may further delegate the authority in (1), (2), and (3) to a representative by a signed written agreement. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 02-1-30-1, 1.30.02; 05-2-16-8, 2.28.05)*

21.139 Fair Board.

Pursuant to ORS 565.230, the Fair Board has authority to award and execute all contracts relating to fairground facilities and operations, except those contracts which transfer an interest in real property. It is also delegated authority to cancel or terminate such contracts as provided in the contract or by law. The Fair Board may further delegate

authority under this provision to a representative by signed written document. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.141 On-Site Construction Change Orders.

The Director of the Department of Public Works or his or her authorized representative, is delegated the authority to execute an on-site construction change order to a contract for the construction or renovation of roads or other transportation facilities and the Director of the Department of Management Services, or his or her representative, is delegated the authority to execute an on-site construction change order to a contract for the construction, renovation, remodeling or repair of County facilities, if all of the following conditions are met:

- (1) The change would not increase the cost of the project by more than 10 percent of the contract price or \$25,000, whichever is less,
- (2) The change order is necessary for completion of the contract,
- (3) Failure to immediately authorize the change could result in a work stoppage or severe slowdown, causing undue and unnecessary costs, or result in a hazard to the public and
- (4) It is in the best interest of the County to authorize the order and facilitate completion of the project. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.143 Cancellation of Award.

- (1) The Board reserves the right to cancel the award of any contract at any time prior to the execution of said contract by all parties without any liability against the Board or Lane County. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

DELEGATION OF AUTHORITY TO EXECUTE CONTRACTS AND AMENDMENTS

21.145 Delegation of Authority to Execute Contracts.

- (1) The County Administrator is delegated authority to execute the following types of contracts:
 - (a) All contracts which have been competitively bid and awarded by the Board.
 - (b) All contracts and agreements not exceeding \$100,000 nor three years in length.
 - (c) Subcontracts and subgrants not exceeding \$100,000 which implement grants.
 - (d) Amendments to contracts or modifications to grants, subgrants, and subcontracts as described in LM 21.147.
 - (e) All computer software licenses not exceeding a purchase price of \$100,000 with a potential term exceeding three years and which may be terminated upon discontinued use of software; and any accompanying computer maintenance agreements not exceeding \$100,000, if the vendor is a sole source.
 - (f) Insurance nonwaiver agreements and insurance endorsements to original policies.
 - (g) Land use improvement agreements, Building Program Quick Start Agreements and acceptance and release of land use performance bonds.
 - (h) Real property leases, licenses and permits, caretaker agreements involving the lease of property, and concessionaire agreements, not exceeding \$100,000 nor three years in length.
 - (i) Emergency contracts which do not exceed \$100,000, and which are executed within 60 days of the declaration of the emergency, except as provided in LM 20.255

- (j) Contracts and assignments for the collection of County judgments.
- (k) All contracts implementing projects listed on the public improvements project list adopted pursuant to ORS 279C.305, including those reflecting the County paid portion of the project, those reflecting any amount to be paid by other governmental agencies or housing development entities for assisted housing projects, and those covering environmental mitigation responsibility.
- (l) All projects, services, materials/product purchases, contracts specifically listed as part of budget adoption order, or a supplemental budget adoption order.
- (m) Any other type of contract the award of which has been expressly approved by the Board.

(2) The Department Directors are delegated authority to execute contracts, grant application, and acceptance documents equal to or less than \$5,000 and not exceeding 3 years in length, subject to compliance with any contract procedures established by the County Administrator. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05)*

21.147 County Administrator's Delegation of Authority to Execute Amendments.

The County Administrator is delegated authority to execute amendments which comply with LM 21.127(1) above as follows:

(1) For personal or professional services contracts where the original amount is equal to or less than \$500,000, the County Administrator may execute any individual amendment which does not exceed \$100,000, but the total of all amendments of that contract shall not exceed 50 percent of the original contract amount. For personal or professional services contracts where the original amount is greater than \$500,000, the County Administrator may execute any individual amendment which does not exceed 20 percent of the original contract amount, but the total of all amendments of that contract shall not exceed 50 percent of the original contract amount.

(2) For grants or sub-grants where the original amount is equal to or less than \$500,000, the County Administrator may execute any individual amendment which does not exceed \$100,000. For grants or sub-grants where the original amount is greater than \$500,000, the County Administrator may execute any individual amendment which does not exceed 20 percent of the original contract amount. The delegation of authority provided in LM 21.137(3) applies only to grant continuations which are substantially similar to the original proposal approved by the Board pursuant to LM 21.137(2); all other grant amendments are governed by this subsection.

(3) The County Administrator is delegated authority to execute all amendments which meet the conditions of LM 20.110.

(4) The County Administrator is delegated authority to execute an amendment when combined with all other amendments and the original contract amount total \$100,000 or less.

(5) For intergovernmental agreements and requirements contracts, the County Administrator is delegated authority to execute amendments based on either dollar amount of original contract or underlying subject matter, i.e., materials, services, materials/services, personal services, grant, etc.

(6) For contracts which include the subject matter in LM 21.145(1)(e), (f), (g), (h), (i), (j) above, or any other situation not covered by LM 21.147 (1), (2), (3), (4) or (5) above, the County Administrator is delegated authority to execute any amendment which does not exceed \$100,000 and which is less than three years in length. *(Revised by Order No. 98-12-2-4, Effective 12.2.98, 02-1-30-1, 1.30.02; 04-6-30-12, 6.30.04)*

21.148 Department Directors' Authority to Execute Amendments.

For original contracts, grant application and acceptance documents, not exceeding \$5,000, the Department Directors are delegated authority to execute contract and grant amendments (excluding personal service contracts) which do not exceed 25% of the initial contract amount, but the total of all amendments for that contract shall not exceed 25% of the original contract or grant amount. The Department Directors are delegated authority to execute such contract amendments for personal service contracts which do not exceed 50% of the initial \$5,000 contract amount, but the total of all amendments for that contract shall not exceed 50% of the original contract amount. *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

21.149 Further Delegation and Termination.

(1) Contract Termination. The County Administrator is delegated the authority to cancel or terminate contracts including amendments, as provided in the contract or by law.

(2) Additional Delegation. The County Administrator may further delegate authority under LM 21.145 and 21.147 to a representative by signed written document. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

INSURANCE**21.300 Generally.**

(1) In all contracts involving work upon a County facility or County-owned property, and in contracts involving a significant risk of liability to the County, the department handling the contract shall consult with the Risk Manager prior to advertising for bid, RFP, RFPS or obtaining quotes to determine whether the contractor will be required to provide an additional named insured endorsement in favor of Lane County for the life of the contract. If such endorsement is not obtainable, a certificate of insurance directed to the County may be substituted.

(2) The County must be informed in advance in writing of all cancellation.

(3) Limits of liability and types of coverage will be set by the Risk Manager based upon risk and exposure in the performance of the contract. Generally, the limits shall not be less than those established in the Oregon Tort Claims Act, ORS Chapter 30.

(4) Where appropriate, as determined by the Risk Manager, contractor will be required to furnish evidence of Workers' Compensation Insurance as required by ORS Chapter 656.

(5) Lane County reserves the right to secure insurance, if the contractor fails to do so, and the cost of same may be deducted from payments due to the contractor. *(Revised by Order No. 85-6-12-13, Effective 6.12.85)*

21.305 Standard Insurance Provisions for Construction Contracts.

(1) General. Contractor shall not commence any work until he or she obtains, at his or her own expense, all required insurance. Such insurance must have the approval of County as to limit, form and amount. Contractor will not permit any subcontractor to commence work on this project until the same insurance requirements have been complied with by such subcontractor.

(a) Types. The contractor shall obtain and maintain for the full period of the contract, the following types of insurance: Worker's Compensation Insurance and Comprehensive General Liability Insurance.

(b) Evidence. As evidence of specified insurance coverage, County may, in lieu of actual policies, accept certificates issued by the insurance carrier showing such policies in force for the specified period. Each policy or certificate will bear an endorsement or statement waiving right of cancellation or reduction in coverage, unless

notice in writing has been delivered by registered mail to County. Should any policy be canceled before final payment by County to contractor and contractor fails immediately to procure other insurance as specified, County reserves the right to procure such insurance and to deduct the cost thereof from any sum due contractor under this contract.

(c) Adequacy of Performance. Any insurance bearing on adequacy of performance shall be maintained after completion of the project for the full guaranty period. Should such insurance be canceled before the end of the guaranty period and contractor fails immediately to procure other insurance, as specified, County reserves the right to procure such insurance and to charge the cost thereof to contractor.

(d) Payment of Damages. Nothing contained in these insurance requirements is to be construed as limiting the extent of contractor's responsibility for payment of damages resulting from his or her operations under this contract.

(2) Worker's Compensation Insurance. The industrial accident protection to be provided shall be in full compliance with ORS Chapter 656.

(3) Comprehensive General Liability Insurance.

(a) Before commencement of the work, contractor shall submit written evidence that he or she and all subcontractors have obtained for the period of the contract, full Comprehensive General Liability Insurance coverage. This coverage shall provide for: bodily injury, broad form property damage, automatic contractual liability, products, completed operations, personal injury and automobile. The Comprehensive General Liability Insurance will include as Additional Named Insureds County, its officers, employees and agents.

(b) The limit of Liability Insurance shall generally not be less than:

(i) Automobile.

Bodily Injury - \$500,000 per person and \$1,000,000 per occurrence.

Property Damage - \$300,000 per occurrence.

(ii) All Other.

Bodily Injury - \$1,000,000 per occurrence.

Property Damage - \$300,000 per occurrence.

However, to encourage bidding on small contracts by small firms, the limits of liability may be set at different levels by the Risk Manager prior to bids being advertised, depending upon the risk involved and the exposure created by the fulfilling of the contract. The limits for general liability in no event will be less than those provided in the Oregon Tort Claims Act, ORS Chapter 30. *(Revised by Order No. 85-6-12-13, Effective 6.12.85)*

REAL PROPERTY

21.400 Real Property Acquisition, Management and Disposition Policy.

(1) The Department of Management Services shall be responsible for procuring real property interests for County needs, as directed by the Lane County Board of Commissioners, through purchase and lease, for managing County-owned, rented and tax-foreclosed real property and for disposing of surplus real property, with the exception of County rights-of-way, parcels of land and other real property interests purchased through the General Road Fund, Solid Waste Management Fund, and Parks Fund. The Department of Management Services shall maintain records on County-owned and occupied property, shall cause all property related transactions to be properly filed and/or recorded and shall represent the County's interest in all property matters in accordance with applicable Federal, State and local laws, rules and regulations. The Board shall have final authority on all real property matters, except as delegated elsewhere in this chapter.

(2) The Department of Public Works shall be responsible for acquiring real property interests for Public Works projects and for managing and disposing of any

excess real property interest or parcels of land acquired through the General Road Fund, Solid Waste Management Fund, or Parks Fund. The Department of Public Works shall maintain records on County-owned and occupied real property interests, rights-of-way and parcels of land acquired through the General Road Fund, Solid Waste Management Fund, and Parks Fund, shall cause all such transactions to be properly filed and/or recorded and shall represent the County's interest in all such matters in accordance with applicable Federal, State and local laws, rules and regulations. The Board shall have final authority on all property matters related to the General Road Fund, except as delegated elsewhere in this chapter.

(3) Pursuant to ORS 93.808, authority to approve the conveyance and recordation of an instrument conveying title or interest to Lane County is hereby delegated to the Department Director to approve the recordation of transactions of under \$100,000, or the Right-of-Way Manager or Property Management Officer for transactions less than \$50,000. The County Administrator will approve amounts under \$250,000 and amounts over \$250,000 will go to the Board of County Commissioners for approval.

(4) No action of Lane County officers, employees or agents in acquiring, managing or disposing of real property shall be binding upon Lane County, if undertaken through fraud, breach of fiduciary duty or through purported exercise of powers not specifically delegated by law.

(5) The County Administrator is delegated authority to sign State of Oregon Well Ownership Information Forms required to be recorded for county-owned land pursuant to ORS 537.788. *(Revised by Order No. 01-5-30-9, Effective 5.30.01; 03-8-20-1, 8.20.03)*

21.410 Real Property Acquisition.

(1) All contracts for real property acquisition shall be acted upon by the Board through prescribed agenda process. Upon Board approval, the County Administrator will be delegated authority to sign the contracts on behalf of the Board and copies will be distributed in accordance with standard contract routing procedures.

(2) Acquisition of real property interests for Public Works projects shall be negotiated by the Public Works Department in accordance with the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" and other applicable Federal, State and local rules and regulations. The Department shall establish such internal procedures as necessary to insure that independent appraisals and unbiased reviews are used to determine fair market value for property acquisition for such purposes. Funding for acquisition of real property interests for Public Works projects will be included in normal budgeting procedures and as part of the project costs projected through the Public Works Five-Year Capital Improvements Program. *(Revised by Order No. 98-4-1-11, Effective 4.1.98; 03-8-20-1, 8.20.03)*

21.420 Management of County-Owned or County-Utilized Real Property.

(1) The Department of Management Services shall be responsible for the lease or rental of County-owned land and buildings, subject to the provisions of state statutes and other applicable laws and regulations.

(2) The Department of Management Services is delegated authority to negotiate rental agreements subject to established contract procedures and Board approval. Rental of County-owned property shall normally be on a month-to-month basis. The Department shall also be responsible for collection of rents. It is the intent of the Board to utilize County-owned real property as a revenue source where possible, and to keep such property on the tax rolls where reasonable to do so. The Department of Public Works is delegated similar authority with regard to rental units on County rights-of-way or County real property acquired through the General Road Fund.

(3) The Department of Management Services is authorized to negotiate caretaker agreements, where rent of County-owned or leased property is included as part of remuneration for services rendered by the occupant, subject to established contract procedures and Board approval.

(4) The Department of Management Services is delegated the authority to negotiate any license for the utilization of County-owned real property, and the Department of Public Works is delegated the authority to negotiate any license for the utilization of County rights-of-way or real property acquired from the General Road Fund for other than road purposes, subject to established contract procedures, the following conditions and such other conditions deemed necessary by the Department:

(a) All licenses to utilize County-owned real property are subject to 30 days termination, unless a shorter term is specified.

(b) A statement shall be signed by the person utilizing County-owned real property, County rights-of-way or County real property acquired through the General Road Fund holding the County harmless from all claims arising out of that person's license, including liability for any ad valorem taxes arising as a result of the license.

(5) Lease of real property by Lane County shall be negotiated by the Department of Management Services in keeping with the needs of the County Department requesting additional space and in keeping with space allocation procedures established by the Board or County Administrator. Lease agreements shall be subject to the established contract review and execution procedures.

(6) Lane County reserves the right to contract for management of real property owned and leased by Lane County to be utilized in land banking and low income housing programs. *(Revised by Order No. 98-4-1-11, Effective 4.1.98)*

21.425 Disposition of County-Owned Real Property.

(1) Subject to deed restrictions and Federal and State laws, it shall be the policy to dispose of County-owned lands not needed for public purposes at market value, except that real property which may be utilized by a governmental agency for a public purpose within a reasonable period of time after acquisition, as determined by the Board or the Department of Management Services, shall be retained by the County until further order of the Board.

(2) The following procedures shall be followed in disposition of County-owned land:

(a) Real Property Officers, or other staff members, as delegated by the Directors of the Departments of Management Services and Public Works, are authorized to negotiate the sale, subject to Board approval, of real property having a true cash value of \$20,000 or less, if the County has no present or future need of the property, as determined by the Department of Public Works in the case of excess County rights-of-way and other property purchased through the General Road Fund, and the Department of Management Services in the case of other excess County-owned property. If funding and staffing levels permit the Department of Management Services may provide assistance with real property disposition to the Public Works Department on request. Such negotiations may only occur after the property has been offered for sale through procedures defined in ORS Chapter 275.

(b) The Director of Public Works in the case of excess rights-of-way and other property acquired through the General Road Fund, and the Director of Management Services in the case of other excess property are authorized to negotiate the sale of real property having a true cash value of \$50,000 or less, if the County has no present or future need of the property as determined by those respective Departments, subject to Board approval. Such negotiations may only occur after the property has been offered for sale through procedures defined in ORS Chapter 275.

(c) County-owned land acquired in any manner whatsoever shall be sold in accordance with the provisions of ORS Chapter 275, when such sale is deemed by the Board to be in the best interests of Lane County. The Department of Public Works, for sales of excess County rights-of-way and other property acquired through the General Road Fund, and the Department of Management Services, for other excess County-owned property, shall prepare the Board Order directing the Sheriff to conduct the sale in accordance with ORS 275.110, and shall deliver a certified copy thereof, together with the information required by ORS 275.120 to the Sheriff. The Sheriff shall then conduct the sale in accordance with ORS Chapter 275 and shall make return to the Board. Upon receiving a copy of the return, the department which initiated the sale shall prepare the deed and other relevant documents for signature by the Board.

(d) The Department of Management Services may provide assistance to the Department of Public Works in real property disposition on request if funding and staffing levels permit.

(e) Notwithstanding the provisions of LC 21.425(2)(c), the private sale of County-owned land may occur in accordance with the provisions of ORS 275.225, when such sale is deemed by the Board to be in the best interests of Lane County. The Board may authorize the sale of County land by private sale if each parcel to be sold is assessed at less than \$5,000 on the most recent assessment roll prepared for the County and unsuited for the construction or placement of structures thereon under current zoning ordinances and building codes of the County.

(3) Conveyance shall be by quitclaim deed without title insurance for land obtained by tax foreclosure, except as may be negotiated with purchaser at his or her expense. Other conveyances shall normally be by bargain and sale deed, with the County providing title insurance.

(4) Real property acquired by tax foreclosure may be sold to the record owner or a contract purchaser of record as provided in ORS 275.180, when any of the following conditions exist:

(a) The property was placed on the foreclosure list as a result of an error or omission in the records of the Department of Assessment and Taxation.

(b) The property was the residence of the record owner or contract purchaser of record at the time of the foreclosure.

(c) The record owner or contract purchaser of record suffered from a mental or physical incapacity or inability during the foreclosure and redemption period, satisfactory evidence of which is presented to the Board of Commissioners. *(Revised by Order No. 98-4-1-11, Effective 4.1.98)*

21.430 Donation of Tax-Foreclosed Property for Low-Income Housing, Social Services or Child Care.

(1) Findings

(a) ORS 271.330(2) specifically permits counties to transfer county-owned property, tax-foreclosed or otherwise, to municipal or nonprofit corporations, with or without consideration, for the purpose of providing low-income housing, social services or child care. ORS 456.355-456.370 further provides that counties have certain powers, including the power to convey property with or without consideration, to certain entities including nonprofit corporations, in order to aid in the development of housing projects.

(b) The Board believes that safe, sanitary, affordable housing is essential to the stability and vitality of the County.

(c) While property remains in County ownership as a result of tax-foreclosure, it fails to contribute to the tax revenue stream for taxing districts at the same time it requires maintenance at County expense.

(d) The Board believes it is of much greater benefit to County residents to have such properties developed and used to provide low-income housing than to remain unused in County ownership.

(2) Definitions.

(a) "Low-Income Family" means a family whose annual income does not exceed 80 percent of the median income for the area, as determined annually by HUD.

(b) "Municipal Corporation" means any governmental organization duly organized under the laws of the State of Oregon which has as one of its powers the authority to provide housing for low-income individuals or families.

(c) "Nonprofit Corporation" means any corporation not for profit organized under ORS CH. 65 for the purpose of undertaking, constructing, or operating decent, safe and sanitary housing for low-income individuals or families.

(3) Notification of Availability of Tax-Foreclosed Property. When the foreclosed property is deeded to the County, the County Real Estate Division responsible for managing such properties (hereinafter "Real Estate Division") shall notify the cities in Lane County, the Lane County Housing Authority and such nonprofit corporations which request notice, that properties are eligible for transfer under this program. The Real Estate Division shall not schedule Sheriff's sale on these properties until 60 days after the notice is mailed. A municipal or nonprofit corporation may request the Real Estate Division withhold from Sheriff's sale one or more specific properties for a period not exceeding six months to allow time for the requesting entity to consider making a proposal under LM 21.430(4) below.

(4) Procedure for Requesting Transfer.

(a) A municipal or nonprofit corporation may request transfer of tax foreclosed property owned by the County at anytime. The request shall be in writing, specifically identifying the property and describing the proposed use.

(b) The Real Estate Division shall in a timely manner, investigate the proposal and prepare a report for the Housing Policy Board, or other entity as designated by the Board, which covers the identity of the requesting entity; the proposed use of the property; the entity's ability (financial and otherwise) to accomplish the proposal; the location of the property and its market value and zoning; the taxes owing at the time the property was deeded to the County; and any costs incurred by the County to date in managing the property.

(c) The requesting entity shall cooperate with the Real Estate Division in the investigation, including making available as necessary such documentation as financial statements and development plans. The Real Estate Division shall work with staff to the Housing Policy Board (HPB) in conducting the investigation and preparing the report.

(d) The HPB shall review the report, direct further review as deemed necessary and make a recommendation to the Board. If the HPB's recommendation is to deny the request, the County Commissioner(s) on the HPB shall orally convey the recommendation to the Board and no further actions shall take place on the request unless directed by the Board.

(e) If the HPB's recommendation is to approve the request, the Real Estate Division shall schedule a public hearing on the request, as covered by ORS 271.330 and ORS 456.355-456.370. The Division shall duly publish notice of the hearing on the transfer for two successive weeks, before the hearing, and shall prepare the ordinance and appropriate agenda materials.

(f) At the conclusion of the hearing, the Board shall make a decision as to whether to grant or deny the request, based solely on its determination and judgment as to what is in the best interest of the public. Approval of any request shall be on such

terms and conditions as deemed appropriate by the Board, and may be for consideration or for no consideration.

(5) Transfer. If approved, the transfer of title shall occur by quitclaim deed, which may provide, if so directed by the Board, that title shall revert to the County if the property ceases to be used for low-income housing purposes during a specified time period. If the requesting entity desires a bargain and sale deed, such a deed shall be provided if a title report from a title insurance company selected by the County shows clear title and the requesting entity pays for the title insurance policy; the deed may also include a reversionary clause. Terms and conditions imposed by the Board or at its direction not appropriate to a deed shall be contained in a development agreement between the County and the entity. These may include conditions of development appropriate to the project, and elements and consequences of default.

(6) Fees. There is no fee for a request pursuant to LM 21.430(3). The requesting entity shall tender with its request pursuant to LM 21.430(4) a non-refundable administrative fee of \$400 for processing the request. In addition, the requesting entity shall pay for the out-of-pocket costs of the transfer, including but not limited to the publication costs, and recording fees.

(7) Other Properties/Other Uses. The Board recognizes that ORS 271.330 permits donation of property acquired in some manner other than through tax foreclosure, and further that it permits donation to municipal or nonprofit corporations for social services or child care purposes. Should a municipal or nonprofit corporation desire to have the Board consider donation of property obtained by any manner for statutorily-identified purposes, the same process as described above should generally be followed. The ordinance shall specify the public benefit of the transfer, any restrictions deemed reasonable by the Board, any necessary repayment of constitutionally dedicated funds used in the acquisition or improvement of the property and the source of repayment, and the appraised value of the property if it is not tax-foreclosed property.

(8) The provisions of LM 21.430(1)-(7) above are discretionary and not mandatory, despite the use of directory language ("shall" or "will"). Regardless of these provisions, the County specifically reserves the right to schedule a Sheriff's sale or sell any particular piece(s) of property at such time and in such manner as the Board deems in the County's best interest. *(Revised by Order No. 93-3-9-6, Effective 3.9.93)*

21.435 Designation of County Forests, Parks, and Recreational Areas

(1) Upon the completion of those requirements set forth in LM 21.430, the Director of the Department of Management Services may, in consultation with the Parks Manager, prepare a list of foreclosed properties to be designated and set aside for county forests, parks, and recreation areas. Only properties outside the corporate limits of a city shall be considered for inclusion on the property list.

(2) In preparing the property list, due consideration shall be given to at least the following:

- (a) Environmental issues;
- (b) Overall benefit to the County;
- (c) Financial needs of the affected departments.

(3) The property list shall be brought before the Board of County Commissioners who may, by order, designate and set aside any such properties for county forest, public park, or recreational area uses. Any properties so set aside shall thereafter be managed by the Parks Division.

(4) Property designated under LM 21.435(3) may thereafter be alienated, sold, or conveyed pursuant to ORS 275.330 following the statutory process and requirements.

(5) If a designated property is alienated, sold, or conveyed pursuant to ORS 275.330(2), the proceeds shall be held for maintenance and improvement of existing park

and recreation lands or future acquisition of lands to be set aside for park or recreational purposes. (Revised by Order No. 05-2-2-2, Effective 2.2.05)

21.440 Sale of County Timber & Log Export Regulations

(1) Subject to ORS Chapter 275 and other Federal and State Laws it shall be the policy of Lane County to sell County Timber to the highest bidder.

(2) Definitions. As used in this subchapter, the following words and phrases shall mean:

(a) County Lands. Lands owned or managed by Lane County.
 (b) County Timber. Any timber owned or managed by Lane County.
 (c) County Timber Sale Contract. Any contract with Lane County for the sale of County timber.

(d) Export. Unprocessed timber loaded on a vessel or other conveyance with a foreign destination, or is present at a facility such as a port or dock with intent to load it on a vessel or other conveyance with a foreign destination.

(e) Performance Bond. The security required by a County timber sale contract that ensures satisfactory performance of contract requirements by the timber sale purchaser.

(f) Person. An individual, partnership, a public or private corporation, an unincorporated association, or any other legal entity. The term includes any subsidiary subcontractor, parent company or other affiliate. Business entities are considered affiliates when one controls or has the power to control the other or when both are controlled directly or indirectly by a third person.

(g) Unprocessed timber or Unprocessed County timber. Trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use. The term does not include timber processed into any one of the following:

(i) Lumber or construction timbers, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list grades, sawn on 4 sides, not intended for remanufacture;

(ii) Lumber, construction timbers, or cants for remanufacture, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list clear grades, sawn on 4 sides, not to exceed 12 inches (nominal) in thickness;

(iii) Lumber, construction timbers, or cants for remanufacture, that do not meet the grades referred to in LM 21.440(2)(g)(ii) above and are sawn on 4 sides, with wane less than 1/4 of any face, not exceeding 8-3/4 inches in thickness;

(iv) Chips, pulp, or pulp products;

(v) Veneer or plywood;

(vi) Poles, posts, or piling cut or treated with preservatives for use as such;

(vii) Shakes or shingles;

(viii) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp;

(ix) Pulp logs or cull logs processed at domestic pulp mills, domestic chip plants, or other domestic operations for the purpose of conversion of the logs into chips;

(x) Firewood cut in pieces 48 inches or less in length.

(3) Criteria for Eligibility to Bid on County Timber Sale Contracts.

(a) In addition to all other requirements of law, any person submitting a bid for the purchase of County timber must certify, in a form and manner specified by the County Administrator or Designee, that:

(i) The person will not export directly or indirectly unprocessed County timber; and

(ii) The person will not sell, transfer, exchange or otherwise convey unprocessed County timber to any other person without obtaining a certification from the person that meets the reporting requirements below.

(b) In addition to all other requirements of law, a person previously not eligible to bid for County timber under LM 21.440(3)(a) above may bid for County timber if the person certifies in form and manner specified by the County Administrator or Designee that:

(i) The person will not export directly or indirectly unprocessed County timber; and

(ii) Unless exempted by LM 21.440(6) below, the person has not exported unprocessed timber from County lands for a period of not less than 24 months prior to the date of submission of the bid; and

(iii) The person will not sell, transfer, exchange or otherwise convey unprocessed County timber to any other person without obtaining a certification from the person that meets the reporting requirements below.

(4) Prohibition of Indirect Substitution.

(a) In addition to all other requirements of law, no person who is prohibited from purchasing County timber directly from the County may purchase County timber from any other person.

(b) Acquisitions of Western Red Cedar which are domestically processed into finished products to be sold into domestic or international markets are exempt from this prohibition.

(5) Prohibition of Export of County Timber. All unprocessed timber, as defined in LM 21.440(2) above, which originates from County lands, may not be exported.

(6) Surplus Timber. The prohibitions against export contained in this provision shall not apply to specific quantities of grades and species of unprocessed timber originating from County land which, at the time of harvest, the United States Secretary of Agriculture or Interior has determined by rule to be surplus to the needs of timber manufacturing facilities in the United States.

(7) Reporting Requirements.

(a) Before the execution of a timber sale contract or the County in any other manner sells County timber, a purchaser of County timber must:

(i) Notify the County Administrator or Designee of the delivery destination of all timber purchased. Notification will be made in a form and manner described by the County Administrator or Designee; and

(ii) Deliver to the County Administrator or Designee a certification of the eligibility to purchase County timber of any person to whom the purchaser intends to sell, trade, exchange, or otherwise convey the purchased County timber, and their intent to comply with the terms and conditions contained in this section. Certification will be made in a form and manner as prescribed by the County Administrator or Designee. Obtaining certification shall not relieve the purchaser's responsibility to provide the County Administrator or Designee with an accounting of the delivery destination of that timber.

(b) Any performance bond required by a County timber sale contract may be retained by the County Administrator or Designee until he or she receives satisfactory notification of County timber delivery destination.

(c) Failure to provide the County Administrator or Designee with a final accounting of the delivery destination of County timber will be considered a violation of this provision. Violators shall be subject to the penalties contained in LM 21.440(8) below.

(8) Remedies for Violation.

(a) The County Administrator or Designee shall keep a written record of all persons whom he or she believes have violated the requirements of this provision.

(b) A person whose name appears on the record for violations as stated in LM 21.440(8)(a) above, and who again violates the requirements of this provision shall be disqualified from bidding on or purchasing County timber for a period of five years following the date of the violation.

(c) The County Administrator or Designee may cease operations on and/or terminate any County timber sale contract entered into with a person who has violated the requirements of this provision.

(d) The County Administrator or Designee may assess damages for violations of this provision according to the following formula:

(i) $D = (OSV + AC) - (PR + RSV)$, where:

(aa) D = Damages and Expenses.

(bb) OSV = Original Sale Value (timber only - does not include project value). The original sale value shall be adjusted to reflect estimated overruns or underruns on recovery sales.

(cc) AC = Administrative Costs. These costs include both the field and office costs required for the preparation of the defaulted parcel for resale. These costs also include rehabilitation or regeneration delay costs, legal service costs, interest, and other costs allowed by law.

(dd) PR = Payments Received.

(ee) RSV = Remaining Sale Value. The value of the remaining timber shall be determined using the County Administrator or Designee's estimate of remaining volume, multiplied by the dollar values stated in the contract.

(e) The County Administrator or Designee shall promptly notify the person in writing of any action taken under LM 21.440(8)(b), (c), or (d) above. The notice shall include the nature and date(s) of the violation(s), and where appropriate, the date of contract termination and/or cessation of operations, the period of disqualification, and the amount of assessed damages and how they were calculated. If the person is disqualified, the notice shall also include a statement of the appeal rights and procedure described in paragraph LM 21.440(8)(f) below.

(f) A person who receives notification from the County Administrator or Designee of disqualification may appeal the decision to the Board of County Commissioners.

(i) A written request must be received by the County Administrator, 125 E. 8th Ave., Eugene, OR., 97401, no later than 15 days after the date of the County notification.

(ii) After a timely appeal request is received, the Board of County Commissioners will schedule a public hearing. The appellant will receive at least 15 days' written notice of the hearing.

(iii) Following the hearing, the Board of County Commissioners shall make written findings and issue a written decision. A copy of the findings and decision will be mailed to the appellant. The Board's decision shall be final.

(g) If a person does not timely appeal a disqualification notice, then the decision of the County Administrator or Designee shall be final.

(h) The County Administrator or Designee's decision to cease operations, terminate a timber sale contract, or assess damages shall be final.

(9) Log Branding and Marking Requirements.

(a) All County timber originating from county timber sales shall be branded with an assigned and registered brand before removal from the sale area. Unless prevented by the size or condition of the wood, one end of all logs originating from

County timber sales shall be hammer branded and both ends shall be painted with a paint type and color determined by the County Administrator or Designee.

(b) If properly marked County timber is subdivided into smaller pieces for any other purpose than immediate processing, each piece must be branded with a county brand specifically used for this purpose and signifying the unprocessed timber is County timber ineligible for export. The County's export restriction branding hammers can be obtained from the County Administrator or Designee, at cost, upon request.

(10) Timber Sale Contracts. All County timber sale contracts shall contain the following provision:

"The Federal Forest Resources Conservation and Shortage Relief Act of 1990 and state law prohibits the export of unprocessed timber originating from County lands. Violations of that Act, ORS 526.801 to 528.831 or the Lane County Log Export Regulations may result in termination of this contract, assessment of damages, disqualification from bidding on or purchasing County timber for up to five years, or federal or state legal action. In any legal action brought by the County to enforce this provision of the contract, the County, if it prevails, shall be awarded its reasonable costs and attorney fees."

(11) Enforcement.

(a) Investigation of suspected violations of these rules and/or surveillance of unprocessed timber in transit and at port facilities may be conducted by the County Administrator or Designee, or contracted by the County Administrator or Designee to other County, state or federal agencies. Any alleged violations of the export prohibition provisions of these log export regulations will be referred by the County Administrator or Designee to the appropriate federal or state agency for prosecution or other legal action.

(b) Once the County Administrator makes a final decision that assesses damages, the full amount of damages shall be immediately due and payable. If payment is not made within 30 days, the County may enforce payment through civil legal proceedings, in which the County, if it prevails, shall be awarded its reasonable costs and attorney fees. *(Revised by Order No. 95-9-20-2, Effective 9.20.95)*

LOCAL CONTRACT REVIEW BOARD

PUBLIC CONTRACT EXEMPTIONS, DESIGNATIONS, SPECIAL PROCUREMENTS, AND RULES

20.085 General.

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

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

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

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

20.090 Findings.

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

20.091 Construction and Interpretation.

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

20.095 Definitions.

As used hereafter, unless the context requires otherwise:

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

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

Board means the Board of Commissioners of Lane County.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Special Procurement means a contracting procedure for non-public improvement contracts that differs from bidding, request for proposals, small procurements, and intermediate procurements which might otherwise apply. It refers to "class special procurement" and "contract-specific" special procurement as defined in ORS 279B.085, unless otherwise specified. (Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05; 05-3-9-21; 3.9.05)

DESIGNATIONS, EXEMPTIONS AND AUTHORIZATIONS

20.096 Sole Source Designation.

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

20.097 Personal Service Contracts Designation.

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

- (1) Pursuant to ORS 279A.055, a personal service contract is one:
 - (a) Primarily based on a special trust and confidence between the County and contractor; or
 - (b) Where the services the County or contractor seek for themselves are primarily based on the special or unique expertise or knowledge; particular experience; or the exercise of discretionary judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider; or
 - (c) Where the County is purchasing services for clients and (a) and (b) above are met for the client, rather than County.

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

- (3) The following are examples which are not considered personal services: a contract, even though in a professional capacity, if predominately for a product; a service to supply labor which is of a type that can generally be done by a competent person or is

primarily a custodial care service; a contract for a trade-related activity such as repair or maintenance for buildings or equipment. *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

20.098 Electronic Advertising.

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

GENERAL EXEMPTIONS

20.100 General Statutory/Regulatory Exemptions and Exclusions.

(1) County contracts are not required to be based upon a County competitive bidding or request for proposal process if a state or federal statute or regulation provides otherwise, or directs that another selection process be used. The County will comply with any limits or conditions to competitive selection required by state or federal law or regulation. Examples of such contracts include, but are not limited to the following:

(a) Contracts between contracting agencies or between contracting agencies and the federal government;

(b) Contracts between entities covered by ORS 190.010, or intergovernmental agreements.

(c) Contracts for ~~goods or services~~ public improvements if the value of the contract is less than \$5,000 ~~for public improvement projects~~;

(d) Public improvement contracts not exceeding \$100,000, or \$50,000 in the case of a contract for a highway, bridge or other transportation project made pursuant to competitive quotes;

(e) Intermediate procurements;

(f) Grants;

(g) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which a public body is or may become interested;

(h) Acquisitions or disposals of real property or interests in real property;

(i) Sole source expenditures when rates are set by law or ordinance for purposes of source selection;

(j) Contracts for employee benefit plans as provided in ORS 243.105(1), 243.125(4), 243.221, 243.275, 243.291, 243.303 and 243.565;

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

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

(m) Contracts specifically exempt or authorized as a special procurement under LM Chapter 20 or under state law.

(n) Cooperative procurements covered by ORS 279A.200 - ORS 279A.220.

- (o) Personal service contracts. See ORS 279B.050(4); ORS 279A.070.
- (p) Contracts in which a public entity such as Lane County is permitted to award without bidding or request for proposals provided the entity adopts its own rules covering the selection process (e.g., ORS 279B.065 (small procurements), ORS 279C.335(5) (emergency), ORS 279A.180 (purchases through certain federal government programs). *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05)*

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

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

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

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

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

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

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

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

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

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

(2) Subject to any waiver, an amendment to a personal service contract may be executed without further competitive process when it is equal to or less than 50 percent of

the original contract amount, or in the event of multiple amendments, where the aggregate of the amendments is equal to or less than 50 percent. In addition, if the amendment is related to continuation of a project as provided in LM 21.118(8), no additional competitive process is required. *(Revised by Order No. 98-12-2-, Effective 12.2.98; 05-2-16-8, 2.28.05)*

20.115 Life Cycle Costing.

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

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

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

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

20.120 Price Regulated Items or Services.

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

20.125 Price Set by Federal Contracts.

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

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

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

20.128 Client/Patient Services.

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

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

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

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

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

20.130 Request for Proposal.

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

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

20.135 Requirements and Price Agreements.

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

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

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

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

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

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

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

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

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

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

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

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

EXEMPTIONS AND AUTHORIZATIONS BY TOPIC

20.155 Advertising Contracts.

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

20.160 Construction Manager/General Contractor.

The County may use a request-for-proposal procedure for the selection of construction manager/general contractor firms (CM/GC) who will be required to establish guaranteed maximum prices for constructing public improvements, subject to the following conditions:

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

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

20.165 Copyrighted Materials.

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

20.170 Election Supplies and Services.

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

20.175 Equipment Repair and Overhaul.

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

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

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

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

20.180 Food Service Contracts.

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

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

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

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

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

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

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

20.190 Oil or Hazardous Material Removal.

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

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

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

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

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

20.195 Office Copier Purchases.

(1) The County may enter into multiple price agreements or requirements contracts for either the purchase or lease of office copying equipment. Except for this

multiple award exemption, such agreements shall otherwise conform to the requirements of LM 20.135(1) above.

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

20.200 Laboratory and Medical Supplies.

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

20.205 Purchases of Hospital and Medical Supplies and Equipment.

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

20.206 Library and Reading Materials.

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

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

20.207 Purchases of Used Personal Property.

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

PRODUCTS SPECIFYING BRAND NAME

20.210 Specification of Particular Brand Names or Products.

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

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

20.215 Brand Name or Mark Exemption Applications.

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

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

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

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

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

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

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

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

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

20.220 Copyrighted Materials.

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

20.225 Single Manufacturer or Service Provider.

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

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

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

20.230 Product Pre-Qualification.

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

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

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

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

COUNTY ADMINISTRATIVE SERVICES

20.235 Insurance Contracts.

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

(a) Agent of Record: The public contracting agency may appoint a licensed insurance agent (agent of record) to perform insurance services in connection with more than one insurance contract. Among the services to be provided is the securing of competitive proposals from insurance carriers for all coverages for which the agent of record is given responsibility:

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

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

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

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

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

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

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

20.240 Employee Benefit Insurance.

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

20.245 Investment Contracts.

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

20.250 Litigation Services.

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

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

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

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

EXEMPTIONS AND AUTHORIZATIONS AS CIRCUMSTANCES ARISE

20.255 Emergency Contracts.

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

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

(1) The LCRB may exempt a particular public improvement contract, or a category of contracts, from the bidding requirements of ORS 279C.335, which are not

otherwise exempt under these rules. The request for exemption shall contain the following information **and draft findings** where appropriate:

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

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

(3) ~~Application~~ **Consideration of the applicable information in LM 20.265(1) and (2) will be documented in findings and must demonstrate that the exemption would meet include** the following standard:

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

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

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

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

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

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

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

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

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

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

~~(8) A person or entity who is adversely affected may protest the County's request for approval of a special procurement. The affected person or entity shall deliver a written protest to the County department proposing the special procurement within ten days after the public notice of the request for special procurement, unless a different protest period is provided in the public notice in (7) above.~~

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

(10) Untimely filed protests in ~~(8)~~ or (9) will not be considered.

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

(12) For protests covered by ~~(8)~~ or (9) above, the County department may prepare a response within three days. If the County department concurs with the protest, in whole or in part, it may revise the proposed special procurement accordingly, or withdraw the request. If it does not concur, the LCRB will consider the protest at the time set for considering the request for special procurement for a protest under ~~(8)~~, and for a protest under (9), on a future LCRB agenda as soon as reasonably practicable. The LCRB shall consider the written record, including but not limited to, any County department analysis and submissions by the affected person or entity, and any oral testimony. The LCRB may revise the special procurement, in whole or in part, or deny or sustain the protest.

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

APPEAL FROM PREQUALIFICATION DECISION OR DEBARMENT

20.270 Prequalification and Debarment Appeals.

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

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

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

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

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

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

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

(b) Unsatisfactory record of performance;

(c) Unsatisfactory record of integrity;

(d) Not legally qualified to contract;

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

(f) Whether contractor has been debarred.

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

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

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

(c) Conviction under state or federal antitrust statutes;

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

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

BID SECURITY AND BONDS

20.275 Bid Security and Bonds.

(1) Contracts, other than those for public improvements and construction contracts as defined in ORS 279C.320(1), are exempt from the bid security requirements of ORS 279B. ~~027050~~ and performance and payment bond requirements provided that the County may require bid, performance, or payment security, in its discretion, regardless of this exemption.

(2) Contracts for public improvements and construction contracts as defined in ORS 279C.320(1) which do not exceed \$100,000 (except for highway, bridge and other transportation projects which do not exceed \$50,000) ~~are equal to or less than \$50,000~~ are exempt from bid security, and performance and payment bond requirements

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provided that the County may require such security in its discretion, regardless of this exemption. ORS 279C.390. (*Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05; 05-3-9-21; 3.9.05*)

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Chapter 21

CONTRACT POLICIES

PUBLIC CONTRACTS

21.100 Generally.

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

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

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

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

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

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

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

21.101 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) Request for Proposal. See LM 21.107.

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

21.102 Policy on Competition.

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

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

21.103 Contract Execution and Processing.

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

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

COMPETITIVE SELECTION

21.105 Competitive Bidding.

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

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

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

(3) Advertisements.

(a) The contents of advertisements for bids shall include:
(i) a description of the project, goods or services;
(ii) the office where the specifications for the project or purchase may be reviewed;

(iii) name, title and address of person authorized to receive bids;
(iv) if prequalification is required, a statement of the class or classes of work for which bidders must be pre-qualified and the filing deadline;
(v) scheduled bid submission deadline which shall not be less than 7 days after the date of the last publication of the ad;

(vi) scheduled bid opening (immediately after bid submission deadline for public improvement contracts);
(vii) if applicable, that the contract is for a public work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act.

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

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

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

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

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

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

(4) Delegations and Authority to Act.

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

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

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

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

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

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

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

(5) **Bids.**

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

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

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

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

(ii) In making a determination for non-public improvement contracts, the County will consider applicable standards of responsibility listed in ORS 279B.110(2) and discrimination pursuant to ORS 279A.110, and for public improvement contracts as set forth in ORS 279C.375(23) and ORS 279A.110. -For all contracts, if a bidder fails to qualify for a mandatory pre-qualification, notice shall be provided of the reasons, length of proposed disqualification not to exceed three years, -the right to a hearing before the LCRB by filing a timely notice of appeal within 3 days with the Department, waiver of the hearing if the deadline is missed, and reference to the sections of the County rules covering the appeal process. For non-public improvement contracts, the Department may revoke or revise and reissue a prequalification approval upon