W.10.a.

AGENDA COVER MEMO

AGENDA DATE: February 16, 2005

TO: Board of County Commissioners, sitting as local contract review board (LCRB) and as local contracting agency

DEPARTMENT: Office of Legal Counsel

PRESENTED BY: Trina Laidlaw, Assistant County Counsel TEL

AGENDA TITLE: In the Matter of Adopting Lane Manual Chapters 20, 21, and 60 For Lane County's Public Contracting Rules; Adopting Exemptions to Formal Bidding and Special Procurements; Right to Protest

I. MOTION

Move to adopt Lane County's public contracting rules in LM Chapters 20, 21, and 60.405 in compliance with Oregon Purchasing Code, ORS Chapter 279A, B, and C effective February 28, 2005.

II. ISSUE OR PROBLEM

Oregon statutes require a local contract review board and contracting agency to readopt any public contract rules in place before March 1, 2005, adopt any new rules, or adopt some or all of the Oregon Attorney General's model contract rules. The Lane County Board of Commissioners is both the local contract review board and the local contracting agency for Lane County. The Board previously adopted public contracting rules for Lane County located in Lane Manual Chapters 20 and 21, and a section in LM Chapter 60 concerning sale of personal and surplus property. The purpose of this agenda item is to request that the Board readopt these Lane Manual rules as Lane County's public contracting rules, with certain modifications to reflect statutory changes and portions of DOJ Model Contract Rules 2004.

III. DISCUSSION

A. Background

Beginning in June 2004, Assistant County Counsel, Trina Laidlaw, and Purchasing Manager, Gail Murray met with department representatives to discuss and solicit feedback about changes in Lane County's public contracting rules as a result of statutory changes to take effect on March 1, 2005. The goal of this project was to update Lane County's existing rules to comply with the statutory changes, including review of rules relating to contracts covered by the statutory Purchasing Code. It was recognized that there were a number of types of contracts which had been covered, but would no longer be covered by this public contracting law. A decision was made to address those contracts and any specific procedures after March 1, 2005. One example is that the statutory Purchasing Code no longer covers grants. This is one major type of

contract for Lane County. The Code does not provide guidance as to what procedures may be appropriate for grants. The rules proposed as part of this agenda item continue treatment of grants as Lane County has in the past, and there would be no change. However, after March 1, 2005, there may be a desire to return to the Board to request changes regarding grants and other types of contracts not covered by the Purchasing Code.

Another topic not covered by the rules proposed in this agenda item are rules regarding electronic procurement and facsimile bids and proposals. Currently the IS Department and others are working on a project to develop policies covering control processes and procedures to adequately preserve, dispose of, ensure integrity, security, confidentiality and auditability of electronic records, in part, for the County's business transactions. Such policies are probably required under Oregon's Uniform Electronic Transactions Act. It is likely the intent of those involved in County contracts to be able to engage in more electronic commerce, and public contracting policies may be later proposed to the Board.

The contents of this agenda item include rule changes for Lane County based on changes in the public contracting statutes. Generally, this new Purchasing Code:

1. Created more distinctions between procedures for public improvement and non-public improvement contracts;
2. Requires the adoption of more rules. The approach Lane County had been taking was to adopt rules which did not reiterate the statute, but which added provisions specifically applicable to Lane County. More statutory provisions are now required to be addressed in local rules;
3. Requires the local contract board to make "designations" and express delegations of authority by rule. There is more emphasis on rules covering which County employees have authority to take certain actions;
4. Perhaps some additional opportunities to protest County actions in competitive processes and award of contracts.

B. Analysis

The analysis below includes a summary of the changes proposed in LM Chapter 20, 21, and 60. As a preliminary matter, Lane County has traditionally maintained rules adopted by the local contract review board in LM Chapter 20. These have primarily included class "exemptions" to formal competitive bidding, and several other matters. That tradition is being followed in these proposed rules. The Lane Manual Chapter 21 rules have primarily been procedural rules adopted by and covering Lane County as a local contracting agency. That tradition is also continuing. The new statute changed some of the responsibilities as between these two bodies, resulting in some of the rules in LM Chapter 20 shifting to LM Chapter 21. Because of this, and some of the reorganizing necessary to incorporate the statutory changes, there are sections in LM Chapter 20 and 21 which appear as though they are new, when they aren't. The summary below covers the major changes.

1. Lane Manual Chapter 20

There are two tests for the Board to apply in considering the adoption of LM Chapter 20. First, many of the provisions may be considered "exemptions" from formal competitive bidding for public improvement contracts. A public hearing is required when

considering exemptions for public improvement contracts. Second, many be considered class special procurements for non-public improvement contracts. A person or entity may protest the request for special procurement rules in LM Chapter 20, and any protest is to be heard at the time set for considering the request for special procurement.

The statutory test to applied in approving exemptions should be addressed in written findings:

1. It is unlikely that such exemption will encourage favoritism in the awarding of public contracts;

2. It is unlikely to substantially diminish competition for public contracts; and

3. The awarding of public contracts pursuant to the exemption will result in substantial cost savings to the public contracting agency.

4. More specific criteria to consider for the findings include:
   a. Operation, budget and financial data
   b. Public benefits
   c. Value engineering
   d. Specialized expertise required
   e. Public safety
   f. Market conditions
   g. Technical complexity
   h. Funding source

5. In granting an exemption, the local contract review board shall:
   a. Where appropriate, direct the use of alternate contracting and purchasing practices that take into account market realities and modern or innovation contracting and purchasing methods which are also consistent with the public policy of encouraging competition.
   b. Require and approve or disapprove written findings that support the awarding of a particular public contract without the requirements of competitive bidding. The findings must show that the exemption meets the three point statutory test.

The statutory test to be applied in approving class special procurements for non-public improvement contracts includes:

1. The County submitting a written request to the LCRB that describes the proposed contracting procedure, the class of goods or services (including construction services) to be acquired through the special procurement and the circumstances that justify the use of a special procurement.

2. In order to authorize the class special procurement, the LCRB must make written findings that the procurement will:

a. Be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts, and
b. Result in substantial cost savings to the County or to the public, or
c. Otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under formal

bidding, request for proposals, small procurement or intermediate procurement procedures.

Proposed findings addressing the test and criteria above and attached for review and consideration.

Chapter 20 - Summary of Changes

The following rules have not been revised and remain the same: LM 20.115 Life Cycle Costing; LM 20.128 Client/Patient Services; LM 20.155 Advertising Contracts; LM 20.160 Construction Manager/General Contractor; 20.165 Copyrighted Materials; 20.170 Election Supplies and Services; 20.185 Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalts; LM 20.195 Office Copier Purchases; LM 20.200 Laboratory and Medical Supplies; LM 20205 Purchases of Hospital and Medical Supplies and Equipment; LM 20.206 Library and Reading Materials; LM 20.207 Purchases of Used Personal Property; LM 20.220 Copyrighted Materials; 20.240 Employee Benefit Insurance; 20.245 Investment Contracts.

The following rules have modified in minor or relatively insignificant respects: LM 20.135 Requirements Contracts only changed in title to add "and Price Agreements;" LM 20.175 Equipment Repair and Overhaul was changed to reflect the increased quote limit from $50,000 to $100,000; LM 20.180 Food Service Contracts only changed the public advertisement to reference the electronic advertisement rule in LM Chapter 21; LM 20.190 Oil or Hazardous Material Removal only changed a citation to the sole source rule to reflect the new procedural rule in LM 21.111; 20.235 Insurance Contracts changed to reflect the increase quote limit from $50,000 to $100,000 and the public advertisement to reference the electronic advertisement rule in LM Chapter 21; and LM 20.275 Bid Security and Bonds has been revised to correct citations and expressly add payment bonds to the rule, rather than only "bid and performance security."

In addition to these changes, the following LM Chapter 20 rules have been modified in more significant respects to reflect statutory changes:

1. LM 20.096 Sole Source Designation - This is a new sole source rule in that it distinguishes between procedures for public improvement and non-public improvement contracts and expressly delegates authority to Department Directors for contracts at or less than $50,000 (with County Administrator oversight) and to the County Administrator for contracts exceeding $50,000. The express delegation is required by the new law. A department's requirement to provide the County Administrator with written analysis and findings for contracts exceeding $50,000 is new, however, the County Administrator's oversight of department decisions for contracts at or below $50,000 is not new. As a matter of practice, departments generally check about sole source acquisitions in large dollar amounts. The procedures for determining sole source have moved to LM 21.111. The ability to utilize sole source for public improvement contracts is more limiting in that a contract specific exemption will probably be required in many cases.

2. LM 20.097 Personal Service Contract Designation - LM 20.097 is new in "designating" specific contracts as personal service contracts. Previously, the County had a more general definition, and the practice was to interpret the general rule as now stated in the new rule. The express delegation to Department Directors to determine

whether a contract meets this definition, with County Administrator oversight in his or her discretion is new. As a matter of practice, little is changing.

3. LM 20.098 Electronic Advertising - LM 20.098 is a new rule and consists of a finding that electronic advertising is cost effective and is authorized as long as the procedures in LM 21.105(3) are followed. This rule is a step to laying the foundation for e-government. This rule along with the procedures in LM 21.105(3) recognizes that newspaper advertising may lead to the greatest competition in a particular case, and if so it should be used. Also, before engaging in electronic advertising, a department is to provide advance notice in the newspaper of its intent. Anyone with objections may contact the department and accommodations may be made (not required) for providing notice by another method.

4. LM 20.100 Statutory and Regulatory Exemptions and Exclusions - LM 20.100 has been modified to reflect new statutory exemptions and exceptions to formal competitive bidding or a request for proposal process. Actually, several of those listed (e.g., contracts for employee benefit plans, and litigation related contracts) were already recognized class exemptions under LM Chapter 20, and they are now simply reflected as exemptions by statute. It is noteworthy that "grants" are, under the new law, excluded from any requirements of the public contracting statute. It is the intent of Lane County to consider new rules covering grants after March 1, 2005. Until such time, they have been left in LM Chapter 21 and covered by such procedures.

5. LM 20.105 Exemptions/Special Procurement for Contracts Not Exceeding $100,000. In December 2004, the Public Contract Task Force received preliminary guidance from the Finance and Audit Committee as well as the Board of County Commissioners about raising the quote limits to $100,000, except for public improvement contracts involving highways, bridges and other transportation which remains at $50,000, and the procedures for small procurements ($5,000 or less). This guidance has been adopted into this rule: There may be direct contracting, without competitive selection for small procurements under or equal to $5,000, informal quotes for contracts over $5,000 but not $50,000, and written solicitation and quotes with a right to protest any contract award for contracts over $50,000 but not $100,000. A reference to personal service contracts following this similar rule was added.

6. LM 20.110 Contract Amendments. The authorized amendment amount has been raised from 20% to 25% in accordance with the preliminary guidance of the Finance and Audit Committee and Board of Commissioners in December. A reference to the existing amendment amount (unchanged) for personal services contracts was added.

7. LM 20.125 Price Set by Federal Contracts. The previous rule stated that the County was required to document the cost savings from use of a federal contract. This new rule adds that quote(s) should be obtained to document the existence of cost savings, rather than reliance on some other unspecified factors or opinions. This change helps clarify the evidence needed to determine cost savings.

8. LM 20.130 Request for Proposal. The previous rule allowed an RFP competitive process in lieu of formal bidding. This new rule reflects statutory changes based on the particular type of contract.

9. LM 20.210 and 20.215 Brand Names. The previous rule created an exemption applying to both public improvement and non-public improvement contracts. The new statute provides that a local contract review board (LM Chapter 20) may grant an exemption for use of a brand name for public improvement contracts, and the local contracting agency (LM Chapter 21) may allow use of brand names for non-public improvement contracts. The same procedure remains for public improvement contracts, with the deletion of products for experimental projects, and other insubstantial language changes.

10. LM 20.230(2) Product Pre-Qualification. This new rule adds statutory language concerning testing or examination of products if necessary or desirable, and the basis of the pre-qualification decision should be the results of tests or examinations. The remainder of the rule is the same.

11. LM 20.250 Litigation Services. The Oregon Legislature excluded certain litigation related contracts from the Purchasing Code and Lane County's new rule reflects that exclusion: 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. The previous rule was more limiting in its coverage to expert witnesses, consultants and specialized personnel necessary for actual defense or prosecution of claims or litigation. The new rule also adds arbitrators and mediators as examples of other specialized personnel. This reflects the potential involvement of two contracting parties in the selection of professionals for alternative dispute resolution. Investigators are added as an example of specialized personnel reflecting the difference in skills and expertise needed based upon the type of investigation.

12. LM 20.255 Emergency Contracts. The major change in this rule is to authorize the County Administrator to declare an emergency for contracts equal to or less than $100,000, instead of $50,000 as stated in the previous rule. The rationale was to track the increase in County Administrator's authority to execute contracts up to and including $100,000 pursuant to the Board's initial guidance. The statute has changed to allow the local contracting agency (LM Chapter 21) to adopt rules concerning award of contracts pursuant to an emergency rather than the LCRB (Chapter 20). Thus, the procedure for declaring an emergency has been moved to LM 21.128, but is essentially unchanged.

13. LM 20.265 LCRB Exemption for Other Public Improvement Contracts and Special Procurements. On February 2, 2005, the Board of Commissioners approved changes to this rule, which separates the public improvement exemption request procedure from the non-public improvement special procurement procedure. There are no new changes to this rule beyond the February 2 submission. Previously, there was only one procedure that applied to both types of contracts, exemptions from formal bidding. This has not changed for public improvement contracts. However, for non-public improvement contracts there is now a change in focus: it is not just which non-public improvement contracts should be "exempt" from formal bidding, but also which ones should not be required to be awarded through an otherwise applicable RFP, small procurement or intermediate procurement process. There are specific rights to protest special procurements, and a right to a public hearing for "exemptions."

14. LM 20.270 Prequalification and Debarment Appeals. The County departments have had the right to find that the lowest bidder is not "responsible" and should not be selected or should be debarred. That right has been extended to proposers in an RFP

process. The standards for disqualification are the same for both public improvement and non-public improvement contracts: lack of availability of appropriate resources to meet contractual responsibilities; unsatisfactory record of performance; unsatisfactory record of integrity; not legally qualified to contract; has been debarred; has not supplied all necessary information. The standards for debarment are the same for both types of contracts and include conviction of certain crimes, violation of a contract provision where debarment was listed as the contractual remedy, and not carrying workers' compensation. LM 20.270 is new and establishes the process by which a party may appeal a disqualification or debarment decision made by a department to the LCRB - including receipt of notice and an opportunity to be heard.

2. Lane Manual Chapter 21 - Summary of Changes

The following LM Chapter 21 rules are unchanged and remain the same: LM 21.105(5)(e) and (f) concerning a prospective bidder seeking clarification and irrevocability of bids; LM 21.105(11) authority to award contract; LM 21.122 revenue contracts; LM 21.124 intergovernmental agreements; LM 21.135 contracts exempt from bids and RFPs; LM 21.139 Fair Board; LM 21.141 On-site Construction Change Orders; LM 21.143 cancellation of award.

The following LM Chapter 21 rules had minor changes including citation corrections: LM 21.100 General; LM 21.102 Policy on Competition; LM 21.103 contract execution and processing; LM 21.105(1) when bids required; LM 21.105(4) delegations and authority to act; LM 21.105(8)(a)-(e); LM 21.105(9); LM 21.106; LM 21.107(13); LM 21.113; LM 21.115; LM 21.116; LM 21.120; LM 21.137.

Chapter 21 - Summary of Changes

1. LM 21.100(5) Delegated Authority - There is a new delegation of authority by the Board to the County Administrator (with assistance of Office of Legal Counsel upon request) to review Attorney General model rule changes in the future. The purpose is to evaluate whether Lane County's rules should be modified to comply with statutory changes. There is also a similar delegation of authority for LM Chapter 20 rules.

2. LM 21.105 Competitive Bidding.

   A. Subsection (3)(a) Advertisements. Lane County's previous rule did not list the contents of bid advertisements, rather referred to the statute which contained the list. The proposed rule now specifies the list of items. This was done in an attempt to combine all items from both the new public improvement and goods and services statutes. There isn't any significant change in practice with this rule change.

   Subsection (3)(b) on electronic advertising is completely new. It would authorize electronic advertising if a department provided appropriate public notice and when considering a specific contract, if newspaper advertising would encourage the greatest competition over electronic, then the newspaper advertising would continue to be used. There is also a process for persons to object to electronic advertising before it is used, by contacting a County contact person. If this were to occur, the department would be authorized (not required) to make special

arrangements for such person to receive advertising of bids and RFPs, or other public notices.

B. Subsection (5)(a) Bids. Lane County's new rule differentiates between the list of requirements for bids in public improvement contracts from those in non-public improvement contracts. The new statutory lists are not much different than the list in the prior statute applying to both public improvement and non-public improvement contracts.

Subsection (5)(b) on pre-qualification of bidders (and proposers) and debarment is new for a Lane County rule, but it was previously covered by Oregon statute which Lane County followed. Lane County's new rule sets forth the procedures, the criteria, and the right to protest standards of responsibility and grounds for debarment including conviction for certain crimes, failure to be covered by Workers' Compensation, etc.

Subsection (5)(c). The new Lane County rule establishes a multi-step invitation to bid process for non-public improvement contracts. Neither the prior statute nor Lane County rule covered this. However, the new statute requires a local contracting agency to adopt rules covering multi-step or multi-tier competitive selection in order to use such processes.

Subsection (5)(d) on correction, withdrawal and late bids. The majority of this new rule includes provisions which had previously been included in a Lane County rule, but reorganized. The provision that decisions to permit correction or withdrawal of bids be supported by written reasons is new. This is consistent with the AG model rule.

Subsection (6) Protest of Process and Solicitation Document. The prior law and Lane County rule reflected that a prospective bidder or proposer could protest the specifications and solicitation document on the grounds that they were "unlawful, improvident or unjustifiably restricted competition." This applied to both public improvement and non-public improvement contracts. The new statute for non-public improvement contracts: a) expands the protest to include the solicitation process, in addition to the specifications and other provisions of the solicitation document; b) adds the right of the party aggrieved by a special procurement decision to this protest, but only if a court has first invalidated the special procurement; c) slightly modifies the standard from "unlawful, improvident or unjustifiably restricting competition" to "unnecessarily restrictive, legally flawed or improperly specifying a brand name." For public improvement contracts, the protest remains unchanged - a protest of the specifications or contract terms. If a department upholds a protest, it can either issue an addendum or cancel the solicitation process.

Subsection (7). Opening of Bids. The new Lane County rule includes a provision that to the extent, practicable, the public officer is to read certain bid information aloud. It also covers when a bid record is open to the public - after bid opening for public improvement contracts, except for certain information covered by an exemption to Oregon public records law; and after the notice of intent to award for non-public improvement contracts with the same exception. Also, Lane County has added that the bidder or proposer shall defend and indemnify the County for any costs associated with establishing an exemption to Oregon public records law. This is standard contract language which Lane County has been using and is now incorporated into a rule applying to bidders and proposers in a competitive selection process.

Subsection (8)(f). This new Lane County rule recognizes evaluation methods for comparing unit prices and lump sum offers, including when additive or deductive

alternates are included. It would authorize Lane County departments to follow the AG model rule or any other method reasonably likely to result in similar comparisons. This is not a change in practice for Lane County.

Subsection (10). Rejection. This rule has been modified to include the concept of rejecting bids "in part," while Lane County's previous rule was to allow rejection of all or any one of the bids. This is consistent with the new statute for non-public improvement contracts, and the public improvement statute is silent on this issue. The new rule also further describes "partial rejection" to include allowing only those who submitted bids originally to supplement their original bids after a partial rejection, as long as it is unlikely that readvertising publicly would lead to greater competition and the deadline for supplemental submissions may be expedited. If a partial rejection occurs as a result of the filing of a protest, any remaining issues not resolved in the protestor's favor shall proceed to the Board or County Administrator. This new rule also includes the concept of rejecting bids when in "the best interests as determined by" the County. This reflects the new statute for goods and services contracts. Examples of this are specified and include when a bid is not in compliance with public bidding procedures and requirements, and for good cause when it is in the public interest to do so.

Subsection (12) Notice of Intent to Award. Lane County previously had no specific deadline for a department to provide its notice of intent to award to participating bidders. The new statute for non-public improvement contracts provides that the deadline is at least 7 days before contract award unless a local rule provides otherwise. The general practice in Lane County is that the notice of intent to award as a result of a formal bid or RFP process (contracts exceeding $100,000) is placed on a Board agenda at least 14 days prior to the award. So, Lane County's rule reflects that, with the flexibility for the department to change this. This would apply to public improvement contracts as well.

Subsection (13) Protests of Award. The new Lane County rule shortens the deadline for filing a protest of award from 14 days, to 7 days, from the date of the notice of intent to award the contract, unless provided otherwise. This is consistent with the AG model rule. The change preserves the ability of the Board to make decisions on contracts generally within 14 days of the notice of intent to award. The criteria for determining a protest of award for public improvements and non-public improvement contracts is slightly different, so Lane County's new rule separates the two. The criteria related to evaluation in public improvement contracts are that a substantial violation of the solicitation document caused the protestor to be evaluated unfairly. The criteria related to evaluation in non-public improvement contracts include violation of ORS 279A and failure to use the criteria or processes described in the solicitation materials.

Lane County's new rule also provides that protests of award for contracts exceeding the County Administrator's authority go directly to the Board, rather than through the County Administrator and then to the Board at any Board member's request. The new rule eliminates the initial review by the County Administrator of protests on contracts exceeding $100,000 which are being awarded after a formal bid or RFP process. For Board awarded contracts, the new rule provides that the public officer can reject bids in response to the filing of a protest, so that the protest would not come to the Board. However, if any portion of the protest remains unresolved in favor of the protestor, it shall come to the Board. The new rule also adds an option for the Board to "remand" or send the contract back to the department with its direction. The old rule allowed only the options of affirm, reverse or revise. The new rule provides that protests of award for contracts to be awarded

by the County Administrator, proceed directly to him first, and then the Board may review this decision in its discretion.

3. LM 21.106. Bid and Performance Securities. In accordance with the new statute, Lane County's rule has been revised to include payment bonds. It also adds "other construction contracts" to public improvement contracts in requiring bonds and security at the same threshold level of $50,000.

4. LM 21.107 Request for Proposals. The new Lane County rule mirrors the changes in the formal bid rule which is similar to the previous rule. There are a few new provisions: a) new rules concerning requests for information, etc. before the formal process to obtain information in preparation of the RFP, and b) new rules concerning various methods of selection including multi-tier, multi-step selection, competitive negotiations, etc. Some Lane County departments had already been using some of these methods. The new statute states that a local contracting agency needs to have rules in order to have the opportunity to utilize various contractor selection methods.

5. LM 21.108 Letters of Interest. There are a few changes to correct citations and to authorize electronic advertisement in accordance with LM 21.105(3).

6. LM 21.109 Small procurements. Previously, Lane County's rule for small procurements (equal to or less than $5,000) was located in LM 20.105. LM 20.105 still exists, but this LM 21.109 rule adds two provisions: any contract terms should be consistent with the County's legal requirements and limitations or as further described in County Administrator procedures, and Department Directors and County Administrator are delegated authority to award small procurement contracts (with further delegation possible).

7. LM 21.110 Intermediate procurements. The purpose of this rule is to provide the procedural/implementation rules for LM 20.105 concerning quotes. One major point added in this rule is the evaluation criteria for quotes: the County will choose the offeror whose quote or proposal will best serve the interests of the County, taking into account price as well as considerations including, but not limited to experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility. This clarifies that an intermediate procurement, including a quote process, is not necessarily limited to the lowest cost, rather other factors may also be considered.

8. LM 21.111 Sole Source. The rule applies only to non-public improvement contracts. It changes the County's previous rule in that: a) it adds a specific authorization for agencies to buy software or data when they wish to exchange information and there is only one source, and b) a specific authorization when goods or services are for an experimental or pilot project, c) authorizes the Department directors to make written findings for contracts equal to or less than $50,000, and for contracts exceeding that amount they make written findings and submit to the County Administrator for approval, d) a new protest right for contracts exceeding $100,000 to be decided by the Board, and e) a reiteration of the statutory point that the County would negotiate, to the extent practicable, to obtain contract terms advantageous to the County. The requirement to make reasonable effort to notify all known potential contractors remains.

9. LM 21.112 Brand Name. This rule applies to non-public improvement contracts only. Previously, the Board as LCRB made decisions on brand name "exemptions" for all contracts. Now, the Board as local contracting agency makes the decision for non-public improvement contracts only. The standard for approving a brand name specification remains unchanged: that a brand name specification is unlikely to encourage favoritism or substantially diminish competition, that use of the brand name would result in substantial cost savings, that there is only one manufacturer or seller of the product of the quality, performance or functionality required, or that efficient utilization of existing goods requires the acquisition of compatible goods or services.

10. LM 21.112A Special Procurements. There are two new protest opportunities for special procurements for non-public improvement contracts in LM 20.265. This LM 21.112A provides a third protest opportunity for contract-specific procurements. If a court invalidates the Board's decision to authorize a contract-specific competitive process which is different than the County would otherwise be following, and the County then conducts a process it believes is acceptable to the court, a party may protest this process or solicitation document after the court's decision.

11. LM 21.112B. Cooperative procurements. This rule recognizes a number of opportunities for cooperative purchasing, including with other public agencies, and with agencies in other states. Lane County has had cooperative purchasing agreements with various agencies, so the practice would not change. There are now some specific requirements for participating in cooperative arrangements - it has become more formalized. The same fundamental premise remains, Oregon public contracting law should not be superceded by inconsistent law (unless federal).

12. LM 21.118 Personal Service Contracts. In subsection (1) changes were made to mirror the intermediate quote process as in LM 20.105 and LM 21.110, with the exception that the County may directly contract (no competitive selection) for contracts of $10,000 or less and for architects, engineers, land surveyors, and other related service providers may directly contract for contracts of $25,000 or less on highway, bridge and other transportation projects. Throughout the remainder of the selection rule, there are reference to qualification based requirements for certain architects, engineers, land surveyors and other related services - no pricing/cost information can be solicited or considered until after ranking of the most qualified.

    There are some changes in (6) covering the RFPS or qualification based process to reflect statutory language. There is a new protest of the solicitation process or document, similar to the right provided for bids and RFPs. The right to protest the award continues to be provided, and the standard for deciding the protest has been added. This is based on the AG model rule. Also, a statutory basis for amending a personal service contract without competitive selection because it is a continuation of a project has been added.

13. LM 21.126 Grants. The definition of a "grant" has been revised to incorporate the statutory definition. Grants are provided to stimulate a program or activity of a contracting agency. The new Lane County rule clarifies that when the County "passes through" funds from a funding source to a subcontractor, it should be conducting a competitive selection unless the funding source directs that the subcontractor receive the funds. This may include the County conducting a

competitive selection if it must apply for a grant and wishes to subcontract services to a particular subcontractor.

14. LM 21.128 Emergency Contracts. This rule is essentially a combination of the County's previous LM 21.128 and LM 20.255. There is no significant change.

15. LM 21.129 Purchase Orders. The delegated authority to the Director of Management Services to execute purchase orders has been raised to $100,000 from $50,000. This is in accordance with the preliminary guidance provided by the Board in December 2004.

16. LM 21.130. These are the County's standard contract provisions and most are based on statutory or other rule requirements. There have been three new provisions added: for lawn and landscape maintenance, the contractor shall salvage, recycle compost, etc.; for public improvement contracts involving demolition, the contractor shall salvage, recycle, etc.; and non-resident bidders for contracts exceeding $10,000 shall file a report with the Department of Revenue.

17. LM 21.145. Delegation of Authority to Execute Contracts. This rule has been amended to increase the County Administrator's delegated authority to execute to $100,000, and to execute software license and computer maintenance agreements not exceeding $100,000, but possibly exceeding 3 years in length. There is a new provision delegating authority to the Department Directors to execute contracts equal to or less than $5,000 and not exceeding 3 years in length.

18. LM 21.148 This is a new rule delegating authority to Department Directors to execute amendments for $5,000 contracts (or less) which do not exceed 25%, or 50% for personal service contracts.

3. Lane Manual Chapter 60.405

LM 60.405 covers the disposal of unclaimed personal property and county-owned surplus. The changes in this rule include: a) adding language which would allow "public auction" to be electronic on the condition that the County Administrator adopts procedures for conducting such an electronic transaction. It is likely that the County will first need to develop and adopt policies to comply with Oregon's Uniform Electronic Transactions Act; b) a change correcting the citation for public advertising, and c) for sales estimated at $100,000 or less , instead of $50,000 or less a public opening of bids is not required as long as the department notifies bidders as soon as practicable and within a reasonable time.

IV. ALTERNATIVES/OPTIONS

1. Approve the motion to adopt Lane Manual Chapters 20, 21, and 60.405.

2. Not approve the motion to adopt Lane Manual Chapters 20, 21, and 60.405, and the Attorney General's model rules would then apply to Lane County. This would mean some fairly significant changes to public contracting in Lane County.

V. RECOMMENDATIONS

Alternative 1 is recommended.

VI. IMPLEMENTATION

Upon approval by the Board, sitting as local contract review board and local contracting agency, Lane County's public contracting rules will be in place.

VII. ATTACHMENTS

Board Order
Findings to Support Lane Manual Chapter 20 amendments

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

ORDER NO.

IN THE MATTER OF ADOPTING LANE MANUAL CHAPTERS 20, 21, AND 60 FOR LANE COUNTY'S PUBLIC CONTRACTING RULES; ADOPTING EXEMPTIONS TO FORMAL BIDDING AND SPECIAL PROCUREMENTS; RIGHT TO PROTEST (EFFECTIVE FEBRUARY 28, 2005)

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

WHEREAS, the Board, sitting as the local contract review board and local contracting agency decided to adopt its own rules for public contracts separate from the Attorney General's Model Rules and wishes to continue to "opt out" of Department of Justice Model Public Contracting Rules 2004;

WHEREAS, certain amendments in Lane County's public contracting rules are necessary to reflect changes in Oregon public contracting statutes ORS 279A, B, and C;

NOW, THEREFORE, sitting as both the local contract review board and local contracting agency for Lane County, having examined and considered findings in Exhibit A, incorporated by this reference, the record submitted and any evidence or testimony provided at the Board's public hearing, the Board of County Commissioners hereby orders and finds as follows:

1. The Board adopts the Exhibit A findings and conclusions in support of amendments to LM Chapter 20 public contracting rules, exemptions, and class special procurements, and adopts Lane Manual Chapter 20 in its entirety.

2. Lane County will continue to "opt out" of the state Attorney General's Model Rules, including the 2004 revision. Lane County's public contracting rules are those in Lane Manual Chapter 20, 21, and 60, as adopted by this order, and as they may be further amended in the future.

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

AND FURTHER, the Board, sitting as both the local contract review board and local contracting agency, hereby orders that:

Lane Manual Chapters 20, 21, and 60 are hereby amended by removing, substituting and adding the following sections:

REMOVE THESE SECTIONS	**INSERT THESE SECTIONS**
20.085 through 20.110	20.085 through 20.110
as located on pages 20-1 through 20-3	as located on pages 20-1 through 20-5
(a total of 3 pages)	(a total of 5 pages)

20.125 through 20.127 as located on page 20-4 (a total of 1 page)	20.125 as located on page 20-6 (a total of 1 page)
20.130 through 20.140 as located on pages 20-4 through 20-5 (a total of 2 pages)	20.130 through 20-135 as located on page 20-6 through 20-7 (a total of 2 pages)
20.140 as located on pages 20-5 through 20-6 (a total of 2 pages)	
20.175 through 20.180 as located on page 20-6 through 20-7 (a total of 2 pages)	20.175 through 20-180 as located on page 20-8 (a total of 1 page)
20.190 as located on page 20-7 (a total of 1 page)	20.190 as located on page 20-9 (a total of 1 page)
20.210 through 20.215 as located on pages 20-8 through 20-9 (a total of 2 pages)	20.210 through 20.215 as located on page 20-10 (a total of 1 page)
20.225 through 20.235 as located on pages 20-9 through 20-10 (a total of 2 pages)	20.225 through 20.235 as located on pages 20-11 through 20-12 (a total of 2 pages)
20.250 through 20.260 as located on page 20-11 (a total of 1 page)	20.250 through 20.255 as located on pages 20-12 through 20-13 (a total of 2 pages)
20.270 as located on page 20-13 (a total of 1 page)	20.270 through 20.275 as located on page 20-15 through 20-16 (a total of 2 pages)
21.100 through 21.108 as located on pages 21-1 through 21-7 (a total of 7 pages)	21.100 through 21.112B as located on pages 21-1 through 21-14 (a total of 14 pages)
21.113 as located on page 21-8 (a total of 1 page)	21.113 as located on page 21-14 (a total of 1 page)
21.115 through 21.120 as located on pages 21-8 through 21-15 (a total of 8 pages)	21.115 through 21.120 as located on pages 21-14 through 21-21 (a total of 7 pages)

APPROVED AS TO FORM
Date 2/8/05 Lane County
OFFICE OF LEGAL COUNSEL

21.126 through 21.130 as located on pages 21-15 through 21-19 (a total of 5 pages)	21.126 through 21.130 as located on pages 21-22 through 21-26 (a total of 5 pages)
21.137 as located on page 21-20 (a total of 1 page)	21.137 as located on page 21-27 (a total of 1 page)
21.145 as located on pages 21-21 (a total of 1 page)	21.145 through 21.148 as located on pages 21-28 through 21-29 (a total of 2 pages)
60.405 as located on pages 60-3 through 60-5 (a total of 3 pages)	60.405 as located on pages 60-3 through 60-5 (a total of 3 pages)

Said sections are attached hereto and incorporated herein by reference. The purpose of these substitutions is to implement the adoption of LM Chapters 20, 21, and 60 to reflect statutory changes, reflect department practices, and clarify the roles of the County Administrator and Board.

The rules adopted by this order shall be effective February 28, 2005.

Adopted this _____ day of _____ 2005.

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

APPROVED AS TO FORM
Date 2/8/05 Lane County
_____
OFFICE OF LEGAL COUNSEL

EXHIBIT A

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

1. Nature of Project

Lane County has been utilizing certain contract exemptions and rules adopted by the Board of County Commissioners, sitting as the local contract review board (LCRB). Originally, the LCRB simply adopted the exemption rules adopted by the Department of General Services for the State of Oregon which were in effect on November 30, 1994. Those exemptions are included in Lane Manual Chapter 20. The LCRB adopted more significant amendments to the LM Chapter 20 exemption rules in December 1998, and in June 2004. The purpose of the exemption rules was to set forth exceptions to formal competitive bidding for certain classes of contracts. While formal competitive bidding may be favored, there are certain classes of contracts for which such a formal and expensive process may not be needed or warranted in relation to cost and effect on competition.

The purpose of these findings and conclusions, and any resulting Board Order is to:

1. Readopt the same special class rules, with certain modifications.
    a. For public improvement contracts, LM Chapter 20 will continue to establish exemptions from formal competitive bidding.
    b. For non-public improvement contracts, LM Chapter 20 will reflect "class special procurements."
2. The modifications include:

The following LM Chapter 20 special class rules and exemptions are covered by these findings as either exemptions which may apply to public improvement contracts or special procurements which may apply to non-public improvement contracts: LM 20.096, 20.100, 20.105 (excluding personal service subsection), 20.110 (excluding personal service subsection), 20.115, 20.120, 20.125, 20.128, 20.130, 20.135, 20.155, 20.160, 20.165, 20.170, 20.175, 20.180, 20.185, 20.190, 20.195, 20.200, 20.205, 20.206, 20.207, 20.210, 20.215, 20.220, 20.225, 20.230, 20.235, 20.240, 20.245, 20.250, 20.255, 20.275, 20.098.

2. Standards to be Applied

A. Public Improvement Contracts.

The LCRB is authorized to grant contract class exemptions pursuant to ORS 279C.335(2). The findings which the Board must approve in order to grant such exemptions include:

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

2. The awarding of public contracts pursuant to the exemption will result in substantial cost savings to the public contracting agency. In making such findings the Board may consider the type, cost, amount of the contract, number of persons available to bid and such other factors as may be deemed appropriate.

3. Findings which are used to support 1. and 2. include information regarding:

a. Operational, budget and financial data
b. Public benefits
c. Value engineering
d. Special expertise required
e. Public Safety
f. Market Conditions
g. Technical complexity
h. Funding sources.

4. In granting an exemption, the Board shall:

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

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

B. Non-Public Improvement Contracts.

The LCRB is authorized to grant "class special procurements" pursuant to ORS 279B.085. The County needs to submit a written request to the LCRB that describes the proposed contracting procedure, the class of goods or services (including construction services) to be acquired through the special procurement and the circumstances that justify the use of a special procurement.

In order to authorize the class special procurement, the LCRB must make written findings that the procurement as described in the request, or an alternative procedure, will:

1. Be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts, and

2. Result in substantial cost savings to the County or to the public, or

3. Otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under formal bidding, request for proposals, small procurement procedure, or intermediate procurement procedure.

3. General Findings with Respect to Certain Criteria in 2.A.3 Above

Funding sources is not a significant factor for this exemption request, which involves rules to exempt classes of contracts, with no particular contract at issue. It would be speculation to attempt to ascertain how funding sources for future contracts would impact a determination on whether to grant a class exemption.

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

4. General Findings with Respect to Criteria in 2.A.4.(a) and 2.B. Above

The following exemption rules subject to this request explicitly include alternative competitive selection processes which result in avoidance of favoritism in the awarding of these public contracts, in substantial cost savings to the County by not incurring the expense of a formal bid process and in not substantially diminishing competition:

A. LM 20.105 Dollar Amount of Contract Under $50,000
B. LM 20.125 Price Set By Federal Contracts
C. LM 20.128 Client/Patient Services
D. LM 20.130 Request for Proposal
E. LM 20.135 Requirements Contracts
F. LM 20.140 Sole Source
G. LM 20.160 Construction Manager/General Contractor

H. LM 20.180 Food Service Contracts
I. LM 20.185 Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalts
J. LM 20.190 Oil or Hazardous Material Removal
K. LM 20.195 Office Copier Purchases
L. LM 20.200 Laboratory and Medical Supplies
N. LM 20.207 Purchases of Used Personal Property
O. LM 20.225 Single Manufacturer or Service Provider
P. LM 20.235 Insurance Contracts
Q. LM 20.255 Emergency Contracts Under ORS 279.015(2)

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

The specific rules below are substantially similar to corresponding rules adopted by the State Department of Administrative Services in OAR Chapter 125 Divisions 246-249 rules. The facts, analysis, findings and conclusions considered in adopting the state rules are applicable to the situation that exists in Lane County and are adopted to support adoption of these Lane County exemption rules. These rules are:

LM 20.105	LM 20.175	LM 20.245
LM 20.110	LM 20.180	LM 20.255
LM 20.115	LM 20.207	LM 20.128
LM 20.120	LM 20.210	
LM 20.130	LM 20.215	
LM 20.096	LM 20.225	
LM 20.155	LM 20.160	

In addition, the Oregon Legislature has implicitly expressed approval of the Oregon Attorney General (AG) model public contracting rules, as they are to be reviewed by local contracting agencies and if such an agency does not adopt its own rules, the AG model rules automatically apply. Specific proposed county rules below are similar to corresponding rules adopted by the Oregon Attorney General in OAR Chapter 137 Divisions 47, 48, and 49. The facts, analysis, findings and conclusions reached in adopting these state rules are applicable to Lane County and are adopted to support the following Lane County rules:

LM 20.105	LM 20.255	LM 20.160	LM 20.215
LM 20.096	LM 20.230	LM 20.210	

6. Specific Findings

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

A. 20.100(1)(a) – (p) General Statutory Exemptions

The Oregon Legislature has already recognized these exemptions for all public contracts, including those of Lane County. Lane County relies upon the facts, analysis, conclusions of the Oregon Legislature.

B. 20.105 Contracts Under $50,000

Lane County's current exemption rule sets a limit at which less formal quotes must be obtained at $5,000 and a limit of $50,000 at which formal competitive bids must be obtained. The 2003 Oregon Legislature adopted a small procurement statute for public improvement and non-public improvement contracts, weighing factors such as public interest/benefit and cost-effectiveness. It expressly approved contracting directly with a contractor, without competitive selection for contracts at $5,000 or less. Lane County's proposed rule would permit direct contracting but encourage informal quotes for new projects. When there is a new project, there may be more uncertainty about the existence of competition than for a contract which has been regularly executed. Lane County's rule would encourage learning about the competitive environment for a new project, in the event this is unknown. Lane County's rule is less likely to encourage favoritism or substantially diminish competition for new contracts for new projects than the Oregon statute.

The 2003 Legislature also adopted an intermediate procurement statute for public improvement and non-public improvement contracts, weighing factors such as public interest/benefits and cost effectiveness. For non-public improvement contracts, it concluded that 3 informal quotes could be sought for purchases of $150,000 or less. Lane County's rule provides for greater competition because a more formal selection process would be required for contracts between $100,000 and $150,000. For public improvement contracts, Lane County's threshold of $100,000, except for highway, bridge, and other transportation contracts at $50,000, would be the same as that adopted by the Oregon Legislature. However, Lane County's rule for both public improvement and non-public improvement contracts would be less likely to encourage favoritism and would encourage greater competition than the statute, because it provides a right to protest by an unsuccessful offeror to the Board of County Commissioners for contracts exceeding $50,000. Lane County relies on the Oregon Legislature's analysis and conclusions to support these findings in addition to the above.

C. 20.110 Contract Amendments

This exemption would allow for change orders, extra work, and continued services on projects and in programs already underway. The original contract would have been awarded pursuant to a competitive process, or be exempt or excepted from that process. This rule would not substantially diminish competition because the percentage increase in amendment authority is not substantial, at 25%. Where additional work or services may not have been an-

ticipated, there is a greater potential for cost savings and benefit to the public by allowing the contractor to complete performance without delay, saving any "wind up" costs and "start up" costs for a new contractor to begin where the original contractor stopped. Lane County's rule would provide for a reasonable limit on the continuation of a contract before an additional competitive selection would be required. Lane County relies upon the analysis and conclusions reached by the Attorney General in determining that 25% was an acceptable limit for intermediate procurements, and up to a potential 50% in public improvement contract in certain circumstances.

D. 20.115 Life Cycle Costing

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

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

The County has no authority to alter prices established by federal or state law. Formal bids would not provide useful information since each would be the same price. The County would incur unnecessary expenses with little or no benefit.

Since federal contracts may be subject to similar public contracting requirements, any price set would have presumably arisen from a competitive selection process. If not, Lane County's rule would require some demonstration of cost effectiveness by requiring comparison with other vendors through informal quotes. The Oregon Legislature has decided that public agencies, such as the County, may use the competitive selection process of other public agencies under certain circumstances pursuant to ORS 279A.200 - ORS 279A.225. There is no express prohibition against Lane County and a federal agency agreeing to the County's use of a price set by federal contract, provided this state law is complied with. Lane County's rule would add a procedure for determining cost-effectiveness and competition, which is probably not required under Oregon law.

F. 20.130 Request for Proposal

The RFP process is used when other factors, besides cost alone, are of significant importance to a decision to award a contract. Specialized expertise, market conditions and technical complexity are integral elements to this process. Cost savings are realized through purchases that have higher quality, better service, operating efficiency and are more cost effective over the long term. Lane County has already established an alternative request for proposal

process which includes substantially similar requirements as for formal bidding. See Lane Manual 21.107. There is an additional protection for competitors under the County's request for proposal process, ie., appeal for protesting evaluation committee's recommendation, which is not required under a formal competitive bidding requirement. Accordingly, it is unlikely that this exemption will encourage favoritism or substantially diminish competition.

G. 20.135 Requirements Contracts

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

H. 20.096 Sole Source

Products and services that are available through only a single seller or provider are not subject to competitive supply. As no competitive market is available, competitive bidding would be unnecessary and an unjustified use of county and public resources to prepare. Cost savings are not applicable. This exemption would require that the County take steps to confirm that the contractor is a sole source. If other competition were located, then the appropriate competitive selection process would be used. Competition would not be substantially diminished.

I. 20.155 Advertising Contracts

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

J. 20.160 Construction Manager/General Contractor

This exemption allows the use of a request for proposal (RFP) process which reflects the specialized expertise required, and technical complex-

ity of large construction projects for which a CMGC would be selected. The County's RFP process is so substantially similar to formal competitive bidding that there would not be significant effect on competition. There would be substantial cost savings to the public and the County through the selection of a high quality professional to meet this need.

K. 20.165 Copyrighted Materials

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

L. 20.170 Election Supplies and Services

The materials included within this exemption are specialty items that must be compatible with both state elections law and the type of equipment used by the County in processing the ballots. Due to the technical complexity of the equipment and materials, there are only a limited number of vendors. Competition would not be substantially diminished in a field with so little competition to begin with. There is only one vendor currently who is able to provide the appropriate envelopes. Drop site signs are approximately $50 per sign, and it is not likely that a competitive process would even be required under Lane County's rules. In addition, the need to act quickly and to be able to rely on the most dependable contractor is critical. There are short election timeframes for both ballots and envelopes. The public benefit would be promoted by allowing this exemption and a cost savings in not spending additional funds for an expedited selection process and a potential higher cost for the products as a result of time constraints. Thus, the purchase of these materials does not lend itself to a competitive process.

M. 20.175 Equipment Repair and Overhaul

Work performed under this exemption is in support of maintenance agreements or warranties that are obtained as part of a purchase process for new equipment. Often this maintenance is required in order to maintain warranty coverage on the equipment. Warranty work is unique to the manufacturer of the equipment. Use of competitive bidding would invalidate the warranty coverage and cost the County more for maintenance work in the future. This would encourage competitors to deliver good quality products and to stand behind their products for the benefit of the public. It would discourage competitors who care less about quality.

N. 20.180 Food Service Contracts

The provision of food services to the County involves the review and analysis of factors other than cost to ensure a quality service and product.

This exemption allows the County to solicit and review these factors through an RFP, instead of a bidding process. This extended review opportunity allows the County to provide and maintain a better level of service that is more cost effective for the users.

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

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

P. 20.190 Oil or Hazardous Material Removal

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

Q. 20.195 Office Copier

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

R. 20.200 Laboratory and Medical Supplies

Competition is not diminished as competitive bidding is still required. Generally, there are multiple vendors of such items, but there may be few or only one manufacturer, or individual health care practitioners may have a medical basis for specifying a certain manufacturer. The ability to split medical and laboratory supplies into multiple groupings will enhance competition by providing an opportunity to bid to specialized vendors in the field, or those that cannot maintain the necessary inventory to cover all needed supplies. Such enhancement will allow the County to obtain more competitive prices for those products requested.

S. 20.205 Purchases of Hospital and Medical Supplies and Equipment

The advantage of buying through a cooperative is that the public will benefit from cost savings after a paying a lower group rate, which is likely to

be lower than any price proposed by a contractor through a single contract competitive selection. Thus, competition would not be substantially diminished.

T. 20.206 Library and Reading Materials

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

U. 20.207 Purchases of Used Personal Property

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

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

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

X. 20.230 Product Pre-Qualification

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

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

Predominant factors for these exemptions include the specialized expertise required, the technical complexity of the subject matter, and the limited market once the County's special needs are considered. As to investment contracts, the market of stocks and bonds is quite volatile and not conducive to a formal competitive selection process. With the exception of litigation services, the contracts under these rules would be considered personal service contracts and subject to the alternative selection process in LM Chapter 21. As to litigation services, the County is typically not in sole control of the selection of arbitrators and mediators as many contract provisions require a joint selection process. The new Oregon statute excludes certain contracts for legally related services and that is now being incorporated into the County's rule. There is a significant public and County interest in the County being able to secure the assistance of capable and often specialized professionals in order to resolve disputes prior to and after litigation if filed. Lane County's rule would provide that a list of qualified specialized personnel would be maintained if practicable, thus allowing the possibility of some competition.

Z 20.255 Emergency Contracts

The Oregon Legislature has by statute authorized emergency contracts under rules to be adopted by each contracting agency. An exemption or special procurement approval is not specifically necessary. However, this rule in conjunction with procedures in LM 21.128 set forth informal quote solicitations to the extent reasonable, and limit the work to that which is necessary to address the emergency. There would not be a substantial diminution of competition as appropriate competition would presumably take place after the emergency subsided. The public would benefit by a preservation of public funds, property or the uninterrupted provision of government services.

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

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

BB. 20.275 Bid Security and Performance Bond

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

CC. 20.098 Electronic Advertising

Last year, Lane County spent approximately $30,000 in competitive selection advertising costs to various newspapers including the Register Guard, Oregonian, and Skanner. Electronic advertising on Lane County's website, as well as through the State of Oregon Vendor Information Program, would eliminate this cost. Other electronic websites may also be available and/or cheaper than this print advertising cost. As the internet becomes the more preferred resource for information, it also reaches the greater number of vendors, generally. There are service companies who, for a fee, search the web on behalf of vendor groups and compile and distribute solicitation information for those groups. The procedural rule in LM 21.105(3) to implement electronic advertising recognizes there may be County contracts in which competition may be greater using a newspaper ad, and provides that the newspaper ad should be used in such a circumstance. This rule is not likely to substantially diminish competition and is cost effective.

7. Conclusions

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

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

(3) 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)*

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)*

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)*

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.

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)*

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.

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.

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.

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 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)*

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, 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, but 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 greater than $5,000, but less than $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 (1)(a) - (c) above, subject to any waiver by the County Administrator and compliance with the additional requirements and procedures in LM 21.117 and LM 21.118. *(Revised by Order No. 98-12-2-1; Effective 12.2.98; 04-6-30-12, 6.30.04)*

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. 98-12-2-1; Effective 12.2.98)*

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)*

20.128 Client/Patient Services.
The County may contract for direct client services without competitive selection where the County Department:

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

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

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

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

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

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

(3) Public improvement contracts as authorized by ORS 279C.335 or by separate exemption covered by LM Chapter 20 rule, if not covered by (1), (2), or (3), or

(4) for any other contract which is not required to be formally competitively bid. The RFP process is set forth in LM 21.107. *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

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)*

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 form 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)*

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)*

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)*

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)*

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)*

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)*

20.230 Product Pre-Qualification.
(1) When it is impractical to create specific design or performance specifications for a type of product to be purchased, the County may specify a list of approved products by reference to particular manufacturers or sellers in accordance with the following product pre-qualification procedure:
(a) The County has made reasonable efforts to notify known manufacturers or vendors of competitive products of its intention to accept applications for inclusion in its list of pre-qualified products. Notification shall be in accordance with LM 21.105(3) and may include advertisement in a trade journal of statewide distribution when possible. In lieu of advertising, the County may notify vendors and manufacturers appearing on an appropriate list maintained by the County.
(b) The County permits application for pre-qualification of similar products up to 5 days prior to advertisement for bids on the product.
(2) Manufacturers and vendors shall have the opportunity to submit goods where testing or examination is necessary or desirable. The decision to pre-qualify the goods shall be based on the results of tests or examinations. If an application for inclusion in a list of pre-qualified products is denied, or an existing pre-qualification is revoked, the County shall notify the applicant in writing. The applicant may appeal to the County Administrator. The appeal must be filed with the department soliciting the product within 5 days of mailing of the denial or revocation. The appeal must state the grounds for appeal. The County Administrator shall decide the matter on the written record within 7 days. *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

COUNTY ADMINISTRATIVE SERVICES

20.235 Insurance Contracts.
(1) Contracts for insurance where either the annual or aggregate premium exceeds $100,000 must be let by formal competitive bidding or by one of the following:
(a) Agent of Record: The public contracting agency may appoint a licensed insurance agent (agent of record) to perform insurance services in connection with more than one insurance contract. Among the services to be provided is the securing of competitive proposals from insurance carriers for all coverages for which the agent of record is given responsibility:
(i) Prior to the selection of an agent of record, the County shall make reasonable efforts to inform known insurance agents in the competitive market area that it is considering such selection. These efforts shall include a public advertisement

pursuant to LM 21.105(3). The advertisement shall generally describe the nature of the insurance that the public contracting agency will require. If the amount of the annual premium for insurance, other than employee benefits insurance, is likely to exceed $100,000 per year, such notice shall also include a public advertisement in at least one insurance trade publication of general circulation in the state;

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

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

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

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

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

(2) Contracts for insurance where either the annual or aggregate premium is less than or equal to $100,000 may be let by informal quotes.

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)*

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.

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

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

(b) The awarding of public contracts pursuant to the exemption will result in substantial cost savings to the public contracting agency considering the type,

cost, amount of the contract, number of persons available to bid and such other factors as may be deemed appropriate.

(4) 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.

(5) 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.

(6) 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.

(7) 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 form 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 embezzelment, 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.

BID SECURITY AND BONDS

20.275 Bid Security.

(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.027 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 are equal to or less than $50,000 are exempt from bid security, and performance and payment bond requirements provided that the County may require such security in its discretion, regardless of this exemption. ORS 279C.390. *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

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.

21.101 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) Request for Proposal. See LM 21.107.

(n) Retainage. The difference between the amount earned by the contractor on a public contract and the amount paid, held to guarantee full performance. See ORS 279C.550.

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.

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)*

COMPETITIVE SELECTION

21.105 Competitive Bidding.

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

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

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

(3) Advertisements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Delegations and Authority to Act.

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

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

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

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

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

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

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

(5) Bids.

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

(a) An invitation to bid is used to initiate a sealed bidding solicitation. It shall contain the information required by ORS 279B.055(2)(a) for non-public improvement contracts, and by ORS 279C.365 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(2) and ORS 279A.110. For all contracts, if a bidder fails to qualify for a mandatory pre-qualification, notice shall be provided of the reasons, length of proposed disqualification not to exceed three years, the right to a hearing before the LCRB by filing a timely notice of appeal within 3 days with the Department, waiver of the hearing if the deadline is missed, and reference to the sections of the County rules covering the appeal process. For non-public improvement contracts, the Department may revoke or revise and reissue a prequalification approval upon reasonable cause to believe there has been a substantial change in conditions or bidder is no longer qualified or less qualified by providing notice of the grounds and a right to a hearing.

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

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

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

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

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

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

(6) Protest of Process and Solicitation Document.

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

(7) Opening of Bids.

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

(8) Evaluation of Bids.

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

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

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

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

(d) The public officer shall make all necessary investigation to determine whether the apparent lowest responsible bidder has met responsibility requirements. See ORS 279C.0375(2); ORS 279B.110.

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

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

(9) Mistakes in Bids.

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

(10) Rejection.

The County reserves the right to cancel a solicitation, or reject any or all bids in whole or in part when the cancellation or rejection is in the County's best interests as determined by the County. This includes rejecting any bid not in compliance with all prescribed public bidding procedures and requirements, and for good cause, rejecting all bids upon a finding that it is in the public interest to do so. See OAR 137-049-0440(5), OAR 137-047-0640, OAR 137-047-0650. If all bids are rejected in whole or in part, new bids may be called for as in the first instance or initial bids may be considered with opportunity for supplemental submission. If there is partial rejection, the County may solicit supplemental information only from the bidders who submitted bids and may set an expedited deadline. The public officer is delegated the authority to reject all bids, prepare findings of best interests and provide written notice of rejection of all bids including the reasons therefore to all bidders. The public officer is further delegated authority to reject any bid which does not conform to prescribed public contract procedures and requirements and to reject for good cause any bid upon a written finding it is in the best interest of the County and public to do so. However, if the rejection is of what initially appears to be the successful bid, the Board or the County Administrator, depending upon authority to execute the contract, shall exercise the right to reject the apparent successful bid. In addition, if partial rejection under this rule occurs as a result of the filing of a protest, any portion of the protest not resolved in favor of the protestor shall proceed to the Board or County Administrator.

(11) Authority to Award Contract Subject to Bid.

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

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

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

(12) Notice of Intent to Award.

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

(13) Protests of Award.

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

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

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

(c) For County Administrator awarded contracts, the County Administrator has authority to reject bids pursuant to LM 21.105(10), and authority to revise the award of the contract in order to correct any errors made in the original award, so that the contract is awarded to the bidder legally entitled to receive an award pursuant to public contract law and regulations and the criteria stated in the documents. If there are remaining issues in the protest not resolved by the County Administrator, the County Administrator shall promptly transmit a copy of the decision to the Board. The decision shall be final seven days after it is delivered to the Board, unless within that time the Board elects to review the matter. Thereafter, within a reasonable time period, a complete copy of the written record shall be delivered to the Board. The Board may consider this written record, and any other evidence provided at a public meeting and shall issue its decision by Board Order. The Board may affirm, reverse, send back to department, or revise the decision of the County Administrator, or his or her designee. Upon adoption of the order, the decision will be final.

21.106 Bid, Payment and Performance Securities.

(1) Bid Security.

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

(b) The public officer is delegated the authority to waive the bid security requirement described above prior to bid opening for any goods or services contract and any public improvement or construction contract as defined in ORS 279C.320(1) equal to or less than $50,000, if the public officer believes:

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

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

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

(2) Payment and Performance Security.

(a) All bids for public improvement and other construction contracts shall require a payment and performance bond in accordance with ORS 279C.380, unless exempt under LM 20.270. All bids for goods or services contracts may require a payment and performance bond, if the public officer determines it is in the County's best interest to do so.

(b) Payment and performance bonds are not required for public improvement and other construction contracts if the amount of the contract is equal to or less than $50,000 pursuant to LM 20.270.

(c) In cases of emergency or as described in ORS 279C.380(4), , the requirement for a performance and payment bond may be excused if the declaration of such emergency is made in accordance with LM 21.128. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04)*

21.107 Requests for Proposals.

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

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

(a) The composition and role of the evaluation committee; .

(b) The evaluation criteria to be used in awarding the contract and the weight assigned to each criterion; .

(c) Provide for an opportunity to protest the solicitation in accordance with LM 21.107 (7); .

(d) The contract terms;

(e) Describe the right of appeal as stated in LM 21.107(14) and to protest pursuant to LM 21.107(17) below;

(f) Invite the submission of sealed, written offers to be publicly opened at a designated time and place;.

(g) Describe the method of contract selection, including award without negotiation, negotiation with highest ranked proposer, competitive negotiations, multiple-tiered competition or any combination of these methods or any other method authorized by these rules.

(h) An RFP process, if appropriately authorized for a public improvement contract, is not required to include first-tier subcontractor disclosure and reciprocal preference for non-resident bidders.

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

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

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

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

(7) Opening. LM 21.105(7) above. References to "bid" or "bidder" there include "proposal" or "proposer.". However, proposals need not be read aloud, and the County is only required to record and make available a list of the proposers after the opening.

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

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

(10) Bid, Payment and Performance Security. Unless otherwise provided in the RFP bid, payment and performance security requirements may be waived if the contract will not be a public improvement or other construction contract or if it will be for a public improvement equal to or less than $50,000. Bid, payment and performance securities shall be provided if the contract will be for a public improvement of $50,000 or more.

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

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

(13) Appeal of Evaluation Committee Recommendation. Anyone responding to an RFP who is not recommended for award by the evaluation committee may appeal the recommendation to the decision maker, either the Board or the County Administrator, depending upon which has authority to execute the contract.

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

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

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

(d) The grounds for appeal are:

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

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

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

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

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

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

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

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

(14) Authority to Award Contract Subject to RFP.

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

(b) All decisions to award a contract following a request for proposals shall be based on the criteria stated therein, substantial compliance with public contract laws, rules and procedures, and the best interests of the County.

(15) Notice of Intent to Award. LM 21.105(12). References to "bid" and "bidder" shall include "proposal" and "proposer."

(16) Protests of Award. See LM 21.105(13). References to "bid documents" includes "request for proposal documents" and references to "bid" include "proposal." *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04)*

21.108 Letters of Interest.

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

(2) When Applicable.

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

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

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

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

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

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

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

21.109 Small Procurements.

The County may award a small procurement contract for goods or services, either related to a public improvement or non-public improvement, when the amount does not exceed $5,000 or 3 years in length. See ORS 279B.065, ORS 279C.320(1), and ORS 279C.335(1)(c).

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

(2) A small procurement contract should not be considered separately when it is a component of a larger purchase or project in one year, and when considered as a whole would require a competitive selection. Any contract terms should be consistent with the County's legal requirements and limitations, or as may be further described in procedures adopted by the County Administrator.

(3) The Department Directors and County Administrator are delegated the authority to award small procurement contracts, and such authority may be further delegated.

21.110 Intermediate Procurements.

The County may award an intermediate procurement contract for goods or services, either related to a public improvement (except highway, bridge or other transportation projects) or non-public improvement, when the amount does not exceed $100,000. The County may use any LM Chapter 21 procedures for obtaining information in preparation for soliciting quotes or prequalifying a product. The three quotes as required by LM 20.105(1)(c) may be either oral or written for contracts exceeding $5,000 but not $50,000. The County shall keep a written record of the source and amount of quotes received. For intermediate contracts exceeding $50,000 but not $100,000, the County department shall prepare a written solicitation, the quotes must be written, and unsuccessful quoters shall have the right to protest the award decision in accordance with LM 21.105(13)(a) and (b). The written solicitation shall provide notice of the right to protest the award. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. An intermediate procurement acquisition should not be made when it is a component of a larger purchase or project in any single year, and when considered as a whole would require a different competitive selection than as provided by this or another rule.

The County may award an intermediate procurement contract for goods or services related to a public improvement involving highway, bridge or other transportation when the amount does not exceed $50,000. The procedure shall be the same as for intermediate procurements not exceeding $50,000 set forth above.

The award of any contract as an intermediate procurement under this rule shall be to the offeror whose quote or proposal will best serve the interests of the County, taking into account price as well as considerations including, but not limited to experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility.

21.111 Sole Source.

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.

(1) The County must make written findings which may include at least one of the following:

(a) That the efficient utilization of existing goods requires acquisition of compatible goods or services;

(b) That the goods or services are required for the exchange of software or data with other public or private agencies and are available from only one source;

(c) That the goods or services are for use in a pilot or an experimental project; or

(d) other findings that support that the goods or services are available from only one source.

(2) Prior to awarding a contract under (1) above, the County shall make a reasonable effort to notify all known potential contractors of the intended purchase or project. The County may solicit information about the existence of any competition through informal telephone, written contacts or formal request for information. Where one or more known potential contractors are located within Lane County, the County should use a Letter of Interest (LOI) selection process as set forth in LM 21.108.

(3) If the County intends to make several purchases of the product or service from a particular seller or provider for a period not to exceed 3 years, it may so state in the documentation required in (1) above and such documentation shall be sufficient notice as to subsequent purchases.

(4) Department directors, or their designee, are delegated authority to make the written findings in (1) and (3) above for contracts equal to or less than $50,000.

(5) For sole source contracts exceeding $50,000, Departments shall provide the County Administrator with proposed written findings in (1) and (3) above. The proposed findings, and County Administrator determination shall be documented and maintained by the respective department.

(6) For contracts exceeding $100,000, the County shall provide public notice within 7 days and in accordance with LM 21.105(3) of the County Administrator's determination that goods or services are available from only one source. Unless otherwise specified in the public notice of the sole source procurement, a person or entity whose interests are adversely affected must deliver a written protest within 7 days to the County Administrator and to be decided by the Board. The written protest shall include a detailed statement of the legal and factual grounds for the protest based on (1) above, a description of the resulting harm and the relief requested. The protest shall be set on the Board's agenda. It may consider the written record, and any other testimony provided at the public meeting and shall issue its decision by Board Order.

(7) To the extent practicable, the County shall negotiate with the sole source to obtain contract terms advantageous to the County.

21.112 Brand Name.

This rule applies to non-public improvement contracts, and LM 20.210 and LM 20.215 applies to public improvement contracts. Specifications shall not expressly or implicitly require any product of a particular manufacturer or seller except pursuant to this rule or the class-specific authorizations in LM Chapter 20. The County may identify products by brand names so long as it includes language similar to "or equal," "or equivalent," or "equal or superior to." The County shall determine, in its sole discretion, whether an offeror's alternative product is "equal" or "equivalent," or "superior." The Department directors shall be delegated authority to determine that only an identified brand name will meet the County's need and shall document such decision in writing, subject to any review and reversal by the County Administrator, in his or her discretion. Any written decision must be based on one or more of the criteria in ORS 279B.215(2).

21.112A Special Procurements.

As to contract-specific special procurements, a prospective offeror may protest the procurement process or solicitation document under ORS 279B.405 in accordance with procedures described in LM 21.105(6), only if the LCRB's decision to approve has been invalidated by a reviewing circuit court.

21.112B Cooperative Procurements.

The County may participate in, sponsor, conduct, or administer cooperative procurements as set forth in ORS 279A.200 through ORS 279A.225.

TYPES OF CONTRACTS

21.113 Goods, Materials and/or Services Contracts.

(1) A goods or materials contract is one that calls primarily for an end product and in which the County purchases, obtains some interest in, or leases personal property. A service contract is one that calls primarily for a contractor's time and effort, and does not include work connected with manufacturing a product or personal services. A service contract includes one for a trade-related activity to accomplish routine functions of a type that can generally be done by any competent worker, even though a specific license is required. A contract may be a combination of goods, materials and services.

(2) Materials and/or service contracts may only be executed after appropriate competitive selection has been completed.

(3) Title to all personal property shall be described on all formal title documents and bills of sale as: Lane County, Lane County Public Service Building, Eugene, Oregon 97401.

(4) For contracts involving the rental, lease or lease purchase of equipment, the Risk Manager should be consulted regarding insurance requirements. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.114 Maintenance and Repair Contracts.

Contracts for the maintenance or repair of equipment or public improvements are subject to the public contract laws and regulations.

(1) Contracts for maintenance or repair of equipment must comply with the requirements of LM 20.175. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.115 Public Improvement and Construction Contracts.

(1) Public improvements shall usually be performed by contract. When the project is estimated to cost more than $125,000, the provisions of ORS 279C.305 and LM 21.105(3) shall be followed. Unless otherwise approved by the Board, public improvement projects shall be performed according to the capital improvements list adopted by the Board pursuant to ORS 279C.305.

(2) Public improvement and construction contracts must comply with a number of requirements. Care should be taken to see that any applicable requirements including, but not limited to, those in the following list are met:

(a) Advertisement (including Asbestos Abatement) - ORS 279C.360 and LM 21.105(3) above. See, OAR 137-049-0210., .

(b) Bid security - ORS 279C.365(4), LM 20.270, LM 21.106 above.

(c) Performance security - ORS 279C.380, LM 20.270, LM 21.106 above.

(d) Prevailing rates of wage - ORS 279C.800 to 279C.855. .

(e) Retainage - ORS 279C.555 to ORS 279C.565, LM 21.116 below.

(f) Prompt payment policies - ORS 279C.505, ORS 279C.515.

(g) Subcontractor clauses - see ORS 279C.515.

(h) Insurance - see LM 21.305 below.

(i) Exempt contracts over $100,000 evaluation report required - see ORS 279C.355.

(j) Contractor shall certify that an employee drug testing program is in place at the time of contract execution, and that such a program will be maintained

throughout the contract period including any extensions. Failure of contractor to certify, to have, or to maintain such a drug testing program is grounds for rejection of a bid or immediate termination of the contract. Contractor shall also certify that it will require any subcontractors to demonstrate to Contractor that it will have such a drug testing program. ORS 279C.505(2).

(k) First-tier subcontractor disclosure for contracts greater than $100,000. ORS 279C.370.

(3) The County Administrator is delegated the authority to make final acceptance of a public improvement and may further delegate this authority to a representative by a signed written document. If it is determined that the project should not be finally accepted, the matter shall be brought to the attention of the Board. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04)*

21.116 Retainage.

(1) Retainage of five percent of the contract price of the work completed shall be withheld on all public improvements contracts until the project is at least 50 percent complete, after which the retainage may be reduced, upon the County Administrator's approval, in accordance with ORS 279C.570(7).

(2) Deposit of Securities in lieu of retainage.

(a) Notwithstanding LM 21.116(1) above, Lane County shall reduce the retainage in an amount equal to the market value of bond or securities deposited by the contractor in accordance with the procedures set out below. Bonds or securities offered for deposit in lieu of retainage shall be as authorized in OAR 137-049-0820(3), which is hereby adopted.

(b) All bonds or securities in lieu of retainage shall be deposited with a bank or trust company in Lane County, Oregon, in an account for the benefit of Lane County established for this purpose. Upon deposit, the bank or trust company shall prepare an Assignment and Safekeeping Receipt in the form set out in Exhibit "A." The contractor shall deliver in person one copy of this receipt to the Department of Management Services.

(i) Bonds or securities deposited shall be in fully transferable form. Any nonnegotiable bonds or securities shall have all necessary instruments attached to enable the County to effect transfer of title should the contractor be unable to fulfill the contract obligations.

(ii) Bonds or securities deposited in lieu of retainage shall be released only upon the written instructions and authorization of the County. Upon default, the County may elect to authorize the bank or trust company to transfer any securities deposited under these provisions, rather than undertake to transfer such securities itself.

(c) If at any time the market value of the bonds or securities deposited in lieu of retainage drops below five percent of the contract price of the work completed, the County may withhold from payments due the contractor an amount sufficient to maintain its appropriate retainage protection. Withheld amounts shall only be released to the extent of the market value of additional bonds or securities deposited by the contractor in accordance with this section.

(3) Retainage Deposited in Interest Bearing Account. In accordance with ORS 279C.560(4), retainage may be deposited upon the request of the contractor in an interest bearing account with earnings to accrue to the contractor.

(4) Surety Bond in Lieu of Retainage. In accordance with ORS 279C.560(6), upon approval of the County Administrator, the contractor may deposit a surety bond for all or a portion of the retainage. The bond shall be in a form acceptable to the County Administrator. The retainage shall be accordingly reduced, and the contractor shall accept like bonds from subcontractors and suppliers.

(5) All retainage on public contracts for public improvements, less costs as allowed by statute, shall be released within 30 days after the work under the contract has been completed and the County Administrator or the Board has authorized final acceptance thereof. If not so released, interest shall be paid in accordance with ORS 279C.570(8). *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04)*

ASSIGNMENT AND SAFEKEEPING RECEIPT *No.* ___

THIS ASSIGNMENT is to satisfy the requirements for deposits of bonds or securities in lieu of retainage on public improvements contracts set out in LM 21.116.

Subject to the conditions below, the undersigned does hereby assign, transfer and set over to Lane County all right, title and interest in and to the bonds and securities listed in the attached Schedule "A" for the use and purpose of retainage on the public contract between Lane County and the undersigned, identified as

_____.
(Project Identification)

_____ agrees that the bonds or securities listed in Schedule
(Bank or Trust Company)
"A" will be held in trust for the purposes stated here, and shall be released only upon the written instructions and authorization of Lane County.

Periodic interest payments or other disbursals which do not reduce the face amount of the bonds or securities shall accrue and may be credited or paid to the undersigned.

If a bond or security deposited under this assignment reaches maturity while subject to these conditions, it may be disbursed to the undersigned without specific authorization from Lane County, if, and only if, the undersigned replaces the matured bond or security with an identical one of equal or greater value.

If the bonds or securities deposited are to be credited to more than one public contract, the distribution shall be as stated on Schedule "A."

SCHEDULE "A"

1. DESCRIPTION OF THE BONDS OR SECURITIES.

2. NAME OF CONTRACTOR/ASSIGNOR.

3. IDENTIFICATION NUMBER OF THE CONTRACT OR PROJECT.

4. PAR VALUE OF SECURITIES OR BONDS (AND THE MARKET VALUE, IF DIFFERENT).

5. MATURITY DATES OF SECURITIES OR BONDS.

Signed and dated at _____, Lane County, Oregon, this __day of _____, 20_.

_____

(Signature of Depositor/Assignor)
Address: _____

_____

ACCEPTANCE

_____ (Bank or Trust Company) hereby accepts the foregoing Assignment and Safekeeping Receipt *No.* __, in the total amount of $ _____, this ___ day of _____, 20 , and hereby acknowledges receipt of the bonds or securities listed in Schedule "A" above to hold in trust for Lane County for the uses and purposes above-stated.

_____
(Authorized Signature)

_____

Exhibit "A" to LM 21.116(2)
(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04)

21.117 Personal and Professional Service Contracts.

(1) Personal service contracts are those as described in LM 20.097.

(2) Personal service contracts shall not be used to engage persons who would be deemed County employees, rather than independent contractors. Two of the primary differences are the amount of control the County has the right to exercise over the individual and the method of payment. That a County employee supervises or has the right to supervise the individual (i.e., assign work, review work, review performance) is an indicator the individual would be an employee, not an independent contractor. That the individual is paid for time and services is an indicator the person is an employee, whereas, that he or she is paid for results or for a total project is an indicator the individual is an independent contractor. All personal services contractors must meet the independent contractor standards of ORS 670.600.

(3) Generally, all personal services contracts shall require the contractor to defend, indemnify and hold the County, its officers, agents and employees harmless from all damages, losses and expenses including but not limited to attorney fees and to defend all claims, proceedings, lawsuits and judgments arising out of the contractor's performance or failure to perform the contract. When the Office of Legal Counsel determines the risk of a substantial judgment against the County is minimal, this provision may be waived.

(4) Care shall be taken in the use of personal service contracts to insure they do not violate the terms of any collective bargaining agreement to which the County is a party. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04)*

21.118 Selection of Personal Service Contractor.

Personal service contracts are excluded from competitive bidding; however, the following selection procedures should be utilized unless an exemption, special procurement, or other LM Chapter 20 or 21 rule would allow a different competitive selection under the circumstances:

(1) Direct Contracting - No Competitive Process Required Dollar Amount $10,000 or Less.

(a) The County may contract directly with any qualified contractor without competitive selection, except as provided in (b) and (c) for architects, engineers, land surveyors, other related service providers, as applicable.

(b) Dollar Amount $25,000 or less. The County may contract directly, and without competitive selection, with any qualified architect, engineer, land surveyor or provider of related services (as defined by ORS 279C.100(6)), for public improvement projects involving a highway, bridge or other transportation, except as in (c) .

(c) Qualification. Based Selection Required Under ORS 279C.110(2). The County may not solicit or use pricing information to determine the architect's, engineer's, or land surveyor's compensation until after initially selecting a qualified consultant. For public improvement projects not meeting ORS 279C.110(2), the County may consider pricing information and qualifications in selecting this type of contractor.

(2) Dollar Amounts Greater Than (1) (a) or (b) But Equal to or Less Than $50,000. For contracts greater than the amounts in (1)(a) or (b) above and up to $50,000, the Department Director or designated officer shall solicit at least three prospective contractors who appear to meet the minimum requirements for the proposed contract, inform each in reasonable detail of the contract and determine the prospective contractor's interest and ability to perform the contract The contract should be awarded to the offeror whose quote or proposal will best serve the interests of the County, in the discretion of the County after considering any applicable criteria such as in (5) below. Pricing information may also be solicited and considered, except as provided below in this rule for architects, engineers, and land surveyors. For all such contracts, quotations shall be solicited from appropriate minority, women and emerging small business enterprises certified by the State pursuant to ORS Chapter 200, and as specified through County administrative procedures. The Department shall keep a written record of the prospective contractors contacted, their responses, and basis for recommending the award.

The same condition in (1)(c) applies to qualification based selection required under ORS 279C.110(2). For such contracts, the County will begin negotiating with the highest ranked proposer on a fair and reasonable price in addition to any other contract provisions the County believes is in its best interest to negotiate. If agreement is not reached within a reasonable time, the County may move to the second highest ranked proposer for similar negotiation, and continue the process with the next in line until agreement is reached. See OAR 137-048-0210(4).

(3) Dollar Amounts Greater than $50,000 But Equal to or Less Than $100,000. Where the contract is greater than $50,000 and equal to or less than $100,000, the Department Director or designated officer shall comply with (2) above, except that they will prepare a written solicitation, including but not limited to specification/scope of work and receive written offers. The contract should be awarded to the offeror whose quote or proposal will best serve the interests of the County, in the discretion of the County after considering any applicable criteria such as in (5) below. Pricing information may also be solicited and considered, except as provided below in this rule for architects, engineers, and land surveyors. The County shall keep the written solicitation and response documents and written basis for recommending the award. Unsuccessful offerors shall have the right to protest the award decision to the Board of County Commissioners in accordance with procedures set forth in LM 21.105(13).

The same condition in (1)(c) applies to qualification based selection required under ORS 279C.110(2). For such contracts, the County will begin negotiating with the highest ranked proposer on a fair and reasonable price in addition to any other contract provisions the County believes is in its best interest to negotiate. If agreement is not reached within a reasonable time, the County may move to the second highest ranked proposer for similar negotiation, and continue the process with the next in line until agreement is reached. See OAR 137-048-0210(4).

(4) Greater Than $100,000. Where the contract is greater than $100,000, the Department Director or designated officer shall comply with (3) above, and conduct interviews of at least the two most qualified prospective contractors, if two or more are available. Interviews may be either by telephone, in person or by written questions.

Unsuccessful quoters shall have the right to protest the award decision to the Board of County Commissioners in accordance with procedures set forth in LM 21.105(13).

(5) Criteria. The following criteria shall be considered, as appropriate, in the evaluation and selection of personal or professional service contractors:

(a) Specialized experience in the type of work.

(b) Capacity and capability to perform the work within necessary time and other limitations.

(c) Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules and contract administration.

(d) Availability to and familiarity with the area in which the specific work is located.

(e) Any other factors relevant to the particular contract.

6) Requests for Professional Services (RFPS).

(a) Description. A request for professional services (RFPS) is a selection procedure used when the County requires the services of the most highly qualified professional based on demonstrated competence and qualifications, and where a fair and reasonable price rather than lowest competitive price is the focus. It may be used in the discretion of the Department Director, on a project-by-project basis, except a qualifications based process is required for selecting registered professional engineers, registered architects, registered professional land surveyors for public improvement projects where:

(i) The County receives grants, loans or moneys from the Oregon State Highway Fund or from the State that exceeds 35% of the value of the project, and

(ii) The value of the project exceeds $400,000. ORS 279C.110(2).

(b) Requirements.

(i) An advertisement shall appear at least once in at least one newspaper of general circulation in the area where the project is to be located and/or published electronically in compliance with LM 21.105(2), and shall briefly describe the project, the services sought, where copies of the solicitation may be obtained and the deadline for submitting a response.

(ii) The solicitation document shall contain, at a minimum, the information in LM 21.118(6)(b)(i) above, specifications, project requirements, a statement of the particular professional qualifications for the project, the evaluation criteria, and the screening or evaluation method to be used. It shall also reserve the County's right, at any time during the solicitation or contract process, to reject any or all proposals or cancel the solicitation, without liability, if there is good cause or if doing so would be in the public interest. The contract terms should also be included.

(iii) An evaluation committee shall review, score and rank the proposals according to solicitation criteria and results of any oral interviews. Criteria may include, but is not limited to, specialized experience, capabilities and technical competence to meet project requirements, methodology to meet project requirements, availability and resources to perform the work, proportion of candidate staff's time spent on project, experience of key staff, demonstrated ability to successfully complete similar projects, references and recommendations, history in meeting deadlines, submitting accurate estimates, producing quality work, meeting financial obligations, contract administration status of licensing, proposed solutions to any perceived design or construction problems, ownership status and employment practices regarding minority, women and emerging small businesses or historically underutilized businesses; availability and familiarity with project locale, and project management approach. Proposed compensation may be included as evaluation criteria except for solicitations for professional engineers, architects, land surveyorsservices covered by ORS 279C.110.

(iv) Contract negotiations, including refining scope of services, with the highest ranked professional shall be directed toward an agreement on a compensation level which is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the personal services. A department may solicit or use a compensation proposal for projects and services covered by ORS 279C.110 only after evaluating and ranking candidates.

(v) If an agreement is not reached in a reasonable time, the County may terminate negotiations with the highest ranked proposer and begin with the second ranked, and then to the third, if applicable. If no agreement is reached, the solicitation may be terminated.

(vi) A prospective contractor may protest the solicitation process or document in accordance with LM 21.105(6). Contractor may protest the contract award in accordance with process in LM 21.105(13). A proposer submitting a protest of the award must demonstrate that the protesting proposer is the highest ranked proposer because the proposals of all higher ranked proposers failed to meet the requirements of the RFPs or because the higher ranked proposers otherwise are not qualified to perform the services. Untimely protests will not be considered.

(7) Other Competitive Processes. Except when qualification based selection is required, a Department may use other methods of selection for personal service contractors including, but not limited to, formal bid, RFP, sole source, emergency, special procurement, or any other exemption in LM Chapter 20.

(8) Amendments. The selection procedures stated in LM 21.118(1) - (7) above shall be utilized for any amendment of a personal services contract which is more than 50 percent of the original contract amount, or when the aggregate of amendments are more than 50 percent of the original amount. However, they need not be utilized if the scope of the amendment was clearly included in the original selection such that prospective contractors understood this amendment may occur. In addition, they need not be used if the project described in the personal service contract consists of work that has been substantially described, planned or otherwise previously studied or rendered in an earlier contract with the consultant that was awarded pursuant to LM Chapter 20 and 21 rules and the amendment (or new contract) is a continuation of that project. A contract may be awarded directly under this circumstance pursuant to the waiver criteria in (9) below.

(9) Waiver. The selection procedures described above may be waived by the County Administrator prior to selection of the personal services contractor or to permit an amendment in excess of the 50 percent limit of LM 21.118(8) above for any of the following reasons:

(a) An emergency exists which could not have been reasonably foreseen and which requires prompt execution of a contract, or

(b) The contractor is the only person within a reasonable area who performs this type of work, or

(c) When good cause is demonstrated to the County Administrator, such that he or she believes award of the contract without utilizing the selection procedures is in the public's interest. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04)*

21.120 Requirements and Pricing Contracts.

Requirements contracts, or pricing agreements, provide for the establishing of unit prices for goods or services (including personal services) when the County knows it will need them, but is unable to determine the quantity in advance. Generally, the vendor agrees to supply some or all of the County's requirements within a specified period of time. Competitive selection and contract/amendment execution authority is governed by the rules which apply to the underlying contract type, i.e., materials, materials and services, services, personal or professional services.

(1) In conducting competitive selection, the County shall inform all potential bidders/proposers:

(a) Whether it will consider awarding and executing more than one requirements contract for a single type of service or good; and

(b) If it anticipates awarding more than one contract, the method to be used in selecting which contractor will perform specific services or provide certain goods.

(2) All requirements contracts shall provide that:

(a) the County will purchase a specified minimum amount of goods or services; or

(b) a maximum, not to exceed amount of goods or services; and

(c) the contract may be canceled upon 30 days written notice by the County; and

(d) the term of the contract, including renewals, shall not exceed three years.

(3) When the price of goods and services has been established by a requirements contract, the County may purchase the goods and services from the supplier without subsequent competitive selection. In order to purchase or pay for goods and/or services under an executed requirements contract, the following steps apply:

(a) For a services/requirements contract, if the scope of work is originally defined in general terms, and the parties anticipate further defining of the work as it arises, i.e., personal services on a project by project basis, the additional defining of the scope of work shall be in writing, signed by both parties and processed as an amendment if the total anticipated dollar amount of work on the project exceeds $50,000. If the total anticipated dollar amount of work on the project is $50,000 or less, the definition of the scope of work shall be in writing, on or attached to a purchase order and processed as a purchase order.

(b) For all other requirements contracts where the services and/or goods are specifically defined in the original contract, i.e., delivery of rock, specific purchases may be made through a purchase order.

(4) The County departments shall determine the most reasonable estimate of the dollar amount of a requirements contract, including from all amendments, purchase orders, etc., throughout the term of the contract. That dollar figure shall be the basis for determining contract/amendment execution authority. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.122 Revenue Contracts.

Revenue contracts must comply with all public contract laws and regulations and LM Chapter 21.

(1) The County Administrator and the Director of the Department of Management Services each individually are delegated the authority to execute certificates of title and bills of sale for County-owned personal property duly sold under established procedures and may further delegate this authority in writing.

(2) A revenue contract which involves elements of an interest in real property (for example, a caretaker or concessionaire agreement or a lease), may also have to comply with laws regarding the disposition of publicly owned real property. The Department considering such a contract should consult with the Office of Legal Counsel regarding appropriate procedures and contract terms.

(3) Disposition of personal property must comply with ORS 279.015, 279.095 and LM 60.405. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04)*

21.124 Intergovernmental Agreements.

(1) Intergovernmental agreements are exempt from competitive selection.

(2) Under the authority of Chapter II, Section 8 of the Lane County Home Rule Charter and ORS Chapter 190, it is the policy of Lane County to offer services to other public agencies where feasible. Lane County must be compensated for the complete cost of providing all intergovernmental services. An intergovernmental agreement should be utilized whenever possible as the implementing document. The Board in its discretion may approve waivers to the policy of complete compensation. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.126 Grants.

"Grant" means a federal, state or other agreement in which the County receives and disburses funding for purposes itemized in the grant, and subject to ORS 279A.010(1)(i) and to the conditions set forth in the grant. A "Grant" includes a County sub-grant when the subcontractor was identified and approved by the grantor (including after any appropriate County competitive selection) and the County merely passes through the grant funds received, in whole or in part, without modifying any terms or conditions of the original grant, except as related to County administration and oversight of the grant conditions. A subcontract may not be a sub-grant if the County does modify, and may be more appropriately analyzed as a service contract, or a materials and service contract, intergovernmental agreement, etc. depending upon the subject matter. *(Revised by Order No. 98- 12-2-4, Effective 12.2.98)*

21.127 Amendments.

(1) Selection Procedures. All amendments including but not limited to change orders, extra work, and modifications, shall comply with public contract laws and regulations regarding competitive bidding and selection procedures. The selection procedures of LM 21.118(1) - (7) above shall not apply to amendments to personal services contracts, except when the total of all amendments exceed 50 percent of the original amount. A waiver of the selection procedure pursuant to LM 21.118(9) above may nonetheless be sought in those cases.

(2) Generally, a contract amendment should include a reference to the original contract by title and/or date, terms of amendment including citation to specific provisions in the original contract being amended, and ending with a provision that "except as set forth above, all provisions of the original contract dated _____ remain unchanged." *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.128 Emergency Contracts.

(1) An emergency is generally defined, but not limited to, as 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. If such an emergency exists which requires the prompt execution of a contract to remedy the situation, the provisions of , LM 20.255 shall be appropriately followed.

(2) In exercising authority under LM 20.255, and in order to declare an emergency the County shall:

(a) Make written findings describing the circumstances which support 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; and describing the harm anticipated to result from failing to establish the contract on an expedited basis.

(b) To the extent reasonable under the circumstances, encourage competition by attempting to make informal quote solicitations from potential suppliers of goods or services.

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

(d) Limit the work or subject of purchase under the resulting contract to what is necessary and appropriate, including a time period, to address the conditions creating the emergency. No dollar limit applies to emergency contracts.

(e) Execute the contract within 60 days following the declaration that an emergency exists, unless the LCRB grants an extension.

(f) Emergency contracts may be modified or amended to address the conditions described in the original declaration or the declaration may be amended to describe additional work or purchases which are necessary.

(g) For public improvement contracts, under circumstances described in ORS 279C.380(4), the emergency declaration may also state that the County waives the requirement of furnishing a performance or payment bond for the contract. Such bonding requirements are excused once the emergency is declared.

21.129 Purchase Orders.

Purchase orders may be used to obtain goods, materials, services, personal or professional services, to implement a purchase pursuant to a requirements contract, to implement a purchase utilizing a contract competitively bid by other political subdivisions when the specifications indicated that more than one political subdivision could utilize the bid award, and to purchase price-regulated items when the rate or price has been set by Federal, State or local regulatory authority.

(1) Quotations for purchase orders shall be solicited from appropriate minority, women and emerging small business enterprises, who are certified by the State pursuant to ORS Chapter 200. The County Administrator shall implement this requirement through administrative procedure.

(2) Purchases of more than $100,000 can be made by purchase order only in implementation of an appropriately awarded written contract or to purchase price-regulated items or the printing of ballots. Appropriate selection procedures in LM Chapters 20 and 21 should be followed. Purchase orders shall not be utilized to circumvent the public contract law or regulations.

(3) A purchase order for goods, materials or services relating to public improvement and construction projects shall comply with and include all applicable contract provisions. .

(4) The Director of Management Services or his or her delegate shall have the discretion to require a written contract in lieu of a purchase order, whenever he or she believes a contract to be in the best interests of the County.

(5) The Director of the Department of Management Services is delegated authority to execute all purchase orders. He or she may further delegate such authority in writing. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

STANDARD PROVISIONS

21.130 Standard Contract Provisions.

The following standard public contract clauses shall be included expressly or by reference where appropriate in every contract of the County.

(1) Contractor shall make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in the contract, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.

(2) Contractor shall pay promptly all contributions or amounts due to the State Industrial Accident Fund and the State Unemployment Compensation Fund from contractor or any subcontractor in connection with the performance of the contract.

(3) Contractor shall not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished, shall assume responsibility for satisfaction of any lien so filed or prosecuted and shall defend against, indemnify and hold County harmless from any such lien or claim.

(4) Contractor and any subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

(5) If contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the contractor or its surety from the obligation with respect to any unpaid claim. If the County is unable to determine the validity of any claim for labor or services furnished, the County may withhold from any current payment due contractor an amount equal to said claim until its validity is determined, and the claim, if valid, is paid by the contractor or the County. There shall be no final acceptance of the work under the contract until all such claims have been resolved.

(6) Contractor shall make payment promptly, as due, to any person, co-partnership, association or corporation furnishing medical, surgical, hospital or other needed care and attention, incident to sickness or injury, to the employees of contractor, of all sums which the contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing payment for such service.

(7) For all public contracts, with certain exceptions listed below, contractor shall not require or permit any person to work more than 10 hours in any one day, or 40 hours in any one week except in case of necessity, emergency, or where public policy absolutely requires it, and in such cases the person shall be paid at least time and a half for:

(a) All overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday, or

(b) All overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday, and

(c) All work performed on the days specified in ORS 279.334.

For personal/professional service contracts as defined in ORS 279.051, instead of (a) and (b) above, a laborer shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Sections 201 to 209, from receiving overtime.

Contractor shall follow all other exceptions, pursuant to ORS 279.316 and ORS 279.334, including contracts for public improvements involving a collective bargaining agreement, contracts for services, and contracts for fire prevention or suppression.

Contractor must give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(8) The hourly rate of wage to be paid by any contractor or subcontractor to workers upon all public works shall be not less than the prevailing rate of wage for an

hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279.348 to 279.365.

(9) The contractor, its subcontractors, if any, and all employers working under the contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, or otherwise be exempt under ORS 656.126.

(10) As to public improvement and construction contracts, Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to those dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the contract. A list of entities who have enacted such laws or regulations is found in the Oregon Attorney General's Model Public Contract Rules Manual. OAR 137-030-0010, Commentary 4. If new or amended statutes, ordinances, or regulations are adopted, or the contractor encounters a condition not referred to in the bid document not caused by the contractor and not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws or regulations dealing with the prevention of environmental pollution or the preservation of natural resources, both the County and the contractor shall have all the rights and obligations specified in ORS 279.318 to handle the situation.

(11) The contract may be canceled at the election of County for any substantial breach, willful failure or refusal on the part of contractor to faithfully perform the contract according to its terms. The County may terminate the contract by written order or upon request of the contractor, if the work cannot be completed for reasons beyond the control of either the contractor or the County, or for any reason considered to be in the public interest other than a labor dispute, or by reason of any third party judicial proceeding relating to the work other than one filed in regards to a labor dispute, and when circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work. In either case, if the work is suspended but the contract not terminated, the contractor is entitled to a reasonable time extension, costs and overhead per ORS 279.328. Unless otherwise stated in the contract, if the contract is terminated, the contractor shall be paid per ORS 279.330.

(12) If the County does not appropriate funds for the next succeeding fiscal year to continue payments otherwise required by the contract, the contract will terminate at the end of the last fiscal year for which payments have been appropriated. The County will notify the contractor of such non-appropriation not later than 30 days before the beginning of the year within which funds are not appropriated. Upon termination pursuant to this clause, the County shall have no further obligation to the contractor for payments beyond the termination date. This provision does not permit the County to terminate the contract in order to provide similar services or goods from a different contractor.

(13) By execution of this contract, contractor certifies, under penalty of perjury that:

(a) To the best of contractor's knowledge, contractor is not in violation of any tax laws described in ORS 305.380(4), and

(b) Contractor has not discriminated against minority, women or small business enterprises in obtaining any required subcontracts.

(14) Contractor agrees to prefer goods or services that have been manufactured or produced in this State if price, fitness, availability or quality are otherwise equal.

(15) Contractor agrees to not assign this contract or any payments due hereunder without the proposed assignee being first approved and accepted in writing by County.

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

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

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

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

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

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

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

(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 contruction 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)*

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 - $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)*

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 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)*

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 not exceeding $5,000, the Department Directors are delegated authority to execute contract 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 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.

(2)	Regional Disposal Sites.			Wednesday-Saturday
	(a)	Cottage Grove	8 a.m.-6 p.m.	
	(b)	Creswell	8 a.m.-6 p.m.	
	(c)	Oakridge	8 a.m.-6 p.m.	
	(d)	Florence	8 a.m.-6 p.m.	
(3)	Rural Transfer Sites. [1]			
	(a)	London	9 a.m.-5 p.m.	Saturday
	(b)	Sharp's Creek	9 a.m.-5 p.m.	Saturday
	(c)	Vida	9 a.m.-5 p.m.	Wednesday-Saturday
	(d)	Low Pass	9 a.m.-5 p.m.	Friday-Saturday
	(e)	Walton	9 a.m.-5 p.m.	Saturday
	(f)	Mapleton	9 a.m.-5 p.m.	Saturday
	(g)	Swisshome	9 a.m.-5 p.m.	Saturday
	(h)	Marcola	9 a.m.-5 p.m.	Wednesday-Saturday
	(i)	Rattlesnake	9 a.m.-5 p.m.	Wednesday-Saturday
	(j)	Veneta	8 a.m.-6 p.m.	Wednesday-Saturday
	(k)	McKenzie Bridge	9 a.m.-5 p.m.	Saturday
			1 p.m.-5 p.m.	Monday
			1 p.m.-5 p.m.	Thursday

(Revised by Order No. 96-4-2-8, Effective 7.1.96)

60.030 Hardship Exceptions.
The Director of the Public Works Department or his or her designated representative may make special arrangements for access to Lane County Solid Waste Disposal Sites during hours or days other than those indicated in LM 60.025 or 60.026 above when strict adherence to those hours or days would result in a serious hardship situation. *(Revised by Order No. 96-4-2-8, Effective 7.1.96)*

60.405 Disposal of Unclaimed Personal Property in the County's Possession and County-Owned Surplus Property.

(1) Policy. Except as otherwise provided and pursuant to ORS 279A.070 and 279A.185, unclaimed personal property in the County's possession and unneeded County-owned personal property shall be disposed of expeditiously under the centralized supervision of the County financial officer. Disposal shall be by auction, sealed bids, grant to other governmental bodies or non-profit organizations, or discarding. The policies in this section expressly do not apply to unclaimed, lost or abandoned property coming into the possession of the County, where disposition is specifically subject to State Statutes e.g., vehicles, including bicycles, intangible personal property, stolen property where the owner is known, seized concealed weapons, and property of a deceased person taken into possession by the County.

An "auction" for purposes of LM 60.405 may be electronic in accordance with procedures deemed necessary by the County Administrator, in his or her discretion, to protect the County's interest. Otherwise an auction shall be live.

(2) Certification of Inability to Determine Owner of Property. Before disposition of any unclaimed, lost or abandoned personal property not owned by the County but in possession of the County, the Director of the Department in possession of the property shall certify to the County financial officer that a reasonable effort to identify and locate the owner of the property has been unsuccessful. Upon such certification, and with the approval of the County financial officer, the certifying

[1] See footnote **#Error! Bookmark not defined.**.

Department may retain any specified property as County property for County use. The County financial officer, or his or her designee, shall establish procedures for storage of property certified to his or her Department for disposition by means other than retention by the certifying Department.

(3) Certification as Surplus Property. Before County-owned personal property may be disposed of as surplus, the appropriate Department Director shall certify that such property is surplus as to his or her Department to the County financial officer. The County financial officer, or his or her designee, shall establish procedures for storage of property so certified. If the certified surplus property consists of vehicles or motor-powered equipment in the possession of any Department, the County financial officer shall authorize sale by auction, sealed bid, direct sale, grant or discard by the possessing Department pursuant to LM 60.405(4) below.

(4) Disposal of Unclaimed Personal Property in the County's Possession and Certified County-Owned Surplus Property. The County financial officer or his or her designee, shall establish procedures for disposal of unclaimed, lost or abandoned personal property in the County's possession and certified County-owned surplus property to include at minimum the following:

(a) Circulating lists of selected items declared surplus to other County Departments, other governmental organizations, and non-profit groups. Cities and school districts located within Lane County shall receive preferential consideration for disposal of certified County-owned surplus vehicles and motor-powered equipment, as follows:

(i) The fair market value of the surplus vehicles and equipment shall be established by the Department Directors or their designee based upon prices obtained in prior years' auctions and upon other relevant information.

(ii) Before the final list of surplus vehicles and equipment for public sale is prepared, all of the school districts and incorporated cities within Lane County shall be notified in writing of the availability of such surplus vehicles and equipment.

(iii) The notice shall include, but need not be limited to, the list of surplus vehicles and equipment, the established fair market value for the surplus vehicles and equipment, the date by which an irrevocable school district or city offer to purchase surplus vehicles and/or equipment at the established fair market value must be submitted, and the date on which the purchase offers will be reviewed.

(iv) In the event that more than one city makes an offer on a vehicle or unit of equipment, the priority for approval of the purchase offers shall be in inverse order to the cities' populations. In the event that more than one school district makes an offer on a vehicle or unit of equipment, the priority for approval shall be in inverse order of the school district's enrollment. In the event that a city and a school district make an offer on a vehicle or unit of equipment, the city shall receive preference over the school district.

(v) The execution of certificates of title and bills of sale for surplus vehicles and equipment sold under this provision shall comply with LM 2.260(1)(h).

(vi) Once the school districts' and cities' offers have been met to the extent possible, any remaining offers shall be returned to the appropriate school districts and cities and the final list of any remaining surplus vehicles and equipment shall be prepared for public sale.

(b) By public auction, or

(c) By advertising pursuant to LM 21.105(3), for the purpose of sealed bids. For sales estimated at $100,000 or less, a public opening of bids is not required as long as the department notifies bidders of its decision as soon as practicable and within a

reasonable time. Acceptance or rejection of the sealed bid price will be at the discretion of Lane County.

(d) By discarding when in the judgment of the County financial officer, or his or her designee, the property is of such little value that it should be discarded.

(5) Disposition of Firearms. The Sheriff will return all stolen firearms in the Sheriff's possession to the rightful owner if the owner can be identified and located through reasonable effort. All seized concealed weapons shall be disposed of in accordance with State statute. The sheriff shall dispose of all other firearms by any reasonable means chosen by the Sheriff, which may include sale at auction, destruction, and donation to other agencies for such purpose as training in hunter safety.

(6) County Employees. Surplus County supplies and equipment shall not be made available to any County employee, except through public auction or sealed bid.

(7) Warranties. No warranty or guarantee shall be made as to the condition of any item offered for sale. All surplus property is offered for sale "as is and where is," without recourse against the County.

(8) Terms of Purchase. All property shall be paid for in full during the sale and legal title of ownership shall pass from the County to purchaser prior to removal from the site. *(Revised by Order No. 93-1-19-14, Effective 1.19.9; 04-6-30-12, 6.30.04)*

LOCAL CONTRACT REVIEW BOARD

PUBLIC CONTRACT EXEMPTIONS, DESIGNATIONS, SPECIAL PROCUREMENTS, AND RULES

20.085 ~~Purpose and Statutory Authority~~General.

(1) Purpose and Authority. These rules establish ~~procedures and~~ 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) Statutory Authority. These rules are authorized by ORS ~~279.015(2)~~ **279C.335(2)** and ORS ~~279.017(2)~~ **279B.085** and the Lane County Charter.

(3) 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)*

20.090 Findings.

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

20.091 Construction and Interpretation.

~~The following state administrative authorities~~ **OAR Chapter 137, including but not limited to OAR 137 Divisions 46, 47, 48, and 49** may be used to further interpret Lane ~~Manual~~ **County's** ~~P~~public ~~C~~contracting ~~R~~rules ~~and Exemptions and Policies,~~ **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 ___."**~~:~~

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

~~(a) OAR 125 Divisions 30, 300, 310, 320, 330, 340, 350, 360.~~

~~(b) OAR 137 Divisions 30, 35, and 40.~~ *(Revised by Order No. 98-12-2-1; Effective 12.2.98; 04-6-30-12, 6.30.04)*

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 ~~pursuant to ORS 279.055~~.

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 ~~other than~~ **including** agreements which are for personal ~~and professional~~ 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)*

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.

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.

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.

GENERAL EXEMPTIONS

20.100 General Statutory/Regulatory Exemptions and Exclusions.
~~(1) Consistent with ORS 279.015, all public contracts shall be based upon competitive bids or proposals except the following:~~
~~(a) Contracts made with other public agencies or the federal government.~~
~~(b) Contracts between public agencies utilizing an existing solicitation or current requirement contract of one of the public agencies that is party to the contract for which:~~
~~(i) The original contract met the requirements of the County's public contracting rules.~~
~~(ii) The contract allows other public agency usage of the contract; and~~
~~(iii) The original contracting public agency concurs.~~
~~(c) No written agreement under ORS 190, which grants authority to local governments to make intergovernmental agreements, is necessary if the arrangement is between or among units of local government.~~
~~(d) Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals.~~

(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 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;

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

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

(gm) Contracts specifically exempt **or authorized as a special procurement** under ~~these rules in~~ LM Chapter 20 or under state law.

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

~~(2) Personal and professional service contracts are excluded from the definition of public contract and selection procedures are covered in LM Chapter 21.~~

(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)*

20.105 Dollar Amount of Contract - Not to Exceed ~~$50,000~~100,000.

(1) The County may let public contracts not to exceed ~~$50,000~~**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**~~fiscal~~ year; and

(b) When the amount of the contract does not exceed $5,000, the County ~~should, where feasible, obtain competitive quotes.~~ **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 ~~more~~**greater** than $5,000, but equal to or less than ~~$50,000~~**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 greater than $5,000, but less than $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. ~~If three (3) quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.~~

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

(2) The County may let personal service contracts in accordance with (1)(a) - (c) above, subject to any waiver by the County Administrator and compliance with the additional requirements and procedures in LM 21.117 and LM 21.118. *(Revised by Order No. 98-12-2-1; Effective 12.2.98; 04-6-30-12, 6.30.04)*

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

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

(~~1~~**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

(~~2~~**b**) The amount of the aggregate cost increase resulting from all amendments does not exceed 2~~0~~**5** 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. 98-12-2-1; Effective 12.2.98)*

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)*

~~**20.127 State or Federal Exemptions.**~~
~~The County may contract for goods or services, without competitive selection including bids or quotes, where state or federal law or regulation allows an exemption from such competitive selection. In addition, the County will comply with any limits or conditions to competitive selection required by state or federal law or regulation. *(Revised by Order 02-12-4-4, Effective 12.04.02)*~~

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:~~ any contract otherwise subject to formal competitive bidding.~~
(1) Procuring goods or services relating to non-public improvement contracts for any amount, or
(2) Personal service contracts, except as otherwise required for qualification based selection, or
(3) Public improvement contracts as authorized by ORS 279C.335 or by separate exemption covered by LM Chapter 20 rule, if not covered by (1), (2), or (3), or

(4) for any other contract which is not required to be formally competitively bid. The RFP process is set forth in LM 21.107. *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

20.135 Requirements and Price Agreements~~Contracts~~.

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

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

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

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

~~**20.140 Sole Source.**~~

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

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

~~(3) Prior to awarding a contract under LM 20.140(1) or (2) above, the County shall make a reasonable effort to notify all known potential contractors of the intended purchase or project. The County may solicit information about the existence of any competition through informal telephone, written contacts or formal request for information. Where one or more known potential contractors are located within Lane~~

~~County, the County should use a Letter of Interest (LOI) selection process as set forth in LM Chapter 21.~~

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

~~(5) If the County intends to make several purchases of the product or service of a particular seller or provider for a period not to exceed 3 years, it may so state in the documentation required in LM 20.140(4) above and such documentation shall be sufficient notice as to subsequent purchased.~~ *~~(Revised by Order No. 98-12-2-1; Effective 12.2.98)~~*

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 form only one source.

(2) If the contract exceeds ~~$50,000~~**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)*

20.180 Food Service Contracts.

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

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

(a) Prior to the selection of a contractor, the County has made reasonable efforts to inform known companies providing food services of the subject matter of the contract and solicits proposals including public advertisements **pursuant to LM 21.105(3).** ~~in at least one newspaper of general circulation in the area where the contract is to be performed.~~

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

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

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 ~~20.140(a)~~**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)*

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)*

20.215 Brand Name or Mark Exemption Applications.

(1) ~~The LCRB may grant~~ **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**~~Board~~ 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, ~~and~~**or** ~~will result in substantial cost savings to the County.~~

(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

(~~b~~**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.

~~(c) The exemption is requested for the purchase of a particular product to be used in an experimental project.~~ *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

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 ~~20.140 above~~**20.111(2)**. *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

20.230 Product Pre-Qualification.

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

(a) The County has made reasonable efforts to notify known manufacturers or vendors of competitive products of its intention to accept applications

for inclusion in its list of pre-qualified products. Notification shall **be in accordance with LM 21.105(3) and may** include advertisement in a trade journal of statewide distribution when possible. In lieu of advertising, the County may notify vendors and manufacturers appearing on an appropriate list maintained by the County.

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

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

COUNTY ADMINISTRATIVE SERVICES

20.235 Insurance Contracts.

(1) Contracts for insurance where either the annual or aggregate premium exceeds $~~50,000~~**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 ~~in at least one newspaper of general circulation in the area where the contract is to be performed~~ **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 $~~50,000~~**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 ~~in at least one newspaper of general circulation in the area where the public contracting agency is located~~ **pursuant to LM 21.105(3)**. If the amount of annual premium for insurance, other than employee benefits

insurance is likely to exceed ~~$50,000~~**100,000** per year, such notice shall also include a public advertisement in at least one insurance trade publication of general circulation in the state;

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

(2) Contracts for insurance where either the annual or aggregate premium is less than or equal to ~~$50,000~~**100,000** may be let by informal quotes.

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

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

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

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

EXEMPTIONS AND AUTHORIZATIONS AS CIRCUMSTANCES ARISE

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

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

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

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

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

~~(2) The County shall not contract pursuant to this exemption in the absence of a substantial risk of loss damage or interruption of services that would occur if contract performance awaited the time necessary given the complexity of the project to solicit, receive and analyze bids or proposals.~~ ~~*(Revised by Order No. 98-12-2-1; Effective 12.2.98)*~~

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.

~~**20.260 Emergency Contracts Under ORS 279.015.**~~

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

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

~~(3) Any contract awarded under this exemption shall be awarded within 60 days following declaration of the emergency unless an extension is granted pursuant to ORS 279.015(4).~~ ~~*(Revised by Order No. 98-12-2-1; Effective 12.2.98)*~~

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

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

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

(4) 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.

(5) 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.

(6) 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.

(7) 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 form 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 embezzelment, 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.

BID SECURITY AND ~~PERFORMANCE~~ BONDS

20.2705Bid ~~and Performance~~ Security.

(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.027 and performance **and payment bond** ~~security~~ requirements ~~of ORS 279.029~~ provided that the County may require bid, performance, or payment security, in its discretion, regardless of this exemption.

(2) Contracts for public improvements **and construction contracts as defined in ORS 279C.320(1)** which are equal to or less than $50,000 are exempt from bid ~~and performance~~ security, **and performance and payment bond** requirements provided that the County may require such security in its discretion, regardless of this exemption. **ORS 279C.390.** *(Revised by Order No. 98-12-2-1; Effective 12.2.98)*

Chapter 21

CONTRACT POLICIES

PUBLIC CONTRACTS

~~21.100 Generally.~~

~~(1) Nothing stated in this Chapter shall be construed contrary to the provisions of ORS Chapter 279. Any reference in this Chapter to OAR Chapter 125 and OAR Chapter 137 provisions shall be for the sole purpose of aiding in interpretation in the event of ambiguity. 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 Chapter 20 and 21.~~

~~(2) The County Administrator is delegated the authority to adopt all procedures necessary to implement the provisions of this Chapter.~~

~~(3) Definitions. As used in this Chapter, the following words and phrases shall mean:~~

~~(a) Board. The Board of County Commissioners.~~

~~(b) Competitive bidding and competitive quotes. LM 20.095; see 137-030-0000.~~

~~(c) Lowest responsible bidder. ORS 279.029.~~

~~(d) Personal Services Contract. ORS 279.051; LM 21.117.~~

~~(e) Public contract. ORS 279.011; 279.310.~~

~~(f) Public improvement. ORS 279.011; 279.310.~~

~~(g) Public officer. The County Administrator, and where otherwise delegated, Department Directors.~~

~~(h) Request for Proposal. LM 21.107.~~

~~(i) Retainage. The difference between the amount earned by the contractor on a public contract and the amount paid, held to guarantee full performance. ORS 279.410.~~

~~(4) Definition of Public Contract. In addition to the statutory definitions in ORS 279.011 and ORS 279.310, 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 interests in personal property or public improvements. It can also cover sales and purchases of services, excluding personal or professional 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.~~

~~(5) 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 279, 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.~~

~~Even though contracts for personal or professional services are not public contracts, the applicable competitive selection procedure in LM 21.118 shall be followed.~~

~~(6) Contract Execution and Processing.~~

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

~~(b) 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)*~~

~~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 279 and these rules. An invitation to bid is a solicitation of competitive offers in which technical specifications, price and delivery (or project completion) will be the predominant award criteria.~~

~~(1) When Required. Generally, competitive bids are required for all public contracts unless exempt under ORS Chapter 279 or the County's exemption rules, or where non price related factors will be significant award criteria.~~

~~(2) Advertisements. All advertisements for bids shall comply with ORS 279.025, and shall include a provision that the contractor shall be an "Equal Opportunity Employer." See OAR 137-30-015.~~

~~(3) Delegations and Authority to Act.~~

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

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

~~(ii) The Director of the Department of Management Services may call and open bids for public contracts for the purchase of materials, materials and 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 outlay 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" under this rule.~~

~~(c) The public officer to whom authority is delegated under this LM 21.105(3) may further delegate this authority to a representative by signed written document.~~

~~(4) 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) All bids shall include a sworn statement by the bidder, properly notarized, that the bid is made without connection or agreement with any other person, firm or corporation making a bid in response to the bid solicitation, and is in all aspects fair and without collusion or fraud.~~

~~(b) All bids shall contain a statement as to whether the bidder is a resident bidder as defined in ORS 279.029, and a certification per ORS 279.111 that the bidder has not discriminated against minority, women or small business enterprises in obtaining any required subcontracts.~~

~~(c) If applicable, the bid shall include a statement that the provisions of ORS 279.350 regarding prevailing rate of wage shall be met.~~

~~(d) If applicable, the bid shall include the bidder's registration number with the Construction Contractors Board or Landscape Contractors Board and its expiration date.~~

~~(e) A bidder may not modify any bid after it has been deposited with the public officer. All bids shall be irrevocable for 30 days from the time of opening unless otherwise stated in the bid documents. Further, the bids of the three lowest unrejected bidders shall be irrevocable and binding and the bid securities shall be retained by the public officer until there is an executed contract and the contractor has provided all required satisfactory performance bonds. All other bid securities shall be returned promptly upon award of the contract or rejection of all bids.~~

~~(f) A bidder may withdraw the bid at any time prior to the deadline set for receipt of bids and deposit a new, sealed bid in accordance with these procedures.~~

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

~~(5) Protest of Specifications. The public officer shall respond promptly to any protest of specifications submitted in accordance with OAR 137-030-0050, which is hereby adopted, with the exception of protest deadline. Unless otherwise specified in the bid, a protest with respect to a public improvement contract must be filed 10 calendar days before bid opening and with respect to all other contracts, five calendar days before bid opening.~~

~~(6) Opening of Bids. All bids submitted to the County will be opened publicly at the time designated by the public officer. Any bid, modification, or notice of withdrawal received after the designated deadline shall be returned unopened to the bidder. After opening, the bids shall be available for public inspection, subject to the provisions of ORS 192.500 et seq.~~

~~(a) Prior to opening, the public officer may hold a prebid conference to answer any questions concerning the bid specifications or procedures. The public officer shall inform all prospective bidders (i.e., all persons who have received a bid package or indicated an interest in the bid) of the time and location of the conference.~~

~~(b) The public officer will not examine any bid prior to opening. The officer shall note on the envelope containing the bid the date and hour received.~~

~~(7) Evaluation of Bids.~~

~~(a) Evaluation of bids will be conducted by the public officer in cooperation with the department requesting the bid, if any, and shall be based on minimum requirements established by the bid documents, compliance with public bidding procedures, bidder responsibility, ethical practice, product acceptability, ORS Chapter 279, and LM Chapter 20.~~

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

~~(c) The public officer shall make all necessary investigation to determine whether the apparent lowest responsible bidder should be disqualified under ORS 279.037. See also ORS 279.029(6)~~

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

~~(8) Mistakes in Bids. Minor informalities, may be waived. Mistakes discovered in bids after opening where the intended correct bid is clearly evident or properly substantiated may be corrected. Where the intended correct bid is not clearly evident or cannot be substantiated by accompanying documents, the bid may not be accepted. The County reserves the right to waive technical defects, discrepancies and minor irregularities, and to not award a contract when it finds such action to be in the public interest. See OAR 137-030-0075.~~

~~(9) Rejection. The County reserves the right to reject any bid not in compliance with the bid documents or all prescribed public bidding procedures and requirements, and may, for good cause, reject any or all bids when it is in the public interest to do so. ORS 279.035; see OAR 137-030-0102. The public officer is delegated the authority to reject all bids, prepare findings of public interest and provide written notice of rejection of all bids including the reasons therefore to all bidders. The public officer is further delegated authority to reject any bid which does not conform to prescribed public contract procedures and requirements and to reject for good cause any bid upon a written finding it is in the public interest to do so per ORS 279.035. See OAR 137-030-0100. However, if the rejection is of what initially appears to be the successful bid, the Board or the County Administrator, depending upon authority to execute the contract, shall exercise the right to reject the apparent successful bid.~~

~~(10) Authority to Award Contract Subject to Bid.~~

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

~~(b) Other than as delegated in LM 21.105(10)(a), the Board shall award contracts which have been bid in a public meeting. Generally, public testimony will not be received unless the Board specifically determines otherwise.~~

~~(c) Any award shall be made to the lowest responsible bidder and, consistent with bid documents, may be made by item, groups of items, or as a whole.~~

~~(11) Protests of Award. Unless otherwise specified in the bid documents, all protests of award must be filed within fourteen (14) days of the notice of award. Protests of award shall be handled by the County Administrator or his or her designee in conformity with OAR 137-030-0104(4) which is hereby adopted. Under this provision, the County Administrator or his or her designee has authority to reject all bids, and authority to revise the award of the contract in order to correct any errors made in the original~~

~~award, so that the contract is awarded to the bidder legally entitled to receive an award pursuant to public contract law and regulations and the criteria stated in the documents. A copy of the decision shall be promptly transmitted to the Board. The decision shall be final seven days after it is delivered to the Board, unless within that time the Board elects to review the matter. Thereafter, within a reasonable time period, a complete copy of the written record shall be delivered to the Board. The Board may consider this written record, and any other evidence provided at a public meeting and shall issue its decision by Board Order. The Board may affirm, reverse or revise the decision of the County Administrator or his or her designee. Upon adoption of the order, the decision will be final. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04)*~~

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.

21.101 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) Request for Proposal. See LM 21.107.

(n) Retainage. The difference between the amount earned by the contractor on a public contract and the amount paid, held to guarantee full performance. See ORS 279C.550.

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.

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)

COMPETITIVE SELECTION

21.105 Competitive Bidding.

Competitive bidding is a formal process by which departments advertise and issue a written invitation to bid, and receive and open bids as required by ORS

Chapter 279A, B, and C and these rules. An invitation to bid is a solicitation of competitive offers in which technical specifications, price and delivery (or project completion) will be the predominant award criteria.

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

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

(3) Advertisements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Delegations and Authority to Act.

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

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

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

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

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

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

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

(5) Bids.

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

(a) An invitation to bid is used to initiate a sealed bidding solicitation. It shall contain the information required by ORS 279B.055(2)(a) for non-public improvement contracts, and by ORS 279C.365 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(2) and ORS 279A.110. For all contracts, if a bidder fails to qualify for a mandatory pre-qualification, notice shall

be provided of the reasons, length of proposed disqualification not to exceed three years, the right to a hearing before the LCRB by filing a timely notice of appeal within 3 days with the Department, waiver of the hearing if the deadline is missed, and reference to the sections of the County rules covering the appeal process. For non-public improvement contracts, the Department may revoke or revise and reissue a prequalification approval upon reasonable cause to believe there has been a substantial change in conditions or bidder is no longer qualified or less qualified by providing notice of the grounds and a right to a hearing.

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

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

(d) Correction, Withdrawal and Late Bids. A bidder may withdraw the bid at any time prior to the deadline set for receipt of bids and deposit a new, sealed bid in accordance with the initial invitation to bid. The County may release an unopened bid which has been withdrawn to the bidder or authorized representative after voiding any date and time stamp mark. The County will not consider bids received after the time and date indicated for bid opening in the invitation to bid. A bidder may not modify any bid after it has been deposited with the public officer, except for minor informalities. All decisions to permit correction or withdrawal of bids shall be supported by written reasons.

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

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

(6) Protest of Process and Solicitation Document.

For non-public improvement contracts, a prospective bidder may protest the competitive selection process or provision(s) in the solicitation document if they believe the process is contrary to law, or that a solicitation document is

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

(7) Opening of Bids.

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

(8) Evaluation of Bids.

(a) Evaluation of bids will be conducted by the public officer in cooperation with the department requesting the bid, if any, and shall be based on minimum requirements established by the bid documents, compliance with public bidding procedures, bidder responsibility, ethical practice, product acceptability, ORS 279B.055(6)(a), and LM Chapter 20. See also, OAR 137-049-0380.

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

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

(d) The public officer shall make all necessary investigation to determine whether the apparent lowest responsible bidder has met responsibility requirements. See ORS 279C.0375(2); ORS 279B.110.

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

(f) Invitations to bid may solicit lump sum offers, unit price offers, or a combination of the two, as well as additive or deductive alternates. The County

may use evaluation methods as described in OAR 137-049-0380(2) or any other method reasonably likely to result in similar comparisons.

(9) Mistakes in Bids.

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

(10) Rejection.

The County reserves the right to cancel a solicitation, or reject any or all bids in whole or in part when the cancellation or rejection is in the County's best interests as determined by the County. This includes rejecting any bid not in compliance with all prescribed public bidding procedures and requirements, and for good cause, rejecting all bids upon a finding that it is in the public interest to do so. See OAR 137-049-0440(5), OAR 137-047-0640, OAR 137-047-0650. If all bids are rejected in whole or in part, new bids may be called for as in the first instance or initial bids may be considered with opportunity for supplemental submission. If there is partial rejection, the County may solicit supplemental information only from the bidders who submitted bids and may set an expedited deadline. The public officer is delegated the authority to reject all bids, prepare findings of best interests and provide written notice of rejection of all bids including the reasons therefore to all bidders. The public officer is further delegated authority to reject any bid which does not conform to prescribed public contract procedures and requirements and to reject for good cause any bid upon a written finding it is in the best interest of the County and public to do so. However, if the rejection is of what initially appears to be the successful bid, the Board or the County Administrator, depending upon authority to execute the contract, shall exercise the right to reject the apparent successful bid. In addition, if partial rejection under this rule occurs as a result of the filing of a protest, any portion of the protest not resolved in favor of the protestor shall proceed to the Board or County Administrator.

(11) Authority to Award Contract Subject to Bid.

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

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

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

(12) Notice of Intent to Award.

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

(13) Protests of Award.

Unless otherwise specified in the bid documents, all written protests of award must be filed within seven (7) days of the notice of intent to award. Protests of award shall be considered by the Board if it would approve and award the

contract. Protests of award shall be handled by the County Administrator, or designee, for those contracts to be awarded by the County Administrator.

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

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

(c) For County Administrator awarded contracts, the County Administrator has authority to reject bids pursuant to LM 21.105(10), and authority to revise the award of the contract in order to correct any errors made in the original award, so that the contract is awarded to the bidder legally entitled to receive an award pursuant to public contract law and regulations and the criteria stated in the documents. If there are remaining issues in the protest not resolved by the County Administrator, the County Administrator shall promptly transmit a copy of the decision to the Board. The decision shall be final seven days after it is delivered to the Board, unless within that time the Board elects to review the matter. Thereafter, within a reasonable time period, a complete copy of the written record shall be delivered to the Board. The Board may consider this written record, and any other evidence provided at a public meeting and shall issue its decision by Board Order. The Board may affirm, reverse, send back to department, or revise the decision of the County Administrator, or his or her designee. Upon adoption of the order, the decision will be final.

21.106 Bid, Payment and Performance Securities.

(1) Bid Security.

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

(b) The public officer is delegated the authority to waive the bid security requirement described above prior to bid opening for any ~~non-public improvement~~**goods or services** contract and any public improvement **or construction** contract **as defined in ORS 279C.320(1)** equal to or less than $50,000, if ~~he or she~~**the public officer** believes:

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

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

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

(2) **Payment and** Performance Security.

(a) All bids for public improvement **and other construction contracts** shall require a **payment and** performance ~~security~~**bond** in accordance with ORS ~~Chapter 279. All bids for contracts for other than public improvements may require a~~

~~performance security;~~279C.380, **unless exempt under LM 20.270. All bids for goods or services contracts may require a payment and performance bond,** if the public officer determines it is in the County's best interest to do so.

(b) ~~Performance security is~~**Payment and performance bonds are** not required for public improvement **and other construction** contracts if the amount of the contract is **equal to or** less than $50,000 pursuant to LM 20.270.

(c) In cases of emergency or as described in ORS ~~279.029(5), if all members of the Board concur,~~279C.380(4), , the requirement for a performance **and payment** bond may be excused **if the declaration of such emergency is made in accordance with LM 21.128.** *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04)*

21.107 Requests for Proposals.

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

(2) **When Required and** Requirements. Proposals submitted in response to ~~RFPs~~**an RFP** are offers as are bids. See OAR **137-047-0310, 137-049-0280. Unless otherwise specified in ORS 279A, B, or C or these rules, references to "bids" and "bidder" and "invitation to bid" shall, to the extent practicable within the proposal process be deemed equally** ~~137-030-0000(23), 137-030-0012(1). The RFPs~~**applicable to "proposals," "proposers," and "requests for proposals." The RFP process** must generally comply with the requirements stated in LM 21.105 ~~above and in ORS Chapter 279, applicable to bids, unless otherwise stated. In addition, all RFPs must meet the requirements of OAR~~ **above, unless otherwise stated, and shall comply with any requirements in ORS 279B.060 and ORS 279C.400. . In addition, all RFP documents shall state:**

~~125-310-0200, including but not limited to:~~

(a) The composition and role of the evaluation ~~committee must be clearly stated in the RFP.~~**committee; .**

(b) The evaluation criteria to be used in awarding the contract and the weight assigned to each ~~criterion must be clearly identified in the RFP.~~**criterion; .**

(c) ~~The RFP must provide for an opportunity for persons interested in responding to comment on any specifications they believe limit competition, or to protest the specifications or contract terms in accordance with LM 21.105(5) above.~~

~~(d) The RFP must clearly state the contractual requirements.~~**Provide for an opportunity to protest the solicitation in accordance with LM 21.107 (7); .**

(d) The contract terms;

(e) ~~The RFP must clearly describe~~**Describe** the right of appeal as stated in LM ~~21.107(9) below.~~**21.107(14) and to protest pursuant to LM 21.107(17) below;**

(f) ~~The RFP must invite~~**Invite** the submission of sealed, written offers to be publicly opened at a designated time and place;.

(g) Describe the method of contract selection, including award without negotiation, negotiation with highest ranked proposer, competitive

negotiations, multiple-tiered competition or any combination of these methods or any other method authorized by these rules.

(h) An RFP process, if appropriately authorized for a public improvement contract, is not required to include first-tier subcontractor disclosure and reciprocal preference for non-resident bidders.

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

~~(3) Advertisements and Proposals. See LM 21.105(2) above and (3).~~**(4) Advertisements and Proposals. LM 21.105(3) and (5).** References to "bid" or "bidder" there include "proposal" or "proposer."

~~(4) Delegations~~**(5) Delegations** and Authority to Act. Each Department Director is delegated the authority to call for open, direct evaluation of requests for proposals, and perform all other obligations of the "public officer" under LM 21.107. The Department Directors may further delegate this authority to a representative by a signed written document. The evaluation committee's recommendation for award of the contract shall be considered and finally decided by either the Board or the County Administrator, depending upon authority to execute the contract per LM 21.145.

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

~~(5) Opening. See LM 21.105(6)~~**(7) Opening. LM 21.105(7)** above. References to "bid" or "bidder" there include "proposal" or "proposer.". **However, proposals need not be read aloud, and the County is only required to record and make available a list of the proposers after the opening.**

~~(6)~~**(8)** Evaluation of Proposals. The evaluation committee shall evaluate the proposals according to the criteria stated in the RFP, compliance with public ~~bidding~~**contracting** procedures, proposer responsibility, ethical practice, product acceptability, and ORS Chapter **279A, B, and C. The award shall be to the responsible proposer whose proposal is** ~~279. See also OAR Chapter 125 and OAR Chapter 137.~~**determined in writing to be the most advantageous to the County, not restricted to price, based on evaluation factors set forth in the RFP and any authorized negotiations. .** The department responsible for issuing the RFP shall mail notice of the evaluation committee recommendation to the proposers within two days of the committee's decision unless otherwise stated in the RFP. Negotiations with proposers regarding contract terms may occur only after the award or only as provided in the RFP. See OAR ~~137-030-0090 as guidance.~~**137-047-0262, OAR 137-049-0650..**

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

of selection in the RFP, evaluate all responsive proposals, and provide at least an opportunity to protest the solicitation process or document, and the award as set forth in this subsection.

~~(7) Bid~~**(10) Bid, Payment** and Performance Security. Unless otherwise provided in the ~~RFP, bid~~**RFP bid, payment** and performance security requirements may be waived if the contract will not be a public improvement **or other construction** contract or if it will be for a public improvement ~~for~~**equal to or** less than $50,000. Bid, **payment** and performance securities shall be provided if the contract will be for a public improvement of $50,000 or more.

~~(8) Rejection.~~**(11) Mistakes in Bids.** See LM 21.105(9). **References to "bid" includes "proposal."**

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

~~(9)~~**(13)** Appeal of Evaluation Committee Recommendation. Anyone responding to an RFP who is not recommended for award by the evaluation committee may appeal the recommendation to the decision maker, either the Board or the County Administrator, depending upon which has authority to execute the contract.

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

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

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

(d) The grounds for appeal are:

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

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

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

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

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

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

(f) If an appeal is timely filed, the Board or County Administrator, as appropriate, shall consider the evaluation committee's recommendation and the allegations of the appeal before rendering a final decision. If the Board is the decisions maker, it shall carefully evaluate any appeal before rendering a decision and shall state the conclusions reached and reasons either in writing or on the record in a public meeting. Any decision to overturn the recommendation shall be based on a finding that one of the criteria of LM ~~21.107(9)(d)~~**21.107(13)(d)** above occurred to the substantial prejudice of the appellant. |

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

~~(10)~~**(14)** Authority to Award Contract Subject to RFP. |

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

(b) ~~(b)~~ All decisions to award a contract following a request for proposals shall be based on the criteria stated therein, substantial compliance with public contract laws, rules and procedures, and the best interests of the County. |

(15) Notice of Intent to Award. LM 21.105(12). References to "bid" and "bidder" shall include "proposal" and "proposer."

~~(11)~~**(16)** Protests of Award. See LM ~~21.105(11).~~**21.105(13).** References to "bid documents" includes "request for proposal documents" and references to "bid" include "proposal." *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04)*

21.108 Letters of Interest.

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

(2) When Applicable.

(a) LOIs may be used as a means of determining whether a potential contractor is a sole source under LM ~~20.140.~~**20.096 and LM 21.111.** This contemplates a situation where the fundamental nature of the good or service is so limiting that it seems likely that only one seller/provider exists. Because it is the County's policy to encourage competition whenever possible, it is not permissible to describe a fundamentally broad need in a narrow or limiting way in order to use this process. The expectation of the funding source is one important factor in determining the fundamental nature of a good or service. There may be additional facts to support sole source. |

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

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

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

(b) The advertisement must contain a description of the nature of the work to be performed or good to be provided, the term of the contract, the person to

whom LOIs are to be submitted and the date the LOIs are due. There must be a sufficient description of the service or good that potential competitors will be able to evaluate whether they are qualified, able and wish to perform.

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

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

21.109 Small Procurements.

The County may award a small procurement contract for goods or services, either related to a public improvement or non-public improvement, when the amount does not exceed $5,000 or 3 years in length. See ORS 279B.065, ORS 279C.320(1), and ORS 279C.335(1)(c).

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

(2) A small procurement contract should not be considered separately when it is a component of a larger purchase or project in one year, and when considered as a whole would require a competitive selection. Any contract terms should be consistent with the County's legal requirements and limitations, or as may be further described in procedures adopted by the County Administrator.

(3) The Department Directors and County Administrator are delegated the authority to award small procurement contracts, and such authority may be further delegated.

21.110 Intermediate Procurements.

The County may award an intermediate procurement contract for goods or services, either related to a public improvement (except highway, bridge or other transportation projects) or non-public improvement, when the amount does not exceed $100,000. The County may use any LM Chapter 21 procedures for obtaining information in preparation for soliciting quotes or prequalifying a product. The three quotes as required by LM 20.105(1)(c) may be either oral or written for contracts exceeding $5,000 but not $50,000. The County shall keep a written record of the source and amount of quotes received. For intermediate contracts exceeding $50,000 but not $100,000, the County department shall prepare a written solicitation, the quotes must be written, and unsuccessful quoters shall have the right to protest the award decision in accordance with LM 21.105(13)(a) and (b),. The written solicitation shall provide notice of the right to protest the award. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. An intermediate procurement acquisition should not be made when it is a component of a larger purchase or project in any single year, and when considered as a whole would require a different competitive selection than as provided by this or another rule.

The County may award an intermediate procurement contract for goods or services related to a public improvement involving highway, bridge or other

whom LOIs are to be submitted and the date the LOIs are due. There must be a sufficient description of the service or good that potential competitors will be able to evaluate whether they are qualified, able and wish to perform.

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

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

21.109 Small Procurements.

The County may award a small procurement contract for goods or services, either related to a public improvement or non-public improvement, when the amount does not exceed $5,000 or 3 years in length. See ORS 279B.065, ORS 279C.320(1), and ORS 279C.335(1)(c).

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

(2) A small procurement contract should not be considered separately when it is a component of a larger purchase or project in one year, and when considered as a whole would require a competitive selection. Any contract terms should be consistent with the County's legal requirements and limitations, or as may be further described in procedures adopted by the County Administrator.

(3) The Department Directors and County Administrator are delegated the authority to award small procurement contracts, and such authority may be further delegated.

21.110 Intermediate Procurements.

The County may award an intermediate procurement contract for goods or services, either related to a public improvement (except highway, bridge or other transportation projects) or non-public improvement, when the amount does not exceed $100,000. The County may use any LM Chapter 21 procedures for obtaining information in preparation for soliciting quotes or prequalifying a product. The three quotes as required by LM 20.105(1)(c) may be either oral or written for contracts exceeding $5,000 but not $50,000. The County shall keep a written record of the source and amount of quotes received. For intermediate contracts exceeding $50,000 but not $100,000, the County department shall prepare a written solicitation, the quotes must be written, and unsuccessful quoters shall have the right to protest the award decision in accordance with LM 21.105(13)(a) and (b). The written solicitation shall provide notice of the right to protest the award. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. An intermediate procurement acquisition should not be made when it is a component of a larger purchase or project in any single year, and when considered as a whole would require a different competitive selection than as provided by this or another rule.

The County may award an intermediate procurement contract for goods or services related to a public improvement involving highway, bridge or other

may consider the written record, and any other testimony provided at the public meeting and shall issue its decision by Board Order.

(7) To the extent practicable, the County shall negotiate with the sole source to obtain contract terms advantageous to the County.

21.112 Brand Name.

This rule applies to non-public improvement contracts, and LM 20.210 and LM 20.215 applies to public improvement contracts. Specifications shall not expressly or implicitly require any product of a particular manufacturer or seller except pursuant to this rule or the class-specific authorizations in LM Chapter 20. The County may identify products by brand names so long as it includes language similar to "or equal," "or equivalent," or "equal or superior to." The County shall determine, in its sole discretion, whether an offeror's alternative product is "equal" or "equivalent," or "superior." The Department directors shall be delegated authority to determine that only an identified brand name will meet the County's need and shall document such decision in writing, subject to any review and reversal by the County Administrator, in his or her discretion. Any written decision must be based on one or more of the criteria in ORS 279B.215(2).

21.112A Special Procurements.

As to contract-specific special procurements, a prospective offeror may protest the procurement process or solicitation document under ORS 279B.405 in accordance with procedures described in LM 21.105(6), only if the LCRB's decision to approve has been invalidated by a reviewing circuit court.

21.112B Cooperative Procurements.

The County may participate in, sponsor, conduct, or administer cooperative procurements as set forth in ORS 279A.200 through ORS 279A.225.

TYPES OF CONTRACTS

21.113 ~~Material, Service, and Material/Service~~Goods, Materials and/or Services Contracts.

(1) A **goods or** materials contract is one that calls primarily for an end product and in which the County purchases, obtains some interest in, or leases personal property. A service contract is one that calls primarily for a contractor's time and effort, and does not include work connected with manufacturing a product or personal ~~or professional~~ services. A service contract includes one for a trade-related activity to accomplish routine functions of a type that can generally be done by any competent worker, even though a specific license is required. A contract may be a combination **of goods,** materials and services ~~contract~~.

(2) Materials and/or service contracts may only be executed after appropriate competitive selection has been completed.

(3) Title to all personal property shall be described on all formal title documents and bills of sale as: Lane County, Lane County Public Service Building, Eugene, Oregon 97401.

(4) For contracts involving the rental, lease or lease purchase of equipment, the Risk Manager should be consulted regarding insurance requirements. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.114 Maintenance and Repair Contracts.
Contracts for the maintenance or repair of equipment or public improvements are subject to the public contract laws and regulations.

(1) Contracts for maintenance or repair of equipment must comply with the requirements of LM 20.175. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.115 Public Improvement and Construction Contracts. |

(1) Public improvements shall usually be performed by contract. When the project is estimated to cost more than $125,000, the provisions of ORS ~~279.023 and 279.025~~**279C.305 and LM 21.105(3)** shall be followed. Unless otherwise approved by the Board, public improvement projects shall be performed according to the capital improvements list adopted by the Board pursuant to ORS ~~279.023.~~**279C.305.**

(2) Public improvement **and construction** contracts must comply with a number of requirements. Care should be taken to see that ~~the~~**any applicable** requirements including, but not limited to, **those in** the following **list** are met:

(a) Advertisement (including Asbestos Abatement) - ORS ~~279.025 and LM 21.105~~**279C.360 and LM 21.105(3)** above. See, OAR ~~137-040-0005, 137-030-0015(2)(e).~~**137-049-0210.,.**

(b) Bid security - ORS ~~279.027,~~**279C.365(4),** LM 20.270, LM 21.106 above.

(c) Performance security - ORS ~~279.029,~~**279C.380,** LM 20.270, LM 21.106 above.

(d) Prevailing rates of wage - ORS ~~279.348 to 279.380. See OAR 137-040-0010, OAR Chapter 839.~~**279C.800 to 279C.855. .**

(e) Retainage ~~ORS 279.400 to 279.435,~~ - **ORS 279C.555 to ORS 279C.565,** LM 21.116 below.

(f) Prompt payment policies - ORS ~~279.435. See, OAR 137-040-0030 to OAR 137-040-0045.~~**279C.505, ORS 279C.515.**

(g) Subcontractor clauses - see ORS ~~279.435 and ORS 279.445.~~**279C.515.**

(h) Insurance - see LM 21.305 below.

(i) Exempt contracts over $100,000 evaluation report required - see ORS ~~279.103.~~**279C.355.** .

(j) Contractor shall certify that an employee drug testing program is in place at the time of contract execution, and that such a program will be maintained throughout the contract period including any extensions. Failure of contractor to certify, to have, or to maintain such a drug testing program is grounds for rejection of a bid or immediate termination of the contract. Contractor shall also certify that it will require any subcontractors to demonstrate to Contractor that it will have such a drug testing program. ORS ~~279.312.~~**279C.505(2).**

(k) First-tier subcontractor disclosure for contracts greater than $100,000. ORS ~~279.027.~~**279C.370.**

(3) The County Administrator is delegated the authority to make final acceptance of a public improvement and may further delegate this authority to a representative by a signed written document. If it is determined that the project should not be finally accepted, the matter shall be brought to the attention of the Board. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04)*

21.116 Retainage.

(1) Retainage of five percent of the contract price of the work completed shall be withheld on all public improvements contracts until the project is at least 50 percent complete, after which the retainage may be reduced, upon the County Administrator's approval, in accordance with ORS ~~279.435.~~**279C.570(7).**

(2) Deposit of Securities in lieu of retainage.

(a) Notwithstanding LM 21.116(1) above, Lane County shall reduce the retainage in an amount equal to the market value of bond or securities deposited by the contractor in accordance with the procedures set out below. Bonds or securities offered for deposit in lieu of retainage shall be as authorized in OAR ~~137-040-0025(3),~~**137-049-0820(3),** which is hereby adopted.

(b) All bonds or securities in lieu of retainage shall be deposited with a bank or trust company in Lane County, Oregon, in an account for the benefit of Lane County established for this purpose. Upon deposit, the bank or trust company shall prepare an Assignment and Safekeeping Receipt in the form set out in Exhibit "A." The contractor shall deliver in person one copy of this receipt to the Department of Management Services.

(i) Bonds or securities deposited shall be in fully transferable form. Any nonnegotiable bonds or securities shall have all necessary instruments attached to enable the County to effect transfer of title should the contractor be unable to fulfill the contract obligations.

(ii) Bonds or securities deposited in lieu of retainage shall be released only upon the written instructions and authorization of the County. Upon default, the County may elect to authorize the bank or trust company to transfer any securities deposited under these provisions, rather than undertake to transfer such securities itself.

(c) If at any time the market value of the bonds or securities deposited in lieu of retainage drops below five percent of the contract price of the work completed, the County may withhold from payments due the contractor an amount sufficient to maintain its appropriate retainage protection. Withheld amounts shall only be released to the extent of the market value of additional bonds or securities deposited by the contractor in accordance with this section.

(3) Retainage Deposited in Interest Bearing Account. In accordance with ORS ~~279.420(4),~~**279C.560(4),** retainage may be deposited upon the request of the contractor in an interest bearing account with earnings to accrue to the contractor.

(4) Surety Bond in Lieu of Retainage. In accordance with ORS ~~279.420(6),~~**279C.560(6),** upon approval of the County Administrator, the contractor may deposit a surety bond for all or a portion of the retainage. The bond shall be in a form acceptable to the County Administrator. The retainage shall be accordingly reduced, and the contractor shall accept like bonds from subcontractors and suppliers.

(5) All retainage on public contracts for public improvements, less costs as allowed by statute, shall be released within 30 days after the work under the contract has been completed and the County Administrator or the Board has authorized final acceptance thereof. If not so released, interest shall be paid in accordance with ORS ~~279.435(3).~~**279C.570(8).** *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04)*

ASSIGNMENT AND SAFEKEEPING RECEIPT *No.* ___

THIS ASSIGNMENT is to satisfy the requirements for deposits of bonds or securities in lieu of retainage on public improvements contracts set out in LM 21.116.

Subject to the conditions below, the undersigned does hereby assign, transfer and set over to Lane County all right, title and interest in and to the bonds and securities listed in the attached Schedule "A" for the use and purpose of retainage on the public contract between Lane County and the undersigned, identified as

_____.
(Project Identification)

_____ agrees that the bonds or securities listed in Schedule
(Bank or Trust Company)
"A" will be held in trust for the purposes stated here, and shall be released only upon the written instructions and authorization of Lane County.

Periodic interest payments or other disbursals which do not reduce the face amount of the bonds or securities shall accrue and may be credited or paid to the undersigned.

If a bond or security deposited under this assignment reaches maturity while subject to these conditions, it may be disbursed to the undersigned without specific authorization from Lane County, if, and only if, the undersigned replaces the matured bond or security with an identical one of equal or greater value.

If the bonds or securities deposited are to be credited to more than one public contract, the distribution shall be as stated on Schedule "A."

SCHEDULE "A"

1. DESCRIPTION OF THE BONDS OR SECURITIES.

2. NAME OF CONTRACTOR/ASSIGNOR.

3. IDENTIFICATION NUMBER OF THE CONTRACT OR PROJECT.

4. PAR VALUE OF SECURITIES OR BONDS (AND THE MARKET VALUE, IF DIFFERENT).

5. MATURITY DATES OF SECURITIES OR BONDS.

Signed and dated at _____, Lane County, Oregon, this __day of _____, 20_.

_____
(Signature of Depositor/Assignor)
Address: _____
_____

ACCEPTANCE

_____ (Bank or Trust Company) hereby accepts the foregoing Assignment and Safekeeping Receipt *No.* __, in the total amount of $ _____, this ___ day of _____, 20 , and hereby acknowledges receipt of the bonds or securities listed in Schedule "A" above to hold in trust for Lane County for the uses and purposes above-stated.

_____
(Authorized Signature)

_____

Exhibit "A" to LM 21.116(2)
(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04)

21.117 Personal and Professional Service Contracts.

(1) Personal ~~and professional~~ service contracts are those ~~for the rendering of services where the particular skill or experience of the contractor is of primary importance, or which involve a relationship of special trust and confidence between the County and the contractor. See OAR 125-020-0130 for guidance as to whether a proposed contract is~~ **as described in LM 20.097.**
~~one for personal or professional service as opposed to one for materials and service.~~

(2) Personal ~~or professional~~ service contracts shall not be used to engage persons who would be deemed County employees, rather than independent contractors. Two of the primary differences are the amount of control the County has the right to exercise over the individual and the method of payment. That a County employee supervises or has the right to supervise the individual (i.e., assign work, review work, review performance) is an indicator the individual would be an employee, not an independent contractor. That the individual is paid for time and services is an indicator the person is an employee, whereas, that he or she is paid for results or for a total project is an indicator the individual is an independent contractor. All personal ~~and professional~~ services contractors must meet the independent contractor standards of ORS 670.600.

(3) Generally, all personal ~~or professional~~ services contracts shall require the contractor to defend, indemnify and hold the County, its officers, agents and employees harmless from all damages, losses and expenses including but not limited to attorney fees and to defend all claims, proceedings, lawsuits and judgments arising out of the contractor's performance or failure to perform the contract. When the Office of Legal Counsel determines the risk of a substantial judgment against the County is minimal, this provision may be waived.

(4) Care shall be taken in the use of personal ~~or professional~~ service contracts to insure they do not violate the terms of any collective bargaining agreement to which the County is a party. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04)*

21.118 Selection of Personal ~~or Professional~~ Service Contractor.

Personal ~~or professional~~ service contracts are excluded from competitive bidding; however, the following selection procedures ~~shall be utilized:~~**should be utilized unless an exemption, special procurement, or other LM Chapter 20 or 21 rule would allow a different competitive selection under the circumstances:**

(1) ~~Dollar Amount.~~**Direct Contracting - No Competitive Process Required Dollar Amount $10,000 or Less.**

~~(a) $5,000 or less. For contracts of $5,000 or less, the Department Director or designated officer may negotiate a contract~~

(a) The County may contract directly with any qualified contractor ~~of his or her selection.~~**without competitive selection, except as provided in (b) and (c) for architects, engineers, land surveyors, other related service providers, as applicable.**

(b) Dollar Amount $25,000 or less. The County may contract directly, and without competitive selection, with any qualified architect, engineer, land surveyor or provider of related services (as defined by ORS 279C.100(6)), for public improvement projects involving a highway, bridge or other transportation, except as in (c) .

(c) Qualification. Based Selection Required Under ORS 279C.110(2). The County may not solicit or use pricing information to determine the architect's, engineer's, or land surveyor's compensation until after initially selecting a qualified consultant. For public improvement projects not meeting ORS 279C.110(2), the County may consider pricing information and qualifications in selecting this type of contractor.

~~(b) Greater than $5,000.~~**(2) Dollar Amounts Greater Than (1) (a) or (b) But Equal to or Less Than $50,000.** For contracts greater than ~~$5,000 and for all retainer type contracts, the Department Director or designated officer shall~~**the amounts in (1)(a) or (b) above and up to $50,000, the Department Director or designated officer shall** solicit at least three prospective contractors who appear to meet the minimum requirements for the proposed contract, inform each in reasonable detail of the contract and determine the prospective contractor's interest and ability to perform the **contract The contract should be awarded to the offeror whose quote or proposal will best serve the interests of the County, in the discretion of the County after considering any applicable criteria such as in (5) below. Pricing information** ~~contract. For all retainer type~~**may also be solicited and considered, except as provided below in this rule for architects, engineers, and land surveyors. For all such** contracts, quotations shall be solicited from appropriate minority, women and emerging small business enterprises certified by the State pursuant to ORS Chapter 200, and as specified through County administrative ~~procedures.~~
procedures. The Department shall keep a written record of the prospective contractors contacted, their responses, and basis for recommending the award.

The same condition in (1)(c) applies to qualification based selection required under ORS 279C.110(2). For such contracts, the County will begin negotiating with the highest ranked proposer on a fair and reasonable price in addition to any other contract provisions the County believes is in its best interest to negotiate. If agreement is not reached within a reasonable time, the County may move to the second highest ranked proposer for similar negotiation, and continue the process with the next in line until agreement is reached. See OAR 137-048-0210(4).

~~(c) Greater than $50,000.~~**(3) Dollar Amounts Greater than $50,000 But Equal to or Less Than $100,000.** Where the contract is greater than $50,000 **and equal to or less than $100,000**, the Department Director or designated officer shall **comply with (2) above, except that they will prepare a written solicitation, including but not limited to specification/scope of work and receive written offers. The contract should be awarded to the offeror whose quote or proposal will best serve the interests of the County, in the discretion of the County after considering any applicable criteria such as in (5) below. Pricing information may also be solicited and considered, except as provided below in this rule for architects, engineers, and land surveyors. The County shall keep the written solicitation and response documents and written basis for recommending the award.**

Unsuccessful offerors shall have the right to protest the award decision to the Board of County Commissioners in accordance with procedures set forth in LM 21.105(13).

The same condition in (1)(c) applies to qualification based selection required under ORS 279C.110(2). For such contracts, the County will begin negotiating with the highest ranked proposer on a fair and reasonable price in addition to any other contract provisions the County believes is in its best interest to negotiate. If agreement is not reached within a reasonable time, the County may move to the second highest ranked proposer for similar negotiation, and continue the process with the next in line until agreement is reached. See OAR 137-048-0210(4).

(4) Greater Than $100,000. Where the contract is greater than $100,000, the Department Director or designated officer shall comply with (3) above, and conduct interviews of at least the two most qualified prospective contractors, if two or more are available. Interviews may be either by telephone, in person or by written questions. ~~When the Department Director~~ **Unsuccessful quoters shall have the right to protest the award decision to the Board of County Commissioners in accordance with procedures set forth in LM 21.105(13).**

~~deems it appropriate, he or she may solicit prospective contractors by advertisement for bids or by a request for proposals process in LM 21.107 above, or by the following request for~~ **(5) Criteria. The following criteria shall be considered, as appropriate, in the evaluation and selection of personal or** professional service ~~(RFPS) process.~~**contractors:**

(a) Specialized experience in the type of work.

(b) Capacity and capability to perform the work within necessary time and other limitations.

(c) Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules and contract administration.

(d) Availability to and familiarity with the area in which the specific work is located.

(e) Any other factors relevant to the particular contract.

~~(d)~~**6)** Requests for Professional Services ~~Greater than $50,000.~~**(RFPS).**

~~(i)~~**(a)** Description. A request for professional services (RFPS) is a selection procedure used when the County requires the services of the most highly qualified professional based on demonstrated competence and qualifications, and where a fair and reasonable price rather than lowest competitive price is the focus. It may be used in the discretion of the Department Director, on a project-by-project basis, except a qualifications based process is required for selecting registered professional engineers, registered architects, ~~or~~ registered professional land surveyors for ~~consulting services~~**public improvement projects** where:

~~(aa)~~**(i)** The County receives grants, loans or moneys from the Oregon State Highway Fund or from the State that exceeds 35% of the value of the project, and

~~(bb)~~**(ii)** The value of the project exceeds $400,000. ORS ~~279.057.~~**279C.110(2).**

~~(ii)~~**(b)**Requirements.

~~(aa)~~(i) An advertisement shall appear at least once in at least one newspaper of general circulation in the area where the project is to be located **and/or published electronically in compliance with LM 21.105(2)**, and shall briefly describe the project, the services sought, where copies of the solicitation may be obtained and the deadline for submitting a response.

~~(bb)~~(ii) The solicitation document shall contain, at a minimum, the information in LM ~~21.118(1)(d)(ii)(aa)~~**21.118(6)(b)(i)** above, specifications, project requirements, a statement of the particular professional qualifications for the project, the evaluation criteria, and the screening or evaluation method to be used. It shall also reserve the County's right, at any time during the solicitation or contract process, to reject any or all proposals or cancel the solicitation, without liability, if there is good cause or if doing so would be in the public interest. ~~A sample of the~~**The** contract ~~expected to be executed~~**terms** should **also** be included.

~~(cc) A screening and~~(iii) **An** evaluation committee shall review, score and rank the proposals according to solicitation criteria and results of any oral interviews. Criteria may include, but is not limited to, specialized experience, capabilities and technical competence to meet project requirements, **methodology to meet project requirements,** availability and resources to perform the work, **proportion of candidate staff's time spent on project,** experience of key staff, demonstrated ability to successfully complete similar projects, references and recommendations, history in meeting deadlines, submitting accurate estimates, producing quality work, meeting financial obligations, contract administration status of licensing, proposed solutions to any perceived design or construction problems, **ownership status and employment practices regarding minority, women and emerging small businesses or historically underutilized businesses;** availability and familiarity with project locale, and project management approach. Proposed compensation may be included as evaluation criteria except for ~~projects and professional engineer, architect, and land surveyor services covered by ORS 279.057.~~**solicitations for professional engineers, architects, land surveyorsservices covered by ORS 279C.110.**

~~(dd)~~(iv) Contract negotiations, including refining scope of services, with the highest ranked professional shall be directed toward an agreement on a compensation level which is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the ~~professional~~**personal** services. A department may solicit or use a compensation proposal for projects and services covered by ORS ~~279.057~~**279C.110** only after evaluating and ranking candidates.

~~(ee)~~(v) If an agreement is not reached in a reasonable time, the County may terminate negotiations with the highest ranked proposer and begin with the second ranked, and then to the third, if applicable. If no agreement is reached, the solicitation may be terminated.

~~(ff) Contractor~~(vi) **A prospective contractor may protest the solicitation process or document in accordance with LM 21.105(6). Contractor** may protest the contract award in accordance with process in LM ~~21.105(11).~~

21.105(13). A proposer submitting a protest of the award must demonstrate that the protesting proposer is the highest ranked proposer because the proposals of all higher ranked proposers failed to meet the requirements of the RFPs or because the higher ranked proposers otherwise are not qualified to perform the services. Untimely protests will not be considered.

(7) Other Competitive Processes. Except when qualification based selection is required, a Department may use other methods of selection for personal

service contractors including, but not limited to, formal bid, RFP, sole source, emergency, special procurement, or any other exemption in LM Chapter 20.

~~(2)~~**(8)** Amendments. The selection procedures stated in LM 21.118(1) - (7) above shall be utilized for any amendment of a personal ~~or professional~~ services contract which is more than 50 percent of the original contract amount, or when the aggregate of amendments are more than 50 percent of the original amount. However, they need not be utilized if the scope of the amendment was clearly included in the original selection such that prospective contractors understood this amendment ~~would occur.~~ **may occur. In addition, they need not be used if the project described in the personal service contract consists of work that has been substantially described, planned or otherwise previously studied or rendered in an earlier contract** ~~(3) Criteria. The following criteria shall be considered, as appropriate, in the evaluation and selection of personal or professional service contractors: (a) Specialized experience in the type of work. (b) Capacity and capability to perform the work within necessary time and other limitations. (c) Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules and contract administration. (d) Availability to and familiarity with the area in which the specific work is located. (e) Any other factors relevant to the particular contract.~~**with the consultant that was awarded pursuant to LM Chapter 20 and 21 rules and the amendment (or new contract) is a continuation of that project. A contract may be awarded directly under this circumstance pursuant to the waiver criteria in (9) below.**

~~(4)~~**(9)** Waiver. The selection procedures described above may be waived by the County Administrator prior to selection of the personal ~~or professional~~ services contractor or to permit an amendment in excess of the 50 percent limit of LM ~~21.118(2)~~**21.118(8)** above for any of the following reasons:

(a) An emergency exists which could not have been reasonably foreseen and which requires prompt execution of a contract, or

(b) The contractor is the only person within a reasonable area who performs this type of work, or

(c) When good cause is demonstrated to the County Administrator, such that he or she believes award of the contract without utilizing the selection procedures is in the public's interest. - *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04)*

21.120 Requirements and Pricing Contracts.

Requirements contracts, **or pricing agreements,** provide for the establishing of unit prices for goods or services (including personal ~~or professional~~ services) when the County knows it will need them, but is unable to determine the quantity in advance. Generally, the vendor agrees to supply some or all of the County's requirements within a specified period of time. Competitive selection and contract/amendment execution authority is governed by the rules which apply to the underlying contract type, i.e., materials, materials and services, services, personal or professional services.

(1) In conducting competitive selection, the County shall inform all potential bidders/proposers:

(a) Whether it will consider awarding and executing more than one requirements contract for a single type of service or good; and

(b) If it anticipates awarding more than one contract, the method to be used in selecting which contractor will perform specific services or provide certain goods.

(2) All requirements contracts shall provide that:

(a) the County will purchase a specified minimum amount of goods or services; or

(b) a maximum, not to exceed amount of goods or services; and

(c) the contract may be canceled upon 30 days written notice by the County; and

(d) the term of the contract, including renewals, shall not exceed three years.

(3) When the price of goods and services has been established by a requirements contract, the County may purchase the goods and services from the supplier without subsequent competitive selection. In order to purchase or pay for goods and/or services under an executed requirements contract, the following steps apply:

(a) For a services/requirements contract, if the scope of work is originally defined in general terms, and the parties anticipate further defining of the work as it arises, i.e., ~~professional~~**personal** services on a project by project basis, the additional defining of the scope of work shall be in writing, signed by both parties and processed as an amendment if the total anticipated dollar amount of work on the project exceeds $50,000. If the total anticipated dollar amount of work on the project is $50,000 or less, the definition of the scope of work shall be in writing, on or attached to a purchase order and processed as a purchase order.

(b) For all other requirements contracts where the services and/or goods are specifically defined in the original contract, i.e., delivery of rock, specific purchases may be made through a purchase order.

(4) The County departments shall determine the most reasonable estimate of the dollar amount of a requirements contract, including from all amendments, purchase orders, etc., throughout the term of the contract. That dollar figure shall be the basis for determining contract/amendment execution authority. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.122 Revenue Contracts.

Revenue contracts must comply with all public contract laws and regulations and LM Chapter 21.

(1) The County Administrator and the Director of the Department of Management Services each individually are delegated the authority to execute certificates of title and bills of sale for County-owned personal property duly sold under established procedures and may further delegate this authority in writing.

(2) A revenue contract which involves elements of an interest in real property (for example, a caretaker or concessionaire agreement or a lease), may also have to comply with laws regarding the disposition of publicly owned real property. The Department considering such a contract should consult with the Office of Legal Counsel regarding appropriate procedures and contract terms.

(3) Disposition of personal property must comply with ORS 279.015, 279.095 and LM 60.405. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04)*

21.124 Intergovernmental Agreements.

(1) Intergovernmental agreements are exempt from competitive selection.

(2) Under the authority of Chapter II, Section 8 of the Lane County Home Rule Charter and ORS Chapter 190, it is the policy of Lane County to offer services to other public agencies where feasible. Lane County must be compensated for the complete cost of providing all intergovernmental services. An intergovernmental agreement should be utilized whenever possible as the implementing document. The Board in its discretion may approve waivers to the policy of complete compensation. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.126 Grants.

"Grant" means a federal, state or other agreement in which the County receives and disburses funding for purposes itemized in the grant, and subject to **ORS 279A.010(1)(i) and to** the conditions set forth in the grant. **A "Grant" includes a County sub-grant when the subcontractor was identified and approved by the grantor (including after any appropriate** ~~"Grants" include sub-grants through which~~**County competitive selection) and** the County merely passes through the grant funds received, in whole or in part, without modifying any terms or conditions of the original grant, except as related to County administration and oversight of the grant conditions. ~~An agreement~~**A subcontract** may not be a sub-grant if the County does modify, and may be more appropriately analyzed as a service contract, or a materials and service contract, intergovernmental agreement, etc. depending upon the subject matter. *(Revised by Order No. 98- 12-2-4, Effective 12.2.98)*

21.127 Amendments.

(1) Selection Procedures. All amendments including but not limited to change orders, extra work, and modifications, shall comply with public contract laws and regulations regarding competitive bidding and selection procedures. The selection procedures of LM 21.118(1) - (7) above shall not apply to amendments to personal services contracts, except when the total of all amendments exceed 50 percent of the original amount. A waiver of the selection procedure pursuant to LM ~~21.118(4)~~**21.118(9)** above may nonetheless be sought in those cases.

(2) Generally, a contract amendment should include a reference to the original contract by title and/or date, terms of amendment including citation to specific provisions in the original contract being amended, and ending with a provision that "except as set forth above, all provisions of the original contract dated _____ remain unchanged." *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.128 Emergency Contracts.

(1) An emergency is generally defined, but not limited to, as 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**. If such an emergency exists which requires the prompt execution of a contract to remedy the situation, the provisions of ~~ORS 279.015, 279.029~~, LM 20.255 ~~and 20.260~~ shall be appropriately followed.

(2) ~~The County Administrator is delegated authority to declare an emergency and to execute a contract to remedy it not to exceed $50,000. The Board of Commissioners must declare the emergency and award any contract exceeding $50,000.~~

~~(3) In all cases, the nature of the emergency and the anticipated harm if a contract is not promptly executed must be described with specificity in writing, and the efforts, if any, made to encourage competition through informal solicitations or quotes.~~

~~(4) Any performance bond requirement may be waived upon approval of all members of the Board, pursuant to ORS 279.029(5).~~

~~(5) Unless an extension is approved by the LCRB, an emergency contract must be awarded within 60 days of the declaration of emergency.~~ *~~(Revised by Order No. 98-12-2-4, Effective 12.2.98)~~*

In exercising authority under LM 20.255, and in order to declare an emergency the County shall:

(a) Make written findings describing the circumstances which support 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; and describing the harm anticipated to result from failing to establish the contract on an expedited basis.

(b) To the extent reasonable under the circumstances, encourage competition by attempting to make informal quote solicitations from potential suppliers of goods or services.

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

(d) Limit the work or subject of purchase under the resulting contract to what is necessary and appropriate, including a time period, to address the conditions creating the emergency. No dollar limit applies to emergency contracts.

(e) Execute the contract within 60 days following the declaration that an emergency exists, unless the LCRB grants an extension.

(f) Emergency contracts may be modified or amended to address the conditions described in the original declaration or the declaration may be amended to describe additional work or purchases which are necessary.

(g) For public improvement contracts, under circumstances described in ORS 279C.380(4), the emergency declaration may also state that the County waives the requirement of furnishing a performance or payment bond for the contract. Such bonding requirements are excused once the emergency is declared.

21.129 Purchase Orders.

Purchase orders may be used to obtain **goods,** materials, services, personal or professional services, to implement a purchase pursuant to a requirements contract, to implement a purchase utilizing a contract competitively bid by other political subdivisions when the specifications indicated that more than one political subdivision could utilize the bid award, and to purchase price-regulated items when the rate or price has been set by Federal, State or local regulatory authority.

(1) ~~In implementation of LM 21.100 above, quotations~~**Quotations** for purchase orders shall be solicited from appropriate minority, women and emerging small business enterprises, who are certified by the State pursuant to ORS Chapter 200. The County Administrator shall implement this requirement through administrative procedure.

(2) Purchases of more than ~~$50,000~~**$100,000** can be made by purchase order only in implementation of an appropriately awarded written contract or to purchase price-regulated items or the printing of ballots. **Appropriate selection procedures in LM Chapters 20 and 21 should be followed.** Purchase orders shall not be utilized to circumvent the public contract law or regulations.

(3) A purchase order for ~~more than $25,000 of trade related services must comply with all applicable conditions for~~**goods, materials or services relating to** public improvement ~~contracts.~~**and construction projects shall comply with and include all applicable contract provisions. .**

(4) The Director of Management Services or his or her delegate shall have the discretion to require a written contract in lieu of a purchase order, whenever he or she believes a contract to be in the best interests of the County.

(5) The Director of the Department of Management Services is delegated authority to execute all purchase orders. He or she may further delegate such authority in writing. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

STANDARD PROVISIONS

21.130 Standard Contract Provisions.
The following standard public contract clauses shall be included expressly or by reference where appropriate in every contract of the County.

(1) Contractor shall make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in the contract, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.

(2) Contractor shall pay promptly all contributions or amounts due to the State Industrial Accident Fund and the State Unemployment Compensation Fund from contractor or any subcontractor in connection with the performance of the contract.

(3) Contractor shall not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished, shall assume responsibility for satisfaction of any lien so filed or prosecuted and shall defend against, indemnify and hold County harmless from any such lien or claim.

(4) Contractor and any subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

(5) If contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the contractor or its surety from the obligation with respect to any unpaid claim. If the County is unable to determine the validity of any claim for labor or services furnished, the County may withhold from any current payment due contractor an amount equal to said claim until its validity is determined, and the claim, if valid, is paid by the contractor or the County. There shall be no final acceptance of the work under the contract until all such claims have been resolved.

(6) Contractor shall make payment promptly, as due, to any person, co-partnership, association or corporation furnishing medical, surgical, hospital or other needed care and attention, incident to sickness or injury, to the employees of contractor, of all sums which the contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing payment for such service.

(7) For all public contracts, with certain exceptions listed below, contractor shall not require or permit any person to work more than 10 hours in any one day, or 40 hours in any one week except in case of necessity, emergency, or where public policy

absolutely requires it, and in such cases the person shall be paid at least time and a half for:

(a) All overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday, or

(b) All overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday, and

(c) All work performed on the days specified in ORS 279.334.

For personal/professional service contracts as defined in ORS 279.051, instead of (a) and (b) above, a laborer shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Sections 201 to 209, from receiving overtime.

Contractor shall follow all other exceptions, pursuant to ORS 279.316 and ORS 279.334, including contracts for public improvements involving a collective bargaining agreement, contracts for services, and contracts for fire prevention or suppression.

Contractor must give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(8) The hourly rate of wage to be paid by any contractor or subcontractor to workers upon all public works shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279.348 to 279.365.

(9) The contractor, its subcontractors, if any, and all employers working under the contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, or otherwise be exempt under ORS 656.126.

(10) **As to public improvement and construction contracts,** Contractor shall | comply with all applicable federal, state, and local laws and regulations, including but not limited to those dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the contract. A list of entities who have enacted such laws or regulations is found in the Oregon Attorney General's Model Public Contract Rules Manual. OAR 137-030-0010, Commentary 4. If new or amended statutes, ordinances, or regulations are adopted, or the contractor encounters a condition not referred to in the bid document not caused by the contractor and not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws or regulations dealing with the prevention of environmental pollution or the preservation of natural resources, both the County and the contractor shall have all the rights and obligations specified in ORS 279.318 to handle the situation.

(11) The contract may be canceled at the election of County for any substantial breach, willful failure or refusal on the part of contractor to faithfully perform the contract according to its terms. The County may terminate the contract by written order or upon request of the contractor, if the work cannot be completed for reasons beyond the control of either the contractor or the County, or for any reason considered to be in the public interest other than a labor dispute, or by reason of any third party judicial proceeding relating to the work other than one filed in regards to a labor dispute, and when circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work. In either case, if the work is suspended but the contract not terminated, the contractor is entitled to a reasonable time

extension, costs and overhead per ORS 279.328. Unless otherwise stated in the contract, if the contract is terminated, the contractor shall be paid per ORS 279.330.

(12) If the County does not appropriate funds for the next succeeding fiscal year to continue payments otherwise required by the contract, the contract will terminate at the end of the last fiscal year for which payments have been appropriated. The County will notify the contractor of such non-appropriation not later than 30 days before the beginning of the year within which funds are not appropriated. Upon termination pursuant to this clause, the County shall have no further obligation to the contractor for payments beyond the termination date. This provision does not permit the County to terminate the contract in order to provide similar services or goods from a different contractor.

(13) By execution of this contract, contractor certifies, under penalty of perjury that:

(a) To the best of contractor's knowledge, contractor is not in violation of any tax laws described in ORS 305.380(4), and

(b) Contractor has not discriminated against minority, women or small business enterprises in obtaining any required subcontracts.

(14) Contractor agrees to prefer goods or services that have been manufactured or produced in this State if price, fitness, availability or quality are otherwise equal.

(15) Contractor agrees to not assign this contract or any payments due hereunder without the proposed assignee being first approved and accepted in writing by County.

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

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

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

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

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

notice or claim of copyright infringement received by the contractor with respect to any data delivered under this contract. The County shall have the right to modify or remove any restrictive markings placed upon the data by the contractor.

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

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

(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 contruction 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 ~~documents.~~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)*

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 - ~~$50,000,~~**$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 ~~$50,000,~~**$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)*

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)*

~~COUNTY ADMINISTRATOR DELEGATED~~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 ~~$50,000~~**$100,000** nor three years in length.

(c) Subcontracts and subgrants not exceeding ~~$50,000~~**$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 ~~$50,000~~**$100,000 with a potential term exceeding three years** and which may be terminated upon discontinued use of ~~software if longer than three years in length.~~**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 ~~$50,000~~**$100,000** nor three years in length.

(i) Emergency contracts which do not exceed ~~$50,000, with one exception,~~**$100,000, ,** and which are executed within 60 days of the declaration of the ~~emergency. See LM 20.255 and 20.260.~~**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 ~~279.023,~~**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 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)

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 ~~$50,000,~~**$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 ~~$50,000.~~**$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 ~~$50,000~~**$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 ~~$50,000~~**$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 not exceeding $5,000, the Department Directors are delegated authority to execute contract 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 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.

(2)	Regional Disposal Sites.		Wednesday-Saturday
	(a) Cottage Grove	8 a.m.-6 p.m.	
	(b) Creswell	8 a.m.-6 p.m.	
	(c) Oakridge	8 a.m.-6 p.m.	
	(d) Florence	8 a.m.-6 p.m.	
(3)	Rural Transfer Sites.[1]		
	(a) London	9 a.m.-5 p.m.	Saturday
	(b) Sharp's Creek	9 a.m.-5 p.m.	Saturday
	(c) Vida	9 a.m.-5 p.m.	Wednesday-Saturday
	(d) Low Pass	9 a.m.-5 p.m.	Friday-Saturday
	(e) Walton	9 a.m.-5 p.m.	Saturday
	(f) Mapleton	9 a.m.-5 p.m.	Saturday
	(g) Swisshome	9 a.m.-5 p.m.	Saturday
	(h) Marcola	9 a.m.-5 p.m.	Wednesday-Saturday
	(i) Rattlesnake	9 a.m.-5 p.m.	Wednesday-Saturday
	(j) Veneta	8 a.m.-6 p.m.	Wednesday-Saturday
	(k) McKenzie Bridge	9 a.m.-5 p.m.	Saturday
		1 p.m.-5 p.m.	Monday
		1 p.m.-5 p.m.	Thursday

(Revised by Order No. 96-4-2-8, Effective 7.1.96)

60.030 Hardship Exceptions.
The Director of the Public Works Department or his or her designated representative may make special arrangements for access to Lane County Solid Waste Disposal Sites during hours or days other than those indicated in LM 60.025 or 60.026 above when strict adherence to those hours or days would result in a serious hardship situation. *(Revised by Order No. 96-4-2-8, Effective 7.1.96)*

60.405 Disposal of Unclaimed Personal Property in the County's Possession and County-Owned Surplus Property.

(1) Policy. Except as otherwise provided **and pursuant to ORS 279A.070 and 279A.185**, unclaimed personal property in the County's possession and unneeded County-owned personal property shall be disposed of expeditiously under the centralized supervision of the County financial officer. Disposal shall be by auction, sealed bids, grant to other governmental bodies or non-profit organizations, or discarding. The policies in this section expressly do not apply to unclaimed, lost or abandoned property coming into the possession of the County, where disposition is specifically subject to State Statutes e.g., vehicles, including bicycles, intangible personal property, stolen property where the owner is known, seized concealed weapons, and property of a deceased person taken into possession by the County.

An "auction" for purposes of LM 60.405 may be electronic in accordance with procedures deemed necessary by the County Administrator, in his or her discretion, to protect the County's interest. Otherwise an auction shall be live.

(2) Certification of Inability to Determine Owner of Property. Before disposition of any unclaimed, lost or abandoned personal property not owned by the County but in possession of the County, the Director of the Department in possession of the property shall certify to the County financial officer that a reasonable effort to identify and locate the owner of the property has been unsuccessful. Upon such certification, and with the approval of the County financial officer, the certifying

[1] See footnote #**Error! Bookmark not defined.**.

Department may retain any specified property as County property for County use. The County financial officer, or his or her designee, shall establish procedures for storage of property certified to his or her Department for disposition by means other than retention by the certifying Department.

(3) Certification as Surplus Property. Before County-owned personal property may be disposed of as surplus, the appropriate Department Director shall certify that such property is surplus as to his or her Department to the County financial officer. The County financial officer, or his or her designee, shall establish procedures for storage of property so certified. If the certified surplus property consists of vehicles or motor-powered equipment in the possession of any Department, the County financial officer shall authorize sale by auction, sealed bid, direct sale, grant or discard by the possessing Department pursuant to LM 60.405(4) below.

(4) Disposal of Unclaimed Personal Property in the County's Possession and Certified County-Owned Surplus Property. The County financial officer or his or her designee, shall establish procedures for disposal of unclaimed, lost or abandoned personal property in the County's possession and certified County-owned surplus property to include at minimum the following:

(a) Circulating lists of selected items declared surplus to other County Departments, other governmental organizations, and non-profit groups. Cities and school districts located within Lane County shall receive preferential consideration for disposal of certified County-owned surplus vehicles and motor-powered equipment, as follows:

(i) The fair market value of the surplus vehicles and equipment shall be established by the Department Directors or their designee based upon prices obtained in prior years' auctions and upon other relevant information.

(ii) Before the final list of surplus vehicles and equipment for public sale is prepared, all of the school districts and incorporated cities within Lane County shall be notified in writing of the availability of such surplus vehicles and equipment.

(iii) The notice shall include, but need not be limited to, the list of surplus vehicles and equipment, the established fair market value for the surplus vehicles and equipment, the date by which an irrevocable school district or city offer to purchase surplus vehicles and/or equipment at the established fair market value must be submitted, and the date on which the purchase offers will be reviewed.

(iv) In the event that more than one city makes an offer on a vehicle or unit of equipment, the priority for approval of the purchase offers shall be in inverse order to the cities' populations. In the event that more than one school district makes an offer on a vehicle or unit of equipment, the priority for approval shall be in inverse order of the school district's enrollment. In the event that a city and a school district make an offer on a vehicle or unit of equipment, the city shall receive preference over the school district.

(v) The execution of certificates of title and bills of sale for surplus vehicles and equipment sold under this provision shall comply with ~~LM 21.260 or~~ 2.620(1)(h).

(vi) Once the school districts' and cities' offers have been met to the extent possible, any remaining offers shall be returned to the appropriate school districts and cities and the final list of any remaining surplus vehicles and equipment shall be prepared for public sale.

(b) By public auction, or

(c) By advertising pursuant to LM 21.105(~~23~~), for the purpose of sealed bids. For sales estimated at $~~50,000~~**100,000** or less, a public opening of bids is not

required as long as the department notifies bidders of its decision as soon as practicable and within a reasonable time. Acceptance or rejection of the sealed bid price will be at the discretion of Lane County.

(d) By discarding when in the judgment of the County financial officer, or his or her designee, the property is of such little value that it should be discarded.

(5) Disposition of Firearms. The Sheriff will return all stolen firearms in the Sheriff's possession to the rightful owner if the owner can be identified and located through reasonable effort. All seized concealed weapons shall be disposed of in accordance with State statute. The sheriff shall dispose of all other firearms by any reasonable means chosen by the Sheriff, which may include sale at auction, destruction, and donation to other agencies for such purpose as training in hunter safety.

(6) County Employees. Surplus County supplies and equipment shall not be made available to any County employee, except through public auction or sealed bid.

(7) Warranties. No warranty or guarantee shall be made as to the condition of any item offered for sale. All surplus property is offered for sale "as is and where is," without recourse against the County.

(8) Terms of Purchase. All property shall be paid for in full during the sale and legal title of ownership shall pass from the County to purchaser prior to removal from the site. *(Revised by Order No. 93-1-19-14, Effective 1.19.9; 04-6-30-12, 6.30.04)*