

W. 14.a.

AGENDA COVER MEMO

AGENDA DATE: March 9, 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 *jez*

AGENDA TITLE: In the Matter of Ratifying Lane Manual Chapter 20 Rules and Findings Covering Exemptions for Public Improvement Contracts and Amendments to Chapter 20 Rules

I. MOTION

A. Move to ratify Lane County's public contracting rules in Lane Manual Chapter 20 and the Findings adopted by the local contract review board (LCRB) and local contracting agency on February 16, 2005 for public improvement contracts;

B. Move to make clarifying amendments in LM Chapter 20:

(i) LM 20.085 General, to allow the County Administrator and Department Directors to further delegate authority granted by the LCRB and contracting agency in Chapter 20;

(ii) Correct a potential internal inconsistency created in LM 20.105(2) and its reference to LM 21.118 in that direct appointment of personal service contractors should be at a \$10,000 threshold in accordance with LM 21.118, except for architects, engineers, land surveyors or providers of related services on public improvement contracts where the threshold is \$25,000;

(iii) Add a definition for "non-public improvement" contract in LM 20.095 and one which is consistent with such definition in LM Chapter 21, and underline the word "Authorization" in this definition section;

(iv) To add "...and Bonds" to the title of LM 20.275.

II. ISSUE OR PROBLEM

On February 16, 2005 the Board of Commissioners, sitting both as the local contract review board (LCRB) and the local contracting agency adopted public contracting rules in Lane Manual Chapters 20 and 21. It was determined advisable to provide additional time for members of the public to comment on the rules exempting certain classes of public improvement contracts from formal competitive bidding in LM Chapter 20. In addition, LM 20.105(2) covering personal service contracts probably incorrectly implicitly states that direct appoint at the \$5,000 threshold applies (through its

reference to (1)(b) and (c)), when LM 21.118 which it also cites states that direct appointment is at \$10,000, except for certain architects, engineers, land surveyors, etc. for highway and bridge contracts where the threshold is \$25,000. It should also be clarified that when the LCRB provided in its rules that the Department Directors were delegated authority to take certain action, e.g., designating personal service contracts in LM 20.097, the Directors should also have the authority to further delegate that authority to other employees in their department. The need for further delegation authority is also true for the County Administrator.

III. DISCUSSION

A. Background and Analysis

At the time the Board considered re-adoption and amendments to Lane County's public contracting rules on February 16, it became advisable to provide additional time for members of the public to review the Findings for Lane Manual Chapter 20 rules, specifically to the extent these apply to public improvement contracts. Accordingly, notice was published in the Daily Journal of Commerce, a publication geared to the construction industry, stating that the Board would hold a public hearing on March 9 for the purpose of taking comments on the Findings for exemption from competitive bidding. In accordance with the statute, copies of the Findings were made available to the public by contacting the Board's Office. These Findings are the same ones reviewed and adopted by the Board on February 16. No member of the public requested an opportunity to review at the time of drafting this memo. The Board should ratify its February 16, 2005 decision to adopt Lane Manual Chapter 20 class exemptions from formal competitive bidding for public improvement contracts.

In the event, there is public comment on March 9 or the Board wishes to reconsider the Findings, the test for granting exemptions for public improvement contracts is set forth in Exhibit A Findings under 2.A. The test will not be reiterated in this memo.

There are a few additional amendments, if adopted by the Board would clarify existing Lane Manual Chapter 20 rules. First, there may be potential confusion in LM 20.105(2) concerning personal service contracts. This rule references 20.105(1)(a) - (c) which, in relevant part, covers direct selection of certain contractors. However, subsection(1)(b) and (c) sets \$5,000 as the threshold for direct selection when it was likely the Board's intent to allow direct selection at a \$10,000 threshold for most personal service contracts (and \$25,000 for certain architect, engineer, and land surveyor, etc. contracts). The amendments proposed in this agenda item clarify that the LM 21.118 rule, including its threshold limits applies in personal service contracts. The process for obtaining 3 quotes, and written quotes for contracts exceeding \$50,000 but not \$100,000, and a right to protest for contracts exceeding \$50,000 is already incorporated in to LM 21.118 for personal service contracts.

Second, it would be helpful to clarify as the Board has in most other instances, that when it delegates authority to the County Administrator or Department Directors, these public officers may further delegate such authority. In order to ensure a more efficient operation, it is likely necessary for these public officers to be able to delegate to employees they ultimately may supervise, directly or indirectly, through other managers and public officers.

It would be helpful (probably not required) to add a definition in LM Chapter 20.095 for "non-public improvement contracts" and one to match the definition existing in LM Chapter 21. Lane County's rules, including those in LM Chapter 21, to a significant extent are based on distinctions between public improvement and non-public improvement contracts, because the statutes make such distinctions. Also, in this definition section, it was a clerical error not to underline the word "Authorization" as it is the term being defined. It would also be helpful to correct a clerical error in not including "Bonds" in the title of LM 20.275 as the text of that rule covers bonds and bid security.

IV. ALTERNATIVES/OPTIONS

1. Approve Motion 1.A. above to ratify the Board's February 16, 2005 decisions to adopt Lane County's public contracting rules in Lane Manual Chapter 20 and accompanying Findings, specifically to the extent these apply to public improvement contracts. Approve Motion 1.B. to make clarifying amendments to Lane Manual Chapter 20 rules.

2. Not adopt Motion 1.A. which would not provide the extended opportunity for members of the public to review Lane County's rules and to provide comment. Not approve Motion 1.B. which would arguably leave certain ambiguity and clerical errors in LM Chapter 20 rules.

V. RECOMMENDATIONS

Alternative 1 is recommended.

VI. IMPLEMENTATION

Upon approval by the Board, the public comment period will have been extended and provided, LM Chapter 20 rules will continue to be in place with the clarifications.

VII. ATTACHMENTS

Board Order
Findings to Support Lane Manual Chapter 20 rules

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 RATIFYING LANE MANUAL
CHAPTER 20 RULES AND FINDINGS COVERING
IMPROVEMENT CONTRACTS AND AMENDMENTS
TO CHAPTER 20 RULES (LM 20.085, 20.095,
20.105, LM 20.275)**

WHEREAS, the Board, sitting as the local contract review board and the local contracting agency adopted public contract rules for Lane County on February 16, 2005;

WHEREAS, the Board adopted rules in Lane Manual Chapter 20, as well as Findings to support class exemptions and class special procurements;

WHEREAS, additional time has been provided for members of the public to review the Chapter 20 rules and Findings, specifically with regard to exemptions for public improvement contracts;

WHEREAS, certain amendments to Lane Manual Chapter 20 rules are advisable to correct potential inconsistency and to clarify;

NOW, THEREFORE, sitting as both the local contract review board and local contracting agency for Lane County, having re-examined the considered the 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 Commissioners hereby orders and finds as follows:

1. The Board ratifies the Exhibit A findings and conclusions in support of amendments to LM Chapter 20 public contracting rules and exemptions, and ratifies the adoption of Lane Manual Chapter 20 with respect to public improvement contracts;

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 60.405, as 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 contract agency, hereby orders that:

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

REMOVE THESE SECTIONS

20.085
as located on page 20-1
(a total of 1 page)

INSERT THESE SECTIONS

20.085
as located on page 20-1
(a total of 1 page)

REMOVE THESE SECTIONS

20.095

as located on pages 20-1 through 20-2
(a total of 2 pages)

20.105

as located on pages 20-4 through 20-5
(a total of 2 pages)

20.275

as located on page 20-16
(a total of 1 page)

INSERT THESE SECTIONS

20.095

as located on pages 20-1 through 20-2
(a total of 2 pages)

20.105

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

20.275

as located on page 20-16
(a total of 1 page)

Said sections are attached hereto and incorporated herein by reference. The purpose of these substitutions is to clarify and correct LM Chapter 20 to be consistent with LM Chapter 21 and with Lane County's practices.

Adopted this _____ day of _____ 2005.

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

APPROVED AS TO FORM

Date 3/1/05 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, i.e., 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) The County Administrator and Department Directors are authorized to further delegate the authority provided to them by these rules.

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

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

20.090 Findings.

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

20.091 Construction and Interpretation.

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

20.095 Definitions.

As used hereafter, unless the context requires otherwise:

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

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

Board means the Board of Commissioners of Lane County.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DESIGNATIONS, EXEMPTIONS AND AUTHORIZATIONS

20.096 Sole Source Designation.

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

20.097 Personal Service Contracts Designation.

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

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

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

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

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

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

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

20.098 Electronic Advertising.

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

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

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; 05-2-16-8, 2.28.05)*

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

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

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

(b) When the amount of the contract does not exceed \$5,000, 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 LM 21.117 and LM 21.118, and subject to any waiver by the County Administrator. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05)*

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

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

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

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

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

20.115 Life Cycle Costing.

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

- (2) (a) Prior to the time of writing specifications for the product, the County shall identify those factors which will have cost implications over the life of the product;
- (b) The written solicitation or invitation shall set out clearly the factors and methodology to be used in life cycle cost adjustments;
- (c) The results of life cycle costing adjustments shall be applied to the base and any applicable alternate bids, proposals or quotes, and the competitor whose total results in the lowest ownership cost, taking into account the life cycle costing adjustments, shall be considered the lowest responsible competitor. *(Revised by Order No. 98-12-2-1, Effective 12.2.98)*

20.120 Price Regulated Items or Services.

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

20.125 Price Set by Federal Contracts.

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

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

20.128 Client/Patient Services.

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

- (1) Reasonably believes after inquiring that no qualified providers are likely to participate in competitive selection; and
- (2) Will include on a list all qualified providers willing to consider taking client referrals on an as-needed basis; and
- (3) Will select a qualified provider from the list as a client need arises, based on criteria including, but not limited to, client and family needs, quality/type of appropriate care, availability of service at the time it is needed, and cost. *(Revised by Order 02-12-4-4, Effective 12.04.02)*

20.130 Request for Proposal.

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

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

(4) for any other contract which is not required to be formally competitively bid. The RFP process is set forth in LM 21.107. *(Revised by Order No. 98-12-2-1, Effective 12.2.98; 05-2-16-8, 2.28.05)*

20.135 Requirements and Price Agreements.

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

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

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

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

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

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

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

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

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

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

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

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

EXEMPTIONS AND AUTHORIZATIONS BY TOPIC

20.155 Advertising Contracts.

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

20.160 Construction Manager/General Contractor.

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

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

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

20.165 Copyrighted Materials.

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

20.170 Election Supplies and Services.

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

20.175 Equipment Repair and Overhaul.

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

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

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

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

20.180 Food Service Contracts.

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

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

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

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

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

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

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

20.190 Oil or Hazardous Material Removal.

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

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

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

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

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

20.195 Office Copier Purchases.

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

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

20.200 Laboratory and Medical Supplies.

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

20.205 Purchases of Hospital and Medical Supplies and Equipment.

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

20.206 Library and Reading Materials.

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

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

20.207 Purchases of Used Personal Property.

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

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

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

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

20.215 Brand Name or Mark Exemption Applications.

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

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

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

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

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

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

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

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

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

20.220 Copyrighted Materials.

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

20.225 Single Manufacturer or Service Provider.

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

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

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

20.230 Product Pre-Qualification.

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

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

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

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

COUNTY ADMINISTRATIVE SERVICES

20.235 Insurance Contracts.

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

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

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

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

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

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

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

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

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

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

20.240 Employee Benefit Insurance.

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

20.245 Investment Contracts.

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

20.250 Litigation Services.

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

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

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

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

EXEMPTIONS AND AUTHORIZATIONS AS CIRCUMSTANCES ARISE

20.255 Emergency Contracts.

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

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

(1) The LCRB may exempt a particular public improvement contract, or a category of contracts, from the bidding requirements of ORS 279C.335, which are not otherwise exempt under these rules. The request for exemption shall contain the following information 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 from the Department. The LCRB shall provide written reasons for the decision in a final order, and include any allocation of costs for the hearing.

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

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

(b) Unsatisfactory record of performance;

(c) Unsatisfactory record of integrity;

(d) Not legally qualified to contract;

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

(f) Whether contractor has been debarred.

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

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

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

(c) Conviction under state or federal antitrust statutes;

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

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

BID SECURITY AND BONDS

20.275 Bid Security and Bonds.

(1) Contracts, other than those for public improvements and construction contracts as defined in ORS 279C.320(1), are exempt from the bid security requirements of ORS 279B.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; 05-2-16-8, 2.28.05)*

LOCAL CONTRACT REVIEW BOARD

PUBLIC CONTRACT EXEMPTIONS, DESIGNATIONS, SPECIAL PROCUREMENTS, AND RULES

20.085 General.

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

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

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

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

20.090 Findings.

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

20.091 Construction and Interpretation.

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

20.095 Definitions.

As used hereafter, unless the context requires otherwise:

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

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

Board means the Board of Commissioners of Lane County.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DESIGNATIONS, EXEMPTIONS AND AUTHORIZATIONS

20.096 Sole Source Designation.

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

20.097 Personal Service Contracts Designation.

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

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

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

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

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

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

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

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

20.098 Electronic Advertising.

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

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; 05-2-16-8, 2.28.05)*

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

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

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

(b) When the amount of the contract does not exceed \$5,000, 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 LM 21.117 and LM 21.118, and ~~(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; 05-2-16-8, 2.28.05)*

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

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

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

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

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

20.115 Life Cycle Costing.

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

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

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

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

20.120 Price Regulated Items or Services.

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

20.125 Price Set by Federal Contracts.

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

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

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

20.128 Client/Patient Services.

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

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

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

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

20.130 Request for Proposal.

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

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

20.135 Requirements and Price Agreements.

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

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

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

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

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

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

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

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

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

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

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

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

EXEMPTIONS AND AUTHORIZATIONS BY TOPIC

20.155 Advertising Contracts.

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

20.160 Construction Manager/General Contractor.

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

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

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

20.165 Copyrighted Materials.

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

20.170 Election Supplies and Services.

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

20.175 Equipment Repair and Overhaul.

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

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

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

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

20.180 Food Service Contracts.

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

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

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

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

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

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

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

20.190 Oil or Hazardous Material Removal.

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

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

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

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

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

20.195 Office Copier Purchases.

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

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

20.200 Laboratory and Medical Supplies.

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

20.205 Purchases of Hospital and Medical Supplies and Equipment.

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

20.206 Library and Reading Materials.

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

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

20.207 Purchases of Used Personal Property.

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

PRODUCTS SPECIFYING BRAND NAME

20.210 Specification of Particular Brand Names or Products.

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

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

20.215 Brand Name or Mark Exemption Applications.

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

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

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

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

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

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

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

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

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

20.220 Copyrighted Materials.

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

20.225 Single Manufacturer or Service Provider.

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

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

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

20.230 Product Pre-Qualification.

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

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

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

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

COUNTY ADMINISTRATIVE SERVICES

20.235 Insurance Contracts.

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

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

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

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

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

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

(i) The County shall make reasonable efforts to inform known insurance agents in the competitive market area of the subject matter of the contract, and to solicit proposals for providing the services required in connection with the contract. Such efforts shall include public advertisements pursuant to LM 21.105(3). If the amount

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of annual premium for insurance, other than employee benefits insurance is likely to exceed \$100,000 per year, such notice shall also include a public advertisement in at least one insurance trade publication of general circulation in the state;

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

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

20.240 Employee Benefit Insurance.

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

20.245 Investment Contracts.

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

20.250 Litigation Services.

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

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

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

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

EXEMPTIONS AND AUTHORIZATIONS AS CIRCUMSTANCES ARISE

20.255 Emergency Contracts.

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

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

(1) The LCRB may exempt a particular public improvement contract, or a category of contracts, from the bidding requirements of ORS 279C.335, which are not otherwise exempt under these rules. The request for exemption shall contain the following information 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 from the Department. The LCRB shall provide written reasons for the decision in a final order, and include any allocation of costs for the hearing.

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

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

(b) Unsatisfactory record of performance;

(c) Unsatisfactory record of integrity;

(d) Not legally qualified to contract;

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

(f) Whether contractor has been debarred.

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

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

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

(c) Conviction under state or federal antitrust statutes;

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

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

BID SECURITY AND BONDS

20.275 Bid Security and Bonds.

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

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(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; 05-2-16-8, 2.28.05)*