

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO. 21-06-08-02

IN THE MATTER OF AMENDING LANE
MANUAL CHAPTER 20 FOR
ELECTRONIC BIDDING, INCREASED
CONTRACTING OPTIONS, AND
IMPROVED CONTRACT PRACTICES

WHEREAS, Lane Manual chapter 20 sets forth the requirements for soliciting, approving, accepting, and contracting for the receipt of grants and provision of services by independent contractors, to ensure that such practices comply with Oregon law and provide for competition in the purchase of goods and services, and

WHEREAS, the County's grant and contracting rules require periodic updating to stay current with changes in the law, best practices, and the broadest and most efficient methods for entering into grants and contracts, and

WHEREAS, the proposed changes will reduce the amount of time County staff must spend on grants and procurements, while maintaining independent control on staff's use of the new procedures and rules, and

WHEREAS, the County desires to modernize the language used in the chapter generally;

NOW THEREFORE, The Board of County Commissioners of Lane County ORDERS as follows:

Effective July 1, 2021, Lane Manual Chapter 20 is amended by removing, substituting and adding the following sections:

REMOVE THESE SECTIONS

20.055 Policy on Electronic Procurement Procedures
20.350 Individual and Class Special Procurements.
20.420 Methods of Source Selection.

20.450 Bidding and Proposal Procedures.

20.590 Standard Public Contract Provisions
20.595 Standard Public Contract Provisions for Public Improvements.
20.630 Limitations on Contract Amendments.
20.650 Delegation of Authority to Execute Grant Applications and Accept Grants.
20.660 County Administrator's Authority to Execute Contracts

INSERT THESE SECTIONS

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20.420 Methods of Source Selection.
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If any section, subsection, sentence, clause, phrase or portion of this Order or the referenced Lane Manual provisions are for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion is deemed a separate, distinct, and independent provision, and such holding does not affect the validity of the remaining portions.

Said sections are attached hereto and incorporated herein by reference. The purpose of this substitution is to update rules and policies pertaining to County grants and public contracting.

ADOPTED this 08th day of June, 2021.



Joe Berney, Chair
Lane County Board of Commissioners

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

Services. Work performed to meet a demand or need, as distinguished from Goods. See ORS 279A.010(1)(kk).

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

CONTRACTING POLICIES

20.050 Policy on Competition.

It is the policy of Lane County to encourage open and impartial competition in the procurement of goods and services, in accordance with the requirements of ORS Chapter 279 and the Public Contracting Code.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.055 Policy on Electronic Procurement Procedures ~~Advertising.~~

(1) The LCRB has determined that it is more cost effective for the County to publicly advertise bids and all other public notices related to ~~competitive~~ procurement processes, ~~including those for public improvement contracts, by publishing the advertisement electronically~~ using the internet, except where Oregon law requires advertising in a newspaper of general circulation in Lane County or a statewide trade publication. ~~The same determination applies to all other public notices required to be provided under the County Rules or the Public Contracting Code.~~

(2) The County may, at its discretion, distribute all materials related to a procurement exclusively by electronic means, and may direct the receipt of all bids, proposals, and related documents exclusively by electronic means.

(3) The County may utilize third-party internet services for distribution of procurement-related materials and receipt of bids and proposals.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.060 Policy on Performing Services for Other Public Agencies.

Under the authority of Chapter II, Section 8 of the Lane County Home Rule Charter and ORS Chapter 190, it is the policy of Lane County to offer services to other public agencies where feasible, providing that the County must be compensated for the complete cost of providing all intergovernmental services. The Board must approve any waiver of the policy for compensation.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.065 Policy on Bid Security and Bonds.

(1) Contracts, generally. All contracts, other than those for public improvements and construction contracts as defined in ORS 279C.320(1), are exempt from the bid security requirements of ORS 279B.050 and performance and payment bond requirements, provided that the County may, in its discretion, require bid security or performance and payment security.

(2) Contracts for public improvements and construction. For contracts for public improvements and construction contracts as defined in ORS 279C.320(1):

(a) Except as provided in subsection (b) below, the County will require that bidders and contractors for public improvements and construction contracts provide:

(i) Not less than 5% bid security meeting the requirements of ORS 279C.365(5),
and

(ii) Performance and payment bonds meeting the requirements of ORS 279C.380.

(b) Bids and contracts which do not exceed \$100,000 (except for highway, bridge and other transportation projects which do not exceed \$50,000) are exempt from bid security, and performance

EXEMPTIONS FROM COMPETITIVE SELECTION FOR ALTERNATIVE CONTRACTING METHODS

20.350 Individual and Class Special Procurements.

(1) For contracts that are not related to public improvements under ORS chapter 279C, ~~the County LCRB~~ may ~~utilize~~**approve** a special procurement for a particular ~~non-public improvement~~ contract, or a ~~class~~**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.070), and intermediate procurement (ORS 279B.070). Approval of a special procurement must be made in accordance with the requirements of ORS 279B.085 **(4) and (5)**, and any protest of such approval must be made in accordance with ORS 279B.400.

(2) Authority to approve an individual special procurement is granted to:

- (a) Each Department Director, for contracts not greater than \$50,000.
- (b) The County Administrator, for contracts not greater than \$150,000.
- (c) The LCRB, for contracts greater than \$150,000.

(3) Authority to approve a class special procurement is granted to:

- (a) The County Administrator, for classes of contracts where the total of all contracts within the class is not greater than \$150,000.
- (b) The LCRB, for classes of contracts where the total of all contracts within the class is greater than \$150,000.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.355 Competitive Bidding Exemptions for Public Improvement Contracts

(1) Contracts Subject to Exemption. Upon approval of the findings in (2)(c) below, the LCRB may authorize an exemption from competitive bidding requirements for any of the following types of public improvement contracts:

- (a) Construction Manager/General Contractor (CM/GC), as defined in ORS 279C.332 and OAR 137-049-0610;
- (b) Design Build, as defined in OAR 137-049-0610; and
- (c) Energy Savings Performance Contracting (ESPC), as defined in ORS 279A.010 and OAR 137-049-0610.

(2) Approval of Findings. Prior to exempting a contract from competitive bidding requirements, the LCRB must:

- (a) Hold a public hearing, in accordance with ORS 279C.335(5);
- (b) Give at least 14 days' notice of the public hearing, in accordance with ORS 279C.335(5)(b) and (c), and
- (c) Approve written findings that:
 - (i) It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts, and
 - (ii) The awarding of public improvement contracts under the exemption will likely result in substantial cost savings to the County or the public. In making this finding, the LCRB may consider the type, cost and amount of the contract, the number of persons available to bid, and must consider all required factors in ORS 279C.335(2)(b), to the extent applicable.

(3) Post Project Evaluation. Upon completion and final payment for any public improvement project in excess of \$150,000 for which an exemption was authorized under this section, the contracting Department shall prepare and deliver to the LCRB an evaluation of the public improvement contract. The evaluation must, at a minimum, meet the requirements of ORS 279C.335(b) and (c), and should include: financial information including comparing estimates with actual cost; any Guaranteed Maximum Price

(GMP); changes and actual costs; successes and failures during design, engineering and construction; and assessment of the use of method as compared to any exemption findings.

(Revised by Order No. 15-09-01-05, Effective 10-15-15; Revised by Order No.19-05-21-03, Effective 05-21-19)

20.360 Construction Manager/General Contractor.

If the County conducts a procurement for a Construction Manager/General Contractor pursuant to an exemption granted under LM 20.251, the procurement must be conducted in accordance with the model rules adopted by the Attorney General under ORS 279A.065(3).

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.365 Design - Build.

If the County conducts a procurement for a Design-Build contractor pursuant to an exemption granted under LM 20.251, the procurement may be conducted following a request for proposal procedure in accordance with LM 20.420(1) and utilizing the criteria in OAR 137-049-0670.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.370 Energy Savings Performance Contracting.

If the County conducts a procurement for a an Energy Savings Performance Contractor (ESPC) pursuant to an exemption granted under LM 20.251, the procurement may be conducted following a request for proposal procedure in accordance with LM 20.420 and utilizing the criteria in OAR 137-049-0680.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

SOLICITATION PROCEDURES

20.410 Preliminary Procedures and Prequalification.

In preparation for competitive selection, the County may:

(1) Issue a request for information, request for letters of interest, request for qualifications, or other preliminary documents, for the purpose of determining the availability and interest of possible vendors for the goods or services proposed.

(2) Allow or require prequalification of bidders or proposers, either through an advertised process setting forth the procedure and criteria for prequalification prior to issuance of competitive procurement, or by inclusion of the requirements in the invitation to bid. The public officer has authority to determine when prequalification may be required for a specific contract or class of contracts, and may determine the prequalification procedure in accordance with the requirements of ORS 279B.120 and 279B.125, and the requirements of ORS 279C.430 for public improvements projects. Determination of prequalification must be made in accordance with ORS 279B.120(2), or the requirements of ORS 279C.375(3)(b) for public improvements projects.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.420 Methods of Source Selection.

Unless exempted under LM 20.110 to 20.450, all contracts for goods or services must be awarded by competitive selection. Notwithstanding such exemption, the public officer may use competitive selection to select a vendor for any type of goods or services except those relating to purchases from qualified rehabilitation facilities in accordance with LM 20.115.

(1) Competitive Selection. The County may use any of the following procedures to procure goods and services through competitive selection:

(a) Competitive Bidding pursuant to the requirements for competitive sealed bidding in ORS 279B.055.

(b) Request for Proposals (RFP) pursuant to the requirements for competitive sealed proposals in ORS 279B.060.

(c) Competitive Quotes (CQ) pursuant to the requirements for intermediate procurements in ORS 279B.070. CQs for contracts greater than \$50,000 in value, the County must prepare a written solicitation document.

(2) Direct Selection Subject to an Exemption. For procurement of goods or services that are exempt from the requirement for competitive selection pursuant to the requirements of LM 20.110 to 20.450, the public officer is authorized to make the selection that best serves the County's interests, taking into account price, qualifications, schedule, and other factors.

(3) Contracts Relating to Public Improvements. Specific requirements apply to procurements and contracts relating to both the design ~~and~~ the construction of public improvements:

(a) Construction. Contracts relating to the construction of public improvements may be awarded using any competitive selection procedure described in subsection (1) of this section, and must also comply with the requirements of ORS 279C.300 through 279C.870 and the County Rules.

(b) Building Construction. Procurements for building construction contracts must comply with the requirements of the Board's Community Benefits Bidding policy, if applicable to the procurement.

(c) Design-Related Services. Contracts relating to the design of public improvements must comply with the requirements of ORS 279C.100 through 279C.120, in addition to the requirements of the County Rules.

(Revised by Order No. 15-09-01-05, Effective 10-15-15; Revised by Order No. 19-05-21-03, Effective 05-21-19)

20.430 Personal Services Contract Selection Procedures.

(1) Pursuant to ORS 279A.055, a contract may be designated as a personal service contract if the contractual relationship is based primarily on a special trust and confidence between the County and contractor; or the type and quality of services to be provided under the contract are based primarily on the contractor's special or unique expertise or knowledge; particular experience; or the exercise of discretionary judgment skills unique to the service provider.

(a) Contracts that may be designated personal service contracts include, but are not limited to, contracts for: expert consulting, appraisal, timber cruising, licensed professionals (including attorneys, auditors, accountants, physicians, physician assistants, nurse practitioners, nurses, therapists, realtors and engineers), research, polling, education, and artwork.

(b) Contracts for services relating to planning, designing, engineering, or overseeing of public improvements are not subject to the requirements of this section. Selection procedures for selection of consultants for such services must be made in the manner provided in section LM 20.435.

(c) Contracts that are not personal services contracts include contracts for services that can generally be performed by an experienced competent person, whether the person is required to be licensed or not, including but not limited to contracts for: trade-related activity (including plumbing and electrical work), custodial services, document filing and storage, general labor, and repairs and maintenance services for buildings or equipment.

~~(e) Pursuant to ORS 279C.100 through 279C.120, contracts for services relating to planning, designing, engineering, or overseeing of public improvements are designated by law as personal services. These include architectural, engineering, photogrammetric mapping, transportation planning, and land surveying services, and related services as defined in ORS 279C.100(8).~~

(2) If a contract has been designated as a personal services contract **under this section**, the County may use an RFP process or a CQ process, depending upon the contract amount.

(a) Evaluation factors should include, but not limited to, the proposed contractor's qualifications, abilities, licenses and certifications, capacity and capability, past record of performance, cost control, quality of work, financial resources, availability, and familiarity with the area.

(b) The process may include, as appropriate, written submissions, demonstrations, and interviews. For contracts in excess of \$150,000, the process should include interviews of not fewer than 2 of the most qualified prospective contractors.

~~(3) For personal services related to the planning, designing, engineering, or overseeing of public improvements, the RFP or CQ process must comply with the requirements of ORS 279C.100 through 279C.120, including the prohibition on soliciting information regarding price until after a contractor has been selected.~~

(Revised by Order No. 15-09-01-05, Effective 10-15-15; Revised by Order No.19-05-21-03, Effective 05-21-19)

20.435 Selection Procedures for Planning, Designing, Engineering, and Overseeing of Public Improvements

Pursuant to ORS 279C.100 through 279C.120, solicitations and contracting with a consultant for architectural, engineering, photogrammetric mapping, transportation planning, land surveying, and related services as defined in ORS 279C 100(8) in accordance with the following procedures:

(1) The County may contract directly with a consultant if the estimated fee to be paid under the contract does not exceed \$100,000.

(2) The County may contract with a consultant using the Informal Selection Procedure set forth in OAR 137-048-0210 if the estimated fee to be paid under the contract does not exceed \$250,000.

(3) The County may contract with a consultant through a Price Agreement established in the manner set forth in OAR 137-048-270.

(4) The County may contract with a consultant following the selection procedures set forth in ORS 279C.110.

20.440 Requirements Contract Selection Procedures.

If the contract for goods or services will be a requirements contract, the County may use any competitive selection process for selection of a contractor, provided the process is in compliance with the requirements of this rule.

(1) In conducting competitive selection, the Invitation or Request must:

(a) State whether the County will consider awarding and executing more than one contract for a single type of service or good, and

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

(2) In addition, the conditions of the Invitation or Request must provide:

(a) A stated minimum or maximum value of goods or services to be purchased under the contract,

(b) The term of the contract, which, including renewals, may not exceed 3 years, and must allow the County to cancel the contract upon 30 days written notice, and

(c) An estimated dollar amount of purchases to be made during the term of the contract.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.450 Bidding and Proposal Procedures.

The bidding and proposal procedures in this section are applicable to Competitive Bidding, RFPs, and CQs under LM 20.520(1). When applied to the procedures for RFPs or CQs, the terms related to "proposals" or "quotes" must be substituted for the terms related to "bids" as used in this section.

(1) Clarifications to Bidding Documents. If a bidder finds discrepancies or omissions in the ~~drawings or~~ bid documents, or is in doubt as to their meaning, the bidder must immediately notify the public officer. If the public officer believes a clarification is necessary, an addendum will be issued in writing not less than ~~7248~~ hours prior to the deadline for bid, ~~unless the public officer determines that a shorter period~~

is in the public interest. The terms of any addenda issued are to be included in the bidder's proposal, and will become part of the contract documents.

(2) Submission and Receipt of Bids.

(a) To be received and considered, all bids must be in writing and signed by the bidder or the bidder's authorized representative. Bids ~~required or allowed to be submitted as sealed bids in paper copy must be submitted in a sealed envelope. Bids required or allowed to be submitted electronically~~ must be submitted in the manner specified in the ~~invitation to bid documents~~.

(b) By signing and returning a bid, the bidder acknowledges ~~that the bidder~~ has read and understands the terms and conditions applicable to the ~~solicitation document bid documents~~ and that the ~~bidder~~ accepts and agrees to be bound by the terms and conditions of the contract, including to perform the scope of work and meet the performance standards.

(c) ~~Modifications.~~—A bidder may not modify its bid after submission. A bidder may withdraw its bid at any time prior to the deadline set for receipt of bids, and may submit a replacement bid in accordance with the required bid submission procedures. ~~The County may release an unopened bid which has been withdrawn to the bidder or authorized representative after voiding any date and time stamp mark.~~

(d) ~~Late Bids.~~ The County will not consider any bid received after the time and date stated in the bid documents for receipt of bids. ~~bid opening in the invitation to bid.~~

(e) ~~Bids Irrevocable.~~—All bids must be irrevocable for ~~not less than~~ 30 days from the ~~deadline for submission~~ time of bid opening, unless otherwise stated in the ~~invitation to bid documents~~. ~~In addition,~~ ~~the bids of all the three lowest bidders will remain~~ be irrevocable and binding, and any bid securities ~~will~~ ~~may~~ be retained by the public officer, until a contract has been executed ~~contract~~ and the contractor has provided any and all required performance bonds and insurance certificates.

(3) Opening of Bids and Proposals.

(a) The public officer may not examine any bid prior to opening. Bids properly submitted will be opened publicly by the public officer at the time, date and place designated in the ~~invitation to bid documents~~. To the extent practicable, the public officer ~~will~~ ~~must~~ read aloud the amount of the bid, the name of the bidder and such other information as the public officer considers appropriate, ~~and~~ record the same, ~~and post the bid results~~. If the offers are a proposals submitted in response to an RFP, the proposals may be opened in a manner to avoid revealing contents to competing proposers in accordance with ORS 279B.060(6)(a).

(b) All bids submitted are subject to public inspection, with the exception of:

(i) Information covered by an exception in public records law pursuant to ORS 279B.055(5)(c). Each bidder, by submitting a bid, acknowledges that it is the bidder's responsibility to defend and indemnify the County for any costs associated with establishing such an exemption. The bidder's act in submitting a bid constitutes its acceptance of this responsibility.

(ii) Proposals submitted in response to a request for proposals under LM 21.113, in accordance with ORS 279B.060(6).

(c) The bid record must be open to public inspection immediately following the issuance of a notice of intent to award.

(4) Evaluation of Bids and Proposals. Bid evaluation will be conducted by the public officer in cooperation with the department requesting the bid, if any, based on compliance with the requirements established in the ~~invitation to bid documents~~ and these Rules, including:

(a) Application of preferences for Oregon goods and services, resident bidders, recycled goods, and printing, pursuant to ORS 279A.120 to 279A.128 and ORS 282.210.

(b) Investigation and determination of responsibility requirements pursuant to ORS 279B.110.

(c) Where the bid includes more than one price or alternative, any calculation and evaluation necessary to determine the lowest responsive bid. The County may use the methods described in OAR 137-049-0380(2) or such other method as the public officer deems reasonable.

(d) For public improvement contracts, the bidder responsibility criteria enumerated in ORS 279C.375.

(e) Proposals submitted in response to an RFP will be evaluated in accordance with the criteria stated in the RFP.

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

(6) Cancellation of Solicitation or Rejection of Bids.

(a) The County reserves the right to cancel a solicitation, or reject any or all bids in whole or in part when the cancellation or rejection is in the County's best interests as determined by the County. This includes rejecting any bid not in compliance with all prescribed public bidding procedures and requirements, and for good cause, rejecting all bids upon a finding that it is in the public interest to do so. See OAR 137-049-0440(5), OAR 137-047-0640, OAR 137-047-0650.

(b) If all bids are rejected in whole or in part, the County may:

(i) Advertise for new bids, or

(ii) Solicit supplemental information only from those bidders that submitted bids, if in the public officer's judgment it is unlikely readvertising publicly would lead to greater competition.

(7) Award. The County will award contracts only to responsible contractors possessing the ability to perform. In determining whether a contractor is responsible, the County will consider the contractor's record of integrity, compliance with public policy, past performance, and technical and financial resources.

(8) Notice of Intent to Award. The County must provide written notice of its intent to award a contract to a particular bidder or bidders at least seven (7) days before the award, unless the public officer determines that a shorter notice period is necessary under the circumstances. The notice of intent may be given by ~~electronic posting on the County's internet website, in the location used for bid solicitations or~~ **may be sent directly to all bidders that submitted bids.**

(9) Retention of Records. The contracting department must maintain records sufficient to detail the history of each procurement, and maintain such records for the period required in OAR 166-150-0005 et seq. Such records include, but are not limited to: the rationale for the method of procurement, determination of exemptions or exceptions, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

TYPES OF CONTRACTS AND AGREEMENTS

20.510 County Contracts, Generally.

Except for small purchases, all County contracts require a written contract signed by a duly authorized delegate, or a purchase order authorized under these rules.

(1) Identification of Contract Parties.

(a) The name "Lane County" must be used as the County's title when entering into any agreement, preferably followed by the words, "a political subdivision of the State of Oregon". If the

(a) The terms of a grant agreement may specify that specific sub-grants be entered into by the County with third parties identified in the grant application or agreement. The grant may provide that the County merely passes through the grant funds received, in whole or in part, without modifying any terms or conditions of the original grant, except as related to County administration and oversight of the grant conditions.

(b) If the terms of a grant do not specify the sub-grantees, and the County is entering into an agreement with a vendor to perform services defined by the County, then that agreement between the County and the vendor generally will be a goods and/or services contract or, if with a public agency, an intergovernmental agreement.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.555 County Grants.

The County may grant funds to a private entity for the purposes of supporting objectives or activities proposed by the entity. If the County requires no further obligation from the grantee beyond use of the funds in compliance with the restrictions placed upon the use of the funds, documentation of the County Grant may be provided in the grant award letter, in a form approved by the Office of Legal Counsel.

(Revised by Order No. 15-09-01-05, Effective 10-15-15; Order no. 19-08-20-03, Effective 8-20-19)

20.560 Revenue Contracts.

The County may enter into contracts to provide services in exchange for payment using an agreement appropriate for the type of services to be provided, in a form approved by the Office of Legal Counsel. However, a contract that includes obligations of the other party that extend beyond payment or documentation must include the County's standard contract conditions.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

STANDARD CONTRACT PROVISIONS

20.585 Standard Lane County Contract Provisions.

The Office of Legal Counsel will establish standard contract provisions to be included in County contracts, and must publish the standard contract provisions on the Department's Intranet webpage.

20.590 Standard Public Contract Provisions.

The following standard public contract clauses must be included expressly or by reference in every County contract:

- (1) Pursuant to ORS 279B.220 or ORS 279C.505, as applicable, Contractor must:
 - (a) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.
 - (b) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.
 - (c) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.
- (2) Pursuant to ORS 279B.230 and 279C.530, as applicable:
 - (a) Contractor must promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

(b) All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

(3) Pursuant to ORS 279B.235, 279C.520, and 279C.540, as applicable, in performing the work of this Contract:

(a) A person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, the employee shall be paid at least time and a half pay:

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

(ii) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(iii) For all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

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

(c) If this Contract is for personal services as described in ORS 279A.055, an employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

(d) If this Contract is for services at a county fair or for other events authorized by a county fair board, employees must be paid at least time and a half for work in excess of 10 hours in any one day or 40 hours in any one week. An employer shall give notice in writing to employees who work on such a contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that employees may be required to work.

(e) Except as provided in subsection (d) of this section, if this Contracts is for services, all persons employed under the Contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater. An employer shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(f) This section (3) does not apply if the Contract is strictly for goods or personal property.

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

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

(6) Contractor, any subcontractors, and all employers working under the contract are subject employers under the Oregon Workers' Compensation Law and must comply with ORS 656.017, unless exempt under ORS 656.027.

~~(7) Unless otherwise provided by the contract or law, the County has a right to exercise the following remedies for Contractor's failure to perform the scope of work or failure to meet established performance standards:~~

- ~~_____ (a) Reduce or withhold payment;~~
- ~~_____ (b) Require Contractor to perform, at Contractor's expense, additional work necessary to perform the identified scope of work or meet the established performance standards; or~~
- ~~_____ (c) Declare a default, terminating the public contract and seeking damages and other relief available under the terms of the public contract or other applicable law.~~
- ~~_____ (8) The Contract may be canceled at the election of the County for any substantial breach, willful failure or refusal on the part of Contractor to faithfully perform the contract according to its terms. The County may terminate the contract by written order or upon request of Contractor, if the work cannot be completed for reasons beyond the control of either Contractor or the County, or for any reason considered to be in the public interest other than a labor dispute, or by reason of any third party judicial proceeding relating to the work other than one filed in regards to a labor dispute, and when circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work~~
- ~~_____ (9) If the County does not appropriate funds for the next succeeding fiscal year to continue payments otherwise required by the contract, the contract will terminate at the end of the last fiscal year for which payments have been appropriated. The County will notify Contractor of such non appropriation not later than 30 days before the beginning of the year within which funds are not appropriated. Upon termination pursuant to this clause, the County will have no further obligation to Contractor for payments beyond the termination date.~~
- ~~_____ (10) Unless otherwise provided by the contract or law, Contractor agrees that the County and its duly authorized representatives may have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts, copies and transcripts. Contractor shall retain and keep accessible such books, documents, papers, and records for a minimum period of (6) six years after the County makes final payment on this Agreement. Copies of applicable records must be made available upon request, and payment of copy costs is reimbursable by the County.~~
- ~~_____ (11) Contractor must meet the highest standards prevalent in the industry or business most closely involved in providing the goods or services or personal services covered by this Agreement, unless the County has good cause and the contract provides otherwise. However, with respect to professional services provided under the Contract, Contractor must possess the learning, skills, and experience ordinarily possessed by similar professionals in the community, and use reasonable care and diligence and professional judgment in carrying out the work.~~
- ~~_____ (12) Contractor shall make all provisions of the contract with the County applicable to any subcontractor performing work under the contract.~~
- ~~_____ (13) The County will not be responsible for any losses or unanticipated costs suffered by Contractor as a result of the contractor's failure to obtain full information in advance in regard to all conditions pertaining to the work.~~
- ~~_____ (14) Contractor certifies that Contractor has all necessary licenses, permits, or certificates of registration necessary to perform the contract and further certifies that all subcontractors will likewise have all necessary licenses, permits or certificates before performing any work. The failure of Contractor to have or maintain such licenses, permits, or certificates is grounds for rejection of a bid or immediate termination of the contract.~~
- ~~_____ (15) Contractor may not commence any work until Contractor obtains, at Contractor's own expense, all required insurance as specified by Lane County. Such insurance must have the approval of Lane County as to limits, form, and amount.~~
- ~~_____ (16) Pursuant to ORS 279A.120, if Contractor is a nonresident bidder and the Contract price exceeds \$10,000, Contractor must promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the County will make final payment on the contract.~~

~~— (17) Pursuant to ORS 279B.225, if the Contract includes lawn and landscape maintenance Contractor must salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost effective.~~

~~— (18) Contractor may not commence any work until Contractor furnishes evidence of all required insurance specified by the County, and has obtained the County's approval as to limits, form, and amount. Coverage must include an Additional Insured Endorsement that includes completed operations, and which is primary and non-contributory with any other insurance and self insurance.~~

~~(Revised by Order No. 15-09-01-05, Effective 10-15-15)~~

20.595 Standard Public Contract Provisions for Public Improvements.

The following standard public contract clauses must be included expressly or by reference in every County contract for public improvements.

(1) Pursuant to ORS 279C.505, Contractor must:
(a) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

(b) Demonstrate that an employee drug testing program is in place.

(2) Pursuant to ORS 279C.510(1), Contractor must salvage or recycle construction waste and demolition debris, if feasible and cost-effective.

(3) Pursuant to ORS 279C.515:

(a) If Contractor fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to the contractor or a subcontractor in connection with the public improvement contract as the claim becomes due, the County may pay the amount of the claim to the person that provides the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of the contract.

(b) If Contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from the contracting agency or Contractor, Contractor or first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is 9 percent per annum. The amount of interest may not be waived.

(c) If Contractor or a subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

(d) Paying a claim in the manner authorized in this section does not relieve the contractor or the contractor's surety from obligation with respect to an unpaid claim.

(4) Pursuant to ORS 279C.540, a person may not be required or permitted to labor more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity or emergency or when the public policy absolutely requires it, in which event, the person so employed for excessive hours shall receive at least time and a half pay in accordance with ORS 279C.540(1) to (5).

(5) Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to those dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the contract. A list of entities that have enacted such laws or regulations is found in the Oregon Standard Specifications for Construction, Section 00170.01 currently in effect and published through Oregon Department of Transportation. If new or amended statutes, ordinances, or regulations are adopted, or Contractor encounters a condition not referred to in the bid document not caused by Contractor and not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws or regulations dealing with the prevention of

environmental pollution or the preservation of natural resources, Contractor shall immediately give notice to the County.

The County and Contractor will have all the rights and obligations specified in ORS 279C.525 to handle the situation.

(6) If the County suspends Contractor's work but does not terminate the contract, Contractor is entitled to a reasonable time extension, costs and overhead in accordance with ORS 279C.655. If the contract is terminated by mutual agreement, Contractor will be paid in accordance with ORS 279C.660.

(7) The Oregon Standard Specifications for Construction adopted by the State of Oregon, and the Manual on Uniform Traffic Control Devices, each as is currently in effect, are applicable to all non-building construction projects, except as modified by the bid documents.

(8) Retainage of five percent (5%) of the amount of any progress payment on a public improvement contracts will be reserved until the project is at least 50 percent complete, after which the retainage may be reduced, upon the approval of the Department Director, in accordance with ORS 279C.570(7). The accumulated retainage withheld, less any costs as allowed by statute, will be paid as part of final payment to the contractor in accordance with ORS 279C.570(8).

(a) Deposit of Retainage in Interest Bearing Account. Upon request of the contractor, the County will deposit the accumulated retainage accumulated in an interest-bearing account in accordance with ORS 279C.560(5). Any interest earned on the retainage deposited will accrue to the contractor.

(b) Surety Bond in Lieu of Retainage. The County may, at its discretion, accept a surety bond from the contractor for all or a portion of the retainage, in accordance with ORS 279C.560(7).

(c) Deposit of Securities in Lieu of Retainage. The County will reduce the retainage amount in an amount equal to the market value of bonds, securities, or other instruments deposited by the contractor in accordance with ORS 279C.560(1), ~~in a manner acceptable to the Finance Director, providing that the following requirements are met:~~

~~(i) The bonds, securities or instruments offered for deposit in lieu of retainage must:~~

~~(A) Be of a type described in OAR 137-049-0820(4);~~

~~(B) Be in fully transferable form, with any non negotiable bonds or securities having attached all instruments necessary to enable the County to effect transfer of title should the contractor be unable to fulfill the contract obligations, and~~

~~(C) Be deposited with a bank or trust company in Lane County, Oregon, in an account for the benefit of Lane County established for this purpose. Upon deposit, the bank or trust company must prepare an Assignment and Safekeeping Receipt in the form set out in Exhibit "A" to this section, which must be delivered to the County Treasurer.~~

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

~~(iii) If at any time the market value of the bonds or securities deposited in lieu of retainage drops below the accumulated retainage amount, the County may withhold from payments due the contractor an amount sufficient to offset any shortfall in the retainage withheld. A contractor may provide additional bonds or securities to remedy such shortfall, in accordance with this section.~~

~~FORM OF ASSIGNMENT AND SAFEKEEPING RECEIPT~~

~~This Assignment is to satisfy the requirements for deposits of bonds or securities in lieu of retainage on public improvement contracts set out in LM 20.595(8). Subject to the conditions below, the undersigned does hereby assign, transfer and set over to Lane County all right, title and interest in and to the bonds and~~

At left margin indicates changes
Bold indicates material being added
~~Strikethrough~~ indicates material being deleted
20.597

~~securities listed in the attached Schedule "A" for the use and purpose of retainage on the public contract between Lane County and the undersigned, identified as:~~

(Project Identification)

~~_____ (Bank or Trust Company) agrees that the bonds or securities listed in Schedule "A" will be held in trust for the purposes stated here, and shall be released only upon the written instructions and authorization of Lane County. Periodic interest payments or other disbursements which do not reduce the face amount of the bonds or securities will accrue and may be credited or paid to the undersigned.~~

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

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

SCHEDULE "A"

- ~~1. DESCRIPTION OF THE BONDS OR SECURITIES.~~
- ~~2. NAME OF CONTRACTOR/ASSIGNOR.~~
- ~~3. IDENTIFICATION NUMBER OF THE CONTRACT OR PROJECT.~~
- ~~4. PAR VALUE OF SECURITIES OR BONDS (AND THE MARKET VALUE, IF DIFFERENT).~~
- ~~5. MATURITY DATES OF SECURITIES OR BONDS.~~

~~Signed and dated at _____, Lane County, Oregon, this ___ day of _____, 20__.~~

(Signature of Depositor/Assignor)
Address: _____

ACCEPTANCE

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

(Authorized Signature)
(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.597 Modification of Standard Contract Provisions.

Except as required by Oregon or federal law, the Office of Legal Counsel is delegated authority to waive one or more of the Standard County Contract Provisions contained in LM 20.590 and 20.595 when it is in the best interests of the County to do so.

(Revised by Order No.19-05-21-03, Effective 05-21-19)

AUTHORITY TO AWARD, APPROVE, AND CANCEL CONTRACTS

20.610 Contract Award and Approval.

(1) Contract award may be made by the public officer delegated the authority to execute the contract or, if no delegation has been made, by the Board.

(2) All contracts must be processed through procedures prescribed by the County Administrator, including review by legal, risk management, budget and other staff, except as expressly stated otherwise by these rules.

(3) Contracts for personal services for, or related to, legal services and investigations will be processed and archived in the Office of Legal Counsel. However, the authority to execute or amend such contracts must be exercised in accordance with the requirements of LM 20.650 through 20.670.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.615 Cancellation of Award.

The County may cancel the award of any contract at any time prior to the execution of said contract by all parties without any liability to the County.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

CONTRACT AMENDMENTS AND ACCEPTANCE

20.625 Requirements for Contract Amendments.

(1) Each contract amendment must include, at a minimum, the title of the original contract, names of the parties, clear references to the original contract or prior amendment terms that are being modified, and execution of the amendment by all parties.

(2) Each contract amendment should include, in addition, the date of original contract, the number of prior amendments and number of the current amendment, a restated contract amount and completion date, and a provision that "except as set forth above, all provisions of the original contract remain unchanged."

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.630 Limitations on Contract Amendments.

A contract may only be amended if the amendment, taken together with all prior amendments, does not result in a final contract that no longer bears a reasonable relationship to the contract contemplated in the original procurement.

(1) Limitations on Cumulative Amount of Contract Amendments. In addition to the limitations on execution authority contained in LM 20.665 and 20.670, all contracts are subject to limitations on the cumulative amount that a contract can be amended, after which a new contract must be awarded in accordance with these Rules, unless exempted under subsection (3) of this section. These limitations apply to:

Small Procurement, if awarded without competitive procurement	\$12,500 total contract amount
Intermediate Procurement, if award using competitive quotes under LM 20.420(1)	200% of original amount or \$150,000, whichever is less
All other contracts	200% of original amount

(23) Limitations on Amendments to Public Improvements Contracts. Contracts for public improvements are subject to statutory limitations on amendments:

(a) A public improvement contract awarded as a small procurement under ORS 279C.335 may not be amended to an amount of \$5,000 or greater.

(b) A public improvement contract with an original contract amount of \$50,000 or less may not be amended to exceed \$50,000 unless the requirements of ORS 279C.800 through 279C.870 regarding the payment of prevailing wage rates are incorporated into the contract.

(34) Exceptions to Limitations on the Cumulative Amount of Contract Amendments:

(a) Contracts awarded under a specific exemption to competitive procurement pursuant to LM 20.110 to 20.370 are not subject to the limitations stated in subsections (1) to (3) of this section.

(b) The ~~County Administrator~~ Finance Director or the Director's delegee ~~is delegated~~ may authorize execution of ~~authority to execute~~ an amendment to a contract that exceeds the limitations in this section when, in the ~~Administrator's~~ Director or Director's delegee's judgment, the increase in the contract amount is reasonable and necessary ~~to provide continuity of services or is necessitated by conditions outside the County's control.~~

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.640 Construction Change Orders.

The Director of a Department with authority to contract for public improvements, construction, or the renovation of roads and transportation facilities is granted authority to authorize and execute construction change orders, providing that all of the following conditions are met:

(1) The change would not increase the cost of the project by more than 10 percent of the contract price,

(2) The change order is reasonably related to the purpose of the project, and

(3) The Director has determined that it is in the best interest of the County to authorize the order to facilitate completion of the project.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.645 Contract Completion and Acceptance.

Each Department Director is granted authority to determine that all obligations under the contract have been met and the contract is completed and accepted.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

AUTHORITY TO EXECUTE CONTRACTS, AMENDMENTS, GRANT APPLICATIONS, AND GRANTS

20.650 Delegation of Authority to Execute Grant Applications and Accept Grants.

(1) Each Department Director is delegated the authority to approve and execute all documents in application for or acceptance of a grant not exceeding \$50,000.

(2) The County Administrator is delegated authority to approve and execute all documents in application for and acceptance of a grant not exceeding \$150,000.

(3) The County Administrator is delegated authority to approve and execute all documents in application for a grant in excess of \$150,000, provided that the application does not obligate the County to accept the grant if awarded.

(4) The Board must approve the acceptance of a grant exceeding \$150,000. If an application for a grant in excess of \$150,000 obligates the County to accept the award as a condition of application, the Board must approve the application for the grant. Following Board approval of a grant or grant application, the Administrator is delegated authority to approve and execute all other grant documents.

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

(6) Notwithstanding the limits on the County Administrator's authority contained in this section, the County Administrator may approve grant applications and accept grants when necessary to secure the full benefit of the grant to the County, provided that:

(a) In the Administrator's judgment, and with the concurrence of County Counsel and the budget and financial planning office, the grant applications or grants require execution prior to the time when they could reasonably be approved by the Board at a regularly-scheduled meeting; and

(b) A description of the grant applications and grants, including the amounts, duration, and reason for prompt execution, is submitted to the Board for ratification on its consent agenda item following execution.

(Revised by Order No. 15-09-01-05, Effective 10-15-15; Revised by Order No.19-05-21-03, Effective 05-21-19)

20.660 County Administrator's Authority to Execute Contracts.

(1) The County Administrator is delegated authority to execute all contracts and agreements that do not exceed \$150,000 in cost or revenue nor three years in length.

(2) The County Administrator is further delegated authority to execute contracts that exceed three years in length, or are by their terms self-renewing, but only if:

(a) The cost or revenue for the first three years does not exceed \$50,000, and

(b) The contract contains a provision allowing the County to terminate the contract upon not more than one year's notice.

(3) The County Administrator is further delegated authority to execute, without limitation of amount or length:

(a) All contracts that have been awarded or expressly approved by the Board.

(b) Contracts specifically identified in a budget adoption order or supplemental budget order approved by the Board.

(c) Insurance nonwaiver agreements and insurance endorsements to original policies.

(d) Land use improvement agreements, Building Program Quick Start Agreements and acceptance and release of land use performance bonds.

(e) Contracts and assignments for the collection of County judgments.

(f) All contracts that implement public improvement projects described on the adopted ~~Public Works five-year Lane County Capital Improvement Program list, the adopted Parks Capital Improvement Program priorities list,~~ and the Public Works and County Administration public improvement lists prepared for filing with the Commissioner of the Bureau of Labor and Industries (BOLI) pursuant to ORS 279C.305. This delegation includes, without limitation, contracts to prepare for, design, administer, and construct listed projects, as well as those contracts reflecting the County paid portion of the project, those reflecting any amount to be paid by other governmental agencies or housing development entities for assisted housing projects, and those covering environmental mitigation responsibility.

(4) Notwithstanding the limits on the County Administrator's authority contained in this section and section 20.665, the County Administrator may execute contracts and amendments when necessary to secure the full benefit of the contract to the County, provided that:

(a) In the Administrator's judgment, and with the concurrence of County Counsel and the budget and financial planning office, the contracts require execution prior to the time when they could reasonably be approved by the Board at a regularly-scheduled meeting; and

(b) A description of the contracts or amendments, including the amounts, duration, and reason for prompt execution, is submitted to the Board for ratification on its consent agenda item following execution.

(Revised by Order No. 15-09-01-05, Effective 10-15-15; Revised by Order No.19-05-21-03, Effective 05-21-19; Order No. 19-08-20-03, Effective 08-20-19)

20.665 County Administrator's Authority to Execute Amendments.

Subject to the limitations on cumulative contract amount in LM 20.630, the County Administrator is delegated authority to:

- (1) Execute amendments to contracts that do not cause the contract amount to exceed \$150,000 in cost or revenue nor three years in length,
- (2) Execute amendments to contracts, without limitation of amount or length, if the amendment amount or length is within limits authorized by the Board for that specific contract or class of contracts, and
- (3) Execute amendments to contracts where the original contract amount exceeds \$150,000, subject to the following limitations:
 - (a) If the original contract amount is greater than \$500,000, the total of all amendments to that contract may not exceed 25 percent of the contract amount approved by the Board.
 - (b) If the original contract amount is \$500,000 or less, the total of all amendments may not exceed 50 percent of the contract amount approved by the Board, and
 - (c) The amendment does not extend the length of the contract beyond three years, unless the original contract contained a provision for a longer duration and was awarded or expressly approved by the Board.

(Revised by Order No. 15-09-01-05, Effective 10-15-15; Revised by Order No.19-05-21-03, Effective 05-21-19)

20.670 Department Directors' Authority to Execute Contracts and Amendments.

- (1) Each Department Director is delegated authority to execute contracts that do not exceed \$50,000 nor three years in length.
- (2) Each Department Director is further delegated authority to execute contracts that exceed three years in length, or are by their terms self-renewing, but only if:
 - (a) The cost or revenue for the first three years does not exceed \$50,000, and
 - (b) The contract contains a provision allowing the County to terminate the contract upon not more than one year's notice.
- (3) Subject to the limitations on cumulative contract amount in LM 20.630, each Department Director is delegated authority to execute amendments that do not exceed \$50,000, subject to the following limitations:
 - (a) The amendment, in combination with all prior amendments, does not cause the contract amount to exceed \$150,000 in cost or revenue nor three years in length, and
 - (b) The amendment, in combination with all prior amendments, does not exceed \$50,000, or 50% of the contract amount approved by the Board, whichever is greater.

(Revised by Order No. 15-09-01-05, Effective 10-15-15; Revised by Order No.19-05-21-03, Effective 05-21-19)

20.680 County Administrator's Authority to Cancel Awards and Terminate Contracts.

The County Administrator is delegated the authority to cancel awards and terminate contracts and grants, including amendments, as provided in the contract or by law.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.685 Further Delegation.

The County Administrator and each Department Director's authority under LM 20.650, 20.655, 20.660, 20.665, and 20.670 may only be delegated through a writing.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

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CONTRACTING POLICIES

20.050 Policy on Competition.

It is the policy of Lane County to encourage open and impartial competition in the procurement of goods and services, in accordance with the requirements of ORS Chapter 279 and the Public Contracting Code.
(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.055 Policy on Electronic Procurement Procedures.

(1) The LCRB has determined that it is more cost effective for the County to publicly advertise bids and all other public notices related to procurement processes using the internet, except where Oregon law requires advertising in a newspaper of general circulation in Lane County or a statewide trade publication.

(2) The County may, at its discretion, distribute all materials related to a procurement exclusively by electronic means, and may direct the receipt of all bids, proposals, and related documents exclusively by electronic means.

(3) The County may utilize third-party internet services for distribution of procurement-related materials and receipt of bids and proposals.
(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.060 Policy on Performing Services for Other Public Agencies.

Under the authority of Chapter II, Section 8 of the Lane County Home Rule Charter and ORS Chapter 190, it is the policy of Lane County to offer services to other public agencies where feasible, providing that the County must be compensated for the complete cost of providing all intergovernmental services. The Board must approve any waiver of the policy for compensation.
(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.065 Policy on Bid Security and Bonds.

(1) Contracts, generally. All contracts, other than those for public improvements and construction contracts as defined in ORS 279C.320(1), are exempt from the bid security requirements of ORS 279B.050 and performance and payment bond requirements, provided that the County may, in its discretion, require bid security or performance and payment security.

(2) Contracts for public improvements and construction. For contracts for public improvements and construction contracts as defined in ORS 279C.320(1):

(a) Except as provided in subsection (b) below, the County will require that bidders and contractors for public improvements and construction contracts provide:

(i) Not less than 5% bid security meeting the requirements of ORS 279C.365(5),
and

(ii) Performance and payment bonds meeting the requirements of ORS 279C.380.

(b) Bids and contracts which do not exceed \$100,000 (except for highway, bridge and other transportation projects which do not exceed \$50,000) are exempt from bid security, and performance and payment bond requirements, provided that the County may require such security in its discretion, regardless of this exemption.

(Revised by Order No. 15-09-01-05, Effective 10-15-15; 18-03-13-03, 3.13.18)

GENERAL EXEMPTIONS FROM COMPETITIVE SELECTION

notice. The written protest shall include a detailed statement of the legal and factual grounds for the protest, a description of the resulting harm, and the relief requested. Unless otherwise specified in the public notice of the sole source procurement, the LCRB may consider the written record, and any other testimony provided at the public meeting and must make its determination by Board Order.

(3) Following a determination under part (2) of this rule, the County negotiates with the sole source to obtain contract terms advantageous to the County, to the extent practicable.

(4) To the extent purchases under this rule are part of an approved special procurement under LM 20.240 through 20.254, the terms of the special procurement prevail over this rule.

(Revised by Order No. 15-09-01-05, Effective 10-15-15; Revised by Order No.19-05-21-03, Effective 05-21-19)

20.320 Emergency Contracts.

Certain contracts may be awarded without competitive selection, if an emergency exists that requires prompt execution of those contract(s) to preserve public funds, property, or the uninterrupted provision of government services.

(1) As used in this section, an emergency is generally defined as circumstances that could not have been reasonably foreseen, and create a substantial risk of loss, damage, or interruption of services, or a threat to property, public health, or safety. ORS 279A.010(f).

(2) A written determination must be made documenting the nature of the emergency, the method of contractor selection, and designating the contract(s) to be awarded. The County Administrator is delegated authority to make the determination for one or more contracts, in an aggregate amount not to exceed \$150,000 for a single occurrence or event. A determination for emergency contracts in excess of \$150,000 for a single occurrence or event must be made by the LCRB.

(3) The County must ensure competition for the contract that is reasonable and appropriate under the emergency circumstances, which may include, but are not limited to:

(a) Limiting the scope or duration of the contract to the amount necessary under the emergency conditions,

(b) Providing a limited solicitation period and limiting required documentation, and

(c) Waiver of a performance or payment bond pursuant to ORS 279C.380(4) or of a public works bond pursuant to ORS 279C.836(9).

(Revised by Order No. 15-09-01-05, Effective 10-15-15; Revised by Order No.19-05-21-03, Effective 05-21-19)

20.325 Personal Services Contracts.

Where possible, selection of a personal service contractor must be made by competitive selection, unless impracticable. However, the County may award a contract for personal services without competitive selection, providing that:

(1) The Department Director makes a written determination that the services to be provided in the particular contract are personal services, as defined in LM 20.430(1), and

(2) The County has made a finding that direct contracting is in the best interests of the County for the contract. Authority to make the finding is granted to:

(a) Each Department Director, for contracts not greater than \$50,000.

(b) The County Administrator, for contracts not greater than \$150,000.

(c) The LCRB, for contracts greater than \$150,000.

(Revised by Order No. 15-09-01-05, Effective 10-15-15; Revised by Order No.19-05-21-03, Effective 05-21-19)

EXEMPTIONS FROM COMPETITIVE SELECTION FOR ALTERNATIVE CONTRACTING METHODS

20.350 Individual and Class Special Procurements.

(1) For contracts that are not related to public improvements under ORS chapter 279C, the County may utilize a special procurement for a particular contract, or a class 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.070), and intermediate procurement (ORS 279B.070). Approval of a special procurement must be made in accordance with the requirements of ORS 279B.085 (4) and (5), and any protest of such approval must be made in accordance with ORS 279B.400.

(2) Authority to approve an individual special procurement is granted to:

- (a) Each Department Director, for contracts not greater than \$50,000.
- (b) The County Administrator, for contracts not greater than \$150,000.
- (c) The LCRB, for contracts greater than \$150,000.

(3) Authority to approve a class special procurement is granted to:

(a) The County Administrator, for classes of contracts where the total of all contracts within the class is not greater than \$150,000.

(b) The LCRB, for classes of contracts where the total of all contracts within the class is greater than \$150,000.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.355 Competitive Bidding Exemptions for Public Improvement Contracts

(1) Contracts Subject to Exemption. Upon approval of the findings in (2)(c) below, the LCRB may authorize an exemption from competitive bidding requirements for any of the following types of public improvement contracts:

- (a) Construction Manager/General Contractor (CM/GC), as defined in ORS 279C.332 and OAR 137-049-0610;
- (b) Design Build, as defined in OAR 137-049-0610; and
- (c) Energy Savings Performance Contracting (ESPC), as defined in ORS 279A.010 and OAR 137-049-0610.

(2) Approval of Findings. Prior to exempting a contract from competitive bidding requirements, the LCRB must:

- (a) Hold a public hearing, in accordance with ORS 279C.335(5);
- (b) Give at least 14 days' notice of the public hearing, in accordance with ORS 279C.335(5)(b) and (c), and
- (c) Approve written findings that:
 - (i) It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts, and
 - (ii) The awarding of public improvement contracts under the exemption will likely result in substantial cost savings to the County or the public. In making this finding, the LCRB may consider the type, cost and amount of the contract, the number of persons available to bid, and must consider all required factors in ORS 279C.335(2)(b), to the extent applicable.

(3) Post Project Evaluation. Upon completion and final payment for any public improvement project in excess of \$150,000 for which an exemption was authorized under this section, the contracting Department shall prepare and deliver to the LCRB an evaluation of the public improvement contract. The evaluation must, at a minimum, meet the requirements of ORS 279C.335(b) and (c), and should include: financial information including comparing estimates with actual cost; any Guaranteed Maximum Price (GMP); changes and actual costs; successes and failures during design, engineering and construction; and assessment of the use of method as compared to any exemption findings.

(Revised by Order No. 15-09-01-05, Effective 10-15-15; Revised by Order No.19-05-21-03, Effective 05-21-19)

20.360 Construction Manager/General Contractor.

If the County conducts a procurement for a Construction Manager/General Contractor pursuant to an exemption granted under LM 20.251, the procurement must be conducted in accordance with the model rules adopted by the Attorney General under ORS 279A.065(3).

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.365 Design - Build.

If the County conducts a procurement for a Design-Build contractor pursuant to an exemption granted under LM 20.251, the procurement may be conducted following a request for proposal procedure in accordance with LM 20.420(1) and utilizing the criteria in OAR 137-049-0670.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.370 Energy Savings Performance Contracting.

If the County conducts a procurement for a an Energy Savings Performance Contractor (ESPC) pursuant to an exemption granted under LM 20.251, the procurement may be conducted following a request for proposal procedure in accordance with LM 20.420 and utilizing the criteria in OAR 137-049-0680.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

SOLICITATION PROCEDURES

20.410 Preliminary Procedures and Prequalification.

In preparation for competitive selection, the County may:

(1) Issue a request for information, request for letters of interest, request for qualifications, or other preliminary documents, for the purpose of determining the availability and interest of possible vendors for the goods or services proposed.

(2) Allow or require prequalification of bidders or proposers, either through an advertised process setting forth the procedure and criteria for prequalification prior to issuance of competitive procurement, or by inclusion of the requirements in the invitation to bid. The public officer has authority to determine when prequalification may be required for a specific contract or class of contracts, and may determine the prequalification procedure in accordance with the requirements of ORS 279B.120 and 279B.125, and the requirements of ORS 279C.430 for public improvements projects. Determination of prequalification must be made in accordance with ORS 279B.120(2), or the requirements of ORS 279C.375(3)(b) for public improvements projects.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.420 Methods of Source Selection.

Unless exempted under LM 20.110 to 20.450, all contracts for goods or services must be awarded by competitive selection. Notwithstanding such exemption, the public officer may use competitive selection to select a vendor for any type of goods or services except those relating to purchases from qualified rehabilitation facilities in accordance with LM 20.115.

(1) Competitive Selection. The County may use any of the following procedures to procure goods and services through competitive selection:

(a) Competitive Bidding pursuant to the requirements for competitive sealed bidding in ORS 279B.055.

(b) Request for Proposals (RFP) pursuant to the requirements for competitive sealed proposals in ORS 279B.060.

(c) Competitive Quotes (CQ) pursuant to the requirements for intermediate procurements in ORS 279B.070. CQs for contracts greater than \$50,000 in value, the County must prepare a written solicitation document.

(2) Direct Selection Subject to an Exemption. For procurement of goods or services that are exempt from the requirement for competitive selection pursuant to the requirements of LM 20.110 to 20.450, the public officer is authorized to make the selection that best serves the County's interests, taking into account price, qualifications, schedule, and other factors.

(3) Contracts Relating to Public Improvements. Specific requirements apply to procurements and contracts relating to both the design and the construction of public improvements:

(a) Construction. Contracts relating to the construction of public improvements may be awarded using any competitive selection procedure described in subsection (1) of this section, and must also comply with the requirements of ORS 279C.300 through 279C.870 and the County Rules.

(b) Building Construction. Procurements for building construction contracts must comply with the requirements of the Board's Community Benefits Bidding policy, if applicable to the procurement.

(c) Design-Related Services. Contracts relating to the design of public improvements must comply with the requirements of ORS 279C.100 through 279C.120, in addition to the requirements of the County Rules.

(Revised by Order No. 15-09-01-05, Effective 10-15-15; Revised by Order No.19-05-21-03, Effective 05-21-19)

20.430 Personal Services Contract Selection Procedures.

(1) Pursuant to ORS 279A.055, a contract may be designated as a personal service contract if the contractual relationship is based primarily on a special trust and confidence between the County and contractor; or the type and quality of services to be provided under the contract are based primarily on the contractor's special or unique expertise or knowledge; particular experience; or the exercise of discretionary judgment skills unique to the service provider.

(a) Contracts that may be designated personal service contracts include, but are not limited to, contracts for: expert consulting, appraisal, timber cruising, licensed professionals (including attorneys, auditors, accountants, physicians, physician assistants, nurse practitioners, nurses, therapists, realtors and engineers), research, polling, education, and artwork.

(b) Contracts for services relating to planning, designing, engineering, or overseeing of public improvements are not subject to the requirements of this section. Selection procedures for selection of consultants for such services must be made in the manner provided in section LM 20.435.

(c) Contracts that are not personal services contracts include contracts for services that can generally be performed by an experienced competent person, whether the person is required to be licensed or not, including but not limited to contracts for: trade-related activity (including plumbing and electrical work), custodial services, document filing and storage, general labor, and repairs and maintenance services for buildings or equipment.

(2) If a contract has been designated as a personal services contract under this section, the County may use an RFP process or a CQ process, depending upon the contract amount.

(a) Evaluation factors should include, but not limited to, the proposed contractor's qualifications, abilities, licenses and certifications, capacity and capability, past record of performance, cost control, quality of work, financial resources, availability, and familiarity with the area.

(b) The process may include, as appropriate, written submissions, demonstrations, and interviews. For contracts in excess of \$150,000, the process should include interviews of not fewer than 2 of the most qualified prospective contractors.

(Revised by Order No. 15-09-01-05, Effective 10-15-15; Revised by Order No.19-05-21-03, Effective 05-21-19)

20.435 Selection Procedures for Planning, Designing, Engineering, and Overseeing of Public Improvements

Pursuant to ORS 279C.100 through 279C.120, solicitations and contracting with a consultant for architectural, engineering, photogrammetric mapping, transportation planning, land surveying, and related services as defined in ORS 279C 100(8) in accordance with the following procedures:

(1) The County may contract directly with a consultant if the estimated fee to be paid under the contract does not exceed \$100,000.

(2) The County may contract with a consultant using the Informal Selection Procedure set forth in OAR 137-048-0210 if the estimated fee to be paid under the contract does not exceed \$250,000.

(3) The County may contract with a consultant through a Price Agreement established in the manner set forth in OAR 137-048-270.

(4) The County may contract with a consultant following the selection procedures set forth in ORS 279C.110.

20.440 Requirements Contract Selection Procedures.

If the contract for goods or services will be a requirements contract, the County may use any competitive selection process for selection of a contractor, provided the process is in compliance with the requirements of this rule.

- (1) In conducting competitive selection, the Invitation or Request must:
 - (a) State whether the County will consider awarding and executing more than one contract for a single type of service or good, and
 - (b) If the awarding of more than one contract is anticipated, state the method to be used in selecting which contractor will perform specific services or provide certain goods.
- (2) In addition, the conditions of the Invitation or Request must provide:
 - (a) A stated minimum or maximum value of goods or services to be purchased under the contract,
 - (b) The term of the contract, which, including renewals, may not exceed 3 years, and must allow the County to cancel the contract upon 30 days written notice, and
 - (c) An estimated dollar amount of purchases to be made during the term of the contract.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.450 Bidding and Proposal Procedures.

The bidding and proposal procedures in this section are applicable to Competitive Bidding, RFPs, and CQs under LM 20.520(1). When applied to the procedures for RFPs or CQs, the terms related to "proposals" or "quotes" must be substituted for the terms related to "bids" as used in this section.

- (1) Clarifications to Bid Documents. If a bidder finds discrepancies or omissions in the bid documents, or is in doubt as to their meaning, the bidder must immediately notify the public officer. If the public officer believes a clarification is necessary, an addendum will be issued in writing not less than 72 hours prior to the deadline for bid, unless the public officer determines that a shorter period is in the public interest. The terms of any addenda issued are to be included in the bidder's proposal, and will become part of the contract documents.
- (2) Submission and Receipt of Bids.
 - (a) To be received and considered, all bids must be in writing and signed by the bidder or the bidder's authorized representative. Bids must be submitted in the manner specified in the bid documents.
 - (b) By signing and returning a bid, the bidder acknowledges that the bidder has read and understands the terms and conditions applicable to the bid documents and that the bidder accepts and agrees to be bound by the terms and conditions of the contract, including to perform the scope of work and meet the performance standards.
 - (c) A bidder may not modify its bid after submission. A bidder may withdraw its bid at any time prior to the deadline set for receipt of bids, and may submit a replacement bid in accordance with the required bid submission procedures.
 - (d) The County will not consider any bid received after the time and date stated in the bid documents for receipt of bids.
 - (e) All bids must be irrevocable for not less than 30 days from the time of bid opening, unless otherwise stated in the bid documents. The bids of all bidders will remain irrevocable and binding, and any bid securities will be retained by the public officer, until a contract has been executed and the contractor has provided any and all required performance bonds and insurance certificates.

- (3) Opening of Bids and Proposals.
 - (a) The public officer may not examine any bid prior to opening. Bids properly submitted will be opened publicly by the public officer at the time, date and place designated in the bid documents. To the extent practicable, the public officer will read aloud the amount of the bid, the name of the bidder and such other information as the public officer considers appropriate, record the same, and post the bid

results. If the offers are a proposals submitted in response to an RFP, the proposals may be opened in a manner to avoid revealing contents to competing proposers in accordance with ORS 279B.060(6)(a).

(b) All bids submitted are subject to public inspection, with the exception of:

(i) Information covered by an exception in public records law pursuant to ORS 279B.055(5)(c). Each bidder, by submitting a bid, acknowledges that it is the bidder's responsibility to defend and indemnify the County for any costs associated with establishing such an exemption. The bidder's act in submitting a bid constitutes its acceptance of this responsibility.

(ii) Proposals submitted in response to a request for proposals under LM 21.113, in accordance with ORS 279B.060(6).

(c) The bid record must be open to public inspection immediately following the issuance of a notice of intent to award.

(4) Evaluation of Bids and Proposals. Bid evaluation will be conducted by the public officer in cooperation with the department requesting the bid, if any, based on compliance with the requirements established in the bid documents and these Rules, including:

(a) Application of preferences for Oregon goods and services, resident bidders, recycled goods, and printing, pursuant to ORS 279A.120 to 279A.128 and ORS 282.210.

(b) Investigation and determination of responsibility requirements pursuant to ORS 279B.110.

(c) Where the bid includes more than one price or alternative, any calculation and evaluation necessary to determine the lowest responsive bid. The County may use the methods described in OAR 137-049-0380(2) or such other method as the public officer deems reasonable.

(d) For public improvement contracts, the bidder responsibility criteria enumerated in ORS 279C.375.

(e) Proposals submitted in response to an RFP will be evaluated in accordance with the criteria stated in the RFP.

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

(6) Cancellation of Solicitation or Rejection of Bids.

(a) The County reserves the right to cancel a solicitation, or reject any or all bids in whole or in part when the cancellation or rejection is in the County's best interests as determined by the County. This includes rejecting any bid not in compliance with all prescribed public bidding procedures and requirements, and for good cause, rejecting all bids upon a finding that it is in the public interest to do so. See OAR 137-049-0440(5), OAR 137-047-0640, OAR 137-047-0650.

(b) If all bids are rejected in whole or in part, the County may:

(i) Advertise for new bids, or

(ii) Solicit supplemental information only from those bidders that submitted bids, if in the public officer's judgment it is unlikely readvertising publicly would lead to greater competition.

(7) Award. The County will award contracts only to responsible contractors possessing the ability to perform. In determining whether a contractor is responsible, the County will consider the contractor's record of integrity, compliance with public policy, past performance, and technical and financial resources.

(8) Notice of Intent to Award. The County must provide written notice of its intent to award a contract to a particular bidder or bidders at least seven (7) days before the award, unless the public officer determines that a shorter notice period is necessary under the circumstances. The notice of intent may be given by electronic posting or may be sent directly to all bidders that submitted bids.

(9) Retention of Records. The contracting department must maintain records sufficient to detail the history of each procurement, and maintain such records for the period required in OAR 166-150-0005

et seq. Such records include, but are not limited to: the rationale for the method of procurement, determination of exemptions or exceptions, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

TYPES OF CONTRACTS AND AGREEMENTS

20.510 County Contracts, Generally.

Except for small purchases, all County contracts require a written contract signed by a duly authorized delegate, or a purchase order authorized under these rules.

(1) Identification of Contract Parties.

(a) The name "Lane County" must be used as the County's title when entering into any agreement, preferably followed by the words, "a political subdivision of the State of Oregon". If the circumstances of the contract require that the name of the County Department be included as part of the County's name, the correct form is: "Lane County, acting through its _____ Department".

(b) The County requires that the name of the party or parties with whom the County is entering into a contract be the parties' correct legal names. Verification of parties' legal names through the Oregon Secretary of State's website is encouraged.

(2) Mandatory Contract Terms.

(a) All contracts must contain, either expressly or by reference, the County's standard contract provisions contained in LM 20.590, except as approved by the Office of Legal Counsel.

(b) All contracts funded in whole or in part by federal or state funds must contain all contract conditions required by the agency or agencies contributing such funds, in the form required by the funding.

(3) Contract Considerations.

(a) Consideration should be given, in all contracts, to the risks involved in the specific work of the contract. Consultation with the County's Risk Manager is advised concerning the County's insurance requirements for a specific contract.

(b) Title to all personal property obtained through a contract must be described on all formal title documents and bills of sale as: Lane County, Lane County Public Service Building, 125 E. 8th Avenue, Eugene, Oregon 97401.

(3) The Office of Legal Counsel is required to maintain standard forms for common contracts that comply with these rules, and make the forms available to County Departments.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.515 Purchase Orders.

(1) Unless otherwise provided, County purchase orders are not contracts until the purchase order is agreed to by the recipient. Once accepted, a purchase order becomes a contract according to its terms.

(2) Authority to approve issuance of Purchase Orders for County Purchases is subject to the limitations on contract amount and delegated authority contained in LM 20.630, 20.660, and 20.670.

(3) The County Administrator is delegated authority to prescribe rules for the types of contracts or purchases that may be made using a purchase order, and the form to be used.

(Revised by Order No. 15-09-01-05, Effective 10-15-15; Revised by Order No.19-05-21-03, Effective 05-21-19)

20.520 Goods and/or Services Contracts.

Goods and/or Services contracts are the County's standard method of contracting for goods, services, or a combination of goods and services. Such contracts may only be used to engage independent contractors meeting the requirements of ORS 670.600, and may not provide for the contractor or contractor's staff to be under the direction and control of the County.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.525 Construction and Public Improvement Contracts.

(1) All contracts relating to construction must comply with the requirements of ORS 279C.300 through 279C.870, in addition to these rules. Except as provided in these rules, the requirements of ORS chapter 279B do not apply to contracts for construction.

(2) All contracts relating to construction must contain, either by inclusion or by reference, the County's standard contract provisions contained in LM 20.590 and the standard contract provisions for construction contained in LM 20.595, except as approved by the Office of Legal Counsel.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.530 Requirements Contracts and Price Agreements.

Requirements contracts and price agreements must meet the requirements of ORS 279B.140 and this rule.

(1) The terms of the resulting contract or contracts must state the method to be used to authorize a purchase of goods or services under the agreement.

(a) If set prices for defined goods or services are stated in the contract, the County may purchase such goods and services from the contractor

(b) If the goods or scope of work to be purchased are described in general terms in the contract, requiring further definition for a specific scope or project, such additional definition must be made in writing and executed as an amendment to the contract.

(2) The contract may not be amended to encompass goods or services not reasonably anticipated in the terms of the original competitive procurement.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.535 Future Purchase and Retainer Contracts.

Future purchase and retainer contracts establish general terms for the future purchase of goods or services, the terms of which will apply only if subsequent purchases are made.

(1) Each contract must comply with the requirements of LM 20.130, and:

(a) Contain a description of the method that the County will use to initiate a purchase under the agreement, which must include a writing, and

(b) State that the County makes no guarantee that any purchase will be made or any minimum amount paid under the contract.

(2) The contract may not be amended to encompass goods or services not reasonably anticipated in the terms of the original competitive procurement.

(3) Any purchase made under the agreement must be considered separately for requirements for competitive selection, unless exempt from competitive selection under these Rules.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.540 Intergovernmental Agreements.

Intergovernmental agreements (IGA) are contracts made between the County and other agencies of State, local, or federal government. IGAs are exempt from competitive selection, and generally do not require inclusion of the standard terms required for public contracts. IGAs involving significant obligations of funds, services, property, or allocation of risks must be made in writing, and are subject to the same approval and authorization as other County contracts.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.545 Memoranda of Understanding.

A memorandum of understanding (MOU) is an agreement, generally between the County or a County Department and another agency, that captures the agencies' common desire to work together to pursue specified common objectives. An MOU can be entered into with multiple parties, and the parties may include different County departments. Use of an MOU is appropriate when there is no exchange of funds, goods, or services between the parties.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.550 Grant and Sub-Grant Agreements.

(1) Grant agreements. The County may enter into agreements with public agencies or private parties in which the County receives and disburses funding for purposes specified in the grant agreement, and subject to the conditions set forth in the grant.

(2) Compliance with the Uniform Guidance (UG) and grant requirements. The County department accepting the grant must comply with all applicable federal, state, and grantor requirements, in accordance with the policy established in the Administrative Procedures Manual for grant administration.

(3) Sub-grants.

(a) The terms of a grant agreement may specify that specific sub-grants be entered into by the County with third parties identified in the grant application or agreement. The grant may provide that the County merely passes through the grant funds received, in whole or in part, without modifying any terms or conditions of the original grant, except as related to County administration and oversight of the grant conditions.

(b) If the terms of a grant do not specify the sub-grantees, and the County is entering into an agreement with a vendor to perform services defined by the County, then that agreement between the County and the vendor generally will be a goods and/or services contract or, if with a public agency, an intergovernmental agreement.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.555 County Grants.

The County may grant funds to a private entity for the purposes of supporting objectives or activities proposed by the entity. If the County requires no further obligation from the grantee beyond use of the funds in compliance with the restrictions placed upon the use of the funds, documentation of the County Grant may be provided in the grant award letter, in a form approved by the Office of Legal Counsel.

(Revised by Order No. 15-09-01-05, Effective 10-15-15; Order no. 19-08-20-03, Effective 8-20-19)

20.560 Revenue Contracts.

The County may enter into contracts to provide services in exchange for payment using an agreement appropriate for the type of services to be provided, in a form approved by the Office of Legal Counsel. However, a contract that includes obligations of the other party that extend beyond payment or documentation must include the County's standard contract conditions.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

STANDARD CONTRACT PROVISIONS**20.585 Standard Lane County Contract Provisions.**

The Office of Legal Counsel will establish standard contract provisions to be included in County contracts, and must publish the standard contract provisions on the Department's Intranet webpage.

20.590 Standard Public Contract Provisions.

The following standard public contract clauses must be included expressly or by reference in every County contract:

- (1) Pursuant to ORS 279B.220 or ORS 279C.505, as applicable, Contractor must:
 - (a) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.
 - (b) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.
 - (c) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.
- (2) Pursuant to ORS 279B.230 and 279C.530, as applicable:

(a) Contractor must promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

(b) All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

(3) Pursuant to ORS 279B.235, 279C.520, and 279C.540, as applicable, in performing the work of this Contract:

(a) A person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, the employee shall be paid at least time and a half pay:

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

(ii) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(iii) For all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

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

(c) If this Contract is for personal services as described in ORS 279A.055, an employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

(d) If this Contract is for services at a county fair or for other events authorized by a county fair board, employees must be paid at least time and a half for work in excess of 10 hours in any one day or 40 hours in any one week. An employer shall give notice in writing to employees who work on such a contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that employees may be required to work.

(e) Except as provided in subsection (d) of this section, if this Contracts is for services, all persons employed under the Contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater. An employer shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(f) This section (3) does not apply if the Contract is strictly for goods or personal property.

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

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

(6) Contractor, any subcontractors, and all employers working under the contract are subject employers under the Oregon Workers' Compensation Law and must comply with ORS 656.017, unless exempt under ORS 656.027.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.595 Standard Public Contract Provisions for Public Improvements.

The following standard public contract clauses must be included expressly or by reference in every County contract for public improvements.

- (1) Pursuant to ORS 279C.505, Contractor must:
 - (a) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
 - (b) Demonstrate that an employee drug testing program is in place.
- (2) Pursuant to ORS 279C.510(1), Contractor must salvage or recycle construction waste and demolition debris, if feasible and cost-effective.
- (3) Pursuant to ORS 279C.515:
 - (a) If Contractor fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to the contractor or a subcontractor in connection with the public improvement contract as the claim becomes due, the County may pay the amount of the claim to the person that provides the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of the contract.
 - (b) If Contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from the contracting agency or Contractor, Contractor or first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is 9 percent per annum. The amount of interest may not be waived.
 - (c) If Contractor or a subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
 - (d) Paying a claim in the manner authorized in this section does not relieve the contractor or the contractor's surety from obligation with respect to an unpaid claim.
- (4) Pursuant to ORS 279C.540, a person may not be required or permitted to labor more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity or emergency or when the public policy absolutely requires it, in which event, the person so employed for excessive hours shall receive at least time and a half pay in accordance with ORS 279C.540(1) to (5).
- (5) Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to those dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the contract. A list of entities that have enacted such laws or regulations is found in the Oregon Standard Specifications for Construction, Section 00170.01 currently in effect and published through Oregon Department of Transportation. If new or amended statutes, ordinances, or regulations are adopted, or Contractor encounters a condition not referred to in the bid document not caused by Contractor and not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws or regulations dealing with the prevention of environmental pollution or the preservation of natural resources, Contractor shall immediately give notice to the County.

The County and Contractor will have all the rights and obligations specified in ORS 279C.525 to handle the situation.

(6) If the County suspends Contractor's work but does not terminate the contract, Contractor is entitled to a reasonable time extension, costs and overhead in accordance with ORS 279C.655. If the contract is terminated by mutual agreement, Contractor will be paid in accordance with ORS 279C.660.

(7) The Oregon Standard Specifications for Construction adopted by the State of Oregon, and the Manual on Uniform Traffic Control Devices, each as is currently in effect, are applicable to all non-building construction projects, except as modified by the bid documents.

(8) Retainage of five percent (5%) of the amount of any progress payment on a public improvement contracts will be reserved until the project is at least 50 percent complete, after which the retainage may be reduced, upon the approval of the Department Director, in accordance with ORS 279C.570(7). The accumulated retainage withheld, less any costs as allowed by statute, will be paid as part of final payment to the contractor in accordance with ORS 279C.570(8).

(a) Deposit of Retainage in Interest Bearing Account. Upon request of the contractor, the County will deposit the accumulated retainage accumulated in an interest-bearing account in accordance with ORS 279C.560(5). Any interest earned on the retainage deposited will accrue to the contractor.

(b) Surety Bond in Lieu of Retainage. The County may, at its discretion, accept a surety bond from the contractor for all or a portion of the retainage, in accordance with ORS 279C.560(7).

(c) Deposit of Securities in Lieu of Retainage. The County will reduce the retainage amount in an amount equal to the market value of bonds, securities, or other instruments deposited by the contractor in accordance with ORS 279C.560(1), in a manner acceptable to the Finance Director.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.597 Modification of Standard Contract Provisions.

Except as required by Oregon or federal law, the Office of Legal Counsel is delegated authority to waive one or more of the Standard County Contract Provisions contained in LM 20.590 and 20.595 when it is in the best interests of the County to do so.

(Revised by Order No.19-05-21-03, Effective 05-21-19)

AUTHORITY TO AWARD, APPROVE, AND CANCEL CONTRACTS

20.610 Contract Award and Approval.

(1) Contract award may be made by the public officer delegated the authority to execute the contract or, if no delegation has been made, by the Board.

(2) All contracts must be processed through procedures prescribed by the County Administrator, including review by legal, risk management, budget and other staff, except as expressly stated otherwise by these rules.

(3) Contracts for personal services for, or related to, legal services and investigations will be processed and archived in the Office of Legal Counsel. However, the authority to execute or amend such contracts must be exercised in accordance with the requirements of LM 20.650 through 20.670.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.615 Cancellation of Award.

The County may cancel the award of any contract at any time prior to the execution of said contract by all parties without any liability to the County.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

CONTRACT AMENDMENTS AND ACCEPTANCE

20.625 Requirements for Contract Amendments.

(1) Each contract amendment must include, at a minimum, the title of the original contract, names of the parties, clear references to the original contract or prior amendment terms that are being modified, and execution of the amendment by all parties.

(2) Each contract amendment should include, in addition, the date of original contract, the number of prior amendments and number of the current amendment, a restated contract amount and completion date, and a provision that "except as set forth above, all provisions of the original contract remain unchanged."

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.630 Limitations on Contract Amendments.

A contract may only be amended if the amendment, taken together with all prior amendments, does not result in a final contract that no longer bears a reasonable relationship to the contract contemplated in the original procurement.

(1) Limitations on Cumulative Amount of Contract Amendments. In addition to the limitations on execution authority contained in LM 20.665 and 20.670, all contracts are subject to limitations on the cumulative amount that a contract can be amended, after which a new contract must be awarded in accordance with these Rules, unless exempted under subsection (3) of this section. These limitations apply to:

Small Procurement, if awarded without competitive procurement	\$12,500 total contract amount
Intermediate Procurement, if award using competitive quotes under LM 20.420(1)	200% of original amount or \$150,000, whichever is less
All other contracts	200% of original amount

(2) Limitations on Amendments to Public Improvements Contracts. Contracts for public improvements are subject to statutory limitations on amendments:

(a) A public improvement contract awarded as a small procurement under ORS 279C.335 may not be amended to an amount of \$5,000 or greater.

(b) A public improvement contract with an original contract amount of \$50,000 or less may not be amended to exceed \$50,000 unless the requirements of ORS 279C.800 through 279C.870 regarding the payment of prevailing wage rates are incorporated into the contract.

(3) Exceptions to Limitations on the Cumulative Amount of Contract Amendments:

(a) Contracts awarded under a specific exemption to competitive procurement pursuant to LM 20.110 to 20.370 are not subject to the limitations stated in subsections (1) to (3) of this section.

(b) The Finance Director or the Director's delegee may authorize execution of an amendment to a contract that exceeds the limits in this section when, in the Director or Director's delegee's judgment, the increase in the contract amount is reasonable and necessary

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.640 Construction Change Orders.

The Director of a Department with authority to contract for public improvements, construction, or the renovation of roads and transportation facilities is granted authority to authorize and execute construction change orders, providing that all of the following conditions are met:

(1) The change would not increase the cost of the project by more than 10 percent of the contract price,

(2) The change order is reasonably related to the purpose of the project, and

(3) The Director has determined that it is in the best interest of the County to authorize the order to facilitate completion of the project.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

20.645 Contract Completion and Acceptance.

Each Department Director is granted authority to determine that all obligations under the contract have been met and the contract is completed and accepted.

(Revised by Order No. 15-09-01-05, Effective 10-15-15)

AUTHORITY TO EXECUTE CONTRACTS, AMENDMENTS, GRANT APPLICATIONS, AND GRANTS

20.650 Delegation of Authority to Execute Grant Applications and Accept Grants.

(1) Each Department Director is delegated the authority to approve and execute all documents in application for or acceptance of a grant not exceeding \$50,000.

(2) The County Administrator is delegated authority to approve and execute all documents in application for and acceptance of a grant not exceeding \$150,000.

(3) The County Administrator is delegated authority to approve and execute all documents in application for a grant in excess of \$150,000, provided that the application does not obligate the County to accept the grant if awarded.

(4) The Board must approve the acceptance of a grant exceeding \$150,000. If an application for a grant in excess of \$150,000 obligates the County to accept the award as a condition of application, the Board must approve the application for the grant. Following Board approval of a grant or grant application, the Administrator is delegated authority to approve and execute all other grant documents.

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

(6) Notwithstanding the limits on the County Administrator's authority contained in this section, the County Administrator may approve grant applications and accept grants when necessary to secure the full benefit of the grant to the County, provided that:

(a) In the Administrator's judgment, and with the concurrence of County Counsel and the budget and financial planning office, the grant applications or grants require execution prior to the time when they could reasonably be approved by the Board at a regularly-scheduled meeting; and

(b) A description of the grant applications and grants, including the amounts, duration, and reason for prompt execution, is submitted to the Board for ratification on its consent agenda item following execution.

(Revised by Order No. 15-09-01-05, Effective 10-15-15; Revised by Order No.19-05-21-03, Effective 05-21-19)

20.660 County Administrator's Authority to Execute Contracts.

(1) The County Administrator is delegated authority to execute all contracts and agreements that do not exceed \$150,000 in cost or revenue nor three years in length.

(2) The County Administrator is further delegated authority to execute contracts that exceed three years in length, or are by their terms self-renewing, but only if:

(a) The cost or revenue for the first three years does not exceed \$50,000, and

(b) The contract contains a provision allowing the County to terminate the contract upon not more than one year's notice.

(3) The County Administrator is further delegated authority to execute, without limitation of amount or length:

(a) All contracts that have been awarded or expressly approved by the Board.

(b) Contracts specifically identified in a budget adoption order or supplemental budget order approved by the Board.

(c) Insurance nonwaiver agreements and insurance endorsements to original policies.

(d) Land use improvement agreements, Building Program Quick Start Agreements and acceptance and release of land use performance bonds.

(e) Contracts and assignments for the collection of County judgments.

(f) All contracts that implement public improvement projects described on the adopted Lane County Capital Improvement Plan and the Public Works and County Administration public improvement lists prepared for filing with the Commissioner of the Bureau of Labor and Industries (BOLI) pursuant to ORS 279C.305. This delegation includes, without limitation, contracts to prepare for, design, administer, and construct listed projects, as well as those contracts reflecting the County paid portion of the project, those reflecting any amount to be paid by other governmental agencies or housing development entities for assisted housing projects, and those covering environmental mitigation responsibility.

(4) Notwithstanding the limits on the County Administrator's authority contained in this section and section 20.665, the County Administrator may execute contracts and amendments when necessary to secure the full benefit of the contract to the County, provided that:

(a) In the Administrator's judgment, and with the concurrence of County Counsel and the budget and financial planning office, the contracts require execution prior to the time when they could reasonably be approved by the Board at a regularly-scheduled meeting; and

(b) A description of the contracts or amendments, including the amounts, duration, and reason for prompt execution, is submitted to the Board for ratification on its consent agenda item following execution.

(Revised by Order No. 15-09-01-05, Effective 10-15-15; Revised by Order No.19-05-21-03, Effective 05-21-19; Order No. 19-08-20-03, Effective 08-20-19)

20.665 County Administrator's Authority to Execute Amendments.

Subject to the limitations on cumulative contract amount in LM 20.630, the County Administrator is delegated authority to:

(1) Execute amendments to contracts that do not cause the contract amount to exceed \$150,000 in cost or revenue nor three years in length,

(2) Execute amendments to contracts, without limitation of amount or length, if the amendment amount or length is within limits authorized by the Board for that specific contract or class of contracts, and

(3) Execute amendments to contracts where the original contract amount exceeds \$150,000, subject to the following limitations:

(a) If the original contract amount is greater than \$500,000, the total of all amendments to that contract may not exceed 25 percent of the contract amount approved by the Board.

(b) If the original contract amount is \$500,000 or less, the total of all amendments may not exceed 50 percent of the contract amount approved by the Board, and

(c) The amendment does not extend the length of the contract beyond three years, unless the original contract contained a provision for a longer duration and was awarded or expressly approved by the Board.

(Revised by Order No. 15-09-01-05, Effective 10-15-15; Revised by Order No.19-05-21-03, Effective 05-21-19)

20.670 Department Directors' Authority to Execute Contracts and Amendments.

(1) Each Department Director is delegated authority to execute contracts that do not exceed \$50,000 nor three years in length.

(2) Each Department Director is further delegated authority to execute contracts that exceed three years in length, or are by their terms self-renewing, but only if:

(a) The cost or revenue for the first three years does not exceed \$50,000, and