

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO. 18-03-13-03

IN THE MATTER OF AMENDING LANE
MANUAL CHAPTER 20 TO REVISE
PROVISIONS PERTAINING TO GRANT
ACCEPTANCE AND COMPLIANCE AND TO
MAKE ADMINISTRATIVE CORRECTIONS

The Board of County Commissioners of Lane County **ORDERS** as follows:

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

REMOVE THESE SECTIONS

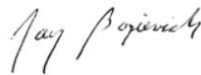
20.065
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INSERT THESE SECTIONS

20.065
NONE
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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.

ADOPTED this 13th day of March 2018.



Jay Bozievich, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date _____

LANE COUNTY OFFICE OF LEGAL COUNSEL

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Offeror. A term used to describe a vendor or person that submits a bid, proposal, quote, or other type of offer.

Personal property. Property, other than real estate, consisting generally of movable or temporary things, as defined in ORS 307.020.

Personal services. Those services described in LM 20.430(1).

Procurement. The process by which the County conducts its purchases of goods and services.

Project. A specific plan or undertaking with defined objectives or limits.

Public contract. See ORS 279A.010(1)(z).

Public improvement. See ORS 279A.010(1)(cc).

Public officer. Any person authorized to conduct a procurement on the County's behalf.

Requirements contract. An agreement in which the contractor agrees to supply to the County the specific goods or services identified in the agreement for a specific time period, based upon the quantity required or ordered by the County's during the time period.

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 Advertising.

The LCRB has determined that it is more cost effective for the County to publicly advertise bids and other 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. *(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

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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)*

GENERAL EXEMPTIONS FROM COMPETITIVE SELECTION

20.110 General Statutory and Regulatory Exemptions and Exclusions.

County contracts are not required to be based upon a County competitive selection process if a state or federal statute or regulation provides otherwise, or directs that another selection process be used. Contracts exempt or excluded from competitive selection include:

(1) Contracts with the State of Oregon, other Oregon units of local government, or the federal government (Intergovernmental Agreements);

(2) Grants or County Grants;

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

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

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

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

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

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

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

(10) Contracts in which County is permitted to award without bidding or request for proposals provided that it adopts its own rules covering the selection process. *(Revised by Order No. 15-09-01-05, Effective 10-15-15)*

20.115 Products or Services of Qualified Rehabilitation Facilities.

If the product or service meeting the County's requirements is available from a Qualified Rehabilitation Facility (QRF), the County must purchase such products or services from a QRF, in accordance with ORS 279.835 through 279.855. *(Revised by Order No. 15-09-01-05, Effective 10-15-15)*

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(1) The purchase is made from the lowest priced vendor for the specific product and brand, and

(2) The County has a reasonable medical or scientific basis for the selection.

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

20.245 Food Services.

~~(1) The County may contract for food services without formal competitive selection, subject to the following conditions:~~

~~(a) Prior to the selection of a contractor, the County has made reasonable efforts to inform known companies providing food services of the subject matter of the contract,~~

~~(b) The County advertises for proposals in accordance with LM 21.105(3), and~~

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

~~(2) The County may contract for food services for jail and juvenile detention facilities without competitive bidding. *(Revised by Order No. 15-09-01-05, Effective 10-15-15)*~~

20.250 Used Personal Property.

The County may purchase used personal property for \$50,000 or less without competitive selection, provided that:

(1) The County has determined that the direct purchase without competitive bidding will result in cost savings, and

(2) For purchases of used personal property over \$50,000, at least 3 competitive quotes have been obtained, if available. If 3 quotes are not available, a written record must be made of the attempt to obtain quotes. *(Revised by Order No. 15-09-01-05, Effective 10-15-15)*

20.255 Litigation Services.

The County may contract for personal services related to litigation or legal matters without competitive selection when County Counsel deems it necessary to do so, including but not limited to outside legal representation, expert witnesses, consultants, arbitrators, mediators, investigators or other specialized personnel. *(Revised by Order No. 15-09-01-05, Effective 10-15-15)*

20.260 Employee Benefit Insurance.

The County may purchase employee benefit insurance without competitive selection. *(Revised by Order No. 15-09-01-05, Effective 10-15-15)*

20.265 Investments.

The County may contract for the purpose of the investment of public funds or the borrowing of funds without competitive selection, when such investment or borrowing is contracted pursuant to an enacted statute, order, ordinance, charter, or constitution. *(Revised by Order No. 15-09-01-05, Effective 10-15-15)*

20.270 Insurance.

(1) The County may purchase insurance without a formal competitive selection when the annual or aggregate premium is less than or equal to \$100,000.

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(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 \$100,000 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)*

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 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 ~~21.10720.420~~ 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

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- (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 48 hours prior to the deadline for bid. 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.

(b) By signing and returning a bid, the bidder acknowledges it has read and understands the terms and conditions applicable to the solicitation document and that it 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 for bid opening in the invitation to bid.

(e) Bids Irrevocable. All bids must be irrevocable for 30 days from the deadline for submission, unless otherwise stated in the invitation to bid. In addition, the bids of the three lowest bidders will be irrevocable and binding, and any bid securities may 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 invitation to bid. To the extent practicable, the public officer 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. If the offers are a proposals submitted in response to an RFP, the proposals may be opened in a manner to

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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 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 ~~LM 21.122(5)~~ 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

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(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.

~~(78)~~ 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 posting on the County's internet website, in the location used for bid solicitations.

(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 Considerations.

(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.

~~(ba)~~ 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.

~~(eb)~~ 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.

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(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) 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)*

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

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(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

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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)*

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

20.590 Standard 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.

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(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. ~~This provision does not permit the County to terminate the contract in order to provide similar services or goods from a different contractor.~~

(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

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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 provides and~~ 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 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).

Project. A specific plan or undertaking with defined objectives or limits.

Public contract. See ORS 279A.010(1)(z).

Public improvement. See ORS 279A.010(1)(cc).

Public officer. Any person authorized to conduct a procurement on the County's behalf.

Requirements contract. An agreement in which the contractor agrees to supply to the County the specific goods or services identified in the agreement for a specific time period, based upon the quantity required or ordered by the County's during the time period.

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 Advertising.

The LCRB has determined that it is more cost effective for the County to publicly advertise bids and other 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. *(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)*

GENERAL EXEMPTIONS FROM COMPETITIVE SELECTION

20.110 General Statutory and Regulatory Exemptions and Exclusions.

County contracts are not required to be based upon a County competitive selection process if a state or federal statute or regulation provides otherwise, or directs that another selection process be used. Contracts exempt or excluded from competitive selection include:

- (1) Contracts with the State of Oregon, other Oregon units of local government, or the federal government (Intergovernmental Agreements);
- (2) Grants or County Grants;
- (3) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which County is or may become interested;
- (4) Acquisitions or disposals of real property or interests in real property;
- (5) Sole source expenditures when rates are set by law or ordinance for purposes of source selection;
- (6) Contracts for employee benefit plans as provided in ORS 243.105(1), 243.125(4), 243.221, 243.275, 243.291, 243.303 and 243.565;
- (7) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145;
- (8) Contracts for repair, maintenance, improvement or protection of property obtained by the Director of Veterans' Affairs under ORS 407.135 and 407.145(1);
- (9) Contracts specifically exempt or authorized as a special procurement under LM Chapter 20 or under state law;
- (10) Contracts in which County is permitted to award without bidding or request for proposals provided that it adopts its own rules covering the selection process. *(Revised by Order No. 15-09-01-05, Effective 10-15-15)*

20.115 Products or Services of Qualified Rehabilitation Facilities.

If the product or service meeting the County's requirements is available from a Qualified Rehabilitation Facility (QRF), the County must purchase such products or services from a QRF, in accordance with ORS 279.835 through 279.855. *(Revised by Order No. 15-09-01-05, Effective 10-15-15)*

20.120 Price-Regulated Items or Services.

The County may, without competitive bidding or quotes, contract for the purchase of goods or services where the rate or price for the goods or services being purchased is established by Federal, State, or regulatory authority. *(Revised by Order No. 15-09-01-05, Effective 10-15-15)*

20.125 Price Set by Federal Contracts.

When the price of goods and services has been established by a contract with an agency of the federal government pursuant to a federal contract award, the County may purchase the goods and services from the supplier without subsequent competitive bidding. *(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 \$100,000 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)*

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 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)*

(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 48 hours prior to the deadline for bid. 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.

(b) By signing and returning a bid, the bidder acknowledges it has read and understands the terms and conditions applicable to the solicitation document and that it 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 for bid opening in the invitation to bid.

(e) Bids Irrevocable. All bids must be irrevocable for 30 days from the deadline for submission, unless otherwise stated in the invitation to bid. In addition, the bids of the three lowest bidders will be irrevocable and binding, and any bid securities 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. To the extent practicable, the public officer 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. 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 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 posting on the County's internet website, in the location used for bid solicitations.

(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)*

(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)*

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**20.590 Standard 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 Contract 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)*