



WASHINGTON COUNTY

OREGON

RULES

OF

PROCUREMENT

EFFECTIVE MARCH 1, 2005

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06/05/2018**

Legislative Requirements / Purchasing Rules Synopsis

The 1999 Oregon Legislature enacted several bills that modified and added provisions to the public contracting laws. In response to those changes, the Purchasing Division initiated a multi-step process to address the changes in State Law and update the County's exemptions.

House Bill 2024 made it mandatory for all public contracting agencies to follow the Attorney General's Model Rules of Procedures or opt out and adopt their own rules. These Model Rules govern procedural matters concerning the preparation, submission, receipt and award of bids and proposals. To meet the new statutory requirements, the County chose to revise the Rules.

On November 2, 1999, the Board of Commissioners approved Resolution and Order #99-192 that opted out of the Attorney General's Model Rules, adopted our own revised Purchasing Rules of Procedure and readopted our current exemptions. The procedural Rules adopted were based on Division 30 of the Model Rules.

On March 21, 2000, the Board of Commissioners approved Resolution and Order #00-50 that adopted Division 40 and incorporated them into the County Purchasing Rules.

In 2003, the legislature adopted HB 2341, which reorganized and modified the public contracting laws. In response to the legislative changes, the Department of Justice Attorney General's Model rules were revised and filed on September 1, 2004.

In 2005, the legislature adopted several bills to clean-up, clarify and amend sections of the Public Contracting Code. The County Purchasing Rules have been revised as of January 24, 2006 due to these legislative actions.

In 2007, the legislature adopted several bills that made changes to the Public Contracting Code. The County Purchasing Rules have been revised as of January 8, 2008 to reflect those changes. In 2009, the legislature adopted HB 2867 that made several changes to the Public Contracting Code. The Purchasing Rules have been revised as of January 1, 2010 to reflect those changes.

The Procurement Rules were revised January 1, 2012 to incorporate the changes made by the 2011 legislative session which increased the formal procurement and contract signature threshold to \$100,000. The 2013 legislative session has made changes effective January 1, 2014. These rules are revised to reflect those changes.

The legislature adopted SB 254 in 2013 and adopted HB 4122 in 2014. SB 254 requires a contracting agency that procures construction manager/general contractor services to do so in accordance with model rules the Attorney General adopts under ORS 279A.065(3) These rules are revised to reflect those changes.

In April 2015, revisions were made to the rules to provide internal consistency on wording to reflect actual practice for approval and execution of documents.

Changes made in the 2015 legislative session are effective June 22, 2015 and January 1, 2016. These rules have been revised to reflect those changes.

In June 2018, revisions were made to the rules to provide clarity and to reflect actual practices for approval and execution of documents. A Class Special Procurement for aggregate rock was approved and added to the Rules.

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Division 00 - Definitions / Glossary

Addendum or Addenda: An addition or deletion to, a material change in, or general interest explanation of the ITB or RFP document. Addenda shall be labeled as such and posted or distributed in accordance with these Rules.

Administering Contracting Agency: A governmental body in this state or in another jurisdiction that solicits and establishes the original contract price for procurement of goods, services, or public improvements in a cooperative procurement.

Advertise: To make a public announcement of the intent to purchase goods, services or construction, for the purpose of notifying interested parties and expanding competition. For example, in a newspaper of general circulation like the Daily Journal of Commerce; or, an electronic posting such as ORPIN.

Agenda: The written document presented to the Board, which details the bid, proposal and contract award recommendations; includes summary and background information.

Amendment: An addition or supplement to an existing contract.

Appropriation: A budgeted sum of money set aside for a specific purpose.

Award: The act or occurrence of the Board's identification of the person, firm or organization with whom the Board will enter into a contract following the resolution of any protest of the Board's selection of the person, firm or organization, and the completion of all contract negotiations.

Bid: An offer submitted in response to an Invitation to Bid.

Bidder: A supplier that submits a bid in response to an invitation to bid.

Blanket Purchase Order: A purchase order placed with a supplier for an established dollar amount to supply various supplies and/or services on an as-needed basis within a specified time period.

Board: The Board of County Commissioners for Washington County and all service districts for which the Board serves as the contract review board.

Bond: -

Bid Security (Bond): A written agreement or check by which a third party guarantees that a bidder will honor its bid if a contract is awarded.

Payment Bond: A bond equal to the full contract price. It is required of a contractor to assure fulfillment of the contractor's obligation to pay all persons supplying labor or materials in the performance of the work provided for in a contract.

Performance Bond: A bond, equal to the full contract price, executed subsequent to award by a successful bidder or proposer to protect the buyer from loss due to the bidder's or proposer's inability or refusal to complete the contract as agreed.

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

Class Special Procurement: A contracting procedure that differs from the procedures otherwise described in these Rules and is for the purpose of entering into a series of contracts over time or for multiple projects.

Closing: The date and time announced in the ITB / RFP document as the deadline for submitting offers.

Commodity Code: A system of words and numbers established to easily identify and list products or services.

Competitive Bidding: The issuing of invitations to bid which follow the formal process of advertising, bid and bid opening required by ORS 279A, ORS 279B, ORS 279C and these Rules.

Competitive Process: The ITB, RFP and/or quote process, as indicated by the context.

Conduct Disqualification: A disqualification from consideration of award based on particular Federal or State convictions, or violations of contract provisions pursuant to ORS 279C.440.

Contract: An agreement, usually written, between parties, with binding legal and moral force; usually exchanging goods or services for money or other consideration.

Contract Administration: The management of all facets of a contract that must be taken to assure compliance by all parties. This includes monitoring service or goods, maintaining open communication, making prompt payment, monitoring budget requirements and closing out the contract when completed.

Contract Review: The process in which every County contract is reviewed and approved as to form and process. The individual department administrator, County Counsel, Purchasing and the County Administrative Office perform the review. Upon completion of this review, either the County Administrator or their designee, or the Chair of the Board or their designee then executes the contract.

Contract Review Authority: The Board of Commissioners.

Contractor: An individual or firm who agrees to furnish goods or services to the County; may include a prime contractor and/or a subcontractor.

Contract-Specific Special Procurement: A contracting procedure that differs from the procedures described in these Rules and is for the purpose of entering into a single contract or number of related contracts on a one-time basis or for a single project.

Cooperative Procurement: Procurement conducted by or on behalf of one or more governmental bodies. “Cooperative procurement” includes, but is not limited to, multi-agency contracts and price agreements.

Cooperative Procurement Group: A group of governmental bodies joined through an intergovernmental agreement for the purpose of facilitating cooperative procurements.

County: Washington County, a political subdivision of the State of Oregon, and any other entity for which the Board serves as the Local Contract Review Authority.

Debarment or Disqualification: The preclusion of a Contractor from contracting with the County for a period of time by County, State or Federal authority.

Electronic Advertisement: Electronic advertisement for ITB’s / RFP’s available over the Internet.

Emergency Declaration: Based on the severity of unforeseen circumstances (e.g., flooding, earthquakes, etc.), the Board or County Administrator may declare an emergency and execute public contracts without going through the standard purchasing processes.

Emergency Situation: Circumstances that are unforeseen and require immediate action to minimize risk of property damage, personal injury or substantial extraordinary expense to the County or to the public.

Emergency Purchase: An acquisition required due to an unexpected situation or occurrence that is serious in nature and requires immediate action.

Exemptions: Materials or services exempt from a competitive process pursuant to ORS 279C.335, 279A.025 and/or these Rules.

Fiscal Year: The twelve-month budget-period starting July 1 and ending June 30.

Foreign Contractor: A contractor that is not domiciled in or registered to do business in the State of Oregon.

F.O.B.: Abbreviation for Free on Board; a term used to identify the point at which a buyer takes legal ownership of goods from a seller. F.O.B. Destination indicates that the buyer takes responsibility for the goods at the point the merchandise is delivered to the buyers’ requested delivery location.

Goods: Supplies, equipment, materials, and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that the County is authorized to procure.

Informal Bid: - *See* Request for Quotation

Informality: A minor defect or variation found in a bid document or proposal response that does not affect the required specifications or scope of work.

Interstate Cooperative Procurement: A permissive cooperative procurement in which the administering contracting agency is a governmental body, domestic or foreign, that is authorized under the governmental body's laws, rules or regulations to enter into public contracts and in which one or more of the participating governmental bodies are located outside the state of Oregon.

Invitation to Bid (ITB): A solicitation document calling for competitive bids.

Joint Cooperative Procurement: A cooperative procurement in which the participating governmental bodies or the cooperative procurement group and the bodies' or group's contract requirements or estimated contract requirements for price agreements are identified.

Letter of Intent: A letter from a potential contractor declaring their intention to respond to an ITB or RFP.

Lowest Responsible Bidder: The bidder with the lowest prices whose past performance, reputation and financial capability is deemed acceptable.

Mandatory: The term used to identify requirements in a bid or proposal that cannot be waived.

Negotiation: The bargaining process between two or more parties seeking to reach a mutually satisfactory agreement or settlement.

Non-Responsive Bid: A bid that does not conform to the mandatory or essential requirements of the Invitation for Bid.

Offer: A bid or proposal response to provide goods, services or personal services.

Opening: The date, time, and place announced in the ITB or RFP document for the public opening of offers.

ORPIN: The on-line electronic Oregon Procurement Information Network (ORPIN), an electronic solicitation system, administered by the Oregon Department of Administrative Services, State Procurement Office, as further defined in OAR 125-246-0500.

Original Contract: The initial contract or price agreement solicited and awarded during a cooperative procurement by an administering contracting agency.

Permissive Cooperative Procurement: A cooperative procurement in which the purchasing contracting agencies are not identified.

Personal Property: Everything subject to ownership that is not real property and has exchangeable value.

Personal Services: Services that are performed as an independent contractor in a personal or professional capacity; including but not limited to accountant, attorney, physician, counselor, consultant, and architect and as further described in 25-020.

Pre-Bid or Pre-Proposal Conference: A meeting held with prospective bidders or proposers prior to solicitation of bids or proposals, to review, discuss and clarify technical considerations, specifications and standards.

Pre-qualification: The process in which suppliers or products are evaluated for future purchase opportunities; thereby limiting consideration for future contracts to only those suppliers or products.

Prevailing Wages: Prevailing Wage Rates are the minimum wages that must be paid to all workers employed in any public works project exceeding \$50,000. Notice of prevailing wage requirements must be included in bid and contract documents for projects of \$50,000 or more.

Professional Services: *See* Personal Services.

Project: A specific plan or task with clearly defined limits.

Proposal: An offer submitted in response to an RFP.

Proposer: A supplier that submits a response to an RFP.

Protest: A complaint received from a bidder or proposer regarding a governmental administrative action or decision; normally in relation to bid or proposal processes and/or contract awards.

Public Agency: Any agency of the State of Oregon or any political subdivision.

Public Contract: A Contract as defined in ORS 279A.010.

Public Contract Review Board: The Board of County Commissioners serving as the Local Contract Review Board (LCRB) pursuant to ORS 279A.060.

Public Improvement: Projects for construction, reconstruction or major renovation on real property by or for the County.

Public Work: Construction or improvements by a public agency of publicly owned buildings, roadways, etc., as defined in ORS 279C.800(6).

Purchase Order: A document used for the general purpose of ordering and paying for supplies. This document is also used to pay for services ordered with a contract. The document stipulates various terms and conditions of the transaction.

Purchasing Contracting Agency: A governmental body that procures goods, services or public improvements from a contractor based on the original contract established by an administering contracting agency.

Quotes: *See* Request for Quotation.

Reinstatement of Expired Contract: The action of reinstatement of an expired contract that was previously properly executed containing all the required signatures.

Request for Information (RFI): Typically used to determine if sufficient information exists to develop specifications for an RFP. It is primarily used for highly technical projects.

Request for Proposals (RFP): The solicitation of competitive proposals to be used as the basis in making an acquisition or entering into a contract when criteria other than specification and pricing may be the predominant factor for award recommendation.

Request for Programmatic Qualifications (RFPQ): An alternative formal procurement process that results in qualifying a pool of contractors. The RFPQ may be a one-time qualification process or may feature a continuously open process providing for periodic qualification evaluations. Contract awards are made through an allocation process.

Request for Quotation (RFQ): An informal written or verbal solicitation for pricing of goods or services.

Requirements Contract: A contract in which the supplier agrees to supply all of the County's requirements that arise for an item or items within a specified time period.

Requisition: An internal document that details goods and/or services desired by the initiator and allows for encumbering of funds for the stated purpose.

Responsible Bidder or Responsible Proposer (as applicable): A supplier that submits an offer and meets the standards set forth in these Rules and the solicitation document.

Responsive Bid or Responsive Proposal (as applicable): An offer that substantially complies with the solicitation document, any applicable rules and other laws.

Retroactive Approval of a Public Contract: The action of the County Administrator or their designee, retroactively executing a contract that was not previously properly executed containing all the required approval signatures.

Service: Work performed to meet a demand.

Services Contract – A contract in which the supplier agrees to supply the County’s service requirements that arise for a specified time period or an individual project, usually based on time and materials. This contract is used whenever the County is purchasing “services” from a supplier rather than goods. “Services” does not include “Personal Services” or “Professional Services” as defined in this section.

Solicitation Document: An Invitation to Bid or Request for Proposals or other similar documents issued to invite an offer that includes all required documents, including those incorporated by reference.

Special Procurement: Means a class special procurement, a contract-specific special procurement or both.

Specification: The description of the physical or functional characteristics of the item(s) or service(s) being solicited, including any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under a contract.

State Price Agreement (PA): A state agreement for materials or services that allows other public agencies to utilize the contract; thereby obtaining volume pricing.

Services Contract: A contract in which the supplier agrees to supply the County’s service requirements that arise for a specified time period or an individual project, usually based on time and materials. This contract is used whenever the County is purchasing “services” from a supplier rather than goods. “Services” does not include “Personal Services” or “Professional Services” as defined in this section.

Surplus Personal Property: County personal property that exceeds the County’s needs and is not required for the agency's foreseeable needs. The term includes recyclable, reclaimed or salvageable materials, used or new property that retains some usefulness for the purpose for which it was intended or for re-use for another purpose.

Transcription: Translating verbal dictation or audio files into written reports. There are two types of transcription, medical and legal. A court reporter is a legal transcriptionist with Oregon Judicial Department certification.

Waiver: An exemption from the RFP process for personal services granted in accordance with 10-130.

Division 10 – Competitive Process and Contract Authority

10-010 – Purpose and Statutory Authority; Rejection of Model Rules

1. Purpose. The purpose of this division is to establish the competitive process requirements; designate the signature authority to bind the County to contracts; and designate the process and authority for amendments.
2. Authority. These Rules are authorized by ORS 279A.050, ORS 279C.345(2) and ORS 279A.070; the Washington County Charter Sec. 20, 21, 31, 36 and 40; and Washington County Code Chapter 2.04.
3. Oregon Attorney General Model Rules. The model rules adopted by the Oregon Attorney General pursuant to ORS 279A.065 shall not apply to Washington County unless specifically referenced herein.
4. The Washington County Board of Commissioners shall serve as the Local Contract Review Board for the County.

10-015 – Electronic Transactions

Washington County may send and accept electronic contracts and electronic signatures to and from contractors.

10-020 - Competitive Bidding

All contracts shall be awarded by competitive process except as otherwise allowed or required by state statute, these Rules or as authorized by the Board.

10-030 – Specification of Particular Brand Names or Products

1. Specifications for public contracts shall not expressly or implicitly require any product of any particular manufacturer or seller except pursuant to an exemption or designation under Rules 15-040 (Brand Name or Mark Designation Applications), 15-060 (Sole Source Procurements) or 20-040 (Copyrighted Materials).
2. The County may designate a particular brand name, make, or product or its equal to establish minimum requirements in the specifications.

10-040 - Federal Law

1. If federal funds are involved, federal laws, rules and regulations shall govern in the event of a conflict with these Rules.
2. When County is expending Federal dollars for a procurement, the procurement shall be in compliance with 2CFR200 including but not limited to the following:

- a. County and all County subcontractors and sub recipients shall comply with 2CFR200.318 General procurement standards through 200.326 Contract provisions.
- b. A competitive process must be completed for any purchase in excess of the micro purchase limit.

10-050 - Prohibitions

1. Only those persons authorized to do so, pursuant to these Rules, may enter into a binding agreement or contract, including a purchase order, for the purchase or sale of goods or services on the part of the County.
2. All persons doing business with the County shall be responsible for being familiar with these Rules and for ensuring that the person purporting to act for the County has been duly authorized.
3. County procurement processes shall not discriminate on the basis of race, color, national origin, age, disability, or sex. Washington County will treat no contractor, bidder, proposer, or other responder differently because of race, color, national origin, age, disability, or sex.

10-060 – Contract Authority

1. Except as otherwise provided in these Rules, any contract in excess of \$100,000 must be awarded by the Board.
2. Upon award by the Board, the Chairperson, the County Administrator or other designee may execute the contract on behalf of the County.
3. The County Administrator, or their designee, may execute a contract or purchase order in an amount not to exceed \$100,000 or the limits as set forth in Rule 25-070 (Multi-Year Personal Services Contracts).
4. The County Administrator or their designee may execute a contract or contracts under the conditions set forth in Rule 20-020 (Emergency Contracts), Rule 20-030 (Equipment Repair and Overhaul), Rule 20-050 (Library Systems Materials), Rule 20-070 (Advertising Contracts), Rule 20-080 (Election Supplies and Services), Rule 20-095 (Purchases of Energy), 20-110 (Copier and Printer Paper), Rule 20-120 Telecommunication, Computer, Data Storage, and Network Hardware / Software), Rule 20-130 (Acquisition of Automobiles and Miscellaneous Equipment Parts), and Rule 25-030 Property, Liability, Workers' Compensation and Employee Benefit Insurance.
5. The County Counsel and District Attorney may execute contracts for all services described in Rule 25-040 (Legal Services) in an amount not to exceed \$100,000.

6. The Purchasing Supervisor or designee has the authority to execute purchase orders. Those purchase orders requiring Board authorization may be executed and issued only after the appropriate Board action.
7. The Purchasing Supervisor or designee may enter into contracts for equipment maintenance services and facility rental agreements in an amount not to exceed \$20,000.
8. The Purchasing Supervisor or designee may execute a Letter of Agreement for qualifying personal services, including guest speakers, presenters, facilitators, trainers, and team builders in an amount that does not exceed \$10,000. The only personal services that qualify for a Letter of Agreement are those services described above whose training or service does not include any person having physical contact with another person, including contact between presenters, contact between participants, or contact between presenter(s) and participant(s); who is not an entertainer (except storytellers), and any class or training that will result in the participants being certified.
9. In the case of an emergency that causes the County Emergency Operations Center to be activated the Board, the Chairperson, the County Administrator, the Incident Commander, Finance Chief, or their designee(s), may execute a contract under the conditions set forth in Rule 20-020 (Emergency Contracts).

10-070 – Contract Amendment Authority – Increasing Expenditure

Contract amendments, including change orders, are authorized in accordance with the following:

1. The County Administrator, or designee, may execute an amendment or a series of amendments to increase the contract expenditure, so long as the total amount of all amendments plus the original contract amount does not exceed \$100,000.
2. The County Administrator, or designee, may execute an amendment or a series of amendments that are authorized by the following Rules:
 - (a) Rule 10-090 (Change Order or Amendments - Public Contracts)
 - (b) Rule 10-140 (Amendments – Personal Service Contracts).
 - (c) Rule 25-050 (State, Federal or Grant Funded Contracts).
3. The County Administrator, or designee, may execute an amendment, or a series of amendments, provided that: (a) the amount was expressly authorized by the Board at the time the contract was awarded; or (b) does not exceed 20% of the Board award or any subsequent Board authorized amendment(s) and complies with all other requirements of these rules.
4. All other amendments affecting the contract amount require Board authorization.

10-080 – Contract Amendment Authority – No Increase of Expenditure

The County Administrator, or designee, may execute any amendment to a contract, including but not limited to a change in scope or time extension, provided the amendment does not exceed the expenditure limitations set forth in these Rules.

10-090 – Change Orders or Amendment – Public Contracts

An amendment or change order that increases the contract amount may be made with the contractor without further competitive process if any of the following conditions are met:

1. The original contract was let by competitive bidding authorized by these Rules; unit prices and/or bid alternates were provided that established the cost for additional work; and a binding obligation exists between the parties covering the terms and conditions of the additional work; or
2. The amount of the aggregate cost increase resulting from all amendments does not exceed 20% of the contract amount authorized by the Board or any subsequent Board authorized amendment(s). Amendments made pursuant to section (1) of this Rule are not included in computing the aggregate amount under this section; or
3. The total proposed increase is still below the dollar amount for the competitive bidding requirement under these Rules.

10-100 – Term – Public Contracts

The term of a public contract shall be a maximum of five (5) years, unless otherwise specified in the ITB or other solicitation document. This Rule shall not apply to contracts or agreements regarding real property.

10-110 - Bid Security, Performance and Payment Bonds; Waivers – Public Contracts

1. Bid Security and Bond Requirements. The bid security requirements of ORS 279C.365 and Performance and Payment Bond requirements of ORS 279C.380 shall not apply to:
 - (a) Contracts for public improvements under \$100,000; or
 - (b) Contracts for purchases of goods or contracts for personal services.
2. Bid security and performance and payment bonds in an amount equal to the full contract price are required for any specific contract unless otherwise exempt under this subsection.
3. The Purchasing Supervisor may waive or reduce the bid security and performance and payment bond requirements on multi-year public improvement requirement contracts.

4. Waivers and Exemptions. The Board may waive or exempt the bid security requirements of ORS 279C.365 and Performance and Payment Bond requirements of ORS 279C.380 for a contract or class of contracts as provided in ORS 279C.380 and 279C.390.

10-120 - Competitive Process – Personal Service Contracts

1. Except as otherwise provided by Rule or by a waiver, personal service contracts anticipated to exceed \$100,000 to a single supplier or to multiple suppliers providing similar services, shall be awarded pursuant to the RFP process.
2. For personal service contracts to a single supplier or to multiple suppliers providing similar services, anticipated not to exceed \$100,000, informal methods to evaluate alternative proposers shall be used when practicable.
3. Notwithstanding any other provision in these rules, for personal services contracts the County may use a Letter of Intent RFP process which requires any prospective proposer(s) to file a letter by the given deadline that notifies the County of its intent to respond to the RFP. If there is only one interested proposer who turns in a letter then the County reserves the right to negotiate a contract with that responder and forego the RFP process.

10-130 - Waiver – Personal Service Contracts (ORS 279A.055)

1. The Board may waive the RFP process for a particular personal service, or a category of personal services. The request shall address the following criteria:
 - (a) The nature of the agreement;
 - (b) The estimated cost;
 - (c) A narrative description of the basis for the waiver and the reasons an RFP process would be inappropriate; and
 - (d) A statement of the alternative selection process that will be used, if any.

10-140 – Amendments – Personal Service Contracts

1. Personal service contracts that are competitively awarded or waived may be amended to increase the contract amount up to 20% over the original contract amount authorized by the Board or any subsequent Board authorized amendment(s), provided that the increase must be for substantially the same type of work described in the original RFP. Increases over 20% of the contract amount require Board authorization.
2. If the RFP and/or original contract allowed for increase in units of service at a set fee, amendments for these personal services contracts are not subject to the percentage increase limitation.

3. A personal service contract that is non-competitively awarded may be increased so long as the total amount of all amendments plus the original contract amount does not exceed \$100,000.

10-150 – Term – Personal Services Contracts

Personal service contracts have a maximum contract period of five (5) years, unless otherwise specified in the solicitation document, or in state or federal program regulations, or the Board authorizes a longer contract period.

10-160 – RESERVED

10-170 - Contract Termination

The Purchasing Supervisor shall have authority to terminate a contract on behalf of the County as provided by law or the terms of the contract, including but not limited to nonperformance, default, convenience, or public interest.

10-180 – Reinstatement of Expired Contract

1. With the exception of grant contracts where the County is the recipient, the County Administrator or designee may authorize reinstatement of an expired contract if the following conditions are met:
 - (a) The contracting Department demonstrates to the County Administrator or designee, concisely in writing, that the failure to extend or renew the contract in a timely manner was due to unforeseen or unavoidable conditions;
 - (b) The written request for reinstatement is presented to the County Administrator or designee within three hundred and sixty-five (365) days after the expiration of the original contract; and
 - (c) The contracting Department provides the County Administrator or designee a concise written statement justifying the contractor's completion of the work after the expiration of the contract, affirming that there is no change in the statement of work, and either:
 - i. The reinstatement is exclusively for the purpose of permitting completion of the work or additional services for no additional compensation; or
 - ii. When the services are of a continuing or repetitive nature, which are compensated at an hourly, daily or similar periodic rate, the reinstatement does not increase the rate of compensation.

2. When a contract is reinstated pursuant to this section, the County may compensate the contractor, at the rate of compensation established in the original contract, for work performed in the interim between the expiration of the original contract and the authorization of the extension or amendment.
3. No reinstatement of a contract shall modify the original contract's scope of work.
4. Once a contract is reinstated, it is in full force and effect, as if it had not expired.

10-190 – Retroactive Approvals

1. This Rule applies to all contracts that must have the authorization of the Board or the County Administrator or designee pursuant to these Rules.
2. Before the Board or the County Administrator or designee may consider retroactive approval of a contract, the Department must do all of the following:
 - (a) Submit to the Board or the County Administrator or designee a copy of the contract to be reviewed and a written request for contract retroactive approval consideration containing:
 - i. An explanation of why the contract was not submitted to the Board or the County Administrator or designee before performance began;
 - ii. A description of the steps being taken to prevent similar occurrences in the future; and
 - iii. A proposed retroactive approval of the contract.
 - (b) Obtain authorization from the Board or the County Administrator or designee.

Division 15 – Small, Intermediate and Source Selection Procurements

15-010 – Small Procurements – ORS 279B.065

1. When a purchase is in excess of the Federal Micro Purchase threshold, and is funded with Federal funds, the intermediate procurement process must be followed (15-020). The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions).
2. All other purchases where the amount of a purchase of goods or services, excluding personal services, is \$10,000 or less, the County shall, when feasible, obtain competitive quotes. Contracts for \$10,000 or less may be awarded in any manner deemed practical or convenient by the County, including direct selection or award.

3. A contract awarded under this section may only be amended to exceed \$10,000 in accordance with Section 10-070 and 10-090.

15-020 – Intermediate Procurements – ORS 279B.070

1. Where the amount of a purchase of goods or services, excluding personal services, exceeds \$10,000 but is not greater than \$100,000, the County shall seek at least three (3) informally solicited, written competitive price quotes or proposals from prospective contractors. The County shall keep a record of the sources of the quotes or proposals received. If three quotes or proposals are not reasonably available, fewer will suffice, but the County will make a written record of the effort made to obtain the quotes or proposals.
2. If a contract is awarded under this section, the County shall award the contract to the offeror whose quote or proposal will best serve the interests of the County taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility.
3. The County may negotiate with a prospective Contractor who offers to provide goods or services in response to an intermediate procurement to clarify its quote or to effect modifications that will make the quote more advantageous to the County.

15-030 – Competitive Process Required

1. Unless otherwise exempted or allowed under these Rules, all purchases of goods or services exceeding \$100,000 shall be awarded pursuant to the competitive requirements of these Rules.
 - (a) The \$100,000 expenditure limit shall be based on the aggregate expenditures, made by purchase order, each fiscal year.
 - (b) For multi-year contracts, the expenditure limit of \$100,000 will cover the aggregate total over the term of the contract.
 - (c) Contracts shall not avoid the competitive process by use of “Split Purchasing.” This is defined as a single purchase or contract which is intentionally divided into two or more separate purchases to avoid the competitive process.

15-035 – Feasibility Study ORS 279B.030-036

1. Before conducting a procurement for services with an estimated contract price that exceed \$250,000 the individual County department will demonstrate, by means of a cost analysis in accordance with ORS 279B.030 through ORS 279B.036, that performing the services by contract would cost less or that using the County's personnel or resources is not feasible. When determining whether or not using the County's personnel or resources is feasible, the factors include, but are not limited to, the factors found in ORS 279B.036.
2. This section does not apply to procurement for Personal Services or Clients Services as defined in OAR 125-246-0110 and services described in ORS Chapter 279C, including, but not limited to contracts for architects, engineers, photogrammetric mappers, transportation planners, surveyors and public improvements.
3. The Board delegates to the County Administrator authorization to make the determination to proceed with a procurement based on the findings required in ORS 279B.033 through ORS 279B.036.
4. The County Administrator's Office shall collect and provide copies to the Board of the records required in ORS 279B.033.

15-040 – Brand Name or Mark Designation Applications ORS 279B.215

1. The Board may specify or designate a brand name or trademark for current and contemplated future purchases. Applications shall contain the following information:
 - (a) A brief description of the contract or contracts to be covered. The description should include contemplated future purchases.
 - (b) The brand name, trademark, or product to be specified.
 - (c) The reasons the County is seeking the designation.
2. The Board may authorize the designation if any of the following findings are made:
 - (a) The purchase is not likely to encourage favoritism in public contracts or substantially diminish competition, and will result in substantial cost savings to the County; or
 - (b) There is only one manufacturer or seller of the product of the quality, performance or functionality required; or efficient utilization of existing equipment or supplies requires acquisition of compatible equipment or supplies.
3. The County's use of a brand name specification is subject to review pursuant to these Rules.

15-050 – Special Procurements ORS 279B.085

1. Upon receipt of a written request describing the proposed contracting procedure, the goods or services to be acquired through special procurement and the circumstances which justify the use of a special procurement, the Board may authorize the special procurement as described in the written request or designate an alternative procedure if the Board finds that the request:
 - (a) Is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and
 - i. Is reasonably expected to result in substantial cost savings to the County or the public; or
 - ii. Otherwise substantially promotes the public interest in a manner that could not be practicably realized by complying with the regular adopted competitive procurement procedures.
2. If the amount of the goods or services is over \$100,000, public notice of the authorization of a special procurement shall be in the same manner as Rule 30-045. The notice shall be published at least once in a newspaper of general circulation in the area where the contract is to be performed and at least seven (7) days prior to the award of the contract.
3. Once the Board has authorized a class special procurement under this section, the County may award contracts to acquire goods or services within the class of goods or services in accordance with the Board's authorization without making a subsequent request for a special procurement.
4. The County Administrator or their designee has the authority to authorize special procurements for purchases less than \$100,000.

15-060 –Sole Source Procurements ORS 279B.075

1. If there is only one manufacturer or seller of goods or services of the quality required, the County may award a contract for a particular product, provided it makes written findings that shall include at least one of the following:
 - (a) That the efficient utilization of existing goods requires the acquisition of compatible goods or services; or
 - (b) That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source; or
 - (c) That the goods or services are for use in a pilot or experimental project; or

- (d) Other findings that support that the goods or services are available from only one source.
- 2. To the extent reasonably practical, the County shall negotiate with the sole source to obtain contract terms advantageous to the County; and
- 3. If the amount of the purchase exceeds \$100,000 public notice of the Board's or County Administrator's determination that goods or services are available from only one source shall be published at least once in a newspaper of general circulation in the area where the contract is to be performed or posted electronically (e.g. on ORPIN) at least seven (7) days prior to the award of the contract.
- 4. An affected person may protest the County's determination that the goods or services or class of goods or services are available from only one source in accordance with these Rules.
- 5. The County Administrator or their designee has the authority to authorize sole source procurements for purchases that do not exceed \$100,000.

15-070 – Multi-Step Sealed Bids

- 1. Generally, the County may procure goods or services by using multi-step competitive sealed bids pursuant to ORS 279B.055 (12).
- 2. Phased Process. Multi-step bidding is a phased process that seeks necessary information or un-priced technical bids in the first phase and regular competitive sealed bidding, inviting bidders who submitted technically eligible bids in the first phase to submit competitive sealed price bids on the technical bids in the second phase. The contract shall be awarded to the lowest responsible bidder.
- 3. Public Notice. Whenever a multi-step sealed bid is used, public notice for the first phase shall be given in accordance with Section 30-045. Public notice is not required for the second phase. However, the County shall give notice of the second phase to all bidders and inform bidders of the right to protest addenda issued after initial closing pursuant to Section 30-070 and inform bidders excluded from the second phase of the right, if any, to protest exclusion pursuant to Section 30-135.
- 4. Procedures Generally. In addition to the procedures set forth in these Rules, the County shall employ the procedures set forth in this section for multi-step bidding:
 - (a) Solicitation Protest. Prior to the closing of phase one: the County shall provide an opportunity to protest the solicitation under ORS 279B.405 and Section 30-135.
 - (b) Addenda Protest. The County may, provide an opportunity to protest any addenda issued after closing of phase one pursuant to Section 30-070.

- (c) Exclusion Protest. The County may, but is not required to provide an opportunity for a bidder to protest exclusion from phase two of multi-step sealed bids as set forth in OAR 137-047-0720.
- (d) Administrative Remedy. Bidders may submit a protest to any addenda or to any action by the County that has the effect of excluding the proposer from the second phase of multi-step sealed bidding to the extent such protests are provided for in the solicitation document or required by this section. Failure to so protest shall be considered the bidder's failure to pursue an administrative remedy made available to the bidder by the County.
- (e) Award Protest. The County shall provide an opportunity to protest its intent to award a contract pursuant to ORS 279B.410 and Section 30-135. An affected bidder may protest, for any of the bases set forth in Section 30-135(9), its exclusion from the second phase of a multi-step sealed bid, or an addendum issued following initial closing, if the County did not previously provide bidders the opportunity to protest such exclusion or addendum.

5. Procedure for Phase One of Multi-Step Sealed Bids.

- (a) Form. Multi-step sealed bidding shall be initiated by the issuance of an invitation to bid in the form and manner required for competitive sealed bids except as hereinafter provided. In addition to the requirements set forth in these Rules, the multi-step invitation to bid shall state:
 - i. That un-priced technical bids are requested;
 - ii. Whether price bids are to be submitted at the same time as un-priced technical bids; if they are, that such price bids shall be submitted in a separate sealed envelope;
 - iii. That the solicitation is a multi-step sealed bid, and priced bids will be considered only in the second phase and only from those bidders whose un-priced technical bids are found eligible in the first phase;
 - iv. The criteria to be used in the evaluation of un-priced technical bids;
 - v. That the County, to the extent that it finds necessary, may conduct oral or written discussions for the purposes of clarification of the un-priced technical bids;
 - vi. That the goods or services being procured shall be furnished generally in accordance with the bidder's technical bid as found to be finally eligible and shall meet the requirements of the invitation to bid; and ,

- vii. Whether bidders excluded from subsequent phases have a right to protest the exclusion before the notice of intent to award. Such information can be given or changed by addenda.
- (b) Addenda to the Invitation to Bid. After receipt of un-priced technical bids, addenda to the invitation to bid shall be distributed only to bidders who submitted un-priced technical bids.
- (c) Receipt and Handling of Un-Priced Technical Bids. Un-priced technical bids need not be opened publicly.
- (d) Evaluation of Un-Priced Technical Bids. Un-priced technical bids submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the invitation to bid. Un-priced technical bids shall be categorized as:
 - i. Eligible;
 - ii. Potentially eligible; that is, reasonably susceptible of being made eligible; or
 - iii. Ineligible. The County shall record in writing the basis for determining a bid ineligible and make it part of the procurement file. The County may initiate phase two of the procedure if, in the County's opinion, there are sufficient eligible un-priced technical bids to assure effective price competition in the second phase without technical discussions. If the County finds that such is not the case, the County may issue an addendum to the invitation to bid or engage in technical discussions as set forth in subsection (5)(d)(iv) of this Rule.
 - iv. Discussion of Un-Priced Technical Bids. The County may seek clarification of a technical bid by any eligible, or potentially eligible bidder. During the course of such discussions, the County shall not disclose any information derived from one un-priced technical bid to any other bidder. Once discussions are begun, any bidder who has not been notified that its bid has been finally found ineligible may submit supplemental information amending its technical bid at any time until the closing of the second phase. Such submission may be made at the request of the County or upon the bidder's own initiative.
 - v. Notice of Ineligible Un-priced Technical Bid. When the County determines a bidder's un-priced technical bid to be ineligible, such bidder shall not be afforded an additional opportunity to supplement its technical bids.

- vi. Mistakes During Multi-Step Sealed Bidding. Mistakes may be corrected or bids may be withdrawn during phase one:
 - A. Before un-priced technical bids are considered;
 - B. After any discussions have commenced under subsection (5)(d)(iv)
 - C. When responding to any addenda of the invitation to bid; or
 - D. In accord with Section 30-090.
- 6. Revisions to Solicitation Specifications: After closing of phase one, the County may issue Addenda that modify the specifications for the goods or services being procured or that modify other terms and conditions of the Invitation to Bid. The County shall provide such addenda to all bidders who initially submitted un-priced technical bids. The County may then require bidders to submit revised un-priced technical bids.
- 7. Procedure for Phase Two of Multi-Step Sealed Bids.
 - (a) Initiation. Upon the completion of phase one, the County shall invite each eligible bidder to submit a price bid.
 - (b) Conduct. Phase two shall be conducted as any other competitive sealed bid procurement except:
 - i. As specifically set forth in this Rule;
 - ii. No public notice need be given of this invitation to submit price bids because such notice was previously given.

15-080 - Procedures for Competitive Range, Multi-Tiered and Multi-Step Proposals

- 1. Generally. The County may procure goods or services employing any combination of the methods of contractor selection as set forth in these Rules. In addition to the procedures set forth in these Rules for methods of contractor selection the County may provide for multi-tiered or multi-step selection process that permits award to the highest ranked proposer at any tier or steps, calls for the establishment of a competitive range or permits either serial or competitive simultaneous discussions or negotiations, County may employ one or more or any combination of the procedures set forth in this Rule for competitive range, multi-tiered and multi-step proposals.
- 2. Solicitation Protest. Prior to the initial closing, the County shall provide an opportunity to protest the solicitation under ORS 279B.405 and Section 30-135.
- 3. Addenda Protest. The County may provide an opportunity to any addenda issued pursuant to Section 30-070.

4. Exclusion Protest. The County may provide, before the notice of intent to award, an opportunity for a proposer to protest exclusion from the competitive range or from subsequent phases of multi-tiered or multi-step sealed proposals as set forth in Section 30-135.
5. Administrative Remedy. Proposers may submit a protest to any addenda or to any action by the County that has the effect of excluding the proposer from subsequent phases of a multiple-tiered or multi-step request for proposals to the extent such protests are provided for in the solicitation document. Failure to so protest shall be considered the proposer's failure to pursue an administrative remedy made available to the proposer by the County.
6. Award Protest. The County shall provide an opportunity to protest its intent to award a contract pursuant to ORS 279B.410 and 30-135. An affected proposer may protest, for any of the bases set forth in Section 30-135(9), its exclusion from the competitive range or any phase of a multi-tiered or multi-step sealed proposal, or an addendum issued following initial closing, if the County did not previously provide proposers the opportunity to protest such exclusion or addendum.

15-090 - Competitive Range, Discussions and Negotiations

1. Competitive Range. When the County's solicitation process conducted pursuant to ORS 279B.060(6)(b) calls for the County to establish a competitive range at any stage in the procurement process the County shall state the anticipated size of the competitive range in the solicitation document. This range may be increased or decreased pursuant to section ii below.
 - (a) Determining Competitive Range.
 - i. After evaluation of all proposals in accordance with the criteria set forth in the RFP or any addenda thereto, the County shall determine and rank the proposers in the competitive range. Notwithstanding the foregoing, the County may establish a Competitive Range of all proposers to enter into discussion with proposers for the purpose of correcting deficiencies in proposals under subsection 2 of this rule.
 - ii. The County may increase or decrease the number of proposers in the competitive range if the County's evaluation of proposals establishes a natural break in the scores of proposers indicating a number of proposers greater or less than the initial competitive range are closely competitive, or have a reasonable chance of being determined the most advantageous proposer.

- (b) **Protesting Competitive Range.** The County shall provide written notice to all proposers identifying proposers in the competitive range. The County may provide an opportunity for proposers excluded from the competitive range to protest the County's evaluation and determination of the competitive range in accordance with Section 30-135.
 - (c) **Discuss or Negotiate.** After determination of the competitive range and after any protest period provided in accordance with subsection (1)(b) expires, or after the County has provided a final response to any protest, whichever date is later, the County may either:
 - i. Commence negotiations in accordance with section (3) of this Rule with the highest ranked proposer in the competitive range; or
 - ii. Engage in discussions with proposers in the competitive range and accept revised proposals from them as set forth in section (2) of this Rule and following such discussions and receipt and evaluation of revised proposals, conduct negotiations as set forth in section (3) of this Rule with the proposers in the competitive range.
2. **Discussions; Revised Proposals.** If provided for in the RFP or any addenda thereto and if the County chooses to enter into discussions with and receive best and final offers, the County shall proceed as follows:
- (a) **Initiating Discussions.** The County shall initiate oral or written discussions with all proposers submitting responsive proposals or all proposers in the competitive range (collectively "eligible proposers") regarding their proposals with respect to the provisions of the RFP, and any addenda thereto, that the County identified in the RFP, and any addenda thereto, as the subject of discussions. The County may conduct discussions for the following purposes:
 - i. Informing eligible proposers of deficiencies in their initial proposals;
 - ii. Notifying eligible proposers of parts of their proposals for which the County would like additional information; or
 - iii. Otherwise allowing eligible proposers to develop revised proposals that will allow the County to obtain the best proposal based on the requirements and evaluation criteria set forth in the RFP or any addenda thereto.

(b) Conducting Discussions. The County may conduct discussions with each eligible proposer necessary to fulfill the purposes of this section (2), but need not conduct the same amount of discussions with each eligible proposer. The County may terminate discussions with any eligible proposer at any time. However, the County shall offer all eligible proposers the same opportunity to discuss their proposals with the County before the County notifies eligible proposers of the date and time pursuant to section 4 that best and final proposals will be due.

i. In conducting discussions, the County:

A. Shall treat all eligible proposers fairly and shall not favor any eligible proposer over another;

B. Shall disclose other eligible proposer's proposals or discussions only in accordance with 279B.060(6)(b)(B) or (C);

C. May adjust the evaluation of a proposal as a result of a discussion under this section. The conditions, terms, or price of the proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the scope of the RFP or any addenda thereto.

ii. At any time during the time allowed for discussions, the County may:

A. Continue discussions with a particular eligible proposer;

B. Terminate discussions with a particular eligible proposer and continue discussions with other eligible proposers; or

C. Conclude discussions with all remaining eligible proposers and provide notice pursuant to section 4 of this Rule to the eligible proposers requesting best and final offers.

3. Negotiations.

(a) Initiating Negotiations. The County may commence serial negotiations with the highest-ranked eligible proposers or commence simultaneous negotiations with all eligible proposers as follows:

i. After initial determination of which proposals are responsive; or

ii. After initial determination of the competitive range in accordance with section (1) of this Rule; or

iii. After conclusion of discussions with all eligible proposers and evaluation of revised proposals (*See* Section (2) of this Rule).

- (b) Conducting Negotiations.
 - i. Scope. The County may negotiate:
 - A. The statement of work;
 - B. The contract price as it is affected by negotiating the statement of work; and
 - C. Any other terms and conditions reasonably related to those expressly authorized for negotiation in the RFP or addenda thereto. Accordingly, proposers shall not submit, and the County shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the RFP or addenda thereto.
 - ii. Terminating Negotiations. At any time during discussions or negotiations that the County conducts in accordance with section (2) or (3) of this Rule, the County may terminate discussions or negotiations with the highest-ranked proposer, or the eligible proposer with whom it is currently discussing or negotiating, if the County reasonably determines that:
 - A. The eligible proposer is not discussing or negotiating in good faith; or
 - B. Further discussions or negotiations with the eligible proposer will not result in the parties agreeing to the terms and conditions of a final contract in a timely manner.
- (c) Continuing Serial Negotiations. If the County is conducting serial negotiations and the County terminates negotiations with an eligible proposer in accordance with paragraph 3(b)(ii) of this Rule, the County may then commence negotiations with the next highest scoring eligible proposer, and continue the process described in section (3) of this Rule until the County has either:
 - i. Determined to award the contract to the eligible proposer with whom it is currently discussing or negotiating; or
 - ii. Completed one round of discussions or negotiations with all eligible proposers, unless the County provided for more than one round of discussions or negotiations in the request for proposals, in which case the County has completed all rounds of discussions or negotiations.

- (d) **Competitive Simultaneous Negotiations.** If the County chooses to conduct competitive negotiations, the County may negotiate simultaneously with competing eligible proposers. The County:
 - i. Shall treat all eligible proposers fairly and shall not favor any eligible proposer over another;
 - ii. May disclose other eligible proposer's proposals or the substance of negotiations with other eligible proposers only if the County notifies all of the eligible proposers with whom the County will engage in negotiations of the County's intent to disclose before engaging in negotiations with any eligible proposer.
- (e) Any oral modification of a proposal resulting from negotiations under this section (3) shall be reduced to writing by the proposer.
- 4. **Best and Final Offers.** If best and final offers are required by the RFP or any addenda thereto, the County shall establish a common date and time by which eligible proposers must submit best and final offers. The County may make a written determination that it is in the County's best interest to conduct additional discussions, negotiations or change the County's requirements and require another submission of best and final offers. Otherwise, no discussion of or changes in the best and final offers shall be allowed prior to award. All eligible proposers shall also be informed if they do not submit notice of withdrawal or another best and final offer, their immediately previous offer will be construed as their best and final offer. The County shall evaluate offers as modified by the best and final offer. The County shall conduct evaluations as described in Section 30-105.

15-100 - Multi-Step Sealed Proposals

- 1. **Generally.** The County may procure goods or services by using multi-step competitive sealed proposals pursuant to ORS 279B.060(6)(b)(G).
- 2. **Phased Process.** Multi-step sealed proposals is a phased procurement process that seeks necessary information or un-priced technical proposals in the first phase and invites proposers who submitted technically qualified proposals in the first phase to submit competitive sealed price proposals on the technical proposals in the second phase. The contract shall be awarded to the responsible proposer submitting the most advantageous proposal in accordance with the terms of the solicitation document applicable to the second phase and any addenda thereto.
- 3. **Public Notice.** Whenever a multi-step sealed proposal is used, public notice for the first phase shall be given in accordance with Section 30-045. Public notice is not required for the second phase. However, the County shall give notice of the second phase to all proposers and inform any proposers excluded from the second phase of the right, if any, to protest exclusion pursuant to Section 30-135.

4. Procedure for Phase One of Multi-Step Sealed Proposals.

- (a) Form. Multi-step sealed proposals shall be initiated by the issuance of a request for proposal in the form and manner required for competitive sealed proposals except as provided in this Rule. In addition to the requirements set forth in these Rules, the multi-step request for proposal and any addenda thereto shall state:
 - i. That un-priced technical proposals are requested;
 - ii. That the solicitation is a multi-step sealed proposal procurement, and that priced proposals will be considered only in the second phase from those proposers whose un-priced technical proposals are found qualified in the first phase;
 - iii. The criteria to be used in the evaluation of un-priced technical proposals;
 - iv. That the County, to the extent that it finds necessary, may conduct oral or written discussions of the un-priced technical proposals;
 - v. That the goods or services being procured shall be furnished generally in accordance with the proposer's technical proposal as found to be finally qualified and shall meet the requirements of the RFP and any addenda thereto and,
 - vi. Whether proposers excluded from the second phase have a right to protest the exclusion. Such information can be given or changed through addenda.
- (b) Addenda to the Request for Proposal. After receipt of un-priced technical proposals, addenda to the request for proposal shall be distributed only to proposers who submitted un-priced technical proposals.
- (c) Receipt and Handling of Un-Priced Technical Proposals. Un-priced technical proposals need not be opened publicly.
- (d) Evaluation of Un-Priced Technical Proposals. Un-priced technical proposals shall be evaluated solely in accordance with the criteria set forth in the RFP and any addenda thereto. Un-priced technical proposals shall be categorized as:
 - i. Qualified;
 - ii. Potentially qualified; that is, reasonably susceptible of being made qualified; or

- iii. Unqualified. The County shall record in writing the basis for determining a proposal unqualified and make it part of the procurement file. The County may initiate phase two of the procedure if, in the County's opinion, there are sufficient qualified or potentially qualified un-priced technical proposals to assure effective price competition in the second phase without technical discussions. If the County finds that such is not the case, the County shall issue an addendum to the request for proposal or engage in technical discussions as set forth in subsection 4(e).
- (e) Discussion of Un-Priced Technical Proposals. The County may seek clarification of a technical proposal of any proposer who submits a qualified, or potentially qualified technical proposal. During the course of such discussions, the County shall not disclose any information derived from one un-priced technical proposal to any other proposer. Once discussions are begun, any proposer who has not been notified that its proposal has been finally found unqualified may submit supplemental information amending its technical proposal at any time until the closing of the second phase established by the County. Such submission may be made at the request of the County or upon the proposer's own initiative.
- (f) Notice of Unqualified Un-Priced Technical Proposal. When the County determines a proposer's un-priced technical proposal to be unqualified, such proposer shall not be afforded an additional opportunity to supplement its technical proposals.
- (g) Mistakes During Multi-Step Sealed Proposals. Mistakes may be corrected or proposals may be withdrawn during phase one:
 - i. Before un-priced technical proposals are considered;
 - ii. After any discussions have commenced under subsection 4(e) of this Rule;
 - iii. When responding to any addenda to the request for proposal; or
 - iv. In accordance with Section 30-090.
- 5. Methods of Contractor Selection for Phase One. In conducting phase one, the County may employ any combination of the methods of contractor selection that call for the establishment of a competitive range or include discussions, negotiations, or best and final offers as set forth in Rule 15-080 and 15-090. If the County uses such method of contractor selection, it shall follow the procedures set forth in those Rules.
- 6. Procedure for Phase 2.
 - (a) Initiation. Upon the completion of phase one, the County shall invite each qualified proposer to submit price proposals.

- (b) Conduct. Phase two shall be conducted as any other competitive sealed proposal solicitation and any addenda thereto except:
 - i. As specifically set forth in this Rule; and
 - ii. No public notice need be given of the request to submit price proposals because such notice was previously given.

Division 20 – General Exemptions and Class Special Procurements

20-010 - General Exemptions

1. The following contracts are exempt from the competitive process:
 - (a) Contracts made with other public agencies or with the federal government. ORS 279A.025(2)(a);
 - (b) Contracts made with qualified rehabilitation facilities (QRF) per ORS 279A.025(4);
 - (c) Contracts for goods or services if the value of the contract does not exceed \$10,000. ORS 279C.335(1)(c); and
 - (e) Grants.

20-020 - Emergency Contracts ORS 279B.080

1. Pursuant to Washington County Ordinance, the Board Chair or designee, the Sheriff or the County Administrator or designee have the authority to declare an emergency. Except as provided in subsection (3) of this Rule, the governing body of the County shall adopt a resolution that indicates the existence of the emergency.
2. The County may execute contracts for goods and services if an emergency exists and circumstances require prompt execution of a contract to remedy the condition. The County shall document the nature of the emergency and describe the method used for the selection of the particular contractor. For emergency procurement of construction services that are not public improvements, the County shall ensure competition for a contract that is reasonable and appropriate under the emergency circumstances. The County may take written or oral offers or make direct appointments without competition in cases of extreme necessity.

3. The County Administrator or designee may declare an emergency, and execute a contract in accordance with Section 10-060, without prior Board authorization, if he or she determines that the standards set forth in section (2) above are met and further finds that the nature of the emergency is such that waiting for governing body action likely would result in significant risk of property damage, personal injury, or substantial expense to the County or the public. The County Administrator or designee shall, as soon as practicable, formally notify the governing body of any contract in excess of \$100,000 entered into pursuant to this provision documenting the nature of the emergency and the method used for selection of the particular contractor.
4. The scope of the contract shall be limited to work or purchases that are necessary and appropriate to address the conditions creating the emergency as described in the resolution.
5. Emergency contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional work or purchases necessary and appropriate for related emergency circumstances.
6. Pursuant to ORS 279C.380(4) and these Rules, the emergency declaration may also state that, in the case of a public improvement, the County waives the requirement of furnishing a performance bond, payment bond and public works bond for the emergency contract. After making such an emergency declaration the bonding requirements are excused for the procurement.

20-030 - Equipment Repair and Overhaul

1. The County may purchase equipment repair or overhaul, and routine maintenance (i.e. maintenance agreements or warranties) without a competitive process if the purchase meets one of the following conditions:
 - (a) The service and/or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or
 - (b) The service and/or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source.

20-040 - Copyrighted Materials

1. With the exception of software, the County may purchase copyrighted materials without a competitive process if there is only one known supplier.
2. The County may specify a copyrighted product.
3. This exemption does not include patented or trademark material.

20-050 - Library System Materials

1. The County may purchase library circulation materials without a competitive process.
2. The County may purchase subscriptions for periodicals, including journals, magazines, and similar publications, including electronic media, without a competitive process.

20-060 - Purchases of Used Personal Property

The County may purchase used personal property for under \$100,000, without a competitive process, if the Purchasing Division has determined that the direct purchase without a competitive process will result in cost savings. For purchases of used personal property over \$100,000, three competitive quotes shall be obtained. If three quotes are not available, a written record must be made of the attempt to obtain quotes.

20-070 - Advertising Contracts

The County may purchase advertising and legal notices in newspapers and other publications without a competitive process.

20-080 - Election Supplies and Services

The County may purchase printing services and the purchase of ballots, ballot pages, envelopes and other similar products and services without a competitive process.

20-090 – Price Regulated Items 279A.025(2)(f)

The County may purchase goods or services without a competitive process when Federal, State, or other regulatory authority establishes the rate or price by law or ordinance.

20-095 – Purchases of Energy

The County may purchase energy (electricity and natural gas) without the normal competitive process. The County may use a third party broker or any other means that the County Administrator deems is in the best interest of the County. The County Administrator, or their designee, may execute the contract(s) necessary for the brokering of any contracts and for the purchase of the commodity up to the dollar amount authorized by the Board in the annual budget for utilities.

20-100 – Purchases through Federal Programs 279A.180

The County may purchase certain authorized supplies and services through General Services Administration (GSA) federal program or federal contracts (Federal Programs) without competitive sealed bidding, competitive sealed proposals or other competition required under ORS 279B.050 to 279B.085, provided that the County has federal authorization to purchase through the Federal Program. Any purchase over \$100,000 requires Board authorization.

20-110 – Copier and Printer Paper

1. The County may purchase copier and printer paper in excess of an aggregate of \$100,000 without a formal competitive process, subject to the following conditions:
 - (a) Must seek a minimum of three quotes; or
 - (b) Use an existing State or other public agency contract.

20-120 – Telecommunications, Computer, Data Storage and Network Hardware/Software

1. The County may purchase telecommunications and microcomputers and computer network hardware, software and peripheral equipment in excess of an aggregate of \$100,000 without a formal competitive process, subject to the following conditions:
 - (a) Must seek a minimum of three quotes ; or
 - (b) Use an existing State or other public agency contract.
2. If an individual acquisition is over \$100,000, the County must purchase from an existing State or other public agency contract or use the formal bid or proposal process.

20-130 – Acquisition of Automobiles and Miscellaneous Equipment and Parts

1. The County Fleet Division may purchase automobiles and miscellaneous equipment and their associated parts in excess of an aggregate of \$100,000 without a formal competitive process, subject to the following conditions:
 - (a) Must seek a minimum of three quotes ; or
 - (b) Use an existing State or other public agency contract.
2. If an individual acquisition is over \$100,000, the County must purchase from an existing State or other public agency contract or use the formal bid or proposal process.

20-140 – Reverse Auctions

1. The County may use the Reverse Auction as an alternative competitive process. A Reverse Auction means a process for the purchase of supplies and services by a buyer from the lowest bidder. The County will conduct Reverse Auctions by first publishing a Solicitation that describes its requirements, contract terms and conditions. The County will then solicit online bids from all interested bidders through an Internet-based program. The Solicitation must set forth a start time for bids and specify the following type of information to be disclosed to bidders during the Reverse Auction:

- (a) The prices of the other bidders or the price of the most competitive bidder;
 - (b) The rank of each bidder (e.g., (i) "winning" or "not winning" or (ii) "1st, 2nd, or higher");
 - (c) The scores of the bidders if the County chooses to use a scoring model that weighs non-price factors in addition to price; or
 - (d) Any combination of (a), (b) and (c) above.
2. Before the Reverse Auction commences, bidders will be required by the County to assent to the Contract terms and conditions, either in writing or by an Internet "click wrap" agreement. The bidders then compete for the award of a contract by offering successively lower prices, informed by the price(s), ranks, and scores, separately or in any combination thereof, as disclosed by the Solicitation. The identity of the bidders will not be revealed during this process. Only the successively lower price(s), ranks, scores and related details, separately or in any combination thereof, will be revealed to the participants. The County may cancel this Solicitation if it determines that it is in the County's best interest. At the end of this bidding process, the County will award any potential contract to the lowest responsible bidder or in the case of multiple awards, lowest responsible bidders.
3. The County will comply with the following procedures for this type of solicitation:
- (a) **Public Notice.** The County will disclose the Reverse Auction process in the Solicitation Documents. The County will provide initial notice of this Solicitation through ORPIN. The County will issue a Notice of Intent to award at least seven (7) calendar days prior to making the award.
 - (b) **Prequalification.** For each Solicitation, on a case-by-case basis, the County may determine whether prequalification of suppliers is needed. If prequalification is used, the County will prequalify suppliers with an appeal process in accordance with ORS 279B.425.

20-150 – Purchases of Aggregate Rock Product

The County may purchase aggregate rock products without a competitive process. The County may purchase aggregate rock products from any non-debarred quarry location deemed in the best interest of the County. Prior to purchase or increase of a purchase order, the Operations Manager, or their designee, shall determine in writing where to purchase the aggregate rock product based on, but not limited to, the following factors: price, quality, location, and availability; the written determination will be sent to Purchasing with the request to establish or increase the amount of a purchase order. The Purchasing Supervisor, or their designee, may execute purchase orders up to the dollar amount approved by the Board in the annual budget.

Division 25 - Personal Service Contracts – Description and Specific Waivers

25-010 - Statutory Authority

Personal service contracts are not public contracts for purposes of ORS Chapters 279A, 279B, 279C, and these Rules. ORS 279A.070 requires all public agencies to create procedures for the screening and selection of persons to perform personal services.

25-020 - Scope

1. The following are personal service contracts:
 - (a) Contracts for services performed as an independent contractor in a professional capacity, including but not limited to, the services of an accountant, attorney, architectural or land use planning consultant, physician or dentist, registered professional engineer, appraiser or surveyor, passenger aircraft pilot, aerial photographer, photogrammetric mapping, transportation planners, timber cruiser, data processing consultant or broadcaster.
 - (b) Contracts for services as an artist in the performing or fine arts, including but not limited to, persons identified as photographer, filmmaker, painter, weaver or sculptor.
 - (c) Contracts for services of a specialized, creative and research-oriented, noncommercial nature.
 - (d) Contracts for services as a consultant.
 - (e) Contracts for educational and human custodial care services.
2. The following are not personal services:
 - (a) Contracts, even though in a professional capacity, if predominately for a product, (e.g., a contract with a landscape architect to design a garden is for personal services, but a contract to design and supply all the shrubs and trees, is predominately for a tangible product).
 - (b) A service contract to supply labor that is of a type that can generally be done by any competent worker, (e.g., janitorial, security guard, laundry, landscape maintenance service contracts, temporary services and delivery services).
 - (c) Contracts for a trade-related activity, even though a specific license is required to engage in the activity. Examples are repair and/or maintenance of all types of equipment or structures.

25-025 – Applicable Selection Procedures and Pricing Information (ORS 279C.107)

When selecting the most qualified consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services or related services, the County shall follow the applicable selection procedure under either 15-010 (Small Procurements), 15-020 (Intermediate Procurement) or the formal request for proposal process. Unless otherwise allowed by State law, the County will not solicit or use pricing policies and pricing proposals, or other pricing information, to determine a Consultant's compensation until after the most qualified Consultant in accordance with the applicable selection procedure has been selected.

25-030 - Property, Liability, Workers' Compensation and Employee Benefit Insurance

The County may purchase a wide range of insurance products including property, liability, workers' compensation and employee benefit plans without a competitive process.

25-040 - Legal Services

The County may purchase the following types of personal services without a competitive process:

1. Legal Services. Contracts for legal services authorized by County Counsel.
2. Litigation support and related contracts authorized by County Counsel or the District Attorney for the following services:
 - (a) Court Reporters or Transcriptionist
 - (b) Expert Witnesses
 - (c) Arbitrators and Mediators
 - (d) Trial Consultants
 - (e) Investigators
 - (f) Videographers

25-050 - State, Federal or Grant Funded Contracts

The County may purchase the following services or amend existing contracts without a competitive process in each of the following circumstances:

1. Contracts in which the rates for the services being purchased are established by federal, state, county or other local regulatory authority, and either all eligible contractors (e.g. all licensed facilities in the County) are awarded funds, or an alternate process for soliciting and approving qualified contractors is authorized in advance by the Purchasing Supervisor.
2. Contracts for which a non-County funding sources (e.g. grant, federal or state) identifies the contractor or contractors.

3. Escalation clauses providing cost of living increases over the term of the contract are excluded from the 20% limitation, if the escalation was part of the original RFP/Waiver and contract.
4. Cost of living and/or blanket funding increases received from the State of Oregon for client services that exceed the 20% limitation are exempt from further competitive process.

25-060 - Investment Contracts

The County may, without a competitive process, contract for the purpose of the investment of public funds or the borrowing of funds by the County when such investment or borrowing of funds is contracted pursuant to duly enacted statute, ordinance, charter, or constitution.

25-070 - Multi-Year Personal Services Contracts

1. The County may enter into multi-year contracts for personal services without a competitive process on a project specific basis, if:
 - (a) The personal service is in support of an on-going, multi-year capital construction program, including but not limited to road construction and reconstruction;
 - (b) Proposals are solicited and contractor selection is conducted in a manner similar to the request for proposal process. The solicitation document shall indicate the maximum number of multi-year contracts to be awarded for each personal service category, the ranking criteria for contractor selection and describe the process and criteria for project specific selections; and
 - (c) The project specific selection process requires consideration of factors that promote efficient use of public resources and do not discourage competition, such as experience in the specific fields or technology relevant to the project; the magnitude and complexity of the services anticipated to be needed for the specific project; access to the specific skills and equipment required; familiarity with the project; availability and ranking in the initial selection process. The rationale for each project specific selection shall be documented.
2. Multi-year personal services contracts awarded under this provision shall not:
 - (a) Exceed five (5) years in length, except that a project specific award may continue until the work provided for under such contract is completed; and
 - (b) Exceed a cumulative value of \$750,000 per contractor per fiscal year and \$100,000 per project without prior authorization of the Board of Commissioners.

25-080 - Medical Services

The County may purchase hospitalization, medical and dental services without a competitive process.

25-090 – Software Maintenance and Licensing

The County may purchase software maintenance services and licensing without a competitive process.

Division 30 - Rules of Procedure

30-010 - Rules of Procedure

Public Improvements. The bidding rules of procedure of the Oregon Department of Transportation may be used as alternative to these Rules for road and bridge public improvements if specified in the solicitation document.

30-015 - Pre-Qualification of Supplier

1. Pre-Qualification.
 - (a) **Mandatory Pre-Qualification.** The County may require mandatory pre-qualification of suppliers. Mandatory pre-qualification is when the County conditions a supplier's submission of an offer upon the supplier's pre-qualification. The requirements shall be set forth on forms prepared by the Purchasing Division. The solicitation document shall indicate if mandatory pre-qualification is required. Failure of a supplier to pre-qualify when required shall result in rejection of the offer.
 - (b) **Permissive Pre-Qualification.** Suppliers may pre-qualify for a solicitation list on forms prescribed by the Purchasing Division, but the distribution of a solicitation shall not be limited to that list.
2. **Pre-Qualification Presumed.** If a supplier is currently pre-qualified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform contracts, the supplier shall be rebuttably presumed qualified to perform similar work for the County.
3. **Standards for Pre-Qualification.** A supplier may pre-qualify by demonstrating the following standards of responsibility to the County's satisfaction:
 - (a) The supplier's financial, material, equipment, facility and personnel resources and expertise, or ability to obtain such resources and expertise, indicate the supplier is capable of meeting all contractual responsibilities;
 - (b) The supplier's record of performance;

- (c) The supplier's record of integrity;
 - (d) The supplier is qualified to contract with the County;
 - (e) The supplier has complied with tax laws of Oregon or a political subdivision of Oregon, including ORS 305.620 and ORS chapters 316, 317 and 318;
 - (f) The supplier supplied all necessary information in connection with the inquiry concerning responsibility; and
 - (g) The supplier has not been debarred by the County pursuant to ORS 279B.030.
4. Notice of Denial. If a supplier fails to pre-qualify for a mandatory pre-qualification, the bidder shall be notified in writing and given the reasons under section 3 of this Rule, and shall be informed of the supplier's right to a hearing conducted in accordance with ORS 279B.425.

30-020 - Eligibility to Bid or Propose on Construction or Landscape Contracts

- 1. Construction Contracts. The County shall not consider a supplier's offer to do work as a contractor, as defined in ORS 701.005(2), unless the supplier has a current, valid certificate of registration issued by the Construction Contractors Board.
- 2. Landscape Contracts. The County shall not consider a supplier's offer to do the work as a landscape contractor as defined in ORS 671.520(2), unless the supplier has a current, valid landscape contractors license issued pursuant to ORS 671.560 by the State Landscape Contractors Board.
- 3. Non-complying Bidders. The County shall deem an offer received from a supplier that fails to comply with this Rule non-responsive and shall reject the offer, unless contrary to federal law.

30-025 - Solicitation Methods

- 1. Policy. It is the policy of the County to encourage open and impartial competition in public contracting. Competition exists not only in prices, but also in a supplier's ability to perform, its technical competence, ability to provide timely deliverables, and in the quality and performance of products and services the supplier provides. While an invitation to bid is a common method of procurement, it is not always the most advantageous or practical solicitation method. The County will make every effort to construct public improvements at the least cost to the County.

2. Solicitation Methods. The County may encourage meaningful competition through a variety of solicitation methods. The County will choose the solicitation method that is most likely to encourage offers representing optimal value to the County. The County may use any combination of methods described herein or any other method approved by the Purchasing Supervisor that allows for open and equitable opportunity for interested parties to participate in the procurement process.
 - (a) An invitation to bid may be used if the County believes it will receive optimal value by selecting the lowest priced offer that meets the technical requirements of the County's specifications.
 - (b) A request for proposals may be used if the County believes it will receive optimal value by selecting an offer using both price and non-price related factors.
 - (c) A request for programmatic qualifications (RFPQ), that assesses the responder's capabilities and establishes a pool of qualified contractors, may be used if it is in the best interest of the County to establish a pool of qualified contractors. An RFPQ may be continuously open.
 - i. One-time RFPQs will establish a qualified contractor pool for up to a maximum of five (5) years.
 - ii. Continuously open RFPQs will establish an initial pool of qualified contractors and then on a recurring basis as established in the RFPQ, permits the receipt and evaluation of new proposals with the intent of adding new contractors to the existing qualified pool.
 - iii. The recurring evaluation period will typically end at the completion of the fourth year of the original qualification date to permit the planning of a new solicitation process.
3. Negotiation.
 - (a) If the solicitation document is a request for proposals for a public contract and the County is willing to negotiate terms and conditions of the contract, the County will identify the specific terms and conditions in the solicitation document that are subject to negotiation and authorize suppliers to propose certain alternative terms and conditions in lieu of the terms and conditions the County has identified as authorized for negotiation.
 - (b) If the solicitation document is a request for proposals for a personal service, the County may negotiate the terms and conditions of the contract in order to provide the County with optimal value and risk protection.

30-030 – Solicitation Document

1. The solicitation document shall generally include the following:
 - (a) General information.
 - i. Notice of any pre-offer conference as follows:
 - A. The time, date, and location of any pre-offer conference;
 - B. Whether attendance at the conference will be mandatory or voluntary; and
 - C. A provision that statements made by the County’s representatives at the conference are not binding upon the County unless confirmed by a written addendum.
 - ii. The form and instructions for submission of bids or proposals and any other special information and whether submissions will be accepted electronically;
 - iii. The time, date and place that pre-qualification applications must be filed under ORS 279C.430 or 279B.120 and these Rules and the class or classes of work for which bidders must be pre-qualified if pre-qualification is a requirement;
 - iv. The date and time after which bids will not be received, which must be at least seven (7) days after the last date of public notice of the solicitation;
 - v. The name and title of the person designated for receipt of bids and the person designated as the contact person for the procurement;
 - vi. The date time and place of opening;
 - vii. The office where the solicitation document may be reviewed;
 - viii. A statement that each bidder must identify whether the bidder is a “resident bidder” as defined in ORS 279A.120(1);
 - ix. Bidder’s certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4); and
 - x. How the County will notify bidders or proposers of addenda and how the County will make addenda available;

- xi. If applicable, that the contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 et seq.) and a statement that no bid will be considered unless the bid contains a statement by the bidder that ORS 279C.840 and 40 USC 3141 et seq. will be complied with;
 - xii. If applicable, the prevailing state rate of wage as required by ORS 279C.830 by: 1) physically contained within or attached to the specifications; 2) included by statement incorporating the applicable wage rate publication into the specifications by reference, in compliance with OAR 839-025-0020; or (3) when the rates are available electronically or by internet access, the rates may be incorporated into the specifications by referring to the rates and providing adequate information on how to access them in compliance with OAR 839-025-0020;
 - xiii. If applicable, the federal prevailing rate of wage and information concerning whether the state or federal rate is higher in each trade or occupation in each locality. The same options for inclusion of wage rate information stated above in subsection 1(a)(xii) above apply to this requirement.
 - xiv. A statement that the County may cancel the procurement or reject any bid not in compliance with these Rules and may reject for good cause all bids upon a finding by the County that it is in the public interest to do so;
 - xv. A statement that requires the contractor or subcontractor to possess an asbestos abatement license, if required under ORS 468A.720; and
 - xvi. If a public improvement, a statement that a bid for a public improvement contract may not be considered by the County unless the bidder is licensed by the Construction Contractors Board or the State Landscape Contractors Board as applicable to the scope of work.
- (b) A description of the goods or services that the County is purchasing including, if applicable, a description of the acquisition, specifications, delivery or performance schedule, inspection and acceptance requirements. The County's description of its need to purchase must include at a minimum:
- i. Identify the scope of the work to be performed under the resulting contract;
 - ii. Outline the anticipated duties of the contractor under any resulting contract;
 - iii. Establish the expectations for the contractors' performance of any resulting contract; and

- iv. Unless the County for good cause specifies otherwise, the solicitation document must require the contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the goods or services that the County is purchasing.
- (d) Bid or proposal evaluation process.
- i. The anticipated solicitation schedule, deadlines, protest process, and evaluation process;
 - ii. The measurable evaluation or selection criteria;
 - iii. If the County intends to award more than one contract, the County shall specify the manner in which it will determine the number of contracts it will award.
- (e) Applicable preferences to be applied;
- (f) All contract terms and conditions, including a provision indicating whether the contractor can assign the contract, delegate its duties, or subcontract the delivery of goods or services without prior approval of the County. The contract terms and conditions must specify, at a minimum, the consequences of the contractors' failure to perform the scope of work or to meet the performance standards established by the resulting contract. Those consequences may include, but are not limited to:
- i. Reducing or withholding payment;
 - ii. Requiring the contractor to perform, at the contractor's expense, additional work necessary to perform the identified scope of work or meet the established performance standards; and
 - iii. Declaring a default, terminating the contract and seeking damages and other relief available under the terms of the contract or other applicable law.
- (g) The request for proposals also may:
- i. Identify those contractual terms or conditions the County reserves, in the request for proposals, for negotiation with proposers;
 - ii. Request that proposers propose contractual terms and conditions that relate to subject matter reasonably identified in the request for proposals;

- iii. Contain or incorporate the form and content of the contract that the County will accept, or suggested contract terms and conditions that nevertheless may be the subject of negotiations with proposers;
- iv. Announce the method of contractor selection that may include, but is not limited to, negotiation with the highest ranked proposer, competitive negotiations, multiple award, multiple-tiered competition designed to identify a class of proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked proposers, or any combination of methods, as authorized or prescribed by these Rules; and
- v. Contain a description of the manner in which proposals will be evaluated, including the relative importance of price and any other evaluation factors used to rate the proposals in the first tier of competition, and if more than one tier of competitive evaluation may be used, a description of the process under which the proposals will be evaluated in the subsequent tiers.

30-035 - Bids or Proposals Are Offers

1. Offer and Acceptance. The bid or proposal is the bidder's or proposer's offer to enter into a contract. The County's award of the contract constitutes acceptance of the offer and binds the bidder's or proposer's to the contract. Notwithstanding the fact that a proposal is an offer, the County may elect to discuss or negotiate certain contractual provisions, as identified in the solicitation document, with the proposer. Where negotiation is permitted by the solicitation document, proposers are obligated to negotiate in good faith and only on those terms or conditions that the solicitation document has reserved for negotiation.
2. Responsive Offer. The County will award a contract only to a responsible bidder or proposer with a responsive offer (*see* Definitions).
3. Contingent Offers. A bidder or proposer shall not make its offer contingent upon the County's acceptance of specifications or contract terms or conditions (including specifications) other than those contained or requested in the solicitation document.
4. Bidder's/Proposer's Acknowledgment. By signing and returning the offer, the bidder or proposer acknowledges it has read and understands the terms and conditions applicable to a solicitation document and that it accepts and agrees to be bound by the terms and conditions of the contract included in the solicitation document. If the request for proposals authorizes proposal of alternative terms or conditions under Section 30-030 – Solicitation Document, the proposer agrees to be bound by any non-negotiable terms and conditions of the contract and any proposed terms and conditions offered for negotiation upon the County's written acceptance of the proposed terms and conditions and bidder or proposer's agreement to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work.

30-040 - Use of Facsimile and Electronic Submission -- Bids and Proposals

1. County Authorization. The County may authorize bidders and proposers to submit facsimile and/or electronic offers. If the County determines that ITB or RFP security is or will be required, the County will describe another method for receipt of such security in the solicitation document.
2. All facsimile and electronic responses, when authorized, must arrive at the place and by the time specified in the solicitation document.
3. The bidder or proposer must sign all facsimile offers.
4. The County may award a contract based solely upon a facsimile offer. However, the offeror must, upon request of the County, promptly submit its complete original signed offer.
5. Before authorizing electronic offers, the County Purchasing Division will establish procedures and controls for receiving, identifying, recording, and safeguarding electronic offers, to ensure timely delivery of the offers to the opening location and to preserve the "sealed" requirement of competitive procurement.
6. Transmission and Receipt. The County is not responsible for any failure attributable to the transmission or receipt of the facsimile or electronic offer including, but not limited to the following:
 - (a) Receipt of garbled or incomplete documents.
 - (b) Availability or condition of the receiving facsimile machine and/or receiving equipment.
 - (c) Incompatibility between the sending and receiving facsimile machines and/or receiving equipment.
 - (d) Delay in transmission or receipt of documents.
 - (e) Failure of the supplier to properly identify the offer documents.
 - (f) Illegibility of offer documents.
 - (g) Security and confidentiality of data.
7. Transmission Verification. It is the responsibility of the bidder or proposer to verify that the submission has been received by the County prior to the submission due date and time.

30-045 - Public Notice of Solicitation

1. Notice and Distribution Fee. The County will, at least seven (7) days prior to the solicitation closing date:
 - (a) Place notice on the Oregon Department of Administrative Services' electronic procurement system, if applicable;
 - (b) Otherwise furnish notice to a sufficient number of bidders or proposers for the purpose of fostering and promoting competition. The notice shall indicate where, when, how, and for how long the solicitation document may be obtained and generally describe the work or goods to be acquired. The notice may contain any other appropriate information. The County may charge a fee or require a deposit for the solicitation document.

2. Advertising. Every solicitation for offer shall be advertised unless these Rules or the Board specifically exempts the solicitation from the advertisement requirement.
 - (a) Unless published by electronic advertisement, the advertisement for offers shall be published at least once in a newspaper of general circulation in the area where the contract is to be performed and is a newspaper of general statewide circulation, and in as many additional issues and publications as may be necessary or desirable to foster and promote competition.
 - (b) All advertisements for offers shall set forth the following as applicable:
 - i. The scheduled closing date and time, which shall not be less than seven (7) days after the date of the last publication of the advertisement;
 - ii. The date that suppliers must file applications for pre-qualification if pre-qualification is a requirement and the class or classes of work for which suppliers must be pre-qualified;
 - iii. The nature of the work to be performed or the goods to be purchased;
 - iv. The office where contract terms, conditions and specifications are available;
 - v. The name, title and address of the County person authorized to receive offers;
 - vi. The date, time and place of the scheduled opening;
 - vii. If applicable, that the contract is for a public work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 et seq.).

- viii. Statement whether licensing per ORS 468A.720 (working with asbestos) is or is not required for the project.

30-050 - Offer Submissions

1. Identification of Offers.
 - (a) To ensure proper identification and special handling, offers shall be submitted in a sealed envelope appropriately marked. If facsimile or electronic offers are permitted in the solicitation document, the supplier may submit and identify facsimile or electronic offers in accordance with the solicitation document.
 - (b) The County is not responsible for offers submitted in any manner, format or to any delivery point other than as required in the solicitation document.
2. Instructions. A supplier shall submit and sign its offer in accordance with the solicitation document. A supplier shall initial and submit any correction or erasure to its offer prior to the opening in accordance with the requirements for submitting an offer under the solicitation document.
3. Receipt of Offers. The supplier is responsible for ensuring the County receives the offer at the required delivery point prior to the closing, regardless of the method used to submit or transmit the offer.
4. Forms. A supplier shall submit its offer on the form(s) provided in the solicitation document, unless the supplier is otherwise instructed in the solicitation document.
5. Documents. A supplier shall provide the County with all documents and descriptive literature required by the solicitation document.
6. Electronic submissions. If the solicitation document permits electronic offers pursuant to these Rules, a supplier may submit its offer electronically. The County shall not consider electronic offers unless the solicitation document specifically authorizes them.

30-055 - Bid or Proposal Security; Performance and Payment Bonds

1. Security Amount. Bid or proposal security, if required, shall be expressly provided for in the solicitation document. If so required, the supplier shall forfeit bid or proposal security after the award if the supplier fails to execute the contract and promptly return it with any required Performance Bond and Payment Bond and any required proof of insurance.

2. **Public Improvement Contracts.** Bid or proposal security is required for the solicitation of offers for public improvements unless the County has otherwise exempted the solicitation or class of solicitations from bid or proposal security. The County may require bid or proposal security even if it has exempted a class of solicitations from bid or proposal security. Unless otherwise stated in the solicitation documents or specifically waived by the County, the following bonds are required:
 - (a) A performance bond in an amount equal to the full contract price conditioned on the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. If the contract is with a single person or entity to provide both design and construction of a public improvement, the obligation of the performance bond or other security for the faithful performance of the contract must also be for the preparation and completion of the design and related services covered under the contract;
 - (b) A payment bond in an amount equal to the full contract price, solely for the protection of claimants under ORS 279C.600; and
 - (c) The contractor must have a public work bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 or the work is an emergency contract under 20-020. Also, the contractor must include in every subcontract a provision requiring the subcontractor to have a public work bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 or it is an emergency contract under 20-020. ORS 279C.830(3) . Pursuant to ORS 279C.836(8), a contractor or subcontractor may elect not to file a public works bond as required by ORS 279C.836 for any public works project for which the contract price does not exceed \$100,000.
3. **Form of Bid or Proposal Security.** Unless otherwise stated in the solicitation documents, the County will only accept the following forms of bid or proposal security:
 - (a) A surety bond from a surety company authorized to do business in the State of Oregon;
 - (b) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or
 - (c) A cashier's check or supplier's certified check.
4. **Form of Performance or Payment Bonds.** Unless otherwise stated in the solicitation documents, the County will only accept the following forms of Performance or Payment Bonds:
 - (a) A surety bond from a surety company authorized to do business in the State of Oregon;

5. Return of Security. Upon execution of a contract and delivery of a good and sufficient Performance Bond and a good and sufficient Payment Bond by a successful bidder or proposer, the County shall return the successful contractor's bid or proposal security. The County will also return or release the bid or proposal security of all unsuccessful suppliers after award or after a contract has been executed and a performance bond provided (if such performance bond is required), or after all offers have been rejected. The County may return the bid or proposal security of unsuccessful suppliers prior to award if the return will not prejudice the contract award and the security of at least the bidders with the three lowest bids, or the proposers with the three highest scoring proposals, is retained pending execution of a contract.

30-060 - Pre-Offer Conferences

1. Purpose. The County may hold pre-offer conferences with prospective suppliers prior to closing to explain the procurement requirements, to conduct site inspections, or as otherwise stated in the solicitation document.
2. Required Attendance. The County may require attendance at the pre-offer conference as a condition for making an offer.
3. Scheduled Time. If the County holds a pre-offer conference, it shall be held within a reasonable time after the solicitation document has been issued, but sufficiently before the closing to allow suppliers the opportunity to consider information provided at the pre-offer conference.
4. Statements Not Binding. Statements made by the County's representative at the pre-offer conference do not change the solicitation document unless the County confirms such statements with a written addendum to the solicitation document.

30-065 - Protest of Specifications

1. Clarification. Prior to the deadline for submitting a written protest or as otherwise provided in the solicitation document, a supplier may request that the County clarify any provision of the solicitation document. The County's clarification to a supplier, whether orally or in writing, does not change the solicitation document and is not binding on the County unless the County amends the solicitation document by addenda.
2. Delivery. A supplier must deliver a protest of specifications to the County in writing. Protests must be received by 5:00 PM on the protest due date; a postmark is not sufficient. A proposer may request a change to add alternative terms and conditions for negotiation if the request for proposals permits negotiation pursuant to 30-025 and 30-105. A supplier must deliver any protest in accordance with the terms of the solicitation document.

3. Content (ORS 279B.405). A supplier's written protest must include:
 - (a) Sufficient information to identify the solicitation that is the subject of the protest;
 - (b) The grounds that demonstrate how the procurement process is contrary to law or how the solicitation document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name;
 - (c) The relief sought; and
 - (d) A statement of the changes to solicitation document that will remedy the conditions upon which the protest is based.
4. County Response. The County may reject without consideration a supplier's protest after the deadline established for submitting protest. The County shall provide notice to the applicable supplier if it entirely rejects a protest. If the County agrees with the supplier's protest, in whole or in part, the County shall either issue an addendum reflecting its determination or cancel the solicitation.
5. Extension of Closing. If the County receives a written protest from a supplier in accordance with this Rule, the County may extend closing if the County determines an extension is necessary to consider the protest and to issue addenda, if any, to the solicitation document.
6. Timelines for submission of protest shall be outlined in the solicitation document.

30-070 - Addenda to a Solicitation Document.

1. Issuance; Receipt. A solicitation document will only be changed by a written addendum. A supplier should provide written acknowledgment of receipt of all issued addenda with its offer, unless the County otherwise specifies in the addenda.
2. Distribution. The County will provide by mail, facsimile, or electronic transmission addenda to all suppliers known to have obtained the solicitation document or to have attended any mandatory pre-offer conference.
3. Timelines; Extensions. The County will issue addenda within a reasonable time to allow prospective suppliers to consider the addenda in preparing their offers. The County may extend the closing if the County determines prospective suppliers need additional time to review addenda.

4. Request for Change or Protest. Unless a different deadline is set forth in the addenda, a supplier may submit a written request for change or protest to the addenda as provided in the solicitation document, within 24 hours following issuance of the addenda, or up to the last day allowed to submit a request for change or protest under 30-065, whichever date is later. The County shall consider only a supplier's request for change or protest to the addenda; the County shall not consider a request for change or protest to matters not added or modified by the addenda.

30-075 - Pre-Opening Modification or Withdrawal of Offers

1. Modifications. A supplier may modify its offer in writing prior to the closing. A supplier shall prepare and submit any modification to its offer to the County in accordance with the Rules, unless otherwise specified in the solicitation document. Any modification must include the supplier's statement that the modification amends and supersedes the prior offer. The supplier shall mark the submitted modification as follows:

Bid (or Proposal) Modification
Solicitation Number or Other Identification

2. Withdrawals:

- (a) A supplier may withdraw its offer by written notice submitted and delivered on the supplier's letterhead, signed by an authorized representative of the supplier, and received by the County prior to the closing. The supplier or authorized representative of the supplier may also withdraw its offer in person prior to the closing, upon presentation of appropriate identification;
- (b) The County may release an unopened offer withdrawn under subsection 2(a) to the supplier, after voiding any date and time stamp mark, and documenting the withdrawal on the solicitation log;
- (c) The supplier shall mark the written request to withdraw an offer as follows:

Bid (or Proposal) Withdrawal
Solicitation Number or Other Identification

30-080 - Receipt, Opening, and Recording of Offers

1. Receipt. All offers must be received at the Purchasing Division unless otherwise stated in the solicitation document. The County will electronically or mechanically time-stamp or hand-mark each offer and any modification upon receipt. Offers shall be stored in a secure place until opening.
2. Opening and Recording. Except as provided in ORS 279C.107, the County shall publicly open offers. In the case of invitations to bid, to the extent practicable, the County shall read aloud the name of each bidder, the bid price(s), and such other information as the County considers appropriate. In the case of requests for proposals or voluminous bids, if the solicitation document so provides, the County will not read offers aloud.

3. Availability. Except as provided in ORS 279C.107, after opening, the County shall make the offers available for public inspection except for those portions of an offer that the supplier designates as trade secrets or as confidential proprietary data in accordance with applicable law. *See* ORS 192.501(2); ORS 646.461 to 646.475. To the extent the County determines such designation is not in accordance with applicable law, the County shall make those portions available for public inspection. The bidder or proposer shall separate information designated as confidential from other non-confidential information at the time of submitting its offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment shall not be confidential, but shall be publicly available regardless of a bidder's or proposer's designation to the contrary. Proposals will not be made available for public inspection until the notice of intent to award has been published. Proposers must designate any trade secrets or confidential proprietary data as outlined above.

30-085 - Late Offers, Late Withdrawals, and Late Modifications

Any offer received after closing is late. A bidder or proposer's request for withdrawal or modification of an offer received after closing is late. The County shall not consider late offers, withdrawals or modifications except as permitted in Section 30-090 - Mistakes.

30-090 - Mistakes

1. General. To protect the integrity of the competitive solicitation process and to assure fair treatment of the bidder or proposer, the County will carefully consider whether to permit waiver, correction or withdrawal of offers for certain mistakes discovered after the opening.
2. County Treatment of Mistakes. The County shall not allow a bidder or proposer to correct or withdraw an offer for an error in judgment. If the County discovers certain mistakes in an offer after opening, but before award of the contract, the County may take the following action:
 - (a) The County may waive or permit a bidder or proposer to correct a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the offer, or an insignificant mistake that can be waived or corrected without prejudice to other bidders or proposers. Examples of minor informalities include a bidder or proposer's failure to:
 - i. Return the correct number of signed offers or the correct number of other documents required by the solicitation document;
 - ii. Sign the offer in the designated block, provided a signature appears in the offer evidencing an intent to be bound; and

- iii. Acknowledge receipt of an addendum to the solicitation document, provided: it is clear on the face of the offer that the bidder or proposer received the addendum and intended to be bound by its terms;
- (b) The County may correct a clerical error if the intended offer and the error are evident on the face of the offer, or other documents submitted with the offer, and the bidder or proposer verifies the County's correction in writing. A clerical error is a bidder or proposer's error in drafting its offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, mathematical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the offer). Unit prices shall prevail over extended prices in the event of a discrepancy between extended prices and unit prices.
- (c) The County may permit a supplier to withdraw an offer based on other errors only if the bidder or proposer shows by clear and convincing evidence:
 - i. The nature of the error;
 - ii. That the error is not a judgment error, minor informality or clerical error;
 - iii. The error cannot be waived or corrected pursuant to subsections (a) and (b) of this section;
 - iv. The bidder or proposer acted in good faith in submitting an offer that contained a claimed error and in claiming the alleged error in the offer exists;
 - v. The bidder or proposer acted without gross negligence in submitting an offer that contained a claimed error;
 - vi. The bidder or proposer will suffer substantial detriment if the County does not grant the bidder or proposer permission to withdraw the offer;
 - vii. The County's or the public's status grant the bidder or proposer permission to withdraw the offer; has not changed so significantly that relief from the forfeiture will work a substantial hardship on the County or the public;
 - viii. The bidder or proposer promptly gave notice of the claimed error to the County.

3. Rejection for Mistakes. The County shall reject any offer in which a mistake is evident on the face of the offer and the intended correct offer is not evident or cannot be substantiated from documents accompanying the offer, i.e., documents submitted with the offer, pursuant to solicitation requirements.

30-095 - Time for County Acceptance

An offer is irrevocable, valid and binding on the bidder or proposer for not less than sixty-days (60) from closing unless otherwise specified in the solicitation document.

30-100 - Extension of Time for Acceptance of Offer

The County may request, orally or in writing, that suppliers extend, in writing, the time during which the County may accept their offer(s). If a bidder or proposer agrees to such extension, the offer shall be irrevocable, valid and binding for the agreed upon extension.

30-105 - Offer Evaluation and Award

1. County Evaluation. The County will evaluate an offer in accordance with the solicitation document and applicable law.
2. Supplier Submissions.
 - (a) The County may require a supplier to submit product samples, descriptive literature, technical data, or other material and may also require any of the following prior to award:
 - i. Demonstration, inspection or testing of a product prior to award for characteristics such as quality or workmanship;
 - ii. Examination of such elements as appearance, finish, taste, or feel; or
 - iii. Other examinations to determine whether the product conforms to specifications.
 - (b) Products will be evaluated in accordance with the criteria disclosed in the solicitation document to determine whether a product is acceptable. The County shall reject an offer providing any product that does not meet the solicitation document requirements. The County's rejection of an offer because it offers non-conforming work or goods is not disqualification and is not subject to appeal under these Rules.

3. Evaluation of Bids. The County will use objective criteria to evaluate the bids of responsible bidders who submitted responsive bids. The County will evaluate bids to determine which responsible bidder offers the lowest responsive bid. In determining the lowest responsive bid, the County will add a percentage increase to the bid of a nonresident bidder equal to the percentage, if any, of the preference given to that bidder in the state in which the bidder resides.
 - (a) In determining the lowest responsible bidder for contracts addressed by ORS 279C the County shall:
 - i. Check the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a public improvement contract;
 - ii. Determine whether the prospective bidder has met the standards of responsibility set forth in ORS 279C.375.
4. Evaluation of Proposals and Programmatic Qualifications.
 - (a) The County will evaluate proposals in accordance with the criteria set forth in the RFP, any addenda to the RFP, and applicable law. The County will evaluate proposals to determine the responsible proposer submitting the best responsive proposal. The County may seek information from a proposer to clarify the proposal. Such clarification may not vary or contradict the proposal. The County will not seek clarification of a non-responsive proposal. If requested, a proposer must submit written and signed clarifications and such clarifications will become part of the proposal.
 - (b) If the County permitted negotiation in the request for proposals for public contracts in accordance with 30-025, the County will evaluate proposals and may negotiate the terms and conditions expressly authorized for negotiation under the request for proposals with the highest scoring proposers and base the award upon the proposer's response to the negotiations.
 - (c) The County will evaluate proposals for personal services in accordance with the criteria set forth in the request for proposals, the Rules and applicable law.
 - (d) If provided for in the RFP, revisions of proposals may be permitted, upon the request of the County, after the submission of proposals and before award

- (e) If provided for in the RFP, after the opening of proposals, the County may issue or electronically post an addendum to the request for proposals that modifies the criteria, rating process and procedure for any tier of competition before the start of the tier to which the addendum applies. The County shall send an addendum that is issued by a method other than electronic posting to all proposers who are eligible to compete under the addendum. The County shall issue or post the addendum at least five days before the start of the subject tier of competition or as the County otherwise determines is adequate to allow eligible proposers to prepare for the competition in accordance with these rules.
6. General. If awarded, the County shall award the contract to the responsible bidder submitting the lowest, responsive bid or the responsible proposer submitting the best, responsive proposal. The County may award by item, groups of items or the entire offer provided such award is consistent with the solicitation document and in the public interest.

30-110 - Tie Offers

1. Definition. Low tie offers are low tie responsive bids from responsible bidders. High tie proposals are high scoring proposals from responsible proposers that are identical in price, fitness, availability and quality.
2. Award. If awarded, the County shall award the contract based on the following order of precedence:
 - (a) Goods or services that have been manufactured or produced in Oregon pursuant to ORS 279A.120.
 - (b) If a tie offer remains after subsection 2(a), then the County shall draw lots among any tied Oregon bidders or proposers. Such bidders or proposers shall be given notice of the date, time and location of the drawing of lots and an opportunity to be present when the lots are drawn;
 - (c) If a tie offer remains after the County applies subsection 2(a) and none of the tied bidders or proposers are located in Oregon, then by drawing lots among any tied bidders or proposers. Such bidders or proposers shall be given notice of the date, time and location of the drawing of lots and an opportunity to be present when the lots are drawn.
 - (d) The County may use any reasonable criteria to determine if goods, services or personal services are manufactured or produced in Oregon.

30-120 - Rejection of Individual Bids or Proposals

1. General. In accordance with ORS 279B.100 and 279C.395, the Purchasing Supervisor may reject any offer not in compliance with all prescribed solicitation procedures and requirements, and may reject for good cause any offer upon a written finding that it is in the public interest to do so.
2. Additional Basis Rejection. The Purchasing Supervisor may reject an offer upon finding that:
 - (a) The contract is for a public work and the Commissioner of the Bureau of Labor and Industries has declared the bidder ineligible under ORS 279C.860; or
 - (b) The supplier is not responsible. A supplier is not responsible if the County finds:
 - i. The bidder or proposer does not have available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the bidder or proposer to meet all contractual responsibilities;
 - ii. The bidder or proposer does not have a satisfactory record of performance. The County shall document the record of performance of the bidder or proposer if the County finds the bidder or proposer not responsible under this paragraph. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the bidder or proposer's control, the bidder or proposer stayed within the time and budget allotted for the contract and otherwise performed the contract in a satisfactory manner;
 - iii. The bidder or proposer does not have a satisfactory record of integrity. The County shall document the record of integrity of the bidder or proposer if the County finds the bidder or proposer not to be a responsible bidder or proposer under this paragraph. The standards for debarment under ORS 279B.130 may be used to determine integrity of a bidder or proposer. The County may find a bidder or proposer non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the bidder's or proposer's performance of a contract or subcontract.;
 - iv. The bidder or proposer is not qualified legally to contract with the County;

- v. The bidder or proposer has not complied with tax laws of Oregon or a political subdivision of Oregon, including ORS 305.620 and ORS chapters 316, 317 and 318, or the bidder or proposer has not demonstrated compliance by submitting a signed Certification and Contract Offer that attests, that the bidder or proposer has complied with the tax laws of Oregon or a political subdivision of Oregon; or
 - vi. The bidder or proposer has not supplied all necessary information in connection with the inquiry concerning responsibility. If the bidder or proposer fails to promptly supply information requested by the County concerning responsibility, the County shall base the determination of responsibility upon any available information, or may find the bidder or proposer not responsible;
- (c) The contract is for a public improvement and the Construction Contractors Board lists the bidder as not qualified;
 - (d) The bidder or proposer has not met the requirements of ORS 279A.105(1) or (2) if required by the solicitation document;
 - (e) Other circumstances relevant to the offer, or bidder or proposer, indicate that acceptance of the offer may impair the integrity of the selection process;
 - (f) The offer is contingent upon the County's acceptance of terms and conditions (including specifications) that differ from the solicitation document;
 - (g) The offer takes exception to some of the terms and conditions in the solicitation documents;
 - (h) The offer offers goods or services that fail to meet the specifications of the solicitation document;
 - (i) The offer is late;
 - (j) The offer is not in substantial compliance with the solicitation document or these public procurement Rules; or
 - (k) The offer has not submitted properly executed bid or proposal security as required by the solicitation document.
3. Form of Business Entity. For purposes of this Rule, the County may investigate any bidder or proposer submitting an offer so that previously disqualified bidder or proposer, or their officers and directors, or principle owners may not, by subterfuge, change of ownership, or other adjustments in formal appearance, avoid application of this Rule or of the disqualification provisions of ORS 279C.440 to 279C.445 and section 30-145 of these Rules.

30-125 – Rejection of All Offers

1. Rejection. The Purchasing Supervisor may reject all offers for good cause upon a written finding it is in the public interest to do so. The County will notify all bidders or proposers of the rejection of all offers, along with the good cause justification and finding.
2. Criteria. The Purchasing Supervisor may reject all offers upon a written finding that:
 - (a) The content of or an error in the solicitation document, or the solicitation process unnecessarily restricted competition for the contract;
 - (b) The price, quality or performance presented by the bidders or proposers is too costly or of insufficient quality to justify acceptance of the offer;
 - (c) Misconduct, error, or ambiguous or misleading provisions in the solicitation document threaten the fairness and integrity of the competitive process;
 - (d) Causes other than legitimate market forces threaten the integrity of the competitive procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or unintentional errors in the solicitation document;
 - (e) Cancellation of the solicitation in accordance with 30-150; or
 - (f) Any other circumstance indicating completion of the solicitation would not be in the public interest.
3. The County will issue a notice of rejection of all offers.

30-130 – Notice of Intent to Award

1. Notice. Unless otherwise provided in the solicitation document, the County shall issue to each bidder or proposer or post electronically a notice of its intent to award a contract pursuant to ORS 279B.135 at least seven (7) days before the award of a contract, unless the County determines that circumstances justify the prompt execution of the contract, in which case the County may provide a shorter notice period. This section does not apply to contracts awarded as a small procurement (ORS 279B.065), an intermediate procurement (ORS 279B.070), a sole source procurement (ORS 279B.075), an emergency procurement (ORS 279B.080), or a special procurement (ORS 279B.085).
2. Finalizing Award. The County's award shall not be final until the later of the following:
 - (a) seven days after the date of the notice, unless the solicitation document provided a different period for protest; or
 - (b) the County provides a written response to all timely-filed protests that denies the protest and affirms the award.

3. Prior Notice Impractical. Posting of notice of intent to award shall not be required when the County determines that it is impractical due to unusual time constraints in making prompt award for its immediate procurement needs, documents the contract file as to the reasons for that determination, and posts notice of that action as soon as reasonable practical.

30-135 – Protest of Solicitation, Contract Award, Special and Sole Source Procurements, and Contractor Selection

1. Right to Protest Award.
 - (a) An adversely affected bidder or proposer may protest the County's award of the contract.
 - (b) A bidder is adversely affected only if the bidder is eligible for award of the contract as the responsible bidder submitting the lowest responsive bid or the responsible proposer submitting the best responsive proposal and is next in line for award, (i.e., the protesting bidder or proposer must claim that all lower bidders or higher-scored proposers are ineligible for award).
2. Exhaustion of Remedies. An adversely affected or aggrieved bidder or proposer must exhaust all avenues of administrative review and relief before seeking judicial review of the County's contractor selection or contract award decision.
3. Award. The decision by the Board or the County Administrator to award the contract shall constitute the final decision of the County to award the contract.
4. Protests and Judicial Review of Solicitations
 - (a) Purpose. A prospective bidder or proposer may protest the procurement process or the solicitation document for a contract solicited under ORS 279B.055, 279B.060 and 279B.085 as set forth in ORS 279B.405(2)(a). Pursuant to ORS 279B.405(3), before seeking judicial review, a prospective bidder or proposer must file written protest with the County and exhaust all administrative remedies.
 - (b) Delivery. Unless otherwise specified in the solicitation document, a prospective bidder or proposer must deliver a written protest to the Board or its designee not less than ten (10) days prior to closing or due date.
 - (c) Content of Protest. In addition to the information required by ORS 279B.405(4), a prospective bidder's or proposer's written protest shall include a statement of the proposed changes to the procurement process. or the solicitation document that the prospective bidder or proposer believes will remedy the conditions upon which the prospective bidder or proposer based its protest.

- (d) County's Response. The Board or its designee shall not consider a prospective bidder's or proposer's solicitation protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the solicitation document. The Board or its designee shall consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). The County shall issue a written disposition of the protest in accordance with the timeline set forth in ORS 279B.405(6). If the Board or its designee upholds the protest, in whole or in part, the County may in its sole discretion either issue an addendum reflecting its disposition or cancel the procurement or solicitation pursuant to these Rules.
- (e) Extension of Closing. If the County receives a protest from a prospective bidder or proposer in accordance with this Rule, the County may extend closing if the County determines an extension is necessary to consider and respond to the protest.
- (f) Clarification. Prior to the deadline for submitting a protest, a prospective bidder or proposer may request that the County clarify any provision of the solicitation document. The County's clarification to a bidder or proposer, whether orally or in writing, does not change the solicitation document and is not binding on the County unless the County amends the solicitation document by addendum.
- (g) Judicial Review. Judicial review of the Board's or its designee's decision relating to a solicitation protest shall be in accordance with ORS 279B.405.

5. Protests and Judicial Review of Contract Award.

- (a) Purpose. A bidder or proposer may protest the award of a contract, or the intent to award a contract, whichever occurs first, if the conditions set forth in ORS 279B.410(1) are satisfied. A bidder or proposer must file a written protest with the County and exhaust all administrative remedies before seeking judicial review of the County's contract award decision.
- (b) Delivery. Unless otherwise specified in the solicitation document, a bidder or proposer must deliver a written protest to the Board or its designee within seven (7) days after the award of a contract or, issuance of the notice of intent to award the contract whichever occurs first.
- (c) Content of Protest. A bidder or proposer's written protest shall specify the grounds for the protest to be considered by the Board or its designee pursuant to ORS 279B.410(2).

- (d) County Response. The Board or its designee shall not consider a bidder's or proposer's contract award protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the solicitation document. The Board or its designee shall issue a written disposition of the protest in a timely manner as set forth in ORS 279B.410(4). If the Board or its designee upholds the protest, in whole or in part, the Board or its designee may in its sole discretion either award the contract to the successful protestor or cancel the procurement or solicitation.
 - (e) Judicial Review. Judicial review of the Board's or its designee's decision relating to a contract award protest shall be in accordance with ORS 279B.415.
6. Protests and Judicial Review of Special Procurements.
- (a) Purpose. An affected person may protest the authorization of a special procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the authorization of a special procurement, an affected person must file a written protest with the Board or its designee and exhaust all administrative remedies.
 - (b) Delivery. Protest of Authorization of a Special Procurement. An affected person must deliver a written protest to the Board within seven (7) days after the first date of public notice of an authorization of a special procurement, unless a different protest period is provided in the public notice.
 - (c) Content of Protest. The written protest must include:
 - i. A detailed statement of the legal and factual grounds for the protest;
 - ii. A description of the resulting harm to the affected person; and
 - iii. The relief requested.
 - (d) County Response. Protest of Authorization of a Special Procurement: The Board or its designee shall not consider an affected person's protest of the County's approval of a special procurement submitted after the timeline established for submitting such protest under this Rule or such different time period as may be provided in the public notice of authorization of a special procurement. The Board or its designee shall issue a written disposition of the protest in a timely manner. If the Board or its designee upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the authorization of the special procurement, or revoke the approval of the special procurement.
 - (e) Judicial Review. An affected person may seek judicial review of the Board's or its designee's decision relating to a protest of the authorization of a special procurement in accordance with ORS 279B.400.

7. Protests and Judicial Review of Sole-Source Procurements

- (a) Purpose. For sole-source procurements requiring public notice, an affected person may protest the determination of the Board or designee that the goods or services or class of goods or services are available from only one source. Pursuant to ORS 279B.420(3)(f), before seeking judicial review, an affected person must file a written protest with the Board or designee and exhaust all administrative remedies.
- (b) Delivery. Unless otherwise specified in the public notice of the sole-source procurement, an affected person must deliver a written protest to the Board or designee within seven (7) days after the first date of public notice of the sole-source procurement, unless a different protest period is provided in the public notice of sole-source procurement.
- (c) Content of Protest. The written protest must include:
 - i. A detailed statement of the legal and factual grounds for the protest;
 - ii. A description of the resulting harm to the affected person; and
 - iii. The relief requested.
- (d) County Response. The Board or designee shall not consider an affected person's sole-source procurement protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the public notice of the sole-source procurement. The Board or designee shall issue a written disposition of the protest in a timely manner. If the Board or designee upholds the protest, in whole or in part, the County shall not enter into a sole-source contract.
- (e) Judicial Review. Judicial review of the Board or designee's disposition of a sole-source procurement protest shall be in accordance with ORS 279B.420.

8. Protests and Judicial Review of Multi-Tiered and Multi-step Solicitations

- (a) Purpose. An affected bidder or proposer may protest exclusion from the competitive range or from subsequent tiers or steps of a solicitation in accordance with the applicable solicitation document. When such a protest is permitted by the solicitation document, then pursuant to ORS 279B.420(3)(f), before seeking judicial review, an affected bidder or proposer must file a written protest with the County and exhaust all administrative remedies.

- (b) **Basis for Protest.** An affected bidder or proposer may protest its exclusion from a tier or step of competition only if the bidder or proposer is responsible and submitted a responsive offer and but for the County's mistake in evaluating the bidder's or proposer's or other bidders' or proposers' offers, the protesting bidder or proposer would have been eligible to participate in the next tier or step of competition. (For example, the protesting bidder or proposer must claim it is eligible for inclusion in the competitive range if all ineligible higher-scoring bidders or proposers are removed from consideration, and that those ineligible bidders or proposers are ineligible for inclusion in the competitive range because: their bids or proposals were not responsive, or the County committed a substantial violation of a provision in the solicitation document or of an applicable procurement statute or these Rules, and the protesting bidder or proposer was unfairly evaluated and would have, but for such substantial violation, been included in the competitive range.)
 - (c) **Delivery.** Unless otherwise specified in the solicitation document, an affected bidder or proposer must deliver a written protest to the County within seven (7) days after issuance of the notice of the competitive range or notice of subsequent tiers or steps.
 - (d) **Content of Protest.** The affected bidder or proposer's protest shall be in writing and must specify the grounds upon which the protest is based.
 - (e) **County Response.** The County shall not consider an affected bidder's or proposer's multi-tiered or multi-step solicitation protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the solicitation document. The County shall issue a written disposition of the protest in a timely manner. If the County upholds the protest, in whole or in part, the County may in its sole discretion either issue an addendum reflecting its disposition or cancel the procurement or solicitation under these Rules.
 - (f) **Judicial Review.** Judicial review of the County's decision relating to a multi-tiered or multi-step solicitation protest shall be in accordance with ORS 279B.420.
9. **Protest of Contractor Selection, Contract Award (public improvements)**
- (a) **Purpose.** An adversely affected or aggrieved bidder or proposer must exhaust all avenues of administrative review and relief before seeking judicial review of the County's contractor selection or contract award decision.
 - (b) **Notice of Competitive Range.** Unless otherwise provided in the RFP, the County shall provide written notice to all proposers of the County's determination of the proposers included in the competitive range. The County's notice of the proposers included in the competitive range shall not be final until the later of the following:

- i. Ten (10) days after the date of the notice, unless otherwise provided therein; or
 - ii. Until the County provides a written response to all timely filed protests that denies the protest and affirms the notice of the proposers included in the competitive range.
- (c) Notice of Intent to Award. Unless otherwise provided in the solicitation document, the County shall provide written notice to all bidders or proposers of the County's intent to award the contract. The County's award shall not be final until the later of the following:
 - i. Seven (7) days after the date of the notice, unless the solicitation document provided a different period for protest; or
 - ii. The County provides a written response to all timely filed protests that denies the protest and affirms the award.
- (d) Right to Protest Award.
 - i. An adversely affected or aggrieved bidder or proposer may submit to the County a written protest of the County's intent to award within seven (7) days after issuance of the notice of intent to award the contract, unless a different protest period is provided under the solicitation document.
 - ii. The bidder or proposer's protest must be in writing and must specify the grounds upon which the protest is based.
 - iii. A bidder or proposer is adversely affected or aggrieved only if the bidder or proposer is eligible for award of the contract as the responsible bidder submitting the lowest responsive bid or the responsible proposer submitting the best responsive proposal and is next in line for award, i.e., the protesting bidder or proposer must claim that all lower bidders or higher-scored proposers are ineligible for award:
 - A. Because their offers were non-responsive; or
 - B. The County committed a substantial violation of a provision in the solicitation document or of an applicable procurement statute or these Rules, and the protesting bidder or proposer was unfairly evaluated and would have, but for such substantial violation, been the responsible bidder offering the lowest bid or the responsible proposer offering the highest-ranked proposal.

- iv. The County shall not consider a protest submitted after the time period established in this Rule or such different period as may be provided in the solicitation document. A proposer may not protest the County's decision not to increase the size of the competitive range above the size of the competitive range set forth in the RFP.
- (e) Right to Protest Competitive Range.
- i. An adversely affected or aggrieved proposer may submit to the County a written protest of the County's decision to exclude the proposer from the competitive range within seven (7) days after issuance of the notice of the competitive range, unless a different protest period is provided under the solicitation document.
 - ii. The proposer's protest shall be in writing and must specify the grounds upon which the protest is based.
 - iii. A proposer is adversely affected only if the proposer is responsible and submitted a responsive proposal and is eligible for inclusion in the competitive range, i.e., the protesting proposer must claim it is eligible for inclusion in the competitive range if all ineligible higher-scoring proposers are removed from consideration, and that those ineligible proposers are ineligible for inclusion in the competitive range because:
 - A. Their proposals were not responsive; or
 - B. The County committed a substantial violation of a provision in the RFP or of an applicable procurement statute or these Rules, and the protesting proposer was unfairly evaluated and would have, but for such substantial violation, been included in the competitive range.
 - iv. The County shall not consider a protest submitted after the time period established in this Rule or such different period as may be provided in the solicitation document. A proposer may not protest the County's decision not to increase the size of the competitive range above the size of the competitive range set forth in the RFP.
- (f) Authority to Resolve Protests. The Purchasing Supervisor, or their designee, may settle or resolve a written protest submitted in accordance with the requirements of this Rule.
10. Decision – The County Administrator has the authority to decide a protest submitted in accordance with the requirements of this Rule. The County Administrator shall promptly issue a written decision on a protest, which decision shall be final.

30-140 - Negotiation with Suppliers

1. Bids. Except as permitted by ORS 279C.340, the County will not negotiate with any bidder. After award of the contract, the County and contractor may only modify the contract by change order or amendment to the contract and in accordance with the Rules of the County.
2. Requests for Proposals.
 - (a) The County may negotiate with proposers in accordance with 30-025 and 30-105.

30-145 - Debarment or Disqualification of a Supplier

1. Authority. The County may debar or disqualify a supplier from consideration of award of the County's contracts after providing the supplier with notice and a reasonable opportunity to be heard in accordance with section 3 of this Rule.
 - (a) Standards for Conduct Debarment or Disqualification. As provided in ORS 279B.130 and ORS 279C.440, the County may debar or disqualify a supplier for:
 - i. Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a public or private contract or subcontract.
 - ii. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the supplier's responsibility as a contractor.
 - iii. Conviction under state or federal antitrust statutes.
 - iv. Violation of a contract provision that is regarded by the County or the Construction Contractors Board to be so serious as to justify debarment or disqualification. A violation under this subsection 1(a)(iv) may include but is not limited to a failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a supplier's failure to perform or unsatisfactory performance caused by acts beyond the supplier's control is not a basis for debarment or disqualification.
 - v. Violation of ORS 200.065, 200.075 or 279A.110.
 - vi. Failure to carry workers' compensation or unemployment insurance as required by statute.

2. Notice of Intent to Debar or Disqualify. The County will notify the supplier in writing of a proposed debarment or disqualification personally or by registered or certified mail, return receipt requested. The notice shall:
 - (a) State that the County intends to debar or disqualify the supplier;
 - (b) Set forth the reasons for the debarment or disqualification;
 - (c) Include a statement of the supplier's right to a hearing if requested in writing within the time stated in the notice and that if the County does not receive the supplier's written request for a hearing within the time stated, the supplier shall have waived its right to a hearing;
 - (d) Include a statement of the authority and jurisdiction under which the hearing will be held;
 - (e) Include a reference to the particular sections of the statutes and rules involved;
 - (f) State the proposed debarment or disqualification period not to exceed three (3) years; and
 - (g) State that legal counsel may represent the supplier.
3. Review of Debarment or Disqualification Decisions. Review of the County's debarment or disqualification decisions shall be as set forth in ORS 279B.425 or ORS 279C.450.
4. Notice of Debarment or Disqualification. The County will notify the supplier in writing of its debarment or disqualification by registered or certified mail, return receipt requested. The notice will contain:
 - (a) The effective date and period of debarment or disqualification;
 - (b) The grounds for debarment or disqualification; and
 - (c) A statement of the supplier's appeal rights and applicable appeal deadlines. For a conduct debarment or disqualification or a Disadvantaged Business Enterprise (DBE) Disqualification under ORS 279B.425, that the debarred or disqualified supplier must notify the County in writing within three (3) business days after receipt of the County's notice of debarment or disqualification if the supplier intends to appeal the County's decision.

30-150 – Cancellation, Delay or Suspension of Solicitation

1. Cancellation in the Public Interest. The Purchasing Supervisor may cancel, delay or suspend a solicitation for good cause if the Purchasing Supervisor finds that cancellation, delay or suspension is in the public interest. The reasons for cancellation, delay or suspension will be made part of the solicitation file.
2. Notice of Cancellation. If the County cancels, delays or suspends a solicitation prior to the opening, the County shall provide notice of cancellation delay or suspension. Such notice of cancellation, delay or suspension will:
 - (a) Identify the solicitation;
 - (b) Briefly explain the reason for cancellation, delay or suspension; and
 - (c) If appropriate, explain that an opportunity will be given to compete on any re-solicitation.

30-155 - Disposition of Offers if Solicitation Canceled

1. Prior to Opening. If the County cancels a solicitation prior to opening, the County will return all offers it received unopened, provided the bidder or proposer submitted its offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the County will open the offer to determine the source and then return it.
2. After Offer Opening. If the County rejects all offers, the County will retain all such offers as part of the County's solicitation file.

30-160 - Documentation of Award

1. Basis of Award. The County will keep a record showing the basis for determining the successful bidder or proposer as part of the solicitation file.
2. Documentation of Award: The County shall document their compliance with ORS 279C.375(3) on a Responsibility Determination Form as set forth in ORS 279C.375(3) and file the form with the Construction Contractors Board within 30 days after Contract Award.

30-165 - Foreign Contractor

If the contract price exceeds \$10,000 and the contractor is a Foreign Contractor, the contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the contract price, terms of payment, length of contract and such other information as the Department of Revenue may require before final payment can be received on the contract. A copy of the report shall be forwarded to the County. The County awarding the contract shall satisfy itself that the above requirements have been complied with before it issues final payment on the contract.

30-170 - Availability of Award Decisions

1. Availability of Solicitation Files. Except as provided in ORS 279C.107, the County shall make completed solicitation files available for public review. In the case of requests for proposals, the solicitation files will not be made public until the notice of intent to award has been posted.
2. Copies from Solicitation Files. Except as provided in ORS 279C.107, any supplier may obtain copies of non-confidential material from solicitation files upon payment of a reasonable copying and shipping charges.

30-175 – Cooperative Procurement

1. Authority for Cooperative Procurements
 - (a) The County may participate in, sponsor, conduct or administer Joint Cooperative Procurements, Permissive Cooperative Procurements and Interstate Cooperative Procurements in accordance with ORS 279A.200 through 279A.225 as follows:
 - i. The County may participate in, sponsor, conduct or administer Joint Cooperative Procurements to establish contracts or price agreements for goods or services or personal services, that use source selection methods substantially equivalent to those set forth in ORS 279B.055, 279B.060, or 279B.085 or to establish contracts for public improvements that use a competitive bidding process substantially equivalent to that set forth in ORS 279C.005 through 279C.870.
 - ii. With the exception of public improvements The County may participate in, sponsor, conduct or administer a permissive or interstate cooperative procurement for the procurement of any goods or services, but not public improvements.

- iii. The County may participate in, sponsor, conduct or administer Permissive Cooperative Procurements to establish contracts or price agreements for the acquisition of goods or services or personal services that use source selection methods substantially equivalent to those set forth in ORS 279B.055 or 279B.060.
 - iv. The County may participate in, sponsor, conduct or administer Interstate Cooperative Procurements to establish contracts or price agreements for the acquisition of goods or services or personal services that use source selection methods substantially equivalent to those set forth in ORS 279B.055 or 279B.060.
- (b) The County shall determine, in writing, whether the solicitation and award process for an original contract arising out of a cooperative procurement is substantially equivalent to those identified in ORS 279B.055, ORS 279B.060 or ORS 279B.085 consistent with ORS 279A.200(2).

2. Responsibilities of Administering Contract Agencies and Purchasing Contracting Agencies

- (a) If the County is an administering contracting agency of a cooperative procurement, the County may establish the conditions under which parties may participate in the cooperative procurements administered by the County. Such conditions may include, without limitation, whether each party that participates in the cooperative procurement must pay administrative fees to the County, whether each party must enter into a written agreement with the County, and any other matters related to the administration of the cooperative procurement and the resulting original contract. The County may, but is not required to, include provisions in the solicitation document for a cooperative procurement and advertise the solicitation document in a manner to assist a purchasing contracting agencies' compliance with the Code or these Rules.
- (b) If the County enters into a contract based on a cooperative procurement, the County shall comply with the Oregon Revised Statutes and these Rules, including without limitation those sections of the Oregon Revised Statutes and these Rules that govern:
- i. The extent to which the County may participate in the cooperative procurement,
 - ii. The advertisement of the solicitation document related to the cooperative procurement, and
 - iii. Public notice of the County's intent to establish contracts based on a cooperative procurement.

3. Joint Cooperative Procurements
 - (a) If the County chooses to participate in, sponsor, conduct or administer a joint cooperative procurement it shall do so only in accordance with ORS 279A.210.
4. Permissive Cooperative Procurements
 - (a) If the County chooses to participate in, sponsor, conduct or administer a permissive cooperative procurement it shall do so only in accordance with ORS 279A.215.
5. Advertisements of Intent to Establish Contracts through a Permissive Cooperative Procurement
 - (a) If the County wishes to enter into a contract or price agreement arising out of a permissive cooperative procurement, it shall publish notice of its intent to do so if it estimates that it will spend in excess of \$250,000 on goods and services or personal services acquired under the contract or price agreement.
 - (b) For purposes of determining whether the County must give notice of intent to establish a contract through a Permissive Cooperative Procurement as required by ORS 279A.215(2)(a) the estimated amount of the procurement will exceed \$250,000 if:
 - i. The County's contract arising out of the permissive cooperative procurement expressly provides that the County will make payments over the term of the contract that will, in aggregate, exceed \$250,000, whether or not the total amount or value of the payments is expressly stated;
 - ii. The County's contract arising out of the permissive cooperative procurement expressly provides for payment, whether in a fixed amount or up to a stated maximum amount that exceeds \$250,000; or
 - iii. At the time the County enters into the contract the County reasonably contemplates, based on historical or other data available to the County, that the total payments it will make for goods or services or both, or personal services under the contract will, in aggregate, exceed \$250,000 over the anticipated duration of the contract.

- (c) If the County acts as an administering contracting agency and intends to establish a contract out of the permissive cooperative procurement that it administers, it may satisfy the notice requirements set forth in ORS 279A.215(2)(a) by including the information required by ORS 279A.215(2)(b) in the solicitation document related to the permissive cooperative procurement, and including instructions in the solicitation document to potential bidders or proposers describing how they may submit comments in response to the County's intent to establish a contract through the permissive cooperative procurement. The content and timing of such notice shall comply in all respects with ORS 279A.215(2), ORS 279A.215(3) and these Rules.

6. Interstate Cooperative Procurements

- (a) If the County chooses to participate in, sponsor, conduct or administer an interstate cooperative procurement it shall do so only in accordance with ORS 279A.220.

7. Advertisement of Interstate Cooperative Procurements. The County may only participate in interstate cooperative procurement if at least one of the following occurs:

- (a) The solicitation document for an interstate cooperative procurement is advertised in Oregon for purposes of ORS 279A.220(2)(a) if it is advertised in Oregon in compliance with ORS 279B.055(4) or ORS 279B.060(4) by:
 - i. The County; or
 - ii. The cooperative procurement group, or a member of the cooperative procurement group, of which the County is a member; or
 - iii. Another purchasing contracting agency that is subject to the Code, so long as such advertisement would, if given by the County, comply with ORS 279B.055(4) or ORS 279B.060(4) with respect to the County; or
- (b) A purchasing contracting agency or the cooperative procurement group of which the purchasing contracting agency is a member satisfies the advertisement requirement under ORS 279A.220 (2)(b) if the notice is advertised in the same manner as provided in ORS 279B.055(4)(b) and (c).

8. Protests and Disputes

- (a) If a bidder or proposer wishing to protest the procurement process, the contents of a solicitation document related to a cooperative procurement, or the award or proposed award of an original contract, the bidder or proposer shall make such protest in accordance with ORS 279B.400 through ORS 279B.425 unless the Administering Contract Agency is not subject to the statute, then the bidder or proposer shall make the protest in accordance with the processes and procedures established by the Administering Contracting Agency.
- (b) Any other protest related to a Cooperative Procurement, or disputes related to a contract arising out of a Cooperative Procurement, shall be made and resolved as set forth in ORS 279A.225.

Division 40 - Public Improvement Contracts

40-000 - Application

In addition to the requirements set forth in Section 30 of these Rules and the definitions therein, the following Rules apply to public improvement contracts. Procurement of construction manager/general contractor services, whether the initial Contract between the parties includes both preconstruction services and construction services, or only contains preconstruction services, shall comply with the Oregon Attorney General Model Rules Section 137, Division 49. In the event of conflict or ambiguity, the more specific requirements of the Rules in Section 40 take precedence over the more general requirements of the Section 30 Rules.

40-005 – Contract Administration Contracting Restrictions

1. As required by Oregon Laws 2009, chapter 880, section 11, when the County procures personal services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract that is subject to ORS Chapter 279C, the County may not:
 - (a) Procure the personal services from a contractor or an affiliate of a contractor who is a party to the public contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the personal services; or
 - (b) Procure the personal services through the public contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the personal services.
2. Section (1) does not apply to a procurement that qualifies as a construction manager/general contractor procurement or a design-build procurement.

3. As used in this section, "affiliate" means a person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the person.

40-010 - Competitive Procurement

The County shall solicit bids for public improvement contracts by invitation to bid (ITB) except as otherwise allowed or required pursuant to state statute or these Rules. Pursuant to ORS 279C.320, Emergency Contracts for construction services are regulated under ORS 279B.080 and Rule 20-020. See also Rules 40-500 to 40-590 regarding the use of Alternative Contracting Methods, use of Alternative Contracting Methods for projects which are excepted or exempt from the competitive bidding process, use of Alternative Contracting Methods within the competitive bidding process and the process for obtaining an exemption.

40-020 - Exemption from Competitive Process – Public Improvement Contracts ORS 279C.335

1. The Board may exempt a public improvement contract or class of public improvement contracts from the competitive bidding requirements of these Rules upon making the following findings:
 - (a) It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts.
 - (b) The awarding of public improvement contracts under the exemption will likely result in substantial cost savings and other substantial benefits to the County or is a pilot project under ORS 279C.335(2)(c).
2. When granting exemptions under this section, the Board shall:
 - (a) When appropriate, direct the use of alternative contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.
 - (b) Require and authorize or reject written findings by the County that support the awarding of a particular public improvement contract or class of public improvement contracts without competitive bidding. The findings must show that the exemption complies with the requirements of section 1.

3. The Board shall hold a hearing regarding the exemption of a public improvement or class of public improvements prior to adopting the findings required by section (1). Notification of the public hearing shall be published in at least one newspaper of general statewide circulation a minimum of fourteen (14) days before the hearing. The notice shall state that the public hearing is for the purpose of taking comments on the County's draft findings for an exemption from the competitive bidding requirement. At the hearing, the Board shall offer an opportunity for any interested party to appear and present comment. Following the hearing, the Board shall either authorize the exemption and adopt the draft findings or reject the exemption.

40-030– Public Improvement Procurements; Competitive Quotes and Amendments

1. Public improvement contracts estimated by the County not to exceed \$100,000, may be awarded through competitive quotes established by this Rule.
2. The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility and similar factors.
3. The County shall utilize written requests for quotes. Written request for quotes shall include the selection criteria to be utilized in selecting a contractor and, if the criteria are not of equal value, their relative value or ranking.
4. The County shall seek at least three written competitive quotes, and keep a record of the sources and amounts of the quotes received. If three quotes are not reasonably available the County shall make a written record of the effort made to obtain those quotes.
5. If awarded, the County shall award the contract to the prospective contractor whose quote will best serve the interests of the County, taking into account the selection criteria. If award is not made to the bidder offering the lowest price, the County shall make a written record of the basis for award.
7. Amendments of public improvement contracts awarded through competitive quotes that exceed the thresholds stated in section (1) are specifically authorized when made in accordance with this Rule. Accordingly, such amendments are not considered new procurements and do not require an exemption from competitive bidding.

40-040 - Mandatory Provisions

In addition to the bidder or proposer qualification, selection, rejection, and disqualification criteria applicable to all public contracts, certain criteria apply specifically to public improvement contracts. Likewise, in addition to provisions required in all solicitations for public contracts and resulting contracts, certain provisions must be included in public improvement solicitations and resulting contracts. Those criteria and mandatory provisions are contained in Section 30, and additional criteria are referenced in this Rule.

1. Eligibility to bid or propose. *See* 30-020(1) (Construction Contracts).
2. Solicitation document statement of required certification or licensing. *See* 30-030(1)(a)(xiii) and (xiv).
3. Solicitation document and contract terms and conditions in addition to those set forth in Rule 30-030 as required pursuant to the following:
 - (a) Demonstration of drug testing program. (ORS 279C.505(2))
 - (b) Liability for late payment. (ORS 279C.515(1))
 - (c) Liability for failing, neglecting or refusing to make payment to a person furnishing labor or materials. (ORS 279C.515(2))
 - (d) Right to file complaints with Construction Contractors Board. (ORS 279C.515(3))
 - (e) Conditions concerning hours of labor. (ORS 279C.520 and ORS 279C.540)
 - (f) Environmental and natural resources regulations. (ORS 279C.525)
 - (g) Payment for medical care and provision of workers' compensation. (ORS 279C.530)
 - (h) Prevailing wage rates. (ORS 279C.800 to 279C.870)
 - (i) Retainage. (ORS 279C.550 to ORS 279C.570; ORS 279C.845(7) et. seq.)
 - (j) Prompt payment policy. (ORS 279C.570)
 - (k) Contractor's relations with subcontractors. (ORS 279C.580)
 - (l) Certification of compliance with tax laws. (ORS 305.385)
 - (m) Demolition contracts/lawn landscape contracts. (ORS 279C.510)
 - (n) BOLI Public Works bond (ORS 279C.830(3))
4. Advertising of solicitation in trade newspaper. *See* 30-045.
5. Bid or Proposal security. *See* 30-055(2).
6. Deadline for delivering request for change or protest of specification or contract terms and conditions. *See* 30-065.

7. Rejection of individual bids or proposals. *See* 30-120(2).
8. Standards for DBE Disqualification. *See* 30-145 (1)(a)(v).
9. Performance security. *See* 30-055(2).
10. Prompt Payment to all persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1)).
11. Time Limitation on claims for overtime (ORS 279C.545)
12. Notice of Claim (ORS 279C.605)
13. Contractor's certification that all subcontractors performing work described in ORS 701.005(2) (i.e., construction work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the contract.

40-050 - Bid or Proposal Evaluation Criteria

1. General. A public improvement contract, if awarded, shall be awarded to the responsible bidder submitting the lowest responsive bid, or to the responsible proposer submitting the best responsive proposal, provided that such supplier is not listed by the Construction Contractors Board as disqualified to hold a contract for a public improvement. *See* 30-105, and Rules for Alternative Contracting Methods at 40-500 to 40-590.
2. Bid Evaluation Criteria. Invitations to bid may solicit lump sum offers, unit-price offers, or a combination of the two.
 - (a) Lump sum: If the ITB requires a lump-sum bid, without additive or deductive alternates, or if the County elects not to award additive or deductive alternates, bids shall be compared on the basis of lump-sum prices, or lump-sum base bid prices, as applicable. If the ITB calls for a lump-sum base bid, plus additive or deductive alternates, the total bid price shall be calculated by adding to or deducting from the base bid those alternates selected by the County, for the purpose of comparing bids.
 - (b) Unit price: If the bid includes unit pricing for estimated quantities, the total bid price shall be calculated by multiplying the estimated quantities by the unit prices submitted by the bidder, and adjusting for any additive or deductive alternates selected by the County, for the purpose of comparing bids. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the bidder, the unit price governs. *See* 30-900 (2)(b).

3. Proposal Evaluation Criteria. If the Board has exempted the procurement of a public improvement from the competitive bidding requirements of ORS 279C.335, and has authorized the use of an alternative contracting method under ORS 279C.335, the evaluation criteria shall be set forth in the solicitation documents. *See* 40-550, ORS 279C.335.

40-060 - Disclosure and Substitution of First-Tier Subcontractors (ORS 279C.370)

1. Required Disclosure. Within two (2) working hours of the bid closing on an ITB for a public improvement having a contract price anticipated to exceed \$100,000, all bidders shall submit a disclosure form as described by this Rule, identifying any first-tier subcontractors (those suppliers that would be contracting directly with the prime contractor) that will be furnishing labor or materials on the contract, if awarded, whose subcontract value would be equal to or greater than:
 - (a) Five percent of the total contract price, but at least \$15,000; or
 - (b) \$350,000, regardless of the percentage of the total contract price.
2. Bid Closing, Disclosure Deadline, and Bid Opening. For each ITB to which this Rule applies, the County will:
 - (a) Set the bid closing on a Tuesday through Thursday between 2:00 p.m. and 5:00 p.m., provided that the two-hour disclosure deadline described by this Rule would not then fall on a legal holiday;
 - (b) Set a subsequent time for bid opening that is at least two (2) working hours after bid closing; and
 - (c) Open only those bids for which the required disclosure has been separately submitted by the announced deadline on prescribed forms.
3. Bidder Instructions and Disclosure Form. For the purposes of this Rule, the County will:
 - (a) Prescribe the disclosure form that must be utilized; and
 - (b) Provide instructions in a notice substantially similar to the following:

“Bidders are required to disclose information about certain first-tier subcontractors (*See* ORS 279C.370). Specifically, when the contract amount of a first-tier subcontractor is greater than or equal to: (i) 5% of the project bid, but at least \$15,000, or (ii) \$350,000 you must disclose the following information about that subcontract within two (2) hours of bid closing:

- A) The subcontractor's name and address;
- B) Subcontractor's Construction Contractors Board registration number;
- C) The subcontract dollar value; and
- D) The subcontractor's category of work."

4. Submission. A bidder shall submit the disclosure form required by this Rule within two (2) working hours of bid closing in the manner specified by the ITB.
5. Responsiveness. Compliance with the disclosure and submittal requirements of ORS 279C.370(2) and this Rule is a matter of responsiveness. Bids which are submitted by closing, but for which the separate disclosure submittal has not been made by the specified deadline, are not responsive and shall not be considered for contract award.
6. Substitution. Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585. The County does not have a statutory role or duty to review, approve, or resolve disputes concerning such substitutions. However, the County is not precluded from making related inquiries or investigating complaints in order to enforce contract provisions that require compliance generally with laws, rules and regulations.

40-070 - Contract Suspension; Termination Procedures

See ORS 279C.650, 279C.655, 279C.660, 279C.665, 279C.670

40-080 - Waiver of Delay Damages Against Public Policy

See ORS 279C.315

40-090 - Retainage

See ORS 279C.550- 279C.570 ; 279C.845(7)

40-100 - Contractor Progress Payments

See ORS 279C.570

40-110 - Interest

See ORS 279C.570

40-120 - Final Inspection

See ORS 279C.570(8)

40-130 - County Payment for Unpaid Labor or Supplies

See ORS 279C.515

ALTERNATIVE CONTRACTING METHODS

40-500 - Purpose

These Rules provide guidance regarding the use of alternative contracting methods for public improvement contracts, as referenced in ORS 279A.015(6). The methods include, but are not limited to, Design/Build, Energy Saving Performance contracts (ESPC), and Construction Manager/General Contractor Method (CM/GC) forms of contracting. As to contracting for CM/GC services, OAR 137-049-0660 to 137-049-0690 include mandatory provisions pertaining to the procurement of CM/GC services, pursuant to the requirements of ORS 279C.337 and set forth in Rules 40-510 to 40-590.

40-510 - Definitions

In addition to those definitions in 00-000, the following definitions shall apply to these Rules, unless the context requires otherwise:

1. Affiliate has the meaning set forth in ORS 279C.332(1).
2. Alternative Contracting Methods: Innovative techniques for procuring or performing public improvement contracts, utilizing processes other than the traditional methods involved in the design-bid-build construction contracting method (with award of a public improvement contract based solely on price in which a final design is issued with formal bid documents, construction work is obtained by sealed bid awarded to the responsible bidder submitting the lowest responsive bid, and the project is built in accordance with those documents). In industry practice, such methods commonly include variations of ESPC, Design/Build and CM/GC forms of contracting, which are specifically addressed in these Rules. These methods also include other developing techniques, which include but are not limited to general “Performance Contracting” “Cost Plus Time” Contracting (as more particularly described in ORS 279C.332(b)(D)(iii)(I)) and “qualifications plus project approach” contracting (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(II)), Procedural requirements are identified under these Rules, when the County uses an Alternative Contracting Method in a procurement that requires an exemption from competitive bidding under ORS 279C.335(2) or in an ESPC procurement that is excepted from competitive bidding under ORS 279.335(1).
3. Construction Manager/General Contractor (or “CM/GC”) has the meaning set forth in ORS 279C.322(2).:

4. Construction Manager/General Contractor Method (or “CM/GC Method”): The Alternative Contracting Method which involves the County’s selection of a CM/GC to perform CM/GC Services for a project or projects.
5. Construction Manger/General Contractor Services (or “CM/GC Services”) has the meaning set forth in ORS 279C.332(3).
6. Design/Build: A form of procurement that results in a public improvement contract in which the construction contractor also provides or obtains specified design services, participates on the project team with the County, and manages both design and construction. In this form of contract, a single person provides the County with all of the services necessary to both design and construct the project.
7. Early Work: Construction services, construction materials and other work authorized by the parties to be performed under the CM/GC contract in advance of the establishment of the GMP, fixed prices or other maximum, not-to-exceed price for the project. Permissible Early Work shall be limited to early procurement of materials and supplies, early release of bid or proposal packages for site development and related activities, and any other advance work related to important components of the project for which performance prior to establishment of the GMP will materially and positively affect the development or completion of the project.
8. Energy Conservation Measures (or "ECMs") (also known as "energy efficiency measures") means, as used in ESPC procurement, any equipment, fixture or furnishing to be added to or used in an existing building or structure, and any repair, alteration or improvement to an existing building or structure that is designed to reduce energy consumption and related costs, including those costs related to electrical energy, thermal energy, water consumption, waste disposal, and future contract-labor costs and materials costs associated with maintenance of the building or structure. For purposes of these Rules, use of either or both of the terms “building” or “structure” shall be deemed to include existing energy, water and waste disposal systems connected or related to or otherwise used for the building or structure when such system(s) are included in the project, either as part of the project together with the building or structure, or when such system(s) are the focus of the project. Maintenance services are not Energy Conservation Measures, for purposes of these Rules.

9. Energy Savings Guarantee means the energy savings and performance guarantee provided by the ESCO under an ESPC procurement, which guarantees to the County that certain energy savings and performance will be achieved for the project covered by the RFP, through the installation and implementation of the agreed-upon ECMs for the project. The Energy Savings Guarantee shall include, but shall not be limited to, the specific energy savings and performance levels and amounts that will be guaranteed, provisions related to the financial remedies available to the County in the event the guaranteed savings and performance are not achieved, the specific conditions under which the ESCO will guarantee energy savings and performance (including the specific responsibilities of the County after final completion of the design and construction phase), and the term of the energy savings and performance guarantee.
10. Energy Savings Performance Contract (or "ESPC") means a public improvement contract between the County and a Qualified Energy Service Company for the identification, evaluation, recommendation, design and construction of Energy Conservation Measures, including a Design/Build contract, that guarantee energy savings or performance.
11. General Conditions Work (or "GC Work") means a general grouping of project work required to support construction operations on the project that is not separately invoiced or subcontracted by the Contractor or included within the Contractor's overhead or fee.
12. Guaranteed Maximum Price (or "GMP") has the meaning set forth in ORS 279C.332(4) pertaining to procurements for CM/GC Services. For Alternative Contracting Methods other than the CM/GC Method, "Guaranteed Maximum Price" or "GMP" means the total maximum price provided to the County by the contractor, and accepted by the County, that includes all reimbursable costs of and fees for completion of the contract work and any particularly identified contingency amounts, as defined by the contract.
13. Measurement and Verification (or "M & V") means, as used in ESPC procurement, the examination of installed ECMs using the International Performance Measurement and Verification Protocol ("IPMVP"), or any other comparable protocol or process, to monitor and verify the operation of energy-using systems pre-installation and post-installation.
14. Project Development Plan means a secondary phase of services performed by an ESCO in an ESPC procurement when the ESCO performs more extensive design of the agreed-upon ECMs for the project, provides the detailed provisions of the ESCO's Energy Savings Guarantee that the fully installed and commissioned ECMs will achieve a particular energy savings level for the building or structure, and prepares an overall report or plan summarizing the ESCO's services during this secondary phase of the work and otherwise explaining how the agreed-upon ECMs will be implemented during the design and construction phase of the work. The term "Project Development Plan" can also refer to the report or plan provided by the ESCO at the conclusion of this phase of the work.

15. Qualified Energy Service Company (or "ESCO") means, as used in ESPC procurement, a company, firm or other legal person with the following characteristics: demonstrated technical, operational, financial and managerial capabilities to design, install, construct, commission, manage, measure and verify, and otherwise implement Energy Conservation Measures and other work on building systems or building components that are directly related to the ECMs in existing buildings and structures; a prior record of successfully performing ESPCs on projects involving existing buildings and structures that are comparable to the project under consideration by the County; and the financial strength to effectively guarantee energy savings and performance under the ESPC for the project in question, or the ability to secure necessary financial measures to effectively guarantee energy savings under an ESPC for that project.
16. Savings has the meaning set forth in ORS 279C.337(4), pertaining to CM/GC Services procurements. For other Alternative Contracting Methods, "Savings" means a positive difference between a Guaranteed Maximum Price or other maximum not-to-exceed price set forth in a public improvement contract and the actual cost of the contractor's performance of the contract work payable by the County under the terms of the Contract, including costs for which the County reimburses a contractor and fees, profits or other payments the contractor earns.
17. Technical Energy Audit means, as used in ESPC procurement, the initial phase of services to be performed by an ESCO that includes a detailed evaluation of an existing building or structure, an evaluation of the potential ECMs that could be effectively utilized at the facility, and preparation of a report to the County of the ESCO's findings during this initial phase of the work; the term "Technical Energy Audit" can also refer to the report provided by the ESCO at the conclusion of this phase of the work.

40-520 - Use of Alternative Contracting Methods

1. Competitive Bidding Exemptions: ORS Chapter 279C requires a competitive bidding process for public improvement contracts unless a statutory exception applies, a class of contracts has been exempted or an individual contract has been exempted in accordance with ORS 279C.335 and these Rules. Use of alternative contracting methods may be directed by the County if that use is within the competitive bidding process, if feasible, or through an available statutory exception to the competitive bidding process. However, when the use of the alternative contracting methods requires an exemption to the prescribed competitive bidding requirement of ORS 279C.335, the use of Alternative contracting methods must be directed through the Board. Alternative contracting methods are therefore an exception to the prescribed public contracting practices in Oregon, and their use must be justified in accordance with the public contracting law and these Rules. *See* 40-530 regarding required findings.

2. Energy Savings Performance Contracts: Unlike other alternative contracting methods covered by these Rules, ESPC's are exempt from the competitive bidding process if the County complies with the procedures set forth in these Rules related to the solicitation, negotiation and contracting for ESPC services. If those procedures are not followed, an ESPC procurement may still be exempted from competitive bidding requirements by following the general exemption procedures within ORS 279C.335.
3. Post-Project Evaluation: The responsible department shall prepare a formal post-project evaluation of public improvement projects in excess of \$100,000 for which the competitive bidding process was not used. The purpose of this evaluation is to determine whether it was actually in the County's best interest to use an alternative contracting method outside the competitive bidding process. The evaluation must be delivered to the Board within thirty (30) days of the date the County "accepts" the public improvement project, which event should be defined in the contract. In the absence of such definition, acceptance of the project occurs on the latter of the date of final payment or the date of final completion of the work. The evaluation should address the following elements:
 - (a) Financial information, consisting of cost estimates; any guaranteed maximum price, changes and actual costs.
 - (b) A narrative description of successes and failures during design, engineering and construction.
 - (c) An objective assessment of the use of the alternative contracting method as compared to the exemption findings.

40-530 – Findings

1. When findings are required under ORS 279C.335 to exempt a contract or class of contracts from competitive bidding requirements, the "substantial cost savings and other substantial benefits" criteria at ORS 279C.335(2)(b) require consideration of the type, cost, and to the extent applicable, the other factors set forth in the statute. If a particular factor has no application whatsoever to the public improvement contract or class of public improvement contracts, the Board does not need to consider that factor and the County is not required to address the factor, other than to explain why the factor has no application whatsoever to the particular public improvement contract or class of public improvement contracts. In approving a finding, the Board shall consider the following:
 - (a) How many persons are available to bid;
 - (b) The construction budget and the projected operating costs for the completed public improvements;
 - (c) Public benefits that may result from granting the exemption;
 - (d) Whether value engineering techniques may decrease the cost of the public improvement;

- (e) The cost and availability of specialized expertise that is necessary for the public improvement;
 - (f) Any likely increases in public safety;
 - (g) Whether granting the exemption may reduce risks to the County or the public that are related to the public improvement;
 - (h) Whether granting the exemption will affect the sources of funding for the public improvement;
 - (i) Whether granting the exemption will better enable the County to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;
 - (j) Whether granting the exemption will better enable the County to address the size and technical complexity of the public improvement;
 - (k) Whether the public improvement involves new construction or renovates or remodels an existing structure;
 - (l) Whether the public improvement will be occupied or unoccupied during construction;
 - (m) Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and
 - (n) Whether the County has, or has retained under contract, and will use County personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the County will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.
2. Likewise, the statutory definition of “findings” means the justification for the County’s conclusion regarding the factors listed in both ORS 279C.335(2)(a) and 279C.335(2)(b) or, in the alternative, both 279C.335(2)(a) and 279C.335(2)(c).
3. Accordingly, when the contract or class of contracts under consideration for an exemption contemplates the use of alternative contracting methods, the “substantial cost savings or other substantial benefits” requirement may be addressed by a combination of:
- (a) Specified findings that address the factors and other information specifically identified by statute, including , but not limited to, an analysis or reasonable forecast of present and future cost saving and other substantial benefits; and
 - (b) Additional findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355 and related information regarding the expected benefits and drawbacks of particular alternative contracting methods. To the extent practicable, such findings should relate back to the specific characteristics of the project or projects at issue in the exemption request.

4. The criteria in ORS 279C.335(2)(a) that the exemption is unlikely to “encourage favoritism” or “substantially diminish competition” may be addressed in contemplating the use of alternative contracting methods by specifying the manner in which an RFP process will be utilized, that the procurement will be formally advertised, competition will be obtained, and award made based upon identified selection criteria and an opportunity to protest that award.
5. Findings supporting a competitive bidding exemption must describe with specificity the alternative contracting method to be used in lieu of competitive bidding, including, but not limited to, whether a one step (request for proposals) or two step (beginning with requests for qualifications, followed by a request for proposals) or other solicitation process will be utilized. The findings may also describe anticipated characteristics or features of the resulting public improvement contract. However, the purpose of an exemption from competitive bidding is limited to a determination of the procurement method. Any unnecessary or incidental descriptions of the specific details of the anticipated contract within the supporting findings are not binding upon the County. The parameters of the public improvement contract are those characteristics or specifics that are announced in the solicitation document.
6. In making the findings supporting a class exemption the County shall clearly identify the class with respect to its defining characteristics of ORS 279C.335(3). The class must meet the following requirements:
 - (a) The class cannot be based on a single characteristic or factor, so that the County directly or indirectly creates a class whereby the County uses, for example, the CM/GC Method for all County construction projects or all County construction projects over a particular dollar amount, unidentified future County construction projects of a particular work category, or all County construction projects from a particular funding source such as the sale of bonds; and
 - (b) The class must include a combination of factors, be defined by the County through characteristic that reasonably relate to the exemption criteria set forth in ORS 279C.335(2) and must reflect a detailed evaluation of those characteristics so that the class is defined in a limited way that effectively meets the County’s objectives while allowing for impartial and open competition, and protecting the integrity of the exemption process. An example of a class that might be permitted under the statute is a series of projects, such as a specific group of building renovation projects that
 - A. Involve renovations for a common purpose;
 - B. Require completion on a related schedule in order to avoid unnecessary disruption of County operations;

- C. Share common characteristics, such as historic building considerations, the presence of asbestos or other hazardous substances, or the presence of County staff during construction;
 - D. Otherwise possess characteristics that meet the requirements of ORS 279C.335(2); and
 - E. Otherwise meet the requirements of the Board, as applicable.
2. Before final adoption of findings exempting a public improvement contract or class of contracts from the requirement of competitive bidding, the County shall give notice and hold a public hearing as required by ORS 279C.335(5). The hearing shall be for the purpose of receiving public comment on the County's draft findings.

40-540 - Pricing Mechanisms

1. A request for proposals may result in a lump sum contract price or a fixed contract price, as in the case of competitive bidding. Alternatively, a request for proposal may result in a cost reimbursement contract with a GMP or some other maximum price specified in the contract.
2. Economic incentives or disincentives may be included to reflect stated County purposes related to time of completion, safety or other public contracting objectives, including total least cost mechanisms such as life cycle costing.
3. A Guaranteed Maximum Price (GMP) may be used as the pricing mechanism for CM/GC services contract where a total contract price is provided in the design phase in order to assist the County in determining whether the project scope is within the County's budget, and allowing for design changes during preliminary design rather than after final design work has been completed.
 - (a) If this collaborative process is successful, the contractor shall propose a final GMP, which may be accepted by the County and included within the contract.
 - (b) If this collaborative process is not successful, and no mutually agreeable resolution on the GMP for the project construct work can be achieved with the contractor, then the County shall terminate the contract. The County may then proceed to negotiate a new contract (and GMP) with the firm that was next ranked in the original selection process, or employ other means for continuing the project under ORS Chapter 279.
4. When cost reimbursement contracts are utilized, regardless of whether a GMP is included, the County shall provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

40-545 – Request for Qualifications (RFQ)

As provided by ORS 279C.410(9), the County may utilize Requests for Qualifications (RFQs) to obtain information useful in the preparation or distribution of a Request for Proposals (RFPs). When using RFQs as the first step in a two-step solicitation process, in which distribution of the RFPs will be limited to the firms identified as most qualified through their submitted statements of qualification, the County shall first advertise and provide notice of the RFQ in the same manner in which RFPs are advertised, specifically stating that RFPs will be distributed only to the qualified firms in the RFQ process. In such cases the County shall also provide within the RFQ a protest provision substantially in the form of Rule 30-135 regarding protests of the Competitive Range. Thereafter, the County may distribute RFPs to those qualified firms without further advertisement of the solicitation.

40-550 - RFP Process

The County may utilize the RFP process for public improvement contracts, allowing flexibility in both proposal evaluation and contract negotiation. The RFP shall be prepared in accordance with ORS Chapter 279C.400 to 279C.410 and these Rules. The RFP process for alternative contracting methods includes the following steps:

1. Proposal Evaluation: Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. Proposal evaluation shall be as objective as possible. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors shall:
 - (a) Be reasonable estimates based on information available to the County;
 - (b) Treat all proposals equitably;
 - (c) Recognize that public policy requires that public improvements be constructed at the least overall cost to the County. *See* ORS 279C.305(1).

2. Evaluation Factors:
 - (a) In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, and related matters that affect cost or quality.

- (b) In CM/GC contracting, in addition to (a) above, those factors may also include the ability to respond to the technical complexity or unique character of the project, analyze and propose solutions or approaches to complex project problems, analyze and propose value engineering options, analyze and propose energy efficiency measures or alternative energy options, coordinate multiple disciplines on the project, effectively utilize the time available to commence and complete the improvement, and related matters that could affect the cost or quality of the work.
- (c) In Design/Build contracting, in addition to (a) and (b) above, those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design builder team experience and related matters that affect cost or quality.
- (d) In ESPC contracting, in addition to the factors set forth in subsections (a), (b) and (c) above, those factors may also include sample Technical Energy Audits from similar projects, sample M & V reports, financial statements and related information of the ESCO for a time period established in the RFP, financial statements and related information of joint venturers comprising the ESCO, the ESCO's capabilities and experience in performing energy baseline studies for facilities (independently or in cooperation with an independent third-party energy baseline consultant), past performance of the ESCO in meeting energy guarantee contract levels, the specific person that will provide the energy savings guarantee to be offered by the ESCO, the ESCO's management plan for the project, information on the specific methods, techniques and equipment that the ESCO will use in the performance of the work under the ESPC, the ESCO's team members and consultants to be assigned to the project, the ESCO's experience in the energy savings performance contracting field, the ESCO's experience acting as the prime contractor on previous ESPC projects (as opposed to a sub-contractor or consultant to a prime ESCO), the ESCO's supplier and product neutrality related to the development of ECMs, the ESCO's project history related to removal from an ESPC project or the inability or unwillingness of the ESCO to complete an ESPC project, the ESCO's M & V capabilities and experience (independently or in cooperation with an independent third-party M & V consultant), the ESCO's ability to explain the unique risks associated with ESPC projects and the assignment of risk in the particular project between the County and the ESCO, the ESCO's equipment performance guarantee policies and procedures, the ESCO's energy savings and cost savings guarantee policies and procedures, the ESCO's project cost guarantee policies and procedures, the ESCO's pricing methodologies, the price that the ESCO will charge for the technical energy audit phase of the work and the ESCO's fee structure for all phases of the ESPC.

3. **Contract Negotiations:** Contract terms may be negotiated to the extent allowed by the RFP and these Rules, provided that the general work scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the solicitation document. *See* 30-025(3). Terms that may be negotiated consist of details of contract performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that affect cost or quality. For the CM/GC Method, terms that may be negotiated also include the specific scope of preconstruction services, the GC Work, any Early Work, and other construction work to be performed by the CM/GC, and any other terms that the County has identified as being subject to negotiation, consistent with the requirements of these Rules. In ESPC contracting, terms that may be negotiated also include the scope of preliminary design of energy conservation measures to be evaluated by the parties during the technical energy audit phase of the work, the scope of services to be performed by the ESCO during the project development plan phase of the work, the detailed provisions of the Energy Savings Guarantee to be provided by the ESCO and scope of work, methodologies and compensation terms and conditions during the design and construction phase and M & V phase of the work.

40-560 - Design/Build

1. **General:** The Design/Build form of contracting, as defined at 40-510(3), has technical complexities that are not readily apparent. This method of contracting should only be used with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to utilize the Design/Build process, County staff must be able to reasonably anticipate the following types of benefits:
 - (a) Obtaining, through a Design/Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control, and required documentation as a fully integrated function with a single point of responsibility;
 - (b) Integrating value engineering suggestions into the design phase, as the construction contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing contract changes;
 - (c) Reducing the risk of design flaws, misunderstandings and conflicts inherent in construction contractors building from designs in which they have had no opportunity for input, with the potential of reducing contract claims;
 - (d) Shortening project time as construction activity (early submittals, mobilization, subcontracting and advance work) commences prior to completion of a “biddable” design, or where a design solution is still required (as in complex or phased projects); and

- (e) Obtaining innovative design solutions through the collaboration of the contractor and design team, which would not otherwise be possible if the contractor had not yet been selected.
- 2. Authority: The Design/Build form of contracting shall be used in accordance with the requirements of these Rules. *See particularly* 40-520 on “Use of Alternative Contracting Methods.”
- 3. Selection: Design/Build selection criteria may include those factors set forth above in 40-550(2)(c).
- 4. Licensing: Where the Design/Build contractor is not a licensed or registered design professional, the Design/Build process contemplates that state licensing and registration requirements related to architectural and engineering services may be fulfilled by design professionals who are employees, subcontractors, joint venturers or in other lawful business relationships with the Design/Build contractor. Under this approach, Design/Build contractors are not required to fulfill design licensing or registration requirements at the time of submitting proposals, but shall specifically identify the associated or sub-contracted licensed design professionals by individual or firm names.
- 5. Performance Security: ORS 279C.380 provides that for Design/Build contracts the surety’s obligation on performance bonds, or the bidder’s obligation on cashier’s or certified checks accepted in lieu thereof, includes the preparation and completion of design and related professional services specified in the contract. This additional obligation, beyond performance of construction services, extends only to the provision of professional services and related design revisions, corrective work and associated costs prior to final completion of the contract (or for such longer time as may be defined in the contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.
- 6. Contract Requirements: County Design/Build contracts shall conform to the following requirements:
 - (a) Design Services: The level or type of design services required must be clearly defined within the procurement documents and contract, along with a description of the level or type of design services previously performed for the project. The services to be performed shall be clearly delineated as either design specifications or performance standards, and performance measurements must be identified.

- (b) Professional Liability: The contract shall clearly identify the liability of design professionals with respect to the Design/Build contractor and County, as well as requirements for professional liability insurance.
- (c) Risk Allocation: The contract shall clearly identify the extent to which the County requires an express indemnification from the Design/Build contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty work claims.
- (d) Warranties: The contract shall clearly identify any express warranties made by the contractor regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.
- (e) Incentives: The contract shall clearly identify any economic incentives and disincentives, the specific criteria that apply and their relationship to other financial elements of the contract.
- (f) Honoraria: If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the solicitation process on the basis that the County is benefited from such deliverables.

40-570 – Energy Savings Performance Contracts (ESPC)

1. Generally. These Rules include a limited, efficient method for the County to enter into ESPCs outside the competitive bidding requirements of ORS 279C.335 for existing buildings or structures, but not for new construction. If the County chooses not to utilize the ESPC procurement method provided for by these Rules, the County may still enter into an ESPC by complying with the competitive bidding exemption process set forth in ORS 279C.335, or by otherwise complying with the procurement requirements applicable to any contracting agency not subject to all the requirements of ORS 279C.335.
2. ESPC Contracting Method. The ESPC form of contracting, as defined in these Rules, has unique technical complexities associated with the determination of what ECMs are feasible for the County, as well as the additional technical complexities associated with a Design/Build contract. The County shall only utilize the ESPC contracting method with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to utilize the ESPC contracting process, the County must be able to reasonably anticipate one or more of the following types of benefits:

- (a) Obtaining, through an ESCO, the following types of integrated services: facility profiling, energy baseline studies, ECMs, technical energy audits, project development planning, engineering design, plan preparation, cost estimating, life cycle costing, construction administration, project management, construction, quality control, operations and maintenance staff training, commissioning services, M & V services and required documentation as a fully integrated function with a single point of responsibility;
 - (b) Obtaining, through an ESCO, an energy savings guarantee;
 - (c) Integrating the technical energy audit phase and the project Development Plan phase into the design and construction phase of work on the project;
 - (d) Reducing the risk of design flaws, misunderstandings and conflicts inherent in the construction process, through the integration of ESPC services;
 - (e) Obtaining innovative design solutions through the collaboration of the members of the ESCO integrated ESPC services team;
 - (f) Integrating cost-effective ECMs into an existing building or structure, so that the ECMs pay for themselves through savings realized over the useful life of the ECMs;
 - (g) Preliminary design, development, implementation and an energy savings guarantee of ECMs into an existing building or structure through an ESPC, as a distinct part of a major remodel of that building or structure that is being performed under a separate remodeling contract; and
 - (h) Satisfying local energy efficiency design criteria or requirements.
3. Authority. If the County desires to pursue an exemption from the competitive bidding requirements of ORS 279C.335 (and, if applicable, ORS 351.086), it shall utilize the ESPC form of contracting only in accordance with the requirements of these Rules.
 4. No Findings Required. The County is only required to comply with the ESPC contracting procedures set forth in these Rules in order for the ESPC to be exempt from the competitive bidding processes of ORS 279C.335. No findings are required for an ESPC to be exempt from the competitive bidding process for public improvement contracts pursuant to ORS 279C.335, unless the County is subject to the requirements of ORS 279C.335 and chooses not to comply with the ESPC contracting procedures set forth in these Rules.

5. Selection. ESPC selection criteria may include those factors set forth above in section 40-550 of these Rules. Since the energy savings guarantee is such a fundamental component in the ESPC contracting process, proposers must disclose in their proposals the identity of any person providing (directly or indirectly) any energy savings guarantee that may be offered by the successful ESCO during the course of the performance of the ESPC, along with any financial statements and related information pertaining to any such person.
6. Licensing. If the ESCO is not an Oregon licensed design professional, the County shall require that the ESCO disclose in the ESPC that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. *See* ORS 671.030(2)(g) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction services.
7. Performance Security. At the point in the ESPC when the parties enter into a binding contract that constitutes a Design/Build contract, the ESCO must provide a performance bond and a payment bond, each for 100% of the full contract price, including the construction and design and related professional services specified in the ESPC Design/Build contract, pursuant to ORS 279C.380(1)(a). For ESPC Design/Build contracts, these "design and related professional services" include conventional design services, commissioning services, training services for the County's operations and maintenance staff, and any similar professional services provided by the ESCO under the ESPC Design/Build contract prior to final completion of construction. M & V services, and any services associated with the ESCO's energy savings guarantee are not included in these ORS 279C.380(1)(a) "design and related professional services." Nevertheless, the County may require that the ESCO provide performance security for M & V services and any services associated with the ESCO's energy savings guarantee, if the County so provides in the RFP.
8. Contracting Requirements. The County shall conform its ESPC contracting practices to the following requirements:
 - (a) General ESPC Contracting Practices. An ESPC involves a multi-phase project, which includes the following contractual elements:
 - i. A contractual structure which includes general contract terms describing the relationship of the parties, the various phases of the work, the contractual terms governing the technical energy audit for the project, the contractual terms governing the project development plan for the project, the contractual terms governing the final design and construction of the project, the contractual terms governing the performance of the M & V services for the project, and the detailed provisions of the ESCO's energy savings guarantee for the project.

- ii. The various phases of the ESCO's work will include the following:
 - A. The technical energy audit phase of the work;
 - B. The project development plan phase of the work;
 - C. A third phase of the work that constitutes a Design/Build contract, during which the ESCO completes any plans and specifications required to implement the ECMs that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration and related services to actually construct the project; and
 - D. A final phase of the work, whereby the ESCO, independently or in cooperation with an independent consultant hired by the County, performs M & V services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the work and agreed to by the parties has actually been achieved.
- (b) Design/Build Contracting Requirements in ESPCs. At the point in the ESPC when the parties enter into a binding contract that constitutes a Design/Build contract, the County shall conform its Design/Build contracting practices to the Design/Build contracting requirements set forth in these Rules.
- (c) Pricing Alternatives. The County may utilize one of the following pricing alternatives in an ESPC:
 - i. A fixed price for each phase of the services to be provided by the ESCO;
 - ii. A cost reimbursement pricing mechanism, with a maximum not-to-exceed price or a GMP; or

- iii. A combination of a fixed fee for certain components of the services to be performed, a cost reimbursement pricing mechanism for the construction services to be performed with a GMP, a single or annual fixed fee for M & V services to be performed for an identified time period after final completion of the construction work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the project (in the event an annual M & V services fee and annual Energy Savings Guarantee fee is utilized by the parties, the parties may provide in the Design/Build contract that, at the sole option of the County, the ESCO's M & V services may be terminated prior to the completion of the M & V/Energy Savings Guarantee period and the County's future obligation to pay the M & V services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).

- (d) Permitted ESPC Scope of Work. The scope of work under the ESPC is restricted to implementation and installation of ECMs, as well as other work on building systems or building components that are directly related to the ECMs, and that, as an integrated unit, will pay for themselves over the useful life of the ECMs installed. The permitted scope of work for ESPCs resulting from a solicitation under these Rules does not include maintenance services for the project facility.

40-580 - Construction Manager/General Contractor (CM/GC)

1. General: The CM/GC Method is a technically complex project delivery system. This contracting method should only be used with the assistance of legal counsel with substantial experience and necessary expertise in using the CM/GC Method, as well as knowledgeable staff or consultants who have a demonstrated capability of managing the CM/GC process in the necessary disciplines of engineering, construction scheduling and cost control, accounting, legal, public contracting and project management. Unlike the Design/Build form of contracting, the CM/GC form of contracting does not contemplate a “single point of responsibility” under which the CM/GC is responsible for successful completion of all work related to a performance specification. The CM/GC has defined contract obligations, including responsibilities as part of the project team along with the County and design professional, although in CM/GC there is a separate contract between the County and design professional. In order to utilize the CM/GC method, the County must be able to reasonably anticipate the following types of benefits:

- (a) Time Savings: The public improvement has significant schedule ramifications, such that concurrent design and construction are necessary in order to meet critical deadlines and shorten the overall duration of construction. The County may consider operational and financial data that shows significant savings or increased opportunities for generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods;
 - (b) Cost Savings: Early CM/GC input during the design process is expected to contribute to significant cost savings. The County may consider value engineering, building systems analysis, life cycle analysis and construction planning that lead to cost savings. The County shall specify any special factors influencing this analysis, including high rates of inflation, market uncertainty due to material and labor fluctuations or scarcities, and the need for specialized construction expertise due to technical challenges; and
 - (c) Technical Complexity: The public improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the County, design professionals, any County project management or technical consultants and the CM/GC, in which the CM/GC will assist in addressing specific project challenges through preconstruction personal services. The County may consider the need for CM/GC input on issues such as operations of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling projects and projects requiring complex phasing or highly coordinated scheduling.
2. Authority: The CM/GC form of contracting shall be used only in accordance with the requirements of these Rules and ORS 279C.337, when a competitive bidding exemption is authorized. See particularly 40-520 on “Use of Alternative Contracting Methods.”
 3. Selection: CM/GC selection criteria may include those factors set forth above in 40-550(2)(b).
 4. Basis for Payment: The CM/GC process adds specified construction manager services to traditional design-bid-build general contractor services, requiring full contract performance within a negotiated Guaranteed Maximum Price (GMP), fixed price or other maximum contract price. For a GMP pricing method, the basis for payment is reimbursable direct costs as defined under the contract, plus a fee constituting full payment for construction work and personal services rendered, which together shall not exceed the GMP. See GMP definition in 40-510(7), and Pricing Mechanisms in 40-540(3).
 5. Contract Requirements. CM/GC contracting practices shall be in accordance with the following requirements:

- (a) Nature of the Initial CM/GC Services Contract Document. The CM/GC services will be provided under two contracts one that will fully govern the relationship between the County and the CM/GC for the pre-construction personal services, and a general contract that will control the CM/GC's providing of the construction work necessary to complete the project (with any remaining necessary construction-related contract provisions being added through amendments to the contract
- (b) Setting the GMP: The GMP, fixed contract price, or other maximum contract price shall be set at an identified time consistent with industry practice and project conditions and after supporting information reasonably considered necessary to its use has been developed, which will normally take place at the end of the design development phase of the project. The supporting information for the GMP must define with particularity both what personal services and construction work are included and excluded from the GMP, fixed contract price or other maximum contract price. A set of project drawings and specifications shall be produced establishing the scope of construction work contemplated by the GMP, fixed contract price or other maximum contract price. .
- (c) Adjustments to the GMP: The contract shall clearly identify the standards or factors under which changes or additional construction work will be considered outside of the work scope that warrants an increase in the GMP, fixed contract price or other maximum contract price, as well as criteria for decreasing the GMP, fixed contract price or other maximum contract price. The GMP, fixed contract price or other maximum contract price shall not be increased without a concomitant increase to the scope of the work defined at the establishment of the GMP, fixed contract price or other maximum contract prices or most recent amendment to the GMP, fixed contract price or other maximum contract price. An increase to the scope of the work may take the form of conventional additions to the project scope, as well as corrections to the contract terms and conditions, additions to insurance coverage required by the County and other changes to work.
- (d) Cost Savings: The contract shall clearly identify the disposition of any cost savings resulting from completion of the work below the GMP, fixed contract price or other maximum contract price; that is, under what circumstances, if any, the CM/GC might share in those cost savings, or whether they accrue only to the County's benefit. Unless there is a clearly articulated reason for sharing such cost savings, they should accrue to the County.

- (e) Cost Reimbursement: The contract shall clearly identify what items or categories of items are eligible for cost reimbursement within the GMP, fixed contract price or other maximum contract price, including any category of GC Work (a general grouping of direct costs that are not separately invoiced, subcontracted or included within either overhead or fee), and may also incorporate a mutually agreeable cost-reimbursement standard.
- (f) Audit: Cost reimbursements shall be made subject to final audit adjustment, and the contract shall establish an audit process to ensure that contract costs are allowable, properly allocated and reasonable.
- (g) Compensation: The CM/GC's personal services and construction work, where the contract uses a GMP, shall include a fee that is inclusive of profit, overhead and all other indirect or non-reimbursable costs. Costs determined to be included within the fee shall be expressly defined in the contract terms and condition at the time the County selects the CM/CG. The fee, first expressed as a proposed percentage of all reimbursable costs, shall be identified during and become an element of the selection process. It shall subsequently be expressed as a fixed amount for particular construction work authorized to be performed, when Early Work is added to the contract through an amendment and when the GMP is established. The CM/GC fee does not include any fee paid to the CM/GC for performing preconstruction services during a separate preconstruction phase.
- (h) Incentives: The contract shall clearly identify any economic incentives, the specific criteria that apply and their relationship to other financial elements of the contract (including the GMP, the fixed contract price or other maximum contract price).
- (i) Controlled Insurance Programs: For projects where an owner-controlled or contractor-controlled insurance project is permitted under ORS 737.602, the contract shall clearly identify whether an owner-controlled or contractor-controlled insurance program is anticipated or allowable. If so, the contract shall clearly identify:
 - i. Anticipated cost savings from reduced premiums, claims reductions and other factors,
 - ii. The allocation of cost savings, and
 - iii. Safety responsibilities, incentives, or both safety responsibilities and incentives.

- (j) Early Work: The RFP shall clearly identify, whenever feasible, the circumstances under which any Early Work may be authorized and undertaken for compensation prior to establishing the GMP, fixed contract price or other maximum contract price.

- (k) Subcontractor Selection: Subcontracts under the contract are not public contracts within the meaning of the Code. However, the contract must include provisions that clearly meet the requirements of ORS 279C.337(3) and other County requirements. Within the scope of ORS 279C.337(3), the CM/GC's subcontractor selection process must meet the following parameters:
 - i. Absent a written justification prepared by the CM/CG and approved by the County as more particularly provided for in this Rule, the CM/GC's subcontractor selection process must be "competitive", meaning that the process should include publicly-advertised subcontractor solicitations and be based on a low-bid competitive method, a low-quote competitive method for contracts in a specified dollar range agreeable to the County, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment, consistent with the RFP and contract requirements;

 - ii. When the subcontractor selection process for a particular work package will not be "competitive" as provided for in this section, the process must meet the following requirements:
 - A. The CM/GC must prepare and submit a written justification to the County explaining the project circumstances that support a non-competitive subcontractor selection process for a particular work package, including but not limited to, emergency circumstances, the CM/GC's need to utilize a key subcontractor member of the CM/GC's project team consistent with the CM/GC's project proposal, the need to meet other specified contract requirements, the continuation or expansion of an existing subcontractor agreement that was awarded through a "competitive process" along with facts supporting the continuation or expansion of the subcontractor agreement, or a "sole source" justification;

- B. For a “sole source” selection of a subcontractor to proceed, the County must evaluate the written justification provided by the CM/GC and must find that critical project efficiencies require utilization of labor, services or materials from one subcontractor; that technical compatibility issues on the project require labor, services or materials from one subcontractor; that particular labor, services or materials are needed as part of an experimental or pilot project or as part of an experimental or pilot aspect of the project; or that other project circumstances exist to support the conclusion that the labor, services or materials are available from only one subcontractor;
 - C. The CM/GC must provide an independent cost estimate for the work package that will be subject to the non-competitive process, if required by the County;
 - D. The CM/GC must fully respond to any questions or comments submitted to the CM/GC by the County; and
 - E. The County must approve the CM/GC’s use of the non-competitive subcontractor selection process prior to the CM/GC’s pursuit of the non-competitive process.
- iii. A competitive selection process may be preceded by a publicly advertised subcontractor pre-qualification process, with only those subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the CM/GC will select the subcontractor to perform the construction work described in the selection process;
 - iv. If the CM/GC or an affiliate or subsidiary of the CM/GC will be included in the subcontractor selection process to perform particular construction work on the project, the CM/GC must disclose that fact in the selection process documents and announcements. The contract must also identify the conditions, processes and procedures the CM/GC will utilize in that competitive process in order to make the process impartial, competitive and fair, including but not limited to objective, independent review and opening of bids or proposal for the elements of work involved, by a representative of the County or another independent third party.

- (l) Subcontractor Approvals and Protests: The contract shall clearly establish whether the County must approve subcontract awards, and to what extent, if any, the County will resolve or be involved in the resolution of protests of the CM/GC's selection of subcontractors and suppliers. The procedures and reporting mechanisms related to the resolution of subcontractor and supplier protests shall be established in the Contract with certainty, including the CM/GC's roles and responsibilities in this process and whether the CM/GC's subcontracting records are considered to be public records. In any event, the County must retain the right to monitor the subcontracting process in order to protect County interests and to confirm the CM/GC's compliance with the contract and with applicable statutes, administrative rules and other legal requirements.
- (m) CM/GC Self-Performance or Performance by CM/GC Affiliates or Subsidiaries Without Competition. Consistent with the requirements of ORS 279C.377(3)(c), the contract must establish the conditions under which the CM/GC or an affiliate or subsidiary of the CM/GC may perform elements of the construction work without competition from subcontractors, including, for example, job-site GC work. Other than for GC work, in order for the CM/GC or an affiliate or subsidiary of the CM/GC to perform elements of the construction work without competition from subcontractors, the CM/GC must provide, or must have included in the CM/GC's RFP proposal to perform CM/GC services for the project, a detailed proposal for performance of the work by the CM/GC or an affiliate or subsidiary of the CM/GC. If required by the County, the CM/GC's proposal to perform the construction work must be supported by at least one independent cost estimate prior to the work being included in the contract.
- (n) Unsuccessful Subcontractor Briefing. ORS 279C.377(3)(e) is designed to allow a subcontractor who was not selected by the CM/GC to perform a particular element of the construction work to obtain specific information from the CM/GC, and meet with the CM/GC to discuss the subcontractor qualification and selection process involved and the CM/GC's subcontractor selection decisions, in order to better understand why the subcontractor was not successful in being selected to perform the particular element of work and to improve the subcontractor's substantive qualification or the subcontractor's method in competing for elements of work for the particular project involved, or for future projects. The briefing meetings may be held with individual subcontractors or, if the subcontractors agree, in groups of subcontractors, with those groups established by bid package or other designation agreed to by the County and CM/GC. Nevertheless, the CM/GC is not obligated to provide this briefing opportunity unless the CM/GC receives a written request from a subcontractor to discuss the subcontractor qualification and selection process involved. Unless the County and the CM/GC agree on a different schedule, the CM/GC contract should include provisions:

- i. Allowing a subcontractor 60 days from the CM/GC's notice of award of a subcontract for a particular work package to request, in writing, a post-selection meeting with the CM/GC under this section; and
 - ii. Requiring the CM/GC to set a meeting with the subcontractor under this section within 45 days of the subcontractor's written request.
- (o) Performance and Payment Bonds. Provided no construction work is included with the preconstruction services to be performed under the initial form of the CM/GC contract, no performance bond or payment bond is required to be provided by the CM/GC at the time of contract signing, consistent with ORS 279C.380. Once construction work is included in the contract and authorized by the County to be performed by the CM/GC, however, the CM/GC must provide a performance bond and payment bond in the full amount of any Early Work to be performed by the CM/GC, or the full amount of the GMP, fixed price, or other maximum contract price, as applicable. Furthermore, in the event additional Early Work is added to the CM/GC contract after the initial Early Work or in the event an amendment to the CM/GC contract is made so that the GMP, fixed price, or other maximum contract price must be increased, the performance bond and the payment bond must be increased in an amount equal to the additional Early Work or the increased GMP, fixed price, or other maximum contract price.
- (p) Independent Review of CM/GC Performance; Conflicts of Interest. If the County requires independent review, monitoring, inspection or other oversight of a CM/GC's performance of pre-construction personal services, construction work, or both pre-construction personal services and construction work, the County must obtain those independent review services from a contractor independent of the CM/GC, the CM/GC's affiliates and the CM/GC's subcontractors, pursuant to the requirements of ORS 279C.307. However, ORS 297C.307 does not prohibit the following:
- i. The CM/GC's performance of both pre-construction personal services and construction work that are include within the definition of CM/GC services, consistent with ORS 279C.307(2); or
 - ii. The CM/GC's performance of internal quality control services, quality assurance services or other internal peer review of CM/GC work project that is intended to confirm the CM/GC's performance of the CM/GC contract according to its terms.

- (q) Socio-Economic Programs: The contract shall clearly identify conditions relating to any required socio-economic programs (such as Affirmative Action or Prison Inmate Labor Programs), including the manner in which such programs affect the CM/GC's subcontracting requirements, the enforcement mechanisms available, and the respective responsibilities of the CM/GC and County.

40-590 - Negotiation When Bids Exceed Cost Estimate

1. General: In accordance with ORS 279C.340, if all responsive bids from responsible bidders on a competitively bid project exceed the County's cost estimate, prior to contract award the County may negotiate value engineering and other options with the responsible bidder submitting the lowest, responsive bid in an attempt to bring the project within the County's cost estimate. The subcontractor disclosure and substitution requirements of 40-030 do not apply to negotiations under this Rule.
2. Definitions: The following definitions apply to this Rule:
 - (a) Cost Estimate: The County's most recent pre-bid, good faith assessment of anticipated contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation worksheets, where available, and otherwise consisting of formal planning or budgetary documents.
 - (b) Other Options: Those items generally considered appropriate for negotiation in the RFP process, relating to the details of contract performance as specified in 40-550, but excluding any material requirements previously announced in the solicitation process that would likely affect the field of competition.
 - (c) Project: A public improvement.
 - (d) Value Engineering: Those proposed changes to the plans, specifications, or other contract requirements which may be made, consistent with industry practice, under the original contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the public improvement. Cost savings include those resulting from life cycle costing, which either may increase or decrease absolute costs over varying time periods.
3. Rejection of Bids: In determining whether all responsive bids from responsible bidders exceed the cost estimate, only those bids that have been formally rejected, or bids from bidders who have been formally disqualified by the County, shall be excluded from consideration.

4. **Scope of Negotiations:** The County will not proceed with contract award if the scope of the project is significantly changed from the original bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other bidders would have been expected by the County to participate in the bidding process had the change been made during the solicitation process rather than during negotiation. This Rule shall not be construed to prohibit re-solicitation of trade subcontracts.
5. **Discontinuing Negotiations:** The County may discontinue negotiations at any time, and shall do so if it appears to the County that the apparent low bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to re-bid any portion of the project, or to obtain subcontractor pricing information upon request, shall be considered a lack of good faith.
6. **Limitation:** Negotiations may only be undertaken with the lowest responsive, responsible bidder. This Rule does not provide any additional authority to further negotiate with bidders next in line for contract award.
7. **Public Records:** Notwithstanding any other provisions of law, the records of a bidder used in contract negotiations under this Rule are not subject to public inspection until after the negotiated contract has been awarded or the negotiation process has been terminated.

Division 50 – Property Disposition

50-005 – Authority

- (1) Except as otherwise provided in these Rules, personal property may be declared surplus by the following:
 - (a) An item valued less than \$5,000 – Purchasing Supervisor declaration
 - (b) An item valued between \$5,000 and \$100,000 – County Administrator declaration
 - (c) An item valued at over \$100,000 – Board of Commissioners declaration
- (2) Surplus personal property declarations must be made in writing.

50-010 – Disposal of Surplus Personal Property

1. Notwithstanding any other provision hazardous materials shall be disposed in accordance with State and local laws and regulations.

2. Except as otherwise provided for in these Rules, surplus personal property may be sold at auction if it is determined that the auction contemplated will probably result in a higher net return than if the property were sold by written competitive bid.
3. Surplus Property comprised of recyclable or reclaimable materials may be sold without a competitive process if it is determined that a sale will result in increased net revenue and providing the sale is made to a recognized recycling or reclaim facility.
4. When the current value per item is deemed to exceed \$5,000, the personal property shall be offered for written competitive bid and be advertised in accordance with ORS 279B.055(4), or be offered for sale at public auction in accordance with Rule 50-010(2). If no bids are received or if a determination is made that the market value of the property exceeds the offer of the highest responsible bidder, all bids may be rejected.
5. Surplus personal property can be sold through a commercially recognized third party liquidator if it is determined by the Purchasing Supervisor that a liquidation sale will result in increased net revenue.
6. Surplus personal property may be donated or sold, including, recyclable or reclaimed materials, to another public agency, or any sheltered workshop, or nonprofit organization, subject to the following conditions:
 - (a) A determination has been made that the personal property is not needed for other County purposes; and
 - (b) The following conditions apply if the personal property has a current market value of over \$5,000:
 - i. Include documentation that it is in the public interest;
 - iii Be authorized by the County Administrator.
7. The County shall maintain a record of all surplus transactions.

50-020 – Trade-In of Surplus Personal Property

All personal property must be declared surplus by the County, per Rule 50-005 prior to being used as a trade-in.

PURCHASING FORMS

The following forms are available in the Purchasing Section of Horizons

Confirming Purchase Order Justification Form

Contract Review Worksheet

Personal Services Agreement (short form)

Services Contract (short form)

Price Quotations Form

Temporary Services Form

Contract Amendment Form

Intergovernmental Agreement

Personal Services Contract

Requirements Contract

Services Contract

Standard Contract Terms and Conditions