

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY
ACTING AS THE PUBLIC CONTRACT REVIEW BOARD FOR MULTNOMAH COUNTY
ORDINANCE NO. 268

An Ordinance adopting Rules of the Multnomah County
Public Contract Review Board.
Multnomah County ordains as follows:

Section 1. Findings and Declarations

The Board of County Commissioners finds and declares as follows:

A. The Board of County Commissioners has been established as the local contract review board for Multnomah County with authority to adopt rules and regulations relating to the award of County contracts.

B. There is a need to provide for consistent contracting practices to insure compliance with ORS Chapter 279.

C. The county contracting rules previously promulgated in April 1976 are in need of updating and revision because of changes in purchasing practices and to insure conformance with ORS Chapter 279.

D. The exemptions granted in the rules for certain classes of contacts will result in cost savings to the county and are unlikely to encourage favoritism in the awarding of county contracts or substantially diminish competition for county contracts.

Section 2. Adoption of Rules

The Multnomah County Public Contract Review Board Administrative Rules, dated April 2, 1981, attached as Exhibit A and incorporated by reference herein, are hereby adopted and replace those administrative rules previously promulgated by the Board.

ADOPTED this 2nd day of April, 1981, being
the date of its second reading before the Board of County
Commissioners of Multnomah County, Oregon, acting as the Public
Review Board for Multnomah County.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

By Gladys McCoy
Presiding Officer

AUTHENTICATED THIS 6th day of April, 1981.

Donald E. Clark
Donald E. Clark
County Executive /cw-

APPROVED AS TO FORM:

JOHN B. LEAHY, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By Denise Francis
Denise Francis
Deputy County Counsel

MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD
ADMINISTRATIVE RULES

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MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD

DIVISION 10

DIVISION 10

AR 10.000 CONTRACTS EXEMPT FROM COMPETITIVE BIDDING AND REQUIREMENTS CONTRACTS.

10.010 Exemptions And Definitions

All public contracts shall be based upon competitive bidding except the following:

- a.) Contracts made with other public agencies or the federal government;
 - b.) Contracts which are exclusively for personal services as defined in Section 10.092. Such contracts may include incidental materials such as written reports, architectural or engineering renderings and similar supplemental materials.
 - c.) Contracts specifically exempt under these rules:
 - 10.020 Contracts for Price Regulated Items
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10.140	Specific Exemptions; Exemption Rulings

d.) As used in this section:

- (i) "Competitive bidding" means the solicitation by Multnomah County of competitive offers which follow the formal process for advertising, bid and bid opening required by ORS Ch. 279, and applicable rules of the Multnomah County Public Contract Review Board;

- (ii) "Competitive quotes" means the solicitation of offers by Multnomah County from competing vendors. The solicitation may be by advertisement or by Multnomah County initiating a request to vendors to make an offer. The solicitation and the offer may be in writing or oral.
- (iii) "The County" or "County" means Multnomah County, Oregon.
- (iv) "Board" means the Multnomah County Public Contract Review Board.
- (v) "Director of Purchasing" means the Director of the Purchasing Section, Department of Administrative Services for Multnomah County or his or her designee.
- (vi) "Department Head" means the Director of and Administrative Department as defined in the Multnomah County charter.
- (vii) "Department" means the Administrative Department under and pursuant to Chapter 1 of the Multnomah County charter.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

Amended by PCRB and Eff. 5-1-81

10.020 Contracts For Price Regulated Items

The County may, without competitive bidding, contract for the purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state or local regulatory authority.

Statutory Authority: ORS Chapter 279

Hist: PCRB 4-8-76

10.030 Copyrighted Materials

If the contract is for the purchase of copyrighted materials and there is only one supplier available for such goods, the County may contract for the purchase of the goods without competitive bidding.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

10.035 Institutional Commissaries

Institutional and residential commissaries may, without competitive bidding, purchase personal property for resale for stores operated by them.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

10.040 Advertising Contracts

The County may purchase advertising without competitive bidding. Such contracts shall be awarded in the manner provided by ORS 279.051.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

10.045 Equipment Maintenance Repair And Overhaul

- (1) Contracts for equipment maintenance, repair, or overhaul may be let without competitive bidding, subject to the following conditions;
 - (a) The services and/or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or
 - (b) The services and/or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source.
- (2) The Purchasing Director shall promptly report to the Board all contracts for equipment maintenance, repair, and overhaul pursuant to this exemption in which the amount exceeds \$10,000. The report shall include:
 - (a) A brief description of the contract; and
 - (b) the name of the company or individual performing the contract, the basis of selection; and

- (c) the total dollar amount of the contract; and
- (d) the reasons why competitive bids or quotes were deemed to be impractical.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 5-1-81

10.047 Auction Sales

Personal property may be sold at auction if the County determines that the auction contemplated will probably result in a higher net return than if the property were sold by competitive written bid.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 5-1-81

10.050 Purchases Under Established Requirements Contracts

When the price of goods and services has been established by a requirements contract pursuant to AR 10.060, the County may purchase the goods and services from the supplier without subsequent competitive bidding.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

10.052 Paper Products

The County is exempt from competitive bidding requirements for the purchase of paper products if the agency seeks competitive quotes from as many vendors as is practicable and retains written justification for the purchase made.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 5-1-81

10.055 Gasoline, Diesel Fuel, Heating Oil, Lubricants And Asphalts

The County may, without competitive bidding, purchase gasoline, diesel fuel, heating oil, lubricants, and asphalts subject to the following conditions:

- (a) Prior to selection of the contractor, the Purchasing Section seeks competitive quotes from a majority of vendors in the area; and
- (b) makes its purchase from the least expensive source; and
- (c) retains written justification for the purchase made.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 5-1-81

10.060 Requirements Contracts

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

- (a) The contract must be let by competitive bidding pursuant to the requirements of Chapter 279, Oregon Revised Statutes and applicable rules of the Multnomah County Public Contract Review Board.
 - (b) The term of the contract must be limited to the current fiscal year and subject to appropriations. In any event, the term of the contract, including renewals, should not exceed two years.
 - (c) The contract is subject to no less than 30 days cancellation by the supplier.
- (2) The County may request specific exemptions from the foregoing conditions in accordance with AR 10.140.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

Amended by PCRB and Eff. 5-1-81

10.070 Investment Contracts

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

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

Amended by PCRB and Eff. 5-1-81

10.080 Insurance Contracts

- (1) Contracts for insurance may be let without competitive bidding subject to the following conditions:
 - (a) Prior to the selection of a contractor the County has made reasonable efforts to inform known vendors of the subject matter of the contract and solicit proposals from available markets. If the amount of the premium other than employee benefit insurance exceeds \$10,000 per year, such notice shall also include a public advertisement in at least one insurance trade publication of general circulation in the industry.
 - (b) The contractor is selected on the basis of the most competitive offer considering both cost and the quality of the product and the service to be rendered.
- (2) The County shall report to the board all contracts for insurance pursuant to this exemption. Reports for the period January 1, 1976 to July 1, 1976 shall be filed on July 15, 1976. Thereafter, reports for the period July 1 to June 30 shall be filed by July 15 of each year. The report shall include:
 - (a) A description of the contract;
 - (i) The name of the company and if applicable the name of the agent;

- (ii) The reasons why competitive bidding was determined to be inappropriate;
- (iii) A description of the reasons why the contractor was selected and other proposals rejected.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

10.081 Ballots, Ballot Pages, And Ballot Cards

The County may, without competitive bidding, contract for the printing of ballots, including ballot pages, and labeling of ballot cards.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 5-1-81

10.083 Exemptions For Purchase Of Three Commodity Food Items

- (1) The County is exempt from the \$20,000 aggregate of section 10.120 (2) (d) for the purchase of the following food commodities:
 - (a) Fresh fruits and vegetables
 - (b) Frozen fruits and vegetables
 - (c) Frozen pre-portioned convenience meat and fish, special meats and entrees.
- (2) A report is to be furnished to the PCRB at the end of each fiscal year.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 5-1-81

10.090 Data Processing Contracts

- (1) Contracts for acquisition of data processing hardware and systems software may be let without competitive bidding using competitive procurement methods subject to the following conditions:
 - (a) If the contract amount does not exceed \$10,000 the Purchasing Section shall follow informal competitive procurement methods. Prior to selection of a vendor reasonable efforts will be made to solicit proposals from three or more vendors. Justification of award shall be documented and become a public record of the County.
 - (b) If the contract amount exceeds \$10,000, the County shall publish an advertisement in a major trade publication of general circulation. The County shall prepare both a detailed and a summary report of the evaluation process, which reports will be part of the public record justifying the award.
 - (c) If the amount of the contract exceeds \$500,000, in addition to the requirements of paragraph (b), the County shall:

- 1) Provide an opportunity for vendors to review requirements and, prior to submitting proposals, comment on any specifications which they feel limit competition;
 - 2) Define the roles of any evaluation committee, explain its evaluation criteria, and state all complaint processes and remedies available;
 - 3) Clearly state the contractual requirements in the solicitation document;
 - 4) Provide that residual values be considered only if they are clearly ascertainable; and
 - 5) Provide that cost of conversion will be minimized by the agency. Vendors competing in this category of procurement shall be given the opportunity to review the evaluation of their proposal before final management review and selection. If there is little difference between the highest ranked proposals, appropriate consideration must be given to the purchase of equipment which will encourage competition.
- (2) The Purchasing Section shall report to the Board all contracts for data processing pursuant to this exemption in which the amount exceeds \$10,000. Reports shall be filed by July 15 of each year. The report shall include:

- (a) The name of the company, and, if applicable, the name of a retail vendor; and
- (b) The reasons why competitive bidding was determined to be inappropriate; and
- (c) A description of the reasons why the contractor was selected and other proposals rejected.

If the purchase or acquisition was made pursuant to this exemption and AR 10.100 and 20.030 in lieu of the information required by those sections the information may be included in this annual report.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

Amended by PCRB and Eff. 5-1-81

10.092 Personal Services Contracts

The County may enter into personal services contracts based upon the following:

- (1) The following are personal service contracts:
 - (a) Contracts for services performed as an independent contractor in the 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, timber cruiser, or broadcaster.

- (b) Contracts for services as an artist in the performing or fine arts, including but not limited to photographer, film-maker, painter, weaver, sculpter.
 - (c) Contracts for services of a specialized creative and research oriented, noncommercial nature.
 - (d) Contract for services as a consultant.
 - (e) Contracts for educational and human custodial care services.
- (2) The following are NOT personal service contracts:
- (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 a garden and supply all the shrubs and trees is predominately for a tangible product.
 - (b) A contract to supply labor which is of a type that can generally be done by any competent worker, e.g., janitorial, security guard, crop spraying, laundry and landscape maintenance service contracts.
 - (c) Contracts for trade related activities considered to be labor and material contracts.
 - (d) Contracts for services of a trade-related activity, even though a specific license is required to engage in the activity.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 5-1-81

10.100 Single Seller Of Product Required

Subject to all requirements of AR 20.030, the County may purchase without competitive bidding if there is only one seller of a product of the quality required, or if the efficient utilization of existing equipment or supplies requires specification of a compatible product for which there is only one seller.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

10.110 Emergency Contracts

- (1) The County Executive may, in his discretion, authorize or let public contracts without competitive bidding if an emergency exists and the emergency consists of circumstances that could not have been reasonably foreseen and requires prompt execution of a contract to remedy the condition.
- (2) The County Executive or his representative must declare that emergency and make detailed written findings describing the emergency conditions necessitating prompt execution of the contract. A copy of the findings together with the amount of the contract and the name of the contractor shall be immediately forwarded, by the Purchasing Section, to the Board.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

Amended by PCRB and Eff. 5-1-81

- (1) The County may, in its discretion, let public contracts without competitive bidding if it has determined that the awarding of the contract without competitive bidding will result in cost savings and the following conditions are complied with:
 - (a) The amount of the contract does not exceed \$10,000, is for a single project, and is not a component of or related to any other project.
 - (b) When the amount of the contract does not exceed \$1,000, the Purchasing Section should, where feasible, obtain competitive quotes.
 - (c) When the amount of the contract is more than \$1,000 but less than \$10,000, the Purchasing Section must obtain a minimum of three competitive quotes. The Purchasing Section shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.
 - (d) No contractor may be awarded in the aggregate within the fiscal year contracts in excess of \$30,000 without competitive bidding. In computing the aggregate under this subsection, awards under \$1,000 shall not be included.

(2) The County may, in its discretion, let public contracts for construction, maintenance, repair, or any other contract containing an element of personal service (other than contracts for repair and maintenance of office equipment which are covered under subsection (1) and contracts for road, highway or parking lot maintenance covered under subsection (3)) without competitive bidding if the County has determined that the awarding of the contract without competitive bidding will result in cost savings and the following conditions are complied with:

- (a) The amount of the contract does not exceed \$10,000, is for a single project and is not a component of or related to any other project.
- (b) When the amount of the contract does not exceed \$1,000 the County should, where feasible, obtain competitive quotes.
- (c) When the amount of the contract is more than \$1,000 but less than \$10,000, the Purchasing Section must obtain a minimum of three competitive quotes. Copies of all documentation shall be maintained by the Purchasing Section, of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

- (d) No contractor may be awarded in the aggregate within the fiscal year contracts in excess of \$20,000 without competitive bidding. In computing the aggregate under this subsection, awards under \$1,000 shall not be included.
- (3) The County may, in its discretion, let public contracts, not to exceed \$25,000, for road, highway, or parking lot maintenance without competitive bidding if the Purchasing Section obtains a minimum of three competitive quotes. The Purchasing Section shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided a written record is made of the effort to obtain the quotes.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

Amended by PCRB and Eff. 5-1-81

10.125 Life Cycle Cost Analysis

The County may, as a part of its competitive bidding requirements, use life-cycle cost evaluation subject to the following requirements:

- (1) The bid specifications must include an explanation of the Evaluation Formula to be used; and

- (2) the award shall be made to the lowest bidder meeting the specifications.
- (3) the Purchasing Section shall report to the Board all contracts pursuant to this exemption in which the amount exceeds \$10,000. Reports shall be filed by July 15 of each year.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 5-1-81

10.130 Contract Amendments (Including Change Orders And Extra Work)

Any contract amendment for additional work including change orders, extra work, field orders, or other change in the original contract price may be made with the contractor without competitive bidding subject to the following conditions:

- (1) The original contract was let by competitive bidding and imposes a binding obligation on the parties covering the terms and conditions of the additional work resulting in cost increase; or
- (2) If in the joint determination of the department head and Purchasing Director the amendment has the effect of creating a new contract, the amount of the aggregate cost increase resulting from all amendments shall not exceed 10% of the initial contract, or 20% of the initial contract when the initial contract is for a public improvement for a face amount not exceeding \$1,000,000.

Amendments made pursuant to section (1) of this rule will not be included in computing the aggregate amount under this section.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

Amended by PCRB and Eff. 5-1-81

10.135 Food Service Contracts

- (1) For purposes of this rule "food service" means a contract in which the contractor agrees to perform for (the County) all of the following functions: The purchase, preparation, and service of meals and related services.
- (2) Contracts for food services may be let without competitive bidding subject to the following conditions:
 - (a) Prior to the selection of a contractor the County has made reasonable efforts to inform known companies providing food services of the subject matter of the contract and solicit proposals including public advertisements in at least one newspaper of general circulation in the area where the contract is to be performed.
 - (b) The contractor is selected on the basis of the most competitive offer considering both cost and the quality of the product and the service to be rendered.

(3) The Purchasing Section, shall report to the Board all contracts for food service pursuant to this exemption in which the fees exceed \$10,000. Reports for the period July 1 to June 30 shall be filed by July 15 of each year. The report shall include:

- (a) A description of the contract including the name of the company.
- (b) The reasons why the department did not believe that competitive bidding was appropriate.
- (c) A description of the reasons why the contractor was selected and other proposals rejected.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 5-1-81

10.140 Specific Exemptions

(1) The Purchasing Section, may apply to the Board for a ruling under AR 30.010 through 30.040 exempting a particular contract or contracts from competitive bidding requirements of ORS 279.015 which are not otherwise exempted under these rules. The application shall contain the following information:

- (a) The nature of the project;
- (b) Estimated cost of the project;

- (c) A narrative description of the cost savings anticipated by the exemption from competitive bidding and the reasons competitive bidding would be inappropriate;
 - (d) Proposed alternative contraction and purchasing practices to be employed; and
 - (e) The estimated date by which it would be necessary to let the contract.
- (2) The Board may require such additional information as it deems necessary to determine whether a specific contract is to be exempt from competitive bidding.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

Amended by PCRB and Eff. 5-1-81

10.145 Affirmative Action Contracts

- (1) Public contracts may be awarded pursuant to a specific Affirmative Action plan. Affirmative Action is a program designed to insure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age, or physical or mental handicap, including, but not limited to, personnel practices of contractors, "set-aside programs" and minority business enterprises.
- (2) The Purchasing Director shall report to the Board all contracts which are let pursuant to this Affirmative Action plan. The report shall include:

- (a) A description of the contract, including the amount thereof and the name of the contractor; and a general description of the type of work to be performed or service or product to be purchased.
- (b) A description of the Affirmative Action goal or goals to be accomplished."

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 3-31-77

Amended by PCRB and Eff. 5-1-81

MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD

DIVISION 20

DIVISION 20

AR 20.000 BRAND NAMES OR MARKS

20.010 Specification Of Particular Brand Names Or Products

Specifications for public contracts shall not expressly or implicitly require any product of any particular manufacturer or seller except pursuant to an exemption under AR 20.020 (copyrighted materials), 20.030 (single manufacturer or compatible products), 20.040 (pre-qualified products) or 20.050 (specific exemptions).

If there is no other practical method of specification, the County may designate a particular brand name, make or product "or equal", but this practice should be avoided whenever possible.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

20.020 Copyrighted Materials

The County may specify a specific copyrighted product. This exemption does not include patented or trade mark goods.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

20.030 Single Manufacturer Or Compatible Products

- (1) If there is only one manufacturer or seller of a product, of the quality required, or if the efficient utilization of the existing equipment or supplies requires a compatible product of a particular manufacturer, the County may specify such particular product subject to the following conditions:
 - (a) The product is selected on the basis of the most competitive offer considering quality and cost. The term 'cost' includes not only the product price but also other items of expense such as costs related to quality of conversion.
 - (b) Prior to awarding the contract, the County has made reasonable effort to notify known vendors of competing or comparable products of the intended specifications and invited such vendors to submit competing proposals. If the purchase does not exceed \$10,000, such notice and invitation may be informal. If the amount of the purchase exceeds \$10,000, such notice shall include advertisement in at least one newspaper of general circulation in the area where the contract is to be performed.
- (2) If the amount of the purchase exceeds \$10,000 and is not also pursuant to the data processing exemption, AR 10.090, the Purchasing Section shall notify the Board of the specifications. Such notice shall include:

- (a) A brief description of the proposed contract or contracts.
 - (b) A detailed description of the reasons why the product and/or seller was selected and any competing products and/or sellers that were rejected. The description shall also include the efforts taken by the Purchasing Section to notify and invite proposals from competing vendors.
- (3) If the County intends to make several purchases of the product of a particular manufacturer or seller for a period not to exceed two years, it may so state in the notice required by paragraphs (b) and (2), and such statement shall be sufficient notice as to subsequent purchases.
- (4) The Board may review the notices required by paragraph (2) and direct the Purchasing Section to cease and desist from such purchasing practices or impose such conditions on the practice as it determines advisable to comply with ORS 279.017. Such orders shall only be effective as to subsequent purchases.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

20.040 Product Prequalification

- (1) When it is impractical to create specific design or performance specifications for a type of product to be purchased, the County may specify a list of approved products by reference to particular manufacturers or sellers in accordance with the following product prequalification procedure:
 - (a) The Purchasing Section has made reasonable efforts to notify known manufacturers or vendors of competitive products of its intention to accept applications for inclusion in its list of prequalified products. Notification shall include advertisement in a trade journal of statewide distribution when possible. In lieu of advertising, the County may notify vendors and manufacturers appearing on the appropriate list maintained by the Department of General Services of the State of Oregon.
 - (b) The County permits application for prequalification of similar products up to 15 days prior to advertisement for bids on the product.
- (2) If an application for inclusion in a list of prequalified products is denied, or an existing prequalification revoked, the Director of Purchasing shall notify the applicant in writing. The applicant may appeal to the Board for a review of the denial or revocation in the same manner as an appeal of disqualification or denial provided in AR 40.090.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

Amended by PCRB and Eff. 5-1-81

20.050 Brand Name Or Mark Exemption Applications

The Purchasing Section may apply for and receive a brand name or mark exemption ruling from the Board 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, mark or product to be specified.
- (c) The reasons the Purchasing Section is seeking the exemption.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

20.060 Conditions Of Exemptions

The Board will grant exemptions if the following conditions are met:

- (a) The exemption is not likely to encourage favoritism in public contracts or substantially diminish competition and will result in cost savings.
- (b) There is only one manufacturer or seller of the product of the quality required, or efficient utilization of existing equipment or supplies requires acquisition of compatible equipment or supplies.
- (c) The exemption is requested for the purchase of a particular product to be used in an experimental project.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

Amended by PCRB and Eff. 5-1-81

MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD

DIVISION 30

DIVISION 30

AR 30.000 SPECIFIC EXEMPTION PROCEDURE

30.010 Notice Of Application

Upon receipt of an application for an exemption ruling under AR 10.100 or AR 20.040, the Chairperson of the Board shall cause a notice of intention to adopt an order to be posted in full public view in the Multnomah County Courthouse and may set the matter for public hearing to receive data, views and arguments.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

30.020 Board Hearing

The application will be placed on the Board's agenda for the next Board meeting, and, in the exercise of discretion, the Chairperson may also set additional public meetings to receive data, views and arguments.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

30.030 Temporary Rules Exemptions

In appropriate cases, the Chairperson of the Board may grant a temporary exemption from public bidding pending formal consideration of a specific exemption.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

30.040 Unanimous Consent Calendar

The Chairperson of the Board may, in the exercise of discretion notify the members of the Board that an application for exemption has been made and that if no objections are received to the exemption from members of the Board within seven days of the Chairperson's notice the exemption will be considered granted by unanimous consent and the Chairperson may in the exercise of discretion, deem the exemption adopted as a temporary rule. Exemptions so adopted will be placed on the Board's agenda as a unanimous consent calendar for ratification or adoption as a permanent rule by the Board at the next meeting of the Board.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD

DIVISION 40

DIVISION 40

AR 40.000 COMPETITIVE BIDDING PROCEDURE

40.010 Statutory Requirements

The County is required to award contracts to the lowest bidder except in the following circumstances:

- (a) The bidder has failed to substantially comply with either the specifications or any statutory requirement relating to public contracting;
- (b) The bidder is disqualified by the County pursuant to the applicable statutes and Rule 40.020.
- (c) If in the judgment of the department head and the Purchasing Director it is in the public interest to reject all bids pursuant to ORS 279.035.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

Amended by PCRB and Eff. 5-1-81

40.015 Receipt And Opening Of Bids

In any contract which is subject to competitive bidding as defined in rule 10.010 the advertisement must state the time and date when bids will be publicly opened. The bids should be sealed and shall not be examined or opened by anyone until the time of the public opening as specified in the advertisement. Such bids are not public records under ORS 192.500 et seq. until the public opening.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

40.020 Disqualification Of Bidders

Bidders may be disqualified on any of the following grounds:

- (1) Lack of financial ability. If a performance bond is required to insure performance of a contract, proof that the bidder can acquire a surety bond in the amount required shall be sufficient to establish financial ability. If no performance bond is required, the public contracting agency may require such information as it deems necessary to determine the bidder's financial ability. In determining whether a surety company is to be considered 'good and sufficient' the public contracting agency may utilize the list maintained by the U.S. Department of Treasury of surety companies acceptable on federal bonds; Best's Rating, published by A. M. Best Company; or information maintained by the Oregon State Department of Transportation.

- (2) The bidder lacks the available equipment or key personnel with sufficient experience to perform the contract.
- (3) The bidder has repeatedly breached contractual obligations.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

40.030 Mandatory Prequalification

Prequalification of contractors for public improvements in excess of \$50,000 pursuant to ORS 279.039 is required. All persons desiring to bid for such contracts shall submit a completed prequalification statement. Such statements must be prepared during the period of one year prior to the bid date and must be actually received or postmarked to Multnomah County by not later than 10 days prior to bid opening. Prequalification granted pursuant to this rule shall be effective for a period of one year. Prequalification granted pursuant to this rule shall be for only those contracts not exceeding a certain monetary limit based upon the financial ability of the particular contractor. Such limits will be designated by Multnomah County.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

Amended by PCRB and Eff. 3-31-77

40.040 Prequalification Application

Prequalification statements required by rule adopted pursuant to ORS 279.039 and prequalification requests submitted pursuant to ORS 279.041 shall be in the form of the State of Oregon Public Contract Review Board 'Contractors' Prequalification Application, 'Equipment and Experience Questionnaire.'

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

Amended by PCRB and Eff. 3-31-77

40.045 Prequalification Prior To The Effective Date

In case of a prequalification that has been granted prior to the effective date of these rules, the County may, in its discretion, deem that prequalification to continue for its remaining term.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

40.050 Qualification Statement

Upon establishment of prequalification, the County shall issue a qualification statement in substantially the following form:

"This is to certify that _____
Name of Contractor
is qualified to perform the classes of work as requested in
its prequalification application dated _____,
for contracts not to exceed \$ _____."

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

40.060 Proof Of Presumed Qualification

A copy of the qualification statement provided by AR 40.050 accompanied by a copy of the contractor's application for prequalification will constitute proof of prequalification for purposes of the presumption established by ORS 279.047.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

40.070 Notice Of Denial Of Qualification

If the County does not qualify the applicant, it shall notify the applicant in the following form:

"Multnomah County Qualification Denial

Name of Contractor

Date

You are hereby notified that your application for prequalification has been denied or your bid has not been qualified for the following reasons:

_____ Contractor does not have sufficient financial ability to perform the contract.

_____ Contractor does not have equipment available to perform the contract.

_____ Contractor does not have key personnel with sufficient experience to perform the contract.

_____ Contractor has repeatedly breached contractual obligations.

_____ Contractor has failed to supply promptly information requested by Multnomah County.

_____ Other (Agency must specify)

If you desire to appeal this disqualification or refusal of bid to the Multnomah County Public Contract Review Board, you must notify the Multnomah County Purchasing Director in writing within three business days after receipt of this notice. The Purchasing Director shall notify the Multnomah County Contract Review Board of your appeal and they shall notify you of the time and place of the hearing.

Signature"

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

40.080 Notice Of Revocation Or Revision Of Prequalification

Upon discovery that a person prequalified is no longer qualified, the County shall send a notification of proposed revocation or revision of qualification in the following form:

"Multnomah County Qualification Revocation or Revision

Name of Contractor

Date

You are hereby notified that your notice of prequalification issued upon _____ shall be revoked or revised for the following reasons:
Date

_____ Contractor no longer has sufficient financial ability to perform the contract.

_____ Contractor does not have equipment available to perform the contract.

_____ Contractor does not have key personnel with sufficient experience to perform the contract.

_____ Contractor has repeatedly breached contractual obligations.

_____ Contractor has failed to supply promptly information requested by Multnomah County.

_____ Other (State Reasons for Revocation or Revision)

This revocation or revision shall be effective ten days from the date of this notice unless you provide the Multnomah County, Director of Purchasing with evidence that the deficiency has been corrected or you file with the Multnomah County, Director of Purchasing notice of appeal to the Multnomah County Public Contract Review Board pursuant to AR 40.090. Failure to file a notice of appeal within ten days bars any appeal to the Board.

Signature"

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

Amended by PCRB and Eff. 5-1-81

40.090 Appeals

- (1) A contractor or bidder may appeal to the Board any of the following:
 - (a) Notice of denial of qualification.
 - (b) Notice of conditions varying from application for pre-qualification.
 - (c) Notice of revocation of prequalification.
 - (d) Notice of product disqualification under Rule AR 20.040.Notice of appeal pursuant to (a) through (d), above need not be in any particular form so long as they are in writing addressed to the Multnomah County Directory of Purchasing and received within 10 days after the bidder or contractor has received notice of sub-section (a) through (d).
- (2) Upon receipt of the notice of appeal, the Director of Purchasing shall forward to the Board, the contractor's prequalification application, the notice of refusal of bid or prequalification or revocation and the record of investigation by the Director of Purchasing upon which the agency based its refusal or revocation together with the notice of appeal. The burden of sustaining the refusal, disqualification or revocation is upon the County.
- (3) For purposes of appeals, three members of the Board shall constitute a quorum. Meetings for appeal purposes shall be held following the Multnomah County Board of Commissioners' meetings.

- (4) At any time prior to the meeting of the Board, the County may reconsider its revocation, revision or disqualification.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

Amended by PCRB and Eff. 5-1-81

MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD

DIVISION 50

DIVISION 50

AR 50.000 WAIVER OF SECURITY BID AND PERFORMANCE BOND

50.010 Bid Security Requirements

The County may, in its discretion, waive the bid security requirements of ORS 279.027 for contracts other than those for public improvements. In the discretion of the Purchasing Director the County may accept blanket bid bonds.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

Amended by PCRB and Eff. 5-1-81

50.020 Contracts Under \$10,000

The County may, in its discretion, waive the bid security requirements of ORS 279.027 and performance bond requirements of ORS 279.027 if the amount of the contract for the public improvement is less than \$10,000.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

Deposits In Lieu Of Retainage On Public Contracts

- (1) When a contractor elects to deposit securities with a bank or trust company in lieu of retainage on public contracts, the securities will be held by the custodian in fully transferable form and under the control of the County.
- (2) Non-negotiable securities so deposited shall have proper instruments attached to enable the County to effect transfer of title should the contractor be unable to fulfill the contract obligations.
- (3) The custodian bank or trust company will issue a safekeeping receipt for the securities to the County. The receipt will describe the securities, the par value, the name of the contractor and project number or other project identification.
- (4) Unless otherwise mutually agreed, the value placed upon said securities shall be market value.
- (5) Securities deposited in the manner described above will be released by the bank or trust company only upon the written instructions and authorization of the County.
- (6) In lieu of the above, an escrow agreement mutually acceptable to the contractor and the County and the bank or trust company may be used.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

- (1) Bills, certificates, notes or bonds of the United States.
- (2) Other obligations of the United States or its agencies.
- (3) Obligations of any corporation wholly owned by the federal government.
- (4) Indebtedness of the Federal National Mortgage Association.
- (5) General Obligation Bonds of the State of Oregon or any political subdivision thereof.
- (6) Time certificates of deposit or savings account passbooks issued by a commercial bank, savings and loan association, or mutual savings bank, duly authorized to do business in Oregon.
- (7) Corporate bonds rated "A" or better by a recognized rating service.
- (8) General obligation improvement warrants issued pursuant to ORS 287.502.
- (9) Irrevocable letters of credit from a bank doing banking business in Oregon.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

- (1) When a contractor elects to have an interest-bearing account established for deposit of retainage in a bank, savings bank, trust company, or savings association, the account will be established by the County for the benefit of and under the control of the County with interest accruing to the contractor.
- (2) When the account is established, proper instruments shall be furnished to the bank, savings bank, trust company, or savings association to prohibit withdrawal or transfer of the funds in the account except upon written instructions and authorization of the County and to enable the County to close the account if in the judgment of the County the contractor has not fulfilled the contract obligations.
- (3) The bank, savings bank, trust company, or savings association will issue to the County a receipt acknowledging the deposit and, on the initial receipt, describing the account, the provision for interest, the name of the contractor, and the full name under which the account is established.
- (4) The amount deposited and accrued interest will be released by the bank, savings bank, trust company, or savings association only upon the written instructions by the County.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 5-1-81

MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD

DIVISION 60

DIVISION 60

AR 60.000 AFFIRMATIVE ACTION IN PUBLIC CONTRACTS

60.010 Purpose

The purpose of this Chapter is to establish procedures to promote and insure Minority Business Enterprise participation in public works and other selected contracts let by Multnomah County, State of Oregon.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 3-31-77

60.020 Definitions

- (1) A minority business enterprise is a business which is at least 51% owned by minority group members.
- (2) Minority group members include Afro-Americans, Spanish-surnamed Americans, American Orientals, Native Americans, American Eskimos and Aleuts. In addition, women, and the mentally and/or physically handicapped will qualify under Section 60.080 of this Chapter.
- (3) "Set-aside program" refers to contracts subject to bid and/or award to minority business enterprises only.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 3-31-77

60.030 Policy

An affirmative action policy is hereby established which is designed to promote and insure the participation by minority business enterprises in performing County public works projects and other selected contracts let by Multnomah County, Oregon. Special procedures will be followed in the awarding of contracts to certified minority business enterprises.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 3-31-77

60.040 Certification

All business entities wishing to qualify for minority business enterprise status shall request the Minority Certification Form from the Purchasing Section. Upon receipt of the form, the business entity is to fill out the form in its entirety and return it to the Purchasing Section. The Section will then review the application and advise the applicant of its status within thirty days of receipt. All minority contractors furnishing proof of certification by the Department of General Services, State of Oregon, as minority business enterprises will be considered certified by the County.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 3-31-77

60.050 Set-Aside Program

Contracts which in the judgment of the Director of Purchasing will have a contract price below \$100,000 will be subject to inclusion in the minority set-aside program. Contracts designated to the set-aside program shall total at least 10% of the total dollar amount of contracts let in a fiscal year in this category. The designation of contracts to the set-aside program will be made by the joint determination of the Department head and the Director of Purchasing or his/her appointed agent.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 3-31-77

Amended by PCRB and Eff. 5-1-81

60.060 Awarding Contracts

- (1) Contracts designated to the set-aside program that are for an amount less than \$1,000 are subject to AR 10.120 (1), (2) and (3).
- (2) Contracts designated to the set-aside program that are in excess of \$1,000 but less than \$100,000 shall be subject to competitive bid among minority enterprises. The procedure for bidding and awarding of contracts shall be consistent with AR 40.000, except for the restriction limiting competition to minority business enterprises.

- (3) Contracts let under this affirmative action plan are exempt from inclusion in the \$30,000 limitation set forth in AR 10.120
- (4). In addition, contracts assigned to the set-aside program may be divided into component parts for the purpose of making awards to minority business enterprises.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 3-31-77

Amended by PCRB and Eff. 5-1-81

60.070 Incentive Program For Non-Minority Contractors

- (1) Contractors who employ certified minority business enterprise subcontractors and provide for them to perform work that represents at least 15% of the total dollar amount subcontracted under a contract will be given a 1% bid preference.
- (2) If the bidder provides for 15% minority participation in the manner described above, he will be considered the low bidder if the bid is not more than 1% higher than the low bid forwarded by a contractor not entitled to the preference.
- (3) The incentive program outlined herein also applies to joint ventures where at least 10% of participation in the joint venture consists of Minority Business Enterprises.
- (4) Bids received from minority business enterprises must qualify for the incentive program on the same basis as majority contractors.

- (5) With submission of the bid, all bidders who intend to use minority subcontractors in the manner described above shall identify minority subcontractors to be utilized, the work to be performed and the dollar amount of subcontracted work. Subcontractors listed in the bid shall not be replaced without prior approval of the County; doing so shall be grounds for a contract award to be refused by the County.
- (6) If a circumstance arises after the award that reduces minority participation, the following procedures will be followed:
 - (a) The contractor shall contact the Director of Purchasing within three working days and request a meeting with the Director of Purchasing.
 - (b) At the meeting, the contractor shall present the Purchasing Director with the circumstances which brought about the reduction in minority participation and what actions are planned to bring the minority participation back to the 15% level.
 - (c) The Purchasing Director shall evaluate the circumstances that brought about the reduction and determine if the reduction warrants:
 - (i) Assessment of liquidated damages, or
 - (ii) Acceptance of the contractor's circumstances as being beyond his control.

- (7) If the Purchasing Director assesses liquidated damages under Section (6), the amount will be determined at the completion of the contract, based on the difference between the contract qualifying percentage and the actual percentage of minority participation. The percentage difference will be multiplied by the contract price, excluding change orders, and the product will be the amount of liquidated damages.

Statutory Authority: ORS Chapter 279

Hist. PCRB Eff. 3-31-77

Amended by PCRB and Eff. 5-1-81

60.080 Goods, Services And Equipment

The County shall promote minority business enterprise participation in the selling of goods, services and equipment to County agencies and may establish separate set-aside or incentive programs to govern the bidding and award of such contracts. Such programs will follow the procedures as set forth above relating to public works contracts, unless otherwise provided by the Board of County Commissioners.

Statutory Authority: ORS Chapter 279

Hist. PCRB Eff. 3-31-77

MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD

DIVISION 70

DIVISION 70

AR 70.000 through AR 70.090 RESERVED FOR EXPANSION

MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD

DIVISION 80

DIVISION 80

AR 80.000 RULES, REPORTING AND MEETINGS

80.010 Rules

Roberts Rules of Order, excepting that seconds will not be required, will govern proceedings of the Board where they do not conflict with these rules or statutory provisions.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

80.020 Quorum

A majority of the members of the Board shall constitute a quorum. Actions exercising the rule making authority of the Board shall require a majority vote of the entire Board.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

80.030 Meetings

- (1) The applicable provisions of the Public Meetings Law shall control the notice and character of meetings of the Board.
- (2) Meetings of the Board may be held by conference telephone call after required public notice. The Chairperson shall conduct the meeting using a speaker telephone attachment.
- (3) On urgent or perfunctory matters, the Chairperson may, by telephone, poll the members of the Board. Electronic transcripts of the polling calls will be made and retained. In the course of a poll, any member may request the matter be discussed by conference call or deferred to a meeting.
- (4) Prior to conference calls or telephone polls, the press and public, including persons directly interested in the subject matter of the poll, shall be given reasonable notice that they may be present in the office of the Chairperson at the time of the meeting or poll.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

80.040 Reports

All reports required to be submitted to the Board by those rules or statutes shall be directed to the mailing address or the principal office of the Chairperson.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD

DIVISION 90

DIVISION 90

AR 90.000 NOTICES AND AGENDA

90.010 Notices

Notices of amendment, adoption or repeal of rules, including contract exemption rulings and of meetings of the Public Contract Review Board and the agenda of the meetings shall be sent to the following at least seven (7) days prior to the meeting:

- (a) Press: The Oregonian, Oregon Journal, The Gresham Outlook, The Daily Journal of Commerce.
- (b) Management and Labor:
Association of Oregon Industries; Associated General Contractors; Oregon Construction Industry Council; Oregon AFL-CIO, and Oregon State Building Trades Council.
- (c) Any persons requesting notice in writing who show themselves in a position to be affected by the Board's determination.

Statutory Authority: ORS Chapter 279

Hist: PCRB Eff. 4-8-76

Amended by PCRB and Eff. 5-1-81

90.020 Agenda

The agenda of the meetings of the Board shall include the following:

- (a) Unanimous consent calendar pursuant to AR 30.040 including a brief description of the contract exempted and the amount of the contract.
- (b) Consideration without hearing of pending applications for exemption. The agenda will list all proposed pending exemptions with a brief description of proposed exemptions including the amount of the contract.
- (c) Consideration with hearing of pending applications for exemption rulings.
- (d) Contested case hearings of appeals of disqualification or revocation of prequalification, including the name of the contractor and the grounds of the proposed disqualification or revocation of prequalification.

Statutory Authority: ORS Chapter 279

Hist. PCRB Eff. 4-8-76