

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 02-130

Resolution Adopting New Public Contract Review Board Rules

The Multnomah County Board of Commissioners Finds:

- a) ORS 279.055 authorizes counties to establish public contract review boards and to establish contracting rules.
- b) Section 3.100 of the County Code provides that the Board of County Commissioners is the Public Contract Review Board (PCRB) for Multnomah County and authorizes the PCRB to adopt rules by resolution.
- c) The current PCRB rules were originally adopted by Multnomah County in 1976. The rules have been revised numerous times, most recently in 1997. The current rules, when written, were designed to conform generally with the Attorney General Model Rules (Model Rules). However, over time, changes to the Model Rules were not incorporated into the PCRB rules. The State of Oregon and most local governments operate under rules that are substantially similar to the current version of the Model Rules.
- d) The proposed new rules, attached as Exhibit 1, represent a comprehensive revision of the PCRB rules to align them more closely with the Model Rules and provide more flexibility in county procurement practices.
- e) The proposed rules provide for exemptions from competitive bidding requirements for certain classes of contracts. State law requires the Board to make findings to support exemptions from competitive bidding. The findings attached to this Resolution as Exhibit 2 support the exemptions found in Divisions 310, 320, 330 and 340 of the proposed rules.
- f) It is in the best interests of Multnomah County to adopt the proposed PCRB rules.

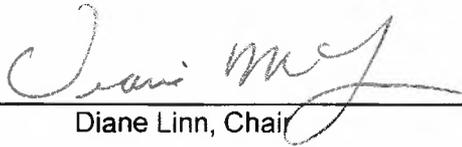
The Multnomah County Board of Commissioners Resolves:

1. The rules attached as Exhibit 1 are adopted as the Public Contract Review Board rules for Multnomah County.

ADOPTED this 10th day of October 2002.



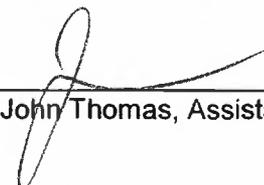
BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON



Diane Linn, Chair

REVIEWED:

THOMAS SPONSLER, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 

John Thomas, Assistant County Attorney

Exhibit 1 – Resolution No. 02-130

MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD ADMINISTRATIVE RULES
OCTOBER 10, 2002

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**DIVISION 5
INTRODUCTION – SOURCE OF RULES**

These rules comprise a comprehensive revision of the Multnomah County Public Contract Review Board Administrative Rules. The original administrative rules were first adopted April 8, 1976 and were most recently revised on February 27, 1997. The primary source documents for these rules were the Oregon Attorney General’s Model Contract Rules (OAR 137-030-0000 and OAR 137-040-0000) effective January 1, 2002 (Model Rules), sections of the State Department of Administrative Services Rules effective January 1, 2002, (DAS Rules) and the former Multnomah County Public Contract Review Board Administrative Rules dated February 27, 1997 (former county rules). The Model Rules and the DAS Rules were in some cases revised to meet the particular requirements of Multnomah County.

The numbering system used for these rules retained the general numbering system used in the former County Rules. The last six numbers of the Model Rules and the DAS Rules were retained so that they could be easily identified when the state rules are revised semi-annually as required by statute.

Division 10 was compiled from OAR 137-030-0000 with additions from the former county rules and from the DAS Rules. Division 15 includes sections that were in Division 15 of the former county rules. Division 20 was newly created for miscellaneous provisions from former county rule Division 15 which did not fit in any other Division. Division 30 is based on the Model Contract Rules, OAR 137-030-0000 to 030-0145. Division 40 is based on the Model Contract Rules, OAR 137-040-0000 to 040-0590. Divisions 60 and 70 are substantially the same as Divisions 60 and 70 in the former county rules. Division 75 is also substantially the same as Division 75 in the former county rules. Division 75 is patterned on Division 65 of the DAS rules with certain changes to accommodate County policies. Divisions 300, 310, 320, and 330 are based on DAS Rules Divisions 300, 310, 320 and 330. Many of the rules in these Divisions replaced similar or identical rules that were found in the former county rules. Finally, Division

340 contains specific Exemptions not found in the DAS Rules. While the commentary to the Model Rules has not been adopted, where appropriate, such commentary may be considered by the Departments and the CPCA Manager when interpreting or administering these Rules.

**DIVISION 10
DEFINITIONS**

10-0000 Definitions

All capitalized terms have the meanings set forth below.

- (1) **Addendum or Addenda** An addition or deletion to, a material change in, or general interest explanation of the Solicitation Document. Addenda shall be labeled as such and distributed to all interested Entities in accordance with these Rules.
- (2) **Bid** A competitive Offer, binding on the Bidder and submitted in response to an Invitation to Bid.
- (3) **Bidder** An Entity that submits a Bid in response to an Invitation to Bid.
- (4) **Board** The Multnomah County Public Contract Review Board.
- (5) **CPCA** Central Procurement and Contracts Administration.
- (6) **CPCA Manager** The Central Procurement and Contracts Administration Manager whose duties are described in Division 15 or that person's designee.
- (7) **Closing** The date and time announced in the Solicitation Document as the deadline for submitting Offers.
- (8) **Competitive Bidding** A price-based selection process, as provided in ORS 279.005 through 279.111, that involves an advertised public notice, issuance of a Written Solicitation Document inviting interested persons or firms to submit Written, Signed, and sealed Bids, that are received by the County and publicly opened at the designated time and place, and a Contract awarded (if one is awarded) to the lowest Responsive, Responsible Bidder.
- (9) **Competitive Range** The number of Proposers with whom the Department will conduct discussions or negotiate if the Department intends to conduct discussions or negotiations in accordance with Rule 30-0090. The Competitive Range must be stated in the Solicitation Document, but will be decreased if the number of Proposers that submit Proposals is less than the specified number, or may be increased by the Department in accordance with Rule 30-0090.
- (10) **Conduct Disqualification** A Disqualification pursuant to ORS 279.037.
- (11) **Contract** The Written agreement between the County and the Contractor describing the Work to be done and the obligations between the parties.
- (12) **Contractor** The Entity awarded the Contract in response to the Solicitation Document.
- (13) **Contract Price** The total amount to be paid on the Contract including any approved alternates; in certain contexts this term may include change orders or amendments.
- (14) **County Chair** The Chair of the Board of County Commissioners for Multnomah County.
- (15) **Days** Calendar days unless otherwise specified by these Rules.
- (16) **Department** A County Department or any unit within a Department, which has responsibility for the purchase of goods or services for the County.
- (17) **Descriptive Literature** The Offeror's materials submitted to provide information concerning the products available in response to the Solicitation Document.
- (18) **Design-Build** A method of public contracting where the responsibility for project team participation with the Department, project design, value engineering, management of the design and construction process, general contractor expertise, a guaranteed maximum price and construction is vested in a single Entity, through one Contract with the County.
- (19) **Disabled Individual** An individual who, because of the nature of the individual's disabilities, is not able to participate fully in competitive employment and for whom specialized employment opportunities must be provided.
- (20) **DBE or Disadvantaged Business Enterprise** A business concern described in ORS 200.005(1) and certified as such with the State of Oregon pursuant to ORS 200.055.
- (21) **Disqualification** The preclusion of an Entity from contracting with the County for a period of time. The CPCA Manager is authorized to disqualify an Entity in accordance with Rule 30-0110.

- (22) **Electronic Advertisement** Electronic Advertisement for Offers available over the internet via the World Wide Web provided the CPCA Manager maintains an internet World Wide Web site that describes how an Entity can access the advertisement through the internet.
- (23) **Electronic Data Interchange Operating Agreement or EDI Operating Agreement** A series of standards that provide computer-to-computer exchange of business documents between organizations over telephone lines or computer networks. An EDI document is a document that has been transmitted pursuant to an EDI Operating Agreement.
- (24) **Emergency** Circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to the public health or safety that requires prompt execution of a Contract to remedy the condition.
- (25) **Emerging Small Business or ESB** A business concern described in ORS 200.005(3) and 200.005(4) and certified as such with the State of Oregon pursuant to ORS 200.055.
- (26) **Entity** A natural person capable of being legally bound, sole proprietorship, limited liability company, corporation, partnership, limited liability company or partnership, limited partnership, profit and nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision.
- (27) **Exemption** A process which allows a Public Contract to be entered into through use of an alternative method instead of through Competitive Bidding. An "exemption" may be for a specific Contract or Solicitation, or it may be for a class or category of Contracts.
- (28) **Facsimile** A document that has been transmitted to and received in a format that is capable of being received via a device commonly known as a facsimile machine.
- (29) **Foreign Contractor** A Contractor that is not domiciled in or registered to do business in the State of Oregon. *See* Rule 30-0130.
- (30) **Formal Quote** A Quote made in response to a Solicitation under Rule 310-0012(4).
- (31) **Good Faith Effort** The objectively demonstrated effort that a Bidder has exerted positive efforts in accordance with Bid requirements to maximize the use of Minority, Women-owned and Emerging Small Businesses through sub-contracting opportunities on the project being bid.
- (32) **Informal Quote** A Quote made in response to a Solicitation under Rule 310-0012(3)
- (33) **Invitation to Bid or ITB** The Solicitation of competitive, Written, Signed and sealed Bids in which Specification, price and delivery (or project completion) are the predominant award criteria.
- (34) **Life Cycle Costing** A method of determining the cost of a product for its estimated useful life, including its disposal.
- (35) **Minority Owned Business or MBE** A minority business concern described in ORS 200.005(6) and certified as such with the State of Oregon pursuant to ORS 200.055.
- (36) **Minority Individual** A person described in ORS 200.005(7).
- (37) **Nonresident Bidder** A Bidder described in ORS 279.029.
- (38) **Offer** A Bid, Proposal or Quote as applicable.
- (39) **Offeror** An Entity submitting a Bid, Proposal or Quote as applicable.
- (40) **Opening** The date, time and place announced in the Solicitation Document for the public opening of Written sealed Offers.
- (41) **Personal Services** Services as defined in Rule 340-1080.
- (42) **Prevailing Wage Rate** When used in these rules means the "prevailing rate of wage" defined in ORS 279.348(1).
- (43) **Product Sample** A representative specimen of the item offered by the Offeror in response to the Solicitation Document. Unless otherwise provided in the Solicitation Document, the Product Sample shall be the exact product or a representative portion of that product offered by the Offeror.
- (44) **Proposal** A competitive Offer, binding on the Proposer and submitted in response to a Request for Proposals.
- (45) **Proposer** An Entity that submits a Proposal in response to a Request for Proposals.

- (46) **Public Contract Review Board** The Board of County Commissioners acting as the local contract review board pursuant to ORS 279.055.
- (47) **Public Contract** Any purchase, lease, or sale by the County of personal property, Public Improvements or services other than agreements which are for personal service. See ORS 279.011 (6).
- (48) **Public Improvement** Projects for construction, reconstruction or major renovation on real property by or for the County. "Public Improvement" does not include Emergency Work, minor alteration, ordinary repair or maintenance necessary in order to preserve a Public Improvement. See ORS 279.011 (8)
- (49) **Public Works** Includes but is not limited to roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by the County the primary purpose of which is to serve the public interest, but does not include the reconstruction or renovation of privately owned property which is leased by the County. See ORS 279.348 (3).
- (50) **PUR-1** The County administrative procedure for use of the Request for Proposal process.
- (51) **QRF** An agency defined in ORS 279.835(4) to serve Disabled Individuals.
- (52) **Quote** A response to a Solicitation where the Solicitation is not made by an Invitation to Bid or a Request for Proposals. A Quote may be an Informal Quote or a Formal Quote. See Rule 310-0012
- (53) **Request for Proposals or RFP** A Solicitation Document calling for Proposals as set forth in Administrative Procedure PUR-1.
- (54) **Requirements Contract** An agreement in which the vendor agrees to supply all the purchaser's requirements for goods or services for an anticipated need at a predetermined price.
- (55) **Resident Bidder** A Bidder described in ORS 279.029.
- (56) **Responsible Offeror (also, Responsible Bidder or Responsible Proposer, as applicable)** An Entity that has submitted an Offer and meets the standards set forth in Rule 30-0100(1) (c) (H) and that has not been disqualified by the CPCA Manager under Rule 30-0110.
- (57) **Responsive Offer (also, Responsive Bid or Responsive Proposal, as applicable)** An Offer that substantially complies with applicable Solicitation procedures and requirements and the Solicitation Document.
- (58) **Retainage** As used in these Rules, "Retainage" has the meaning given in ORS 279.410.
- (59) **Sign, Signed or Signature** Any mark, word or symbol executed or adopted by an Entity evidencing an intent to be bound.
- (60) **Solicitation** A request by the County to receive Offers.
- (61) **Solicitation Document** A Written notice to prospective Offerors that the County wishes to receive Offers to purchase goods or services.
- (62) **Specification** Any description of the physical or functional characteristics, or of the nature of a supply, service or construction item, 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 the Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed.
- (63) **Woman or Women** As used in these Rules this term has the meaning set forth in ORS 200.005(10).
- (64) **Women Business Enterprise or WBE** A Women business concern described in ORS 200.005(6) and certified as such with the State of Oregon pursuant to ORS 200.055.
- (65) **Work** The furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and successful completion of all duties and obligations imposed by the Contract.
- (66) **Written or Writing** Conventional paper documents either manuscript or printed, in contrast to spoken words. It also includes electronic transmissions or Facsimile documents when required by applicable law or to the extent permitted by the Solicitation Document or Contract.

Source AG Model Rules 137-30-0000, DAS Rules, County Rules
Replaces 10.000

**DIVISION 15
AUTHORITY OF THE CPCA MANAGER**

15-0000 Authority of the CPCA Manager

- (1) The authority of the CPCA Manager is as follows:
- (a) Solicit and award all Contracts over the dollar limit set forth in Rule 310.0012 (1) on behalf of the County unless the Solicitation Document provides that the Contract shall be awarded by the County Chair or the Board.
 - (b) Purchase or contract for supplies, materials, equipment and services equal to or less than the dollar limit set forth in Rule 310.0012 (1);
 - (c) Delegate authority to make purchases for supplies, materials, equipment, and services equal to or less than the dollar limit set forth in Rule 310.0012 (1);
 - (d) Ensure compliance with all applicable federal and state laws, Multnomah County rules, policies and procedures governing public and personal services Contracts.
 - (e) Establish and enforce Specifications to procure supplies, materials, equipment and services.
 - (f) Execute County Contracts on behalf of the County Chair when authorized by the County Chair, using the signature of the County Chair and the initials or the name of the CPCA Manager.
 - (g) Recommend amendments to the Public Contract Review Board Administrative Rules to the Board and recommend amendments to County Administrative Procedures to the Chair;
 - (h) Develop procedures which comply with applicable statutes, rules, policies, resolutions and administrative procedures.
 - (i) Review and recommend action to be taken on Exemption requests over the dollar limit set forth in Rule 310.0012 (1).
 - (j) Review and approve or deny Exemption requests equal to or less than the dollar limit set forth in Rule 310.0012 (1).
 - (k) Manage and monitor county-wide Contracts required by county Departments for greater efficiency and economy.
 - (l) Adopt forms and procedures for all county purchases.
 - (m) Maintain a file of all original executed copies of Contracts.
 - (n) Maintain a county-wide Contracts information system.
 - (o) Manage the county contract approval process

Replaces County Rules 15.000, 15.003 and 15.006

**DIVISION 20
MISCELLANEOUS MATTERS**

20-0005 – Rules Applicable in Lieu of Model Rules

- (1) The model rules Adopted by the Attorney General shall not apply to Multnomah County. These rules shall apply in place of the model rules.

20-0010 Conflicts of Interest

- (1) **Definitions** The following definitions apply only to this section:

- (a) **Actual conflict of interest** Any action, decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated.
- (b) **Business** Any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal Entity operated for economic gain.
- (c) **Business with which the person is associated** Any business of which the person or the person's relative is a director, officer, owner or employee, or agent or any corporation in which the person or the person's relative owns or has stock worth \$1,000 or more at any time in the preceding calendar year.
- (d) **Potential conflict of interest** Any action or decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:
 - (A) An interest of membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.
 - (B) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative is associated, is a member or is engaged. The Board of Commissioners may by resolution limit the minimum size of or otherwise establish criteria for or identify the smaller classes that qualify under this exception.
 - (C) Membership in a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.
- (e) **Public official** Any person who, when an alleged violation of this chapter occurs, is serving Multnomah County as an elected official, officer, employee, or appointee on any commission, committee or similar advisory body, irrespective of whether the person is compensated for such services.
- (f) **Relative** The spouse of the public official, any children of the public official or of the public official's spouse, and brothers, sisters or parents of the public official or of the public official's spouse.
- (g) **Contract Official** Any public official responsible for processing, awarding, funding or monitoring a county Contract.
- (h) **Appointing authority** The elected official having administrative authority over the affected public official, or such elected official's designee.

(2) **Actual and Potential Conflicts of Interest**

- (a) Prior to taking any action in connection with a County Contract, every contract official shall

in Writing notify the contract official's appointing authority, the County Auditor and CPCA Manager of any actual conflict of interest or potential conflict of interest of such contract official with respect to such proposed Contract.

- (b) Upon receiving any information that a proposed Contract involves a potential conflict of interest or actual conflict of interest of any contract official, the County Auditor or designated representative shall review the contract award procedures for compliance with applicable laws and regulations.
- (c) No Contract shall be awarded or executed on behalf of the County without review and approval by the County Auditor if the County Auditor determines that any contract official has a potential conflict of interest or actual conflict of interest in connection with the Contract.

Former County Rules 15.010 and 15.015

Subsection (c) revised

20-0025 Annual Reports

- (1) The CPCA Manager shall file an annual report of purchasing activity by September 30 for the twelve-month period ending June 30 with the County Chair and the Board. The report shall contain the following:
 - (a) An index of Contracts, contract price and contractors.
 - (b) Information regarding Contracts with MBE, WBE and ESB enterprises as well as Qualified Rehabilitation Facilities.
 - (c) A summary of contract totals by Department for the prior and current year.
 - (d) A listing of Contracts awarded through the Solicitation process to contractors who did not score the highest evaluation or have the lowest Responsive Bid.
 - (e) A listing of Contracts exceeding the dollar limit set forth in Rule 310.0012 (1) for which only one Bid or Proposal was received.

Former County Rule 15.025 revised

20-0030 Unauthorized Purchases

- (1) An unauthorized purchase is any purchase of goods or services made without following County procurement requirements or without delegated authority.
- (2) The CPCA Manager may approve claims for payment arising from unauthorized purchases or may refer such claims to the Board for approval.
- (3) Prior to processing a request for approval of an unauthorized purchase, the CPCA Manager shall require the following information:
 - (a) Description of the goods or services furnished as a result of the unauthorized Contract;
 - (b) A detailed statement of facts relating to the unauthorized purchase, including the name and position of the person who made the unauthorized purchase and an explanation of the reason County procurement requirements were not followed;
 - (c) Documentation that the amount claimed by the Contractor is fair and reasonable;
 - (d) Copies of all invoices and other documents pertinent to the transaction;
 - (e) Verification that the goods or services have been received and accepted by the County;
 - (f) The cost center, WBS element or order code for the purchase;
 - (g) A statement of the steps taken or planned to prevent recurrence of such unauthorized purchase.

Former County Rule 15.030 revised

**DIVISION 30
PUBLIC PROCUREMENT RULES**

30-0005 Competitive Procurement

- (1) **Generally** The County shall award its Contracts by an ITB or RFP except as otherwise allowed or required in ORS 279.015(1)(a)—(h), (2), (3) or (4), 279.029(2), 279.053, 279.059(2), 279.095, 279.570, 279.850 or 282.210.
- (2) **Federal Provisions** If federal funds are involved, federal laws, Rules and regulations shall govern the provisions of ORS 279.011 to 279.063 and these Rules in the event of conflict.
- Stat. Auth.: ORS 279.049
Stats. Implemented: 279.015(1), 279.056
Replaces County Rule 40.010, 40.015

30-0009 Preferences – Recycled Materials – Resident Bidders

(1) **Preference for Recycled Materials**

- (a) **Definitions** The following definitions apply only to this section:
- (A) **Post-consumer Waste** A finished material which would normally be disposed of as solid waste, having completed its life cycle as a consumer item. "Post-consumer waste" does not include manufacturing waste
 - (B) **Recycled Material** Any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.
 - (C) **Recycled Paper** A paper product with not less than twenty five percent of its total weight consisting of post-consumer waste.
 - (D) **Recycled Product** All materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste, with not less than 10 percent of its total weight consisting of post-consumer waste. "Recycled product" also includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.
 - (E) **Secondary Waste Material** Fragments of products or finished products of a manufacturing process which has converted a virgin resource into a commodity of real economic value, and includes post consumer waste, but does not include excess virgin resources of the manufacturing process. For paper "secondary waste materials" does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.
- (b) **Policy** It is the policy of Multnomah County to purchase materials and products that are environmentally sound in their manufacture, use and disposal. The County shall give preference to the purchase of materials and supplies manufactured from recycled materials if:
- (A) The recycled product is available; and
 - (B) The recycled product meets applicable standards; and
 - (C) The recycled product can be substituted for a comparable non-recycled product; and
 - (D) The cost of the recycled product does not exceed the cost of the non-recycled product by more than five percent; or
 - (E) If the product is recycled paper, the cost does not exceed the cost of non-recycled paper by more than 15 percent.
- (c) **Development of Specifications** Departments shall review and work with the CPCA Manager to develop procurement Specifications that encourage the use of recycled products whenever

quality of a recycled product is functionally equal to the same product manufactured from virgin resources. Except for Specifications that have been established to preserve the public health and safety, all procurement and purchasing Specifications shall be established in a manner that encourages procurement and purchase of recycled products.

- (d) **Discretion to Give Preference** At its discretion, the County may give preference to the purchase of materials and supplies manufactured from recycled materials, even if the cost differential exceeds the five percent preference set forth in subsection (b) (D) of this rule, or the fifteen percent preference set forth in subsection (b) (E) of this rule.
- (e) **Required Solicitation Language** Any Written Solicitation under these Rules shall include the following language: "Vendors shall use recyclable products to the maximum extent economically feasible in the performance of the Contract Work set forth in this document."
- (f) **Awards to Maximize Recycling** In any Bid which the County has reserved the right to make multiple awards, the recycled product or recycled paper preference shall be applied to the extent possible to maximize the dollar participation of firms offering recycled products or recycled paper in the contract award.
- (g) **Required Specifications** The County shall require the Bidder to specify the minimum, if not the exact, percentage of recycled paper in the paper products or recycled product in products offered, and both the post-consumer waste and secondary waste material content regardless of whether the product meets the percentage of recycled material specified for recycled paper or recycled products in ORS 279.545. For paper products, the County also shall require that the Bidder specify the fiber type. The Bidder may certify a zero percent recycled paper or product. All Contract provisions impeding the consideration of products with recycled paper or recycled products shall be deleted in favor of performance standards.
- (h) **Requirements for Oils** The County shall require that purchases of lubricating oil and industrial oil be made from the seller whose oil products contain the greater percentage of recycled oil, unless a specific oil product containing recycled oil is:
 - (A) Not available within a reasonable period of time or in the quantities necessary to meet a Department's needs;
 - (B) Not able to meet the performance requirements or standards recommended by the equipment or vehicle manufacturer, including any warranty requirements; or
 - (C) Available only at a cost of the comparable virgin oil products or other percent preference established by the County under ORS 279.570(3).

(2) **Reciprocal Preference Law Guidelines –Resident Bidders**

- (a) When the lowest Responsible Bidder is a Nonresident Bidder, the CPCA Manager shall apply the in-state preferences described in ORS 279.029.

Statutory Authority: ORS 184.305, 184.340, 279.712

Stats. Implemented: ORS 279.029

30-0010 Solicitation Methods

- (1) **Policy** It is the policy of Multnomah County to encourage open and impartial competition in public contracting. The County may establish competition by comparing price, product and service quality, product performance, and an Entity's ability to perform, technical competence, ability to make timely deliveries. While an Invitation to Bid is a common method of procurement, it is not always the most advantageous or practical Solicitation method. But a Department must make every effort to construct Public Improvements at the least cost to the County.

(2) **Solicitation Methods**

- (a) A Department may encourage meaningful competition through a variety of Solicitation methods. Subject to the conditions and limitations set forth in ORS Chapter 279 and these Rules, the Department shall choose the Solicitation method that is most likely to encourage Offers representing optimal value to the County.

- (A) A Department may use an Invitation to Bid if the Department believes it will receive optimal value by selecting the lowest priced Offer that meets the technical requirements of the Department's Specifications.
- (B) A Department may use a Request for Proposal if a Department believes it will receive optimal value:
 - (i) by selecting an Offer using both price and non-price related factors, or
 - (ii) by selecting an Offer using both price and non-price related factors and permitting discussions or negotiations pursuant to Rule 30-0090.
- (C) A Department may permit discussions or negotiations under a Request for Proposal pursuant to Rule 30-0090 if:
 - (i) The Department intends to consider alternative terms and conditions to reduce County cost or enhance the value of the product or service requested, or
 - (ii) The Department determines that discussions or negotiation is required to effect a successful procurement (e.g. the Specifications are complex and the Department expects numerous queries as to the proper interpretation of the Specification); the Work requires a high level of technical or managerial competence that cannot be defined adequately in the Specifications; or the Department believes discussions or negotiations are necessary to gauge the Proposer's understanding of complex Specifications.

(3) Solicitation Documents The Solicitation Document for ITBs and RFPs shall include each of the following items:

(a) General Information

- (A) Notice of any pre-Offer conference as follows:
 - (i) The time, date and location of any pre-Offer conference; and
 - (ii) Whether attendance at the conference will be mandatory or optional; and
 - (iii) That statements made by the County's representatives at the conference are not binding upon the County unless confirmed by Written Addendum.
- (B) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;
- (C) The name and title of the authorized person designated for receipt of Offers and contact person (if different);
- (D) Instructions and information concerning submission requirements including Opening and Closing, the address of the office to which Offers must be delivered, the contact person for the Solicitation and any other special information, e.g., whether Offers may be submitted by Facsimile or electronic data interchange under an EDI Operating Agreement,
- (E) The time, date and place of Opening;
- (F) The time and date of Closing after which Offers will not be accepted shall be not less than five Days after the date of the last publication of the advertisement. The interval between the date of issuance of the Solicitation Document and Closing should not be less than 14 Days for an ITB and not less than 30 Days for RFP unless the Department finds a shorter interval is in the public's interest. If an ITB is issued that may result in a Contract for a Public Improvement with a value in excess of the dollar limit set forth in Rule 310.0012 (1), the Closing shall not be set for at time when a Department is closed to the public or after 12 noon on Friday (see also, Rule 40-0017; for timing issues relating to Addenda see Rule 30-0055(3));
- (G) The form and submission of Offers and any information required therein, including Bid or Proposal security, if any;
- (H) The office where the Specifications for the Work or goods may be reviewed;
- (I) A statement that each Bidder to an ITB must identify whether the Bidder is a "Resident Bidder," as defined in ORS 279.029;

- (J) If the Contract resulting from a Solicitation will be a Contract for Public Works subject to ORS 279.348 to 279.380 or the Davis-Bacon Act (40 U.S.C. 276a), a statement that no Offer will be received or considered by the Department unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279.350 or 40 U.S.C. 276a.";
 - (K) If the Work so requires, a statement that the Department will not receive or consider an Offer from an Entity when the Entity is not registered with the Construction Contractors Board or is not licensed by the State Landscape Contractors Board as required by ORS 671.530;
 - (L) Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720;
 - (M) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279.111. (See Rule30-0100(3));
 - (N) How the CPCA Manager will notify Offerors of Addenda and how the Addenda will be made available. See Rule 30-0055.
- (b) Department Need. The character of the Work or goods the Department is purchasing including, if applicable, description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements and evaluation criteria which the Department will use to determine the lowest Responsible Bidder or highest scoring Responsible Proposer;
- (c) Evaluation process.
- (A) A statement that the CPCA Manager may reject any Offer not in compliance with all prescribed Solicitation requirements and other applicable laws, and that the CPCA Manager may reject for good cause any or all Offers upon the CPCA Manager's finding that it is in the public interest to do so;
 - (B) The anticipated schedule, deadlines, protest process, and evaluation process, if any;
 - (C) Evaluation criteria, including the relative value applicable to each criterion, that the Department will use to determine the Responsible Bidder with the lowest Responsive Bid or the Responsible Proposer or Proposers with the highest scoring Responsive Proposal or Proposals and the evaluation criteria the Department will use to determine acceptability of any Work or goods to be purchased;
 - (i) If the Solicitation Document is an Invitation to Bid, the Department shall set forth objective evaluation criteria in the Solicitation Document. Examples of such criteria include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, ownership or life-cycle cost formulas, performance history on other private and public contracts, experience of key personnel, adequacy of equipment and physical plant, financial wherewithal, sources of supply, references and warranty provisions. Evaluation criteria need not be precise predictors of actual future costs; but to the extent possible, such evaluation factors shall be reasonable estimates based upon information the Department has available concerning future use;
 - (ii) If the Solicitation Document is a Request For Proposal, the Department shall set forth selection criteria in the Solicitation Document. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment and/or physical plant, financial wherewithal, sources of supply, references and warranty provisions; The criteria shall be as objective as possible. Evaluation factors need not be precise predictors of actual future costs and performance;

but to the extent possible, such evaluation factors shall be reasonable estimates based on information available to the Department.

- (iii) If the Solicitation Document is a Request for Proposal and the Department is willing to negotiate terms and conditions of the Contract or allow submission of revised Proposals following discussions, the Department must identify the specific terms and conditions in the Solicitation Document that are subject to negotiation or discussion and authorize Offerors to propose certain alternative terms and conditions in lieu of the terms and conditions the Department has identified as authorized for negotiation. The Department must describe the evaluation and discussion or negotiation process consistent with Rule 30-0090;
 - (iv) If the Solicitation Document is a Request for Proposals and the Department intends to award Contracts to more than one Proposer, the Department must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will award. The Department shall also include the criteria it will use to determine how the Department will endeavor to achieve optimal value, utility and substantial fairness when selecting a particular Contractor to provide goods or services from those Contractors awarded Contracts;
- (D) Reference to the preferences in Rule 30-0009 and a statement that, "Vendors shall use recyclable products to the maximum extent economically feasible in the performance of the contract Work set forth in this document."
- (d) Terms and conditions that will apply to the Contract, including applicable terms and conditions, warranties and bonding requirements the Department considers necessary and, if it allows discussions or negotiations, then it must also specify the terms and conditions or subject matter reasonably related to the terms and conditions that it will negotiate. The Department shall include in the Contract terms and conditions as prescribed by ORS 279.310 to 279.650 the following terms and conditions, as applicable:
- (A) Payment of all Entities furnishing labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279.312);
 - (B) If the Contract is for a Public Improvement, a condition that the Contractor shall demonstrate it has established a drug-testing program for employees;
 - (C) If the Contract calls for demolition work described in ORS 279.313(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;
 - (D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective;
 - (E) Payment of claims by public officers (ORS 279.314);
 - (F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279.314;
 - (G) Entity's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279.314);
 - (H) Hours of labor in compliance with ORS 279.316 and 279.338;
 - (I) Environmental and natural resources regulations (ORS 279.318);

- (J) Payment for medical care and attention to employees (ORS 279.320);
- (K) Maximum hours and overtime (ORS 279.334);
- (L) Claims for overtime (ORS 279.336);
- (M) Overtime requirement for local governments (ORS 279.340 and 279.342);
- (N) Prevailing wage rates (ORS 279.348 to 279.365);
- (O) Fee paid to BOLI (ORS 279.352);
- (P) Retainage (ORS 279.400 to 279.430 and 279.435);
- (Q) Prompt payment policy (ORS 279.435);
- (R) Contractor's relations with subcontractors (ORS 279.445);
- (S) Notice of claim (ORS 279.528);
- (T) Provisions regarding use of recovered resources and recycled materials;
- (U) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS 279.320(2));
- (V) 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; and
- (W) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279.111. (*See* Rule 30-0100(3));

(4) Additional Terms and Conditions

- (a) The Department may include additional terms and conditions as applicable in the Solicitation Document. If federal grant funds are involved, the federal laws, rules and regulations applicable to the grant shall govern to the extent provided by the grant documents.
- (b) The Solicitation Document may also provide, where applicable:
 - (A) "Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the Department's prior Written consent. Unless otherwise agreed by the Department in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the Department consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the Department for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the Department otherwise agrees in Writing," and
 - (B) "An Offeror is responsible for knowing and understanding the terms and conditions included in or applicable to a Solicitation Document," and

- (C) "By signing and returning the Offer the Offeror acknowledges acceptance of and agrees to be bound by the terms and conditions of the Contract. If the Request for Proposal authorizes proposal of alternative terms under Rule 30.0015 the Offeror agrees to be bound by the nonnegotiable terms and conditions of the Contract and any proposed terms and conditions offered for negotiation upon the Department's Written acceptance of the proposed terms and conditions."

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.005, 279.007, 279.017, 279.021(1), 279.027, 279.029(2) & (3), 279.033, 279.310 279.650, 279.748, 305.385, 701.005, 701.055

30-0011 Brand Name Products

- (1) **Generally** A Department's Solicitation Document shall not expressly or implicitly require any product by brand name or mark, nor shall it require the product of any particular manufacturer or seller, except pursuant to an Exemption granted under Rule 310-0010.
- (2) **Equivalents** If there is no other practical method of Specification, a Department may identify products by brand names so long as the following language: "approved equal"; "or equal"; "approved equivalent" or "equivalent", or similar language is included in the Solicitation Document. The Department shall determine, in its sole discretion, whether an Offeror's alternate product is "equal" or "equivalent".

Stat. Auth.: ORS 279.049

Stats. Implemented: 279.017(1) & (2)

Replaces 20.010

30-0012 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 Offer is a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the County's acceptance for 30 Days unless otherwise specified in the Solicitation Document. The County's award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.
- (2) **Responsive Offer** The County may award a Contract only to a Responsible Offeror with a Responsive Offer.
- (3) **Contingent Offers** Except to the extent the Proposer is authorized to propose certain terms and conditions pursuant to Rule 30-0010 and 30-0090, a Proposer shall not make its Offer contingent upon the County's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.
- (4) **Offeror's Acknowledgement** By signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.029, 279.035, 279.037

30-0013 Facsimile Bids and Proposals

- (1) **Authorization** Upon approval by the CPCA Manager a Department may specify in the Solicitation Documents that Offerors are permitted to submit Facsimile Offers. If Bid or Proposal security is or will be required, use of Facsimile Offers will not be approved unless the Department has arranged for another method for receipt of such security.

Stat. Auth. : ORS 279.049

Stats. Implemented: ORS 279.027

30-0014 Use of Electronic Data Interchange

- (1) **Authorization** Upon approval by the CPCA Manager a Department may specify in the Solicitation Documents that Offerors are permitted to submit EDI Offers. If Bid or Proposal security is or will be required, use of EDI Offers will not be approved unless the Department has arranged for another method for receipt of such security.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.027, 279.049

30-0015 Public Notice of Solicitation

- (1) **Notice and Distribution Fee** The CPCA Manager shall furnish Notice to a sufficient number of Entities 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 Notice may provide for a fee or require a deposit for the Solicitation Document. The CPCA Manager may furnish Notice using any method determined to foster and promote competition, including:

- (a) Mail notice of the availability of Solicitation Documents ("Notice") to Entities that have expressed an interest in the County's procurements; or
- (b) Place Notice on the Oregon Department of Administrative Services' electronic procurement system; or
- (c) Place Notice on the County's internet website.

- (2) **Advertising** Every Solicitation for Contracts in excess of the dollar limit set forth in Rule 310.0012(1) shall be advertised.

- (a) Unless the CPCA Manager publishes by Electronic Advertisement, the CPCA Manager shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the CPCA Manager or the Department may determine to be necessary or desirable to foster and promote competition.
- (b) The CPCA Manager may publish any advertisement for Offers by Electronic Advertisement.
- (c) In addition to the Department's publication required under subsection 2(a) or 2(b), the advertisement for Offers shall be published in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of \$125,000.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.007, 279.025, 200.035

30-0020 Offer Preparation

- (1) **Instructions** An Offeror shall submit and Sign its Offer in accordance with the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to the Closing in accordance with the requirements for submitting an Offer under the Solicitation Document.
- (2) **Forms** An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.
- (3) **Documents** An Offeror shall provide all documents and Descriptive Literature required under the Solicitation Document.
- (4) **Facsimile or EDI Submissions** The County shall not consider Facsimile or EDI Offers unless authorized by the Solicitation Document.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.027

30-0030 Offeror Submissions

- (1) **Product Samples and Descriptive Literature** A Department may require Product Samples or Descriptive Literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The Department will dispose of Product Samples, or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.
- (2) **Identification of Offers** To ensure proper identification and handling, Offers shall be submitted in a sealed envelope or package. If the Offer is submitted by Facsimile or EDI, the Offeror shall identify the Offer in accordance with the requirements of the Solicitation Document.
- (3) **Receipt of Offers** The Offeror is responsible for ensuring the Offer is received at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.
Stat. Auth.: ORS 279.049
Stats. Implemented: ORS 279.027

30-0035 Bid or Proposal Security

- (1) **Security Amount** If the County requires Bid or Proposal security, it shall not be more than 10% of the Offeror's Bid or Proposal. A Department shall not use Bid or Proposal security to discourage competition. A Department may, in its discretion, waive the bid security requirements of ORS 279.027 for Contracts other than those for Public Improvements. The Solicitation Document shall expressly provide for any Bid or Proposal security. The Offeror shall forfeit Bid or Proposal security after award if the Offeror fails to Sign the Contract promptly and properly
- (2) **Public Improvement Contracts** A Department shall require Bid or Proposal security for its Solicitation of Offers for Public Improvements, except that a Department may, in its discretion, waive the bid security requirements of ORS 279.027 if the amount of the Contract for the Public Improvement is equal to or less than the dollar limit set forth in Rule 310.0012(1).
- (3) **Form of Bid or Proposal Security** Only the following forms of Bid or Proposal security may be accepted:
 - (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 Offeror's certified check.
- (4) **Return of Security** The CPCA Manager shall return or release the Bid or Proposal security of all unsuccessful Offerors 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 Bid or Proposal security of unsuccessful Offerors may be returned prior to award if the return does not prejudice 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.
Stat. Auth.: ORS 279.049
Stats. Implemented: ORS 279.027(4), 279.031, 279.033, 279.722
Replaces 50.010, 50.020

30-0040 Pre-Offer Conferences

- (1) **Purpose** The County may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the procurement requirements, obtain information, or to conduct site inspections.
- (2) **Required attendance** The Department may require attendance at the pre-Offer conference as a condition for making an Offer.
- (3) **Scheduled time** Pre-Offer conferences shall be held within a reasonable time after the Solicitation

Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that 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 CPCA Manager confirms such statements with a Written Addendum to the Solicitation Document.
- (5) **Announcement** The CPCA Manager must set forth notice of any pre-Offer conference in the Solicitation Document.
Stat. Auth.: ORS 279.049
Stats. Implemented: ORS 279.007, 279.027

30-0050 Solicitation Protest; Request for Change; Request for Clarification

(1) Protest

(a) **Delivery** An Offeror may protest Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to the CPCA Manager not less than 10 Days prior to Closing;

(b) Content of Protest

(A) An Offeror's Written protest shall include:

- (i) A detailed statement of the legal and factual grounds for the protest; and
- (ii) A description of the resulting prejudice to the Offeror; and
- (iii) A statement of the desired changes to the Contract terms and conditions, including Specifications.

(B) An Offeror shall mark its protest as follows:

- (i) Solicitation Specification or Contract Provision Protest; and
- (ii) Solicitation Document Number (or Other Identification as specified in the Solicitation Document).

(2) Request for Change

(a) **Delivery** An Offeror may request in Writing a change to the Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver the Written request for change to the CPCA Manager not less than 10 Days prior to Closing;

(b) Content of Request or Change

(A) An Offeror's Written request for change shall include a statement of the requested changes to the Contract terms and conditions, including Specifications together with the reason for the requested change.

(B) An Offeror shall mark its request for change as follows:

- (i) Solicitation Specification or Contract Provision Request for Change; and
- (ii) Solicitation Document Number (or Other Identification as specified in the Solicitation Document)

(3) **Response to Protest or Request for Change** The CPCA Manager shall not be required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The CPCA Manager shall provide notice to the applicable Entity if it entirely rejects a protest. If the CPCA Manager agrees with the Entity's request or protest, in whole or in part, the CPCA Manager shall issue an Addendum reflecting the determination.

(4) **Extension of Closing** If the CPCA Manager receives a Written request for change or protest from an Offeror in accordance with this Rule, the CPCA Manager may extend Closing if the CPCA Manager determines an extension is necessary to consider the request or protest and to issue an Addendum, if any, to the Solicitation Document.

- (5) **Clarification** Prior to the deadline for submitting a Written request for change or protest, an Offeror may request that the CPCA Manager clarify any provision of the Solicitation Document. The CPCA Manager's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the County unless the CPCA Manager amends the Solicitation Document by Addendum.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.017, 279.023, 279.027, 279.067

30-0055 Addenda to a Solicitation Document

- (1) **Issuance; Receipt** The CPCA Manager may change a Solicitation Document only by Written Addenda. All Offers in response to Solicitations for the construction of Public Improvements shall include a Written acknowledgement of receipt of all issued Addenda with its Offer, unless the CPCA Manager otherwise specifies in the Addenda.
- (2) **Notice and Distribution** The CPCA Manager shall notify prospective Offerors of Addenda. The Solicitation Document shall specify how notice of Addenda will be provided.
- (3) **Timelines; Extensions** Except to the extent required by public interest, the CPCA Manager shall not issue Addenda less than five Days before the Closing unless the Addendum also extends the Closing.
- (4) **Request for Change or Protest** Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum by the close of the CPCA 's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest, whichever date is later. The CPCA Manager shall consider only an Offeror's request for change or protest to the Addendum; the CPCA Manager shall not consider a request for change or protest to matters not addressed in the Addendum if the deadline for protests has passed.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.035, 279.049

30-0060 Pre-Opening Modification or Withdrawal of Offers

- (1) **Modifications** An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the CPCA Manager. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:

Bid (or Proposal) Modification

Solicitation Number (or Other Identification as specified in the Solicitation Document)

- (2) **Withdrawals**

- (a) An Offeror may withdraw its Offer by Written notice, Signed by an authorized representative of the Offeror, delivered to the location specified in the Solicitation Document and received by the CPCA Manager prior to the Closing;
- (b) The CPCA Manager may release an unopened Offer withdrawn under subsection 2(a) to the Offeror or its authorized representative, after voiding any date and time stamp mark;
- (c) The Offeror shall mark the Written request to withdraw an Offer as follows:

Bid (or Proposal) Withdrawal

Solicitation Number (or Other Identification as specified in the Solicitation Document)

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.025(2), 279.027, 279.049, 279.029(6) (a), 279.035

30-0065 Receipt, Opening, and Recording of Offers.

- (1) **Receipt** All Offers and modifications of Offers shall be electronically or mechanically time-stamped

or hand-marked upon receipt. The CPCA Manager shall not open the Offer or modification, but shall store it in a secure place until Opening. If the CPCA Manager opens an Offer or a modification prior to the Opening, the CPCA Manager shall reseal and store the opened Offer or modification for Opening. The CPCA Manager shall document the resealing for the Solicitation file.

- (2) **Opening and Recording** The CPCA Manager shall publicly open Offers including any modifications. In the case of Invitations to Bid, to the extent practicable, the CPCA Manager shall read aloud the name of each Bidder, the Bid price(s), and such other information as the CPCA Manager considers appropriate.
- (3) **Availability** After Opening, the CPCA Manager shall make the Offers available for public inspection except for those portions of an Offer that the Offeror 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 such designation is not in accordance with applicable law, those portions shall be made available for public inspection. The Offeror shall separate information designated as confidential from nonconfidential information at the time of submitting its Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be publicly available regardless of an Offeror's designation to the contrary.
Stat. Auth.: ORS 279.049

30-0070 Late Offers, Late Withdrawals and Late Modifications

- (1) Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The CPCA Manager shall not consider late Offers, withdrawals or modifications.
Stat. Auth.: ORS 279.049
Stats. Implemented: CR5 279.027, 279.035

30-0075 Mistakes

- (1) **Treatment of Mistakes** An Offeror may not correct or withdraw an Offer for an error in judgment. If the CPCA Manager discovers certain mistakes in an Offer after Opening, but before award of the Contract, the CPCA Manager may take the following action:
 - (a) Waive, or permit an Offeror 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 Offerors. Examples of minor informalities include an Offeror's failure to:
 - (A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;
 - (B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and
 - (C) Acknowledge receipt of an Addendum to the Solicitation Document, provided: it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms.
 - (b) The CPCA Manager 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 Offeror confirms the correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical 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) . In the event of a discrepancy, unit

- prices shall prevail over extended prices.
- (c) The CPCA Manager may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:
 - (A) The nature of the error; and
 - (B) That the error is not a minor informality under this subsection or an error in judgment;
 - (C) That the error cannot be corrected or waived under subparagraph (b) of this subsection; and
 - (D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists; and
 - (E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error; and
 - (F) That the Offeror will suffer substantial detriment if the County does not grant it permission to withdraw the Offer; and
 - (G) That the County's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the County or the public it represents; and
 - (H) That the Offeror promptly gave notice of the claimed error to the County.
 - (d) The criteria in subsection (1)(c) of this Rule shall determine whether the CPCA Manager will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question whether the CPCA Manager will permit an Offeror to withdraw its Offer without forfeiture of its bid bond (or other bid security), or without liability to the County based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the County, whether by award to the next lowest Responsive and Responsible Bidder or the best Responsive and Responsible Proposer, or by resort to a new Solicitation.

- (2) **Rejection for Mistakes** The CPCA Manager 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.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.029, 279.035

30-0080 Time for Department Acceptance

- (1) An Offeror's Offer is a firm Offer, irrevocable, valid and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document.

Stat. Auth.: ORS 279.049

Stats. Implemented: CR5 279.029(1)

30-0085 Extension of Time for Acceptance of Offer

- (1) The CPCA Manager may request, orally or in Writing, that Offerors extend, in Writing, the time during which the CPCA Manager may consider their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.029(1)

30-0090 Offer Evaluation and Award

- (1) **General** If awarded, the CPCA Manager shall award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the highest scoring Responsive Proposal or Proposals. The CPCA Manager 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.

(2) **Department Evaluation** The Department shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The Department shall not evaluate an Offer using any other requirement or criterion.

(3) **Offeror Submissions.**

(a) A Department may require an Offeror to submit Product Samples, Descriptive Literature, technical data, or other material and may also require any of the following prior to award:

(A) Demonstration, inspection or testing of a product prior to award for characteristics such as quality or workmanship; or

(B) Examination of such elements as appearance, finish, taste, or feel; or

(C) Other examinations to determine whether the product conforms to Specifications.

(b) The Department shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The CPCA Manager shall reject an Offer providing any product that does not meet the Solicitation Document requirements. The CPCA Manager's rejection of an Offer because it offers nonconforming Work or goods is not Disqualification and is not appealable under ORS 279.043.

(4) **Evaluation of Bids** The Department shall use only objective criteria to evaluate Bids as set forth in the ITB. The Department shall evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid.

(a) **Nonresident Bidders** In determining the lowest Responsive Bid, the CPCA Manager shall 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.

(b) **Clarifications** In evaluating Bids, the CPCA Manager may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification shall not vary, contradict or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications shall become part of the Bidder's Bid.

(c) **Negotiation Prohibited** A Department shall not negotiate scope of Work or other terms or conditions under an Invitation to Bid process.

(5) **Evaluation of Proposals**

(a) **Evaluation** The Department shall only evaluate Proposals in accordance with criteria set forth in the RFP and applicable law. The Department shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.

(A) **Clarifications** In evaluating Proposals, a Department may seek information from a Proposer only to clarify the Proposer's Proposal. Such clarification shall not vary, contradict or supplement the Proposal. A Proposer must submit Written and Signed clarifications and such clarifications shall become part of the Proposer's Proposal.

(B) **Limited Negotiation** If the Department did not permit negotiation in accordance with Rule 30-0010 in its Request for Proposals, the Department may, nonetheless, negotiate with the highest-ranked Proposer, but may only negotiate:

(i) Nonmaterial changes to the statement of work, and

(ii) Contract Price as it is affected by negotiating the statement of work. The process for discussions or negotiations that is outlined and explained in subsection (5)(b) and sections (6) through (8) of this Rule does not apply to this limited negotiation.

(b) **Discussions; Negotiations** If the Department permitted discussions or negotiations in the Request for Proposals in accordance with Rule 30-0010, the Department shall evaluate Proposals and establish the Competitive Range in accordance with Rule 30-0090(6), and may

conduct discussions in accordance with Rule 30-0090(7) and negotiations in accordance with Rule 30-0090(8).

- (A) If the Solicitation Document provided that discussions or negotiations may occur at the Department's discretion, the Department may forego discussions and negotiations and evaluate all Proposals in accordance with subsection 5(a) of this Rule.
- (B) If the Department proceeds with discussions or negotiations, the Department shall establish a negotiation team tailored for the acquisition. The Department's team may include legal, technical and negotiating personnel.
- (c) Nothing in sections (5) through (8) of this rule shall restrict or prohibit the Department from canceling the Solicitation at any time in accordance with Rule 30-0115.

(6) Competitive Range; Protest; Award

- (a) **Determining Competitive Range** If the CPCA Manager does not cancel the Solicitation, after the Opening the Department will evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the Department will determine and rank the Proposers in the Competitive Range.
 - (A) The Department may increase the number of Proposers in the Competitive Range if the Department's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the best Proposer after the Department's evaluation of revised Proposals submitted in accordance with the process described in Rule 30-0090(7).
- (b) **Protesting Competitive Range** The CPCA Manager shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Proposer that is not within the Competitive Range may protest the Department's evaluation and determination of the Competitive Range in accordance with Rule 30-0104. After Opening, all Proposals are open for public inspection subject to the Oregon Public Records Law.
- (c) **Intent to Award; Discuss or Negotiate** After the protest period provided in accordance with paragraph 6(b) expires, or after the CPCA Manager has provided a final response to any protest, whichever date is later, the CPCA Manager may either:
 - (A) Provide Written notice to all Proposers in the Competitive Range of its intent to award the Contract to the highest-ranked Proposer in the Competitive Range.
 - (i) An unsuccessful Proposer may protest the intent to award in accordance with Rule 30-0104.
 - (ii) After the protest period provided in accordance with Rule 30-0104 expires, or after the final response to any protest, whichever date is later, the Department shall commence final Contract negotiations in accordance with Rule 30-0090(8) with the highest-ranked Proposer in the Competitive Range; or
 - (B) Engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them as set forth in Rule 30-0090(7), and, following such discussions and receipt and evaluation of revised Proposals, conduct negotiations as set forth in Rule 30-0090(8) with the Proposers in the Competitive Range.

(7) Discussions; Revised Proposals If the Department chooses to enter into discussions with and receive revised Proposals from the Proposers in the Competitive Range (See paragraph (6)(c)(B), above), the Department shall proceed as follows:

- (a) **Initiating Discussions** The Department shall initiate oral or Written discussions with all of the Proposers in the Competitive Range regarding their Proposals with respect to the provisions of the RFP that the Department identified in the RFP as the subject of discussions. The Department may conduct discussions for the following purposes:
 - (A) Informing Proposers of deficiencies in their initial Proposals;

- (B) Notifying Proposers of parts of their Proposals for which the Department would like additional information; and
 - (C) Otherwise allowing Proposers to develop revised Proposals that will allow the Department to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.
- (b) **Conducting Discussions** The Department may conduct discussions with each Proposer in the Competitive Range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions with each Proposer. The Department may terminate discussions with any Proposer in the Competitive Range at any time. However, the Department shall offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with Department before the Department notifies Proposers of the date and time pursuant to this section that revised Proposals will be due.
- (A) In conducting discussions, the Department:
 - (i) shall treat all Proposers fairly and shall not favor any Proposer over another; and
 - (ii) shall not discuss other Proposers' Proposals; and
 - (iii) shall not suggest specific revisions that a Proposer should make to its Proposal, and shall not otherwise direct the Proposer to make any specific revisions to its Proposal.
 - (B) At any time during the time allowed for discussions, the Department may:
 - (i) continue discussions with a particular Proposer; or
 - (ii) terminate discussions with a particular Proposer and continue discussions with other Proposers in the Competitive Range; or
 - (iii) conclude discussions with all remaining Proposers in the Competitive Range and provide notice to the Proposers in the Competitive Range to submit revised Proposals.
- (c) **Revised Proposals** If the CPCA Manager does not cancel the Solicitation at the conclusion of the Department's discussions with all remaining Proposers in the Competitive Range, the CPCA Manager shall give all remaining Proposers in the Competitive Range notice of the date and time by which they must submit revised Proposals. This notice constitutes the Department's termination of discussions, and Proposers must submit revised Proposals by the date and time set forth in the notice.
- (A) Upon receipt of the revised Proposals, the Department shall score the revised Proposals based upon the evaluation criteria set forth in the Request for Proposals, and rank the revised Proposals based on the Department's scoring.
 - (B) The Department may only conduct discussions and accept one revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the Request for Proposals.
- (d) **Intent to Award; Protest** The CPCA Manager shall provide Written notice to all Proposers in the Competitive Range of the Department's intent to award the Contract. An unsuccessful Proposer may protest the Department's intent to award in accordance with Rule 30-0104. After the protest period provided in accordance with Rule 30-0104 expires, or after the Department has provided a final response to any protest, whichever date is later, the Department shall commence final Contract negotiations in accordance with Rule 30-0090(8).

(8) Negotiations

- (a) **Initiating Negotiations** The Department may determine to commence negotiations with the highest-ranked Proposer in the Competitive Range following the:
 - (A) Initial determination of the Competitive Range (See paragraph (6)(c)(A) of this Rule); or
 - (B) Conclusion of discussions with all Proposers in the Competitive Range and evaluation of revised Proposals (See paragraph (6)(c)(B) of this Rule).
- (b) **Conducting Negotiations.**

- (A) **Scope** The Department may negotiate:
 - (i) the statement of Work; and
 - (ii) the Contract Price as it is affected by negotiating the statement of Work; and
 - (iii) any other terms and conditions reasonably related to those expressly authorized for negotiation in the Request for Proposals. Accordingly, Proposers shall not submit, and Department shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Request for Proposals.
- (B) **Terminating Negotiations** At any time during discussions or negotiations that the Department conducts in accordance with sections (7) and (8) of this rule, the Department may terminate discussions or negotiations with the highest-ranked Proposer, or the Proposer with whom it is currently discussing or negotiating, if the Department reasonably believes that:
 - (i) the Proposer is not discussing or negotiating in good faith; or
 - (ii) further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.
- (C) **Continuing Negotiations** If the Department terminates discussions or negotiations with a Proposer in accordance with paragraph (B) above, the Department may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in subsection (8)(b) of this rule until the Department has determined either:
 - (i) to award the Contract to the Proposer with whom it is currently discussing or negotiating, or
 - (ii) has completed one round of discussions or negotiations with all Proposers in the Competitive Range, unless the Department provided for more than one round of discussions or negotiations in the Request for Proposals.

(4) Life Cycle Costing

- (a) In determining the lowest Bid or highest scoring Proposal in the award of a Contract, a Department may use the concept of Life Cycle Costing if:
 - (A) At the time of Writing Specifications for the product, the Department identifies the factors which will have cost implications over the life of the product and which, for evaluation purposes, will be used to adjust the Bid or Proposal price of the product; and
 - (B) The Solicitation Document sets out clearly the factors and evaluation method to be used in life cycle cost adjustments; and
 - (C) The Life Cycle Costing adjustments set forth in the Solicitation Document are applied to the Bid or Proposal price of the product(s) offered so that the lowest Bid or highest scoring Proposal for purposes of Bid or Proposal price evaluation is the Bid or Proposal that results in the lowest overall ownership cost taking into account the Life Cycle Costing adjustments.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.005, 279.007, 279.015, 279.027, 279.029, 279.035

Replaces 10.125 (Life Cycle Costing)

30-0095 Low Tie Offers

- (1) **Definition** Low Tie Offers are two or more identical Responsive, Responsible Offers, or if the Solicitation Document was a Request for Proposals, two or more Proposals from Responsible Proposers which have received identical scores.
- (2) **Award** In the event of a low tie Offer, if a Contract is awarded, the CPCA Manager 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 279.021(1) shall be preferred.
- (b) The County shall then prefer the Offer of the Offeror whose principal offices or headquarters are located in Oregon.
- (c) If a Tie Offer remains after application of subsections 2(a) and (b), the CPCA Manager shall award the Contract by drawing lots among any tied Oregon Offerors. Such Offerors shall be given notice and an opportunity to be present when the lots are drawn;

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.021, 279.029

30-0100 Rejection of an Offer

(1) Rejection of an Offer

- (a) The CPCA Manager may reject any Offer upon finding that to accept the Offer may impair the integrity of the procurement process or that rejecting the Offer is in the public interest.
- (b) The CPCA Manager shall reject an Offer upon finding that the Offer:
 - (A) is contingent upon acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document, or
 - (B) takes exception to terms and conditions (including Specifications) , or
 - (C) attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law; or
 - (D) offers Work or goods that fail to meet the Specifications of the Solicitation Document; or
 - (E) is late; or
 - (F) is not in substantial compliance with the Solicitation Documents; or
 - (G) is not in substantial compliance with all prescribed public solicitation procedures; or
 - (H) omits or is unclear as to the price or the price cannot be determined in the Bid or Proposal documents; or
 - (I) requires a delivery date different from that required in the ITB or RFP; or
 - (J) contains a deviation which, if the Bid or Proposal were accepted, would give the Offeror a substantial advantage or benefit not shared by other Offerors; or
 - (K) the Bid or Proposal security has not been submitted or properly executed as required by the Solicitation Documents.
- (c) The CPCA Manager shall reject an Offer upon finding that the Offeror:
 - (A) has not been prequalified and the Department required mandatory prequalification; or
 - (B) has been Disqualified; or
 - (C) has been declared ineligible under ORS 279.361 by the Commissioner of Bureau of Labor and Industries and the Contract is for Public Works; or
 - (D) is listed as not qualified by the Construction Contractors Board, if the Contract is for a Public Improvement; or
 - (E) has not met the requirements to make Good Faith Efforts if required by the Solicitation Document, See 60-0031; or
 - (F) has not submitted properly executed Bid or Proposal security as required by the Solicitation Document; or
 - (G) has failed to provide the certification required under subsection 3 of this Rule; or
 - (H) is nonresponsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before awarding a Contract, the CPCA Manager must have information that indicates that the Offeror meets the applicable standards of responsibility. Before award, the Department shall demonstrate to the CPCA Manager that the Offeror:
 - (i) has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of the Offeror to meet all contractual responsibilities; and

- (ii) has a satisfactory record of contract performance. A Department should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Department should determine whether the Offeror's deficient performance was expressly excused under the terms of contract, or whether the Offeror took appropriate corrective action. The Department may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The Department shall make its basis for determining an Offeror nonresponsible under this section part of the Solicitation file; and
- (iii) has a satisfactory record of integrity. An Offeror may lack integrity if the Department determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a public agency. A Department may find an Offeror nonresponsible based on the lack of integrity of any Entity having influence or control over the Offeror. The standards for Conduct Disqualification under Rule 30-0110 may be used to determine an Offeror's integrity. The CPCA Manager shall make the basis for determining that an Offeror is nonresponsible under this section part of the Solicitation file; and
- (iv) is qualified legally to contract with the County; and
- (v) has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the Department concerning responsibility, the CPCA Manager shall base the determination of responsibility upon any available information, or may find the Offeror nonresponsible.

(2) **Form of Business Entity** For purposes of this Rule, the CPCA Manager may investigate any Entity submitting an Offer. The investigation may include that Entity's officers, directors, owners, affiliates, or any other Entity acquiring ownership of the Entity to determine application of this Rule or to apply the disqualification provisions of ORS 279.037 to 279.045 and Rule 30-0110.

(3) **Certification of Non-Discrimination** The Offeror shall certify and deliver to the CPCA Manager Written certification, as part of the Offer, that the Offeror has not discriminated against Minority, Women or Emerging Small Business enterprises in obtaining any required subcontracts.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.029, 279.035, 279.059 279.111

Includes provisions from DAS Rule 125-030-0004

30-0102 Rejection of All Offers

(1) **Rejection** The CPCA Manager may reject all Offers for good cause upon the CPCA Manager finding that it is in the public interest to do so. The CPCA Manager shall notify all Offerors of the rejection of all Offers.

(2) **Criteria** The CPCA Manager may reject all Offers upon a finding that:

- (a) The content of or an error in the Solicitation Document, or the solicitation process unnecessarily restricted competition for the Contract; or
- (b) The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer; or
- (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 intentional errors in the Solicitation Document; or
- (e) The CPCA Manager cancels the Solicitation in accordance with Rule 30-0115; or
- (f) Any other circumstance indicating that rejection of all Offers is in the public interest or in the best interest of the County.

Stat. Auth. : ORS 279.049

Stats. Implemented: ORS 279.035

30-0104 Protest of Contractor Selection, Contract Award

- (1) **Purpose** An adversely affected Offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the County's Contractor selection or Contract award decision.
- (2) **Notice of Competitive Range** Unless otherwise provided in the RFP, the CPCA Manager shall provide Written notice to all Proposers of the Department's determination of the Proposers included in the Competitive Range. The Department's notice of the Proposers included in the Competitive Range shall not be final until the later of the following:
 - (a) 10 Days after the date of the notice, unless otherwise provided therein; or
 - (b) until the CPCA Manager 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.
- (3) **Notice of Intent to Award** Unless otherwise provided in the Solicitation Document, the CPCA Manager shall provide Written notice to all Offerors of the intent to award the Contract. The award shall not be final until the later of the following:
 - (a) The time to file a protest has passed; or
 - (b) If a protest is filed, the date upon which the CPCA Manager provides a Written response to all timely filed protests that denies the protests and affirms the award.
- (4) **Right to Protest Award**
 - (a) An adversely affected Offeror may submit to the CPCA Manager a Written protest of the CPCA Manager's intent to award within 7 Days after issuance of the notice of intent to award the Contract, unless a different protest period is provided under the Solicitation Document.
 - (b) The Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.
 - (c) An Offeror is adversely affected only if the Offeror is eligible for award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the highest scoring Responsive Proposal and is next in line for award, *i.e.*, the protesting Offeror must claim that all lower Bidders or higher-scored Proposers are ineligible for award:
 - (A) because their Offers were nonresponsive or
 - (B) the CPCA Manager committed a substantial violation of a provision in the Solicitation Document or of an applicable procurement statute or administrative Rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been the lowest Bidder or the highest-ranked Proposer.
 - (d) The CPCA Manager 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.
- (5) **Right to Protest Competitive Range**
 - (a) An adversely affected or aggrieved Proposer may submit to the CPCA Manager a Written protest of the Department's decision to exclude the Proposer from the Competitive Range within 10 Days after issuance of the notice of the Competitive Range, unless a different protest period is provided under the Solicitation Document.

- (b) The Proposer's protest shall be in Writing and must specify the grounds upon which the protest is based.
 - (c) 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 Proposals, or
 - (B) the Department committed a substantial violation of a provision in the RFP or of an applicable procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.
 - (d) The Department 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 a Department's decision to not increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.
- (6) **Authority to Resolve Protests** The CPCA Manager, or such person's designee, has the authority to resolve a Written protest submitted in accordance with the requirements of this Rule.
- (7) **Decision** If a protest is not resolved, the CPCA Manager, or such person's designee, shall promptly issue a Written decision on the protest. Judicial review of this decision will be available if provided by statute.
- (8) **Award** The successful Offeror shall promptly execute the Contract after the award is final. The Contract shall only be executed after all applicable required documents and approvals have been obtained.
 - Stat. Auth.: ORS 279.049
 - Stats. Implemented: ORS 279.029, 279.031, 279.067

30-0105 Negotiation with Bidders Prohibited

- (1) **Bids** Except as permitted by ORS 279.015(1) (h), a Department shall not negotiate with any Bidder. After award of the Contract, the Department and Contractor may only modify the Contract by change order or amendment to the Contract.
- (2) **Requests for Proposals** A Department may only conduct discussions or negotiate with Proposers in accordance with Rule 30-0010(2)(a)(C) and Rule 30-0090(5).
 - Stat. Auth. : ORS 279.049
 - Stats. Implemented: ORS 279.005, 279.015, 279.023, 279.027, 279.029

30-0110 Disqualification of an Entity

- (1) **Authority** The CPCA Manager may disqualify an Entity from consideration of award of County Contracts in accordance with this Rule.
 - (a) As provided in ORS 279.037, the CPCA Manager may disqualify an Entity for:
 - (A) 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 such contract or subcontract; or
 - (B) 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 Entity's responsibility as a contractor; or

- (C) Conviction under state or federal antitrust statutes; or
 - (D) Violation of a contract provision that is regarded by the CPCA Manager to be so serious as to justify Disqualification. A violation under this subsection may include but is not limited to material failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, an Entity's failure to perform or unsatisfactory performance caused by acts beyond the Entity's control is not a basis for Disqualification.
- (b) The CPCA Manager may, pursuant to ORS 279.111, disqualify an Entity if the CPCA Manager finds the Entity discriminated against a Minority, Woman or Emerging Small Business enterprise in awarding a subcontract under a prior Contract with the County.
- (2) **Notice of Intent to Disqualify** The CPCA Manager shall notify the Entity in Writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice shall:
- (a) State that the CPCA Manager intends to disqualify the Entity; and
 - (b) Set forth the reasons for the Disqualification; and
 - (c) Include a statement of the Entity's right to a hearing if requested in Writing within the time stated in the notice and that if the CPCA Manager does not receive the Entity's Written request for a hearing within the time stated, the Entity shall have waived its right to a hearing; and
 - (d) Include a statement that the hearing will be held in accordance with ORS279.037 and this Rule; and
 - (e) Include a reference to ORS 279.037 or ORS 279.111, as applicable, and this Rule; and
 - (f) State the proposed Disqualification period; and
 - (g) State that the Entity may be represented by legal counsel.
- (3) **Hearing** The CPCA Manager shall schedule a hearing upon receipt of the Entity's timely request. The CPCA Manager shall notify the Entity of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing prior to hearing.
- (4) **Notice of Disqualification** The CPCA Manager will notify the Entity in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice shall contain:

- (a) The effective date and period of Disqualification; and
- (b) The grounds for Disqualification; and
- (c) A statement of the Entity's appeal rights under ORS 279.043 and ORS 279.045 and the appeal deadline. The Disqualified Entity must notify the CPCA Manager in Writing within 5 Days after receipt of the notice of Disqualification if the Entity intends to appeal the CPCA Manager's decision.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 200.065, 200.075, 279.037, 279.043, 279.045, 279.111

Replace 40.020

30-0115 Cancellation of Solicitation

- (1) **Cancellation in the Public Interest** The CPCA Manager may cancel a Solicitation for good cause if the Department finds that cancellation is in the public interest.
- (2) **Notice of Cancellation** If the CPCA Manager cancels a Solicitation prior to Opening, the CPCA Manager shall provide notice of cancellation in accordance with Rule 30-0015(1). Such notice of cancellation shall:
- (a) Identify the Solicitation;
 - (b) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

30-0120 Disposition of Offers if Solicitation Canceled

- (1) **Prior to Opening** If the Department cancels a Solicitation prior to Opening, the CPCA Manager will return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the CPCA Manager will open the Offer to determine the source and then return it to the Offeror.
- (2) **After Offer Opening** If the CPCA Manager rejects all Offers, the CPCA Manager will retain all such Offers as part of the CPCA Manager's Solicitation file.

Stat. Auth.: ORS 279.049
Stats. Implemented: ORS 279.035

30-0125 Documentation of Award

- (1) **Basis of Award** After award, the CPCA Manager shall make a record showing the basis for determining the successful Offeror part of the CPCA Manager's Solicitation file.
- (2) **Contents of Award Record** The CPCA Manager's record shall include:
 - (a) Bids.
 - (A) Completed Bid tabulation sheet; and
 - (B) Written justification for any rejection of lower Bids.
 - (b) Proposals.
 - (A) The completed evaluation of the Proposals; and
 - (B) Written justification for any rejection of higher scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and
 - (C) If the Solicitation Document permitted negotiations in accordance with 30-0010, the Department's completed evaluation of the initial Proposals and the Department's completed evaluation of final Proposals.

Stat. Auth.: ORS 279.049
Stats. Implemented: ORS 279.039

30-0130 Foreign Contractor

- (1) 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, Contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report shall be forwarded to the Department. The Department awarding the Contract shall satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

Stat. Auth.: ORS 279.049
Stats. Implemented: ORS 279.021

30-0135 Availability of Award Decisions

- (1) **Contract documents** To the extent required, the Department shall deliver to the successful Offeror, a signed purchase order, price agreement, or other Contract documents, as applicable.
- (2) **Notification to Unsuccessful Offerors** An Entity may obtain tabulations of awarded Bids or evaluation summaries of Proposals for the fee set forth in the CPCA Manager's fee schedule, in person or by submitting to the CPCA Manager a Written request accompanied by payment. Such request shall provide the Solicitation Document number or other identifying information.
- (3) **Availability of Solicitation Files** CPCA shall make completed Solicitation files available for public

review.

- (4) **Copies from Solicitation Files** Any Entity may obtain copies of material from Solicitation files upon payment of a reasonable copying charge.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.027

30-0140 Performance Security

- (1) **Public Improvement Contracts** The Department may, at its discretion waive the performance bond requirements of ORS 279.029 if the amount of the Contract for the Public Improvement is equal to or less than the dollar limit set forth in Rule 310.0012(1).
- (2) **Other Public Contracts** A Department may require performance security for other Public Contracts. Such requirements shall be expressly set forth in the Solicitation Document.
- (3) **Requirement for Surety Bond** The Department shall accept only a performance bond furnished by a surety company authorized to do business in Oregon unless otherwise specified in the Solicitation Document (i.e. the Department may accept a cashier's check or certified check in an amount equal to 100 percent of the Contract Price if specified in the Solicitation Document).
- (4) **Time for Submission** The apparent successful Offeror must promptly furnish the required performance security upon request of the CPCA Manager. If the Offeror fails to furnish the security as requested, the CPCA Manager may reject the Offer and award the Contract to the Responsible Bidder with the next lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at the County's discretion, the Offeror shall forfeit its Bid or Proposal security.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.029(4) & (5), 279.033

Replaces 50.020

30-0155 Substitute Contractor

- (1) If the Contractor provided a performance and payment bond, the Department may afford the Contractor's surety the opportunity to provide a substitute Contractor to complete performance of the Contract. A substitute contractor shall perform all remaining Contract Work and comply with all terms and conditions of the Contract, including the provisions of the performance and payment bond. Such substitute performance does not involve the award of a new Contract and shall not be subject to the competitive procurement provisions of ORS 279.005 to 279.111.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.027(3), 279.029(4), 279.033

**DIVISION 40
PUBLIC IMPROVEMENT CONTRACTS**

40-0000 Application

- (1) In addition to the requirements set forth in Division 30 of these Rules and the definitions therein, the following Rules apply to Public Improvement Contracts. In the event of conflict or ambiguity, the more specific requirements of the Rules in Division 40 take precedence over the more general requirements of the Division 30 Rules.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.049

40-0005 Competitive Procurement

- (1) The County shall solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except as otherwise allowed or required by these Rules.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.015

40-0006 Prequalification of Offeror

(1) Prequalification

- (a) **Mandatory Prequalification.** A Department may require mandatory prequalification of Offerors on forms prescribed by the CPCA Manager. The Department must indicate in the Solicitation Document if it will require mandatory prequalification. Mandatory prequalification is when the Department conditions an Entity's submission of an Offer upon the Entity's prequalification. If the Department requires prequalification the CPCA Manager may reject any Offer from an Entity that is not prequalified for the amount of the Offeror's Bid.
- (b) **Permissive Prequalification.** The Department may prequalify an Entity for the Department's solicitation list on forms prescribed by the CPCA Manager, but the Department shall not limit distribution of a Solicitation to that list.

- (2) **Prequalification Presumed** If an Offeror is currently prequalified by the State of Oregon to perform Contracts, the Offeror shall be rebuttably presumed qualified to perform similar Work for the County up to the amount for which the Offeror has been prequalified by the State.

- (3) **Standards for Prequalification** An Entity may prequalify to perform Work up to a specified dollar limit by demonstrating to the Department's satisfaction:

- (a) That the Entity's financial, material, equipment, facility and personnel resources and expertise, or ability to obtain such resources and expertise, indicate that the Entity is capable of meeting all contractual responsibilities to perform Work up to the specified dollar limit;
- (b) The Entity's record of performance indicates that the Entity is capable of meeting all contractual responsibilities to perform Work up to the specified dollar limit;
- (c) The Entity has a satisfactory record of integrity as determined under Rule 30-0100 (1)(c)(H) (iii);
- (d) The Entity is qualified legally to contract with the County.

- (4) **Notice Of Denial** If an Entity fails to prequalify for the dollar limit requested for any class of Work, the County shall notify the Entity and specify the reasons under section 3 of this Rule and inform the Entity of the Entity's right to a hearing under ORS 279.043 and 279.045.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.039, 279.041, 279.047

Source: OAR 137-030-0006

Replaces 40.020, 40.030, 40.040, 40.060, 40.070

40-0008 Eligibility to Bid or Propose on Construction or Landscape Contracts

- (1) **Construction Contracts** The County shall not consider an Entity's Offer to do Work as a Contractor, as defined in ORS 701.005(2), unless the Entity has a current, valid certificate of registration issued by the Construction Contractors Board.
- (2) **Landscape Contracts** The County shall not consider an Entity's Offer to do Work as a landscape contractor as defined in ORS 671.520(2), unless the Entity has a current, valid landscape contractor's license issued pursuant to ORS 671.560 by the State Landscape Contractors Board.
- (3) **Noncomplying Entities** The County shall deem an Offer received from an Entity that fails to comply with this Rule nonresponsive and shall reject the Offer, unless contrary to federal law.

Stat. Auth.: ORS 279.049

Source: OAR 137-030-0008

Stats. Implemented: ORS 279.027(1) (k), 671.530, 701.055

40-0010 Unique or Mandatory Provisions

In addition to the Bidder qualification, selection, rejection, and disqualification criteria applicable to all Public Contracts, certain provisions apply specifically to Public Improvement Contracts. Likewise, in addition to provisions required in all Solicitations and Contracts, certain provisions must be included in Public Improvement Solicitation Documents and Contracts. These criteria are referenced in this Rule for convenience as follows.

- (1) Eligibility to bid or propose. *See* 40-0008(1) (Construction Contracts).
- (2) Solicitation Document statement of required certification or licensing. *See* 30.0010(3)(a)(K)
- (3) Solicitation Document terms and conditions:
 - (a) Demonstration of drug testing program. *See* 30.0010(3)(d)(B)
 - (b) Liability for late payment. *See* 30.0010(3)(d)(F)
 - (c) Right to file complaints with Construction Contractor's Board. *See* 30.0010(3)(d)(G)
 - (d) Environmental and natural resources regulations. *See* 30.0010(3)(d)(I)
 - (e) Prevailing wage rates. *See* 30.0010(3)(d)(N)
 - (f) Fee paid to BOLI. *See* 30.0010(3)(d)(O)
 - (g) Retainage. *See* 30.0010(3)(d)(P)
 - (h) Prompt payment policy. *See* 30.0010(3)(d)(Q)
 - (i) Contractor's relations with subcontractors. *See* 30.0010(3)(d)(R)
- (4) Advertising of Solicitation in trade newspaper. *See* 30-0015(2)(c).
- (5) Bid or Proposal security. *See* 30-0035(2).
- (6) Deadline for delivering request for change or protest of Specification or Contract terms and conditions. *See* 030-0050(1)(a).
- (7) Rejection of individual Bids or Proposals. *See* 30-0100.
- (8) Standards for Disqualification. *See* 30-0110.
- (9) Performance security. *See* 30-0140(1).

Stat. Auth.: ORS 279.049

40-0015 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 highest scoring Responsive Proposal, provided that such Entity is not listed by the Construction Contractors' Board as disqualified to hold a Contract for a Public Improvement. *See* Rule 30-0090, and Rules for Alternative Contracting Methods at Rule 40-0500 to 40-0590.
- (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 Department 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 Department, 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 Department, 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 shall govern. *See Rule 30-0075 (1)(b).*

- (3) **Proposal Evaluation Criteria** If the Board has exempted the procurement of a Public Improvement from the competitive bidding requirements of ORS 279.015(1), and has directed a Department to use an Alternative Contracting Method under ORS 279.015(6), the Department shall set forth the evaluation criteria in the Solicitation Documents. *See Rule 40-0550, ORS 279.015(2) and 279.015(6).*

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.015, 279.049

40-0017 Disclosure and Substitution of First-Tier Subcontractors

- (1) **Required Disclosure** Within four working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price anticipated by the Department to exceed the dollar limit set forth in Rule 310.0012(1), all Bidders shall submit to the CPCA Manager a disclosure form, identifying any first-tier subcontractors (those Entities that would be contracting directly with the prime Contractor) that will be furnishing labor or labor and materials on the Contract.
- (2) **Bid Closing, Disclosure Deadline, and Bid Opening** For each ITB to which this Rule applies, the CPCA Manager shall:
 - (a) Set the Bid Closing on a Monday through Thursday, or before noon on a Friday, provided that the four-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 four working hours after Bid Closing;
 - (c) Consider for Contract award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the Department.
- (3) **Bidder Instructions and Disclosure Form** For the purposes of this rule, a Department in its Solicitation for competitive Bids shall:
 - (a) Prescribe the disclosure form that must be utilized; and
 - (b) Provide instructions in a notice substantially similar to the following:

"Instructions for First-Tier Subcontractor Disclosure

Each bidder must disclose the following information about each subcontract for labor or labor and materials within four hours after bid closing:

- 1) **The subcontractor's name, and**
- 2) **The category of work that the subcontractor will be performing.**

If the bidder will not be using any subcontractors that are subject to the above disclosure requirements, the bidder is required to indicate "NONE" on the accompanying form.

IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE THE COUNTY WILL REJECT THE BID (see PCRB Rule 040-0017)."

- (4) **Submission** A Bidder shall submit the disclosure form required by this Rule either in its Bid submission or within four working hours after Bid Closing in the manner specified by the ITB.
- (5) **Responsiveness** Compliance with the disclosure and submittal requirements of ORS 279.027(2) and this Rule is a matter of responsiveness. Bids which are submitted by Bid Closing, but for which the disclosure form has not been submitted by the specified deadline in the ITB, are not Responsive Bids and shall not be considered for Contract award.
- (6) **Department Role** The CPCA Manager shall obtain, and make available for public inspection, the disclosure forms required by ORS 279.027 and this Rule. Departments shall also provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279.363. Neither the CPCA Manager nor the Departments are required to determine the accuracy or completeness of the information provided on disclosure forms.
- (7) **Substitution** Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279.322, and as specified by the Solicitation Document. The County shall accept Written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279.322(5), the County does not have a statutory duty or role to review, approve or resolve disputes concerning such substitutions.
- Stat. Auth.: ORS 279.049
Stats. Implemented: ORS 279.027, ORS Chapter 279.

40-0025 Retainage

- (1) **Withholding of Retainage** A Department shall not hold as Retainage an amount in excess of 5 percent of the Contract Price for Work completed.
- (2) **Deposit in interest-bearing accounts** Upon request of the Contractor, a Department shall deposit cash Retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the Department. Earnings on such account shall accrue to the Contractor.
- (3) **Alternatives to cash Retainage** In lieu of cash Retainage to be held by a Department, the Contractor may substitute one of the following:
- (a) **Deposit of securities:**
- (A) The Contractor may deposit bonds or securities with the County or in any bank or trust company to be held for the benefit of the County. In such event, the Department shall reduce the Retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.
- (B) Bonds and securities deposited or acquired in lieu of Retainage shall be of a character approved by the County, including but not limited to:
- (i) Bills, certificates, notes or bonds of the United States.
- (ii) Other obligations of the United States or its agencies.
- (iii) Obligations of any corporation wholly owned by the Federal Government.
- (iv) Indebtedness of the Federal National Mortgage Association.
- (C) Upon the County's determination that all requirements for the protection of the County's interests have been fulfilled, it shall release to the Contractor all bonds and securities deposited in lieu of Retainage.
- (b) **Deposit of surety bond:** A Department, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the County in lieu of all or a portion of funds retained or

to be retained. A Contractor depositing such a bond shall accept surety bonds from its subcontractors and suppliers in lieu of Retainage. In such cases, Retainage shall be reduced by an amount equal to the value of the bond, and the excess shall be reimbursed.

- (4) **Recovery of costs** A Department may recover from the Contractor all costs incurred in the proper handling of cash Retainage and securities, by reduction of the final payment.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.420, 279.435, 701.420

Replaces 50.030, 50.040, 50.050

40-0031 Interest

- (1) **Prompt payment policy** A Department shall pay promptly all payments due and owing to the Contractor on Contracts for Public Improvements. Interest due on late payments shall be paid in accordance with statutory requirements.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.435

40-0500 Purpose of rules concerning Alternative Contracting Methods

- (1) The following Rules are intended to provide guidance regarding the use of Alternative Contracting Methods for Public Improvement Contracts, as may be directed by the Board under ORS 279.015(6)(a). Those methods include, but are not limited to, Design-Build and Construction Manager/General Contractor (CM/GC) forms of contracting. These Rules also implement the provisions of ORS 279.015(1)(h), which allows limited negotiation when all Bids exceed a Department's cost estimate. *See Rule 40-0590.*

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.015, 279.049

40-0510 Definitions for Rules 40-0500 to 40-0590

The following definitions shall apply to Rules 40-0500 to 40-0590, unless the context requires otherwise:

- (1) **Alternative Contracting Methods** Innovative techniques for obtaining Public Improvement Contracts, utilizing processes other than the traditional method of design-bid-build with award based solely on price (in which a final design is issued with formal Bid documents, construction services are obtained by sealed Bid awarded to the lowest Responsive, Responsible Bidder, and the project is built in accordance with those documents). In industry practice, such methods commonly include variations of Design-Build and CM/GC forms of contracting, which are specifically addressed in these Rules.
- (2) **Construction Manager/General Contractor (or "CM/GC")** A form of contracting that results in a Public Improvement Contract for a Construction Manager to undertake design phase involvement; constructability reviews; value engineering, scheduling, estimating and subcontracting services; establish a Guaranteed Maximum Price to complete the Contract Work; act as General Contractor; coordinate and manage the building process; provide general Contractor expertise; and act as a member of the project team along with the Department, architect, engineers and other consultants. Also refers to a Contractor under this form of Contract, sometimes known as the "Construction Manager at Risk."
- (3) **Design-Build** A form of contracting 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 Department, and manages both design and construction. In this form of Contract, a single Entity provides the Department with all of the services necessary to both design and construct the project.

- (4) **Guaranteed Maximum Price (or “GMP”)** The total maximum price provided to the Department by the Contractor, and accepted by the Department, that includes all reimbursable costs of, and fees for, completion of the Contract Work as defined by the Contract except for material changes in the scope of Work. It may also include particularly identified contingency amounts.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.015, 279.049

40-0520 Use of Alternative Contracting Methods

- (1) **Competitive Bidding Exemptions** ORS Chapter 279 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 279.015 and any applicable Rule. Alternative Contracting Methods may be directed by the Board as 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* Rule 40-0530 regarding required findings.

- (2) **Post-Project Evaluation** ORS 279.103 requires that the Department 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 Department’s best interest to use an Alternative Contracting Method. The evaluation must be delivered to the Board within 30 Days of the date the Department “accepts” the Public Improvement project, which event is typically 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. ORS 279.103 describes the timing and content of this evaluation, with three required 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, and
- (c) An objective assessment of the use of the Alternative Contracting Method as compared to the Exemption findings.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.015, 279.049, 279.103

40-0530 Findings

- (1) When findings are required under ORS 279.015(6)(b) and 279.015(2) to exempt a Contract or class of Contracts from competitive bidding requirements, the “substantial cost savings” criterion in ORS 279.015(2)(b) requires consideration of the type, cost, amount of the Contract, number of Entities available to Bid, and “such other factors as may be deemed appropriate.”
- (2) Likewise, the statutory definition of “findings” at ORS 279.011(5) means the justification for a Department conclusion that includes, “but is not limited to,” information regarding eight identified areas.
- (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” requirement may be addressed by a combination of:
- (a) Specified findings that address the factors and other information specifically identified by statute; and
 - (b) Additional findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279.103 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 at ORS 279.015(2)(a) that it is “unlikely” that the Exemption will “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.
- (5) Before final adoption of findings exempting a Contract for a Public Improvement from the requirement of Competitive Bidding, the Board shall hold a public hearing as required by ORS 279.015(3). The hearing shall be for the purpose of receiving public comment on the County’s draft findings.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.015(2), 279.0 15(6), 279.049

Replaces 10.086(1)(c)

40-0540 Pricing Mechanisms

- (1) A Request for Proposals may result in a lump sum Contract Price, as in the case of Competitive Bidding. Alternatively, a cost reimbursement Contract may be negotiated.
- (2) Economic incentives or disincentives may be included to reflect stated Department 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) is used as the pricing mechanism for CM/GC where a total Contract Price is provided in the design phase in order to assist the Department in determining whether the project scope is within the Department’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 Department and included within the Contract.
 - (b) If this collaborative process is not successful, and no mutually agreeable resolution on GMP can be achieved with the Contractor, then the Department shall terminate the Contract. The Department 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 Department shall provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.015(6), 279.049

40-0550 RFP Process

Departments may utilize the RFP process for Public Improvement Contracts, allowing flexibility in both Proposal evaluation and Contract negotiation, in accordance with ORS Chapter 279, Divisions 30 and 40 of these Rules and Administrative Procedure PUR-1.

- (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 Department; and
 - (b) Treat all Proposals equitably; and

- (c) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the Department. *See* ORS 279.023(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 include but are not limited to 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, related matters that affect cost or quality and experience promoting MBE, WBE and ESB participation on projects.
- (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, coordination of multiple disciplines, the time required to commence and complete the improvement, and related matters that affect cost or quality.
- (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.

- (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. 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.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.015(6), 279.049

Replaces 10.086(1)(a), 10.086(1)(b)

40-0560 Design/Build

- (1) General** The Design-Build form of contracting, as defined at Rule 40-0510(3), has technical complexities that are not readily apparent. Departments shall only utilize this contracting method with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to utilize the Design-Build process the Department 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; and
- (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; and
- (c) Reducing the risk of design flaws, misunderstandings and conflicts that occur when Contractors build from designs that they had no opportunity to provide input on; and
- (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** Departments shall utilize the Design-Build form of contracting only in accordance with the requirements of these Rules. *See particularly* Rule 40-0520 on "Use of Alternative Contracting Methods."

- (3) Selection** Design-Build selection criteria may include those factors set forth above in Rule 40-

0550(2)(c).

- (4) **Licensing** Where the Design-Build Contractor is not an Oregon licensed professional, the Department shall require that the Design-Build Contractor disclose in its Written Offer that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services.
- (5) **Performance Security** ORS 279.029(4)(b) 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 Personal Services specified in the Contract. This additional obligation, beyond performance of construction services, extends only to the provision of Personal 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** Departments shall conform their Design-Build contracting practices 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 Department, as well as requirements for professional liability insurance.
 - (c) **Risk Allocation** The Contract shall clearly identify the extent to which the Department 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 to the Department 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 Department is benefited from such deliverables.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.015(6), 279.049, 279.057

40-0570 Construction Manager/General Contractor (CM/GC)

- (1) **General** The CM/GC form of contracting, as defined at Rule 40-0510(2), is a technically complex project delivery system. Departments shall only utilize this contracting method with the assistance of 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 Contractor 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 Department and design professional, although in CM/GC there is a separate contract between the Department and design professional. In order to utilize the CM/GC

method, the Department 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 Department 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; and
- (b) **Cost Savings** Early Contractor input during the design process is expected to contribute to significant cost savings. The Department may consider value engineering, building systems analysis, life cycle analysis and construction planning that lead to cost savings. The Department 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 or the overall project of which it is a part presents significant technical complexities that are best addressed by a collaborative or team effort between the Department, design professionals and Contractor, in which the Contractor will assist in addressing specific project challenges through pre-construction services. The Department may consider the need for Contractor 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** Departments may utilize the CM/GC form of contracting only in accordance with the requirements of these Rules. *See particularly* Rule 40-0520 on “Use of Alternative Contracting Methods”.

(3) **Selection** CM/GC selection criteria may include those factors set forth above in Rule 40-0550(2)(b).

(4) **Basis for Payment** The CM/GC process adds specified Construction Manager services to traditional General Contractor services, requiring full Contract performance within a negotiated Guaranteed Maximum Price (GMP). The basis for payment is reimbursable direct costs as defined under the Contract, plus a fee constituting full payment for Work and services rendered, which together shall not exceed the GMP. *See* GMP definition at Rule 40-0510(4), and Pricing Mechanisms at Rule 40-0540(3).

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 297.015, 279.049

40-0590 Negotiation When Bids Exceed Cost Estimate

(1) **General** In accordance with ORS 279.015(1)(h), if all Responsive Bids from Responsible Bidders on a competitively Bid Project exceed the Department’s Cost Estimate, prior to Contract award the Department 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 Department’s Cost Estimate. The subcontractor disclosure and substitution requirements of Rule 40-0017 do not apply to negotiations under this Rule.

(2) **Definitions** The following definitions apply to this Rule:

- (a) **Cost Estimate:** The Department’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 Rule 40-0550, 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 may either 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 Department, shall be excluded from consideration.
- (4) **Scope of Negotiations** Departments shall not proceed with Contract award if the scope of the Project is significantly changed from the original Bid, ORS 279.015(1)(h)(B). 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 Department 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 Department may discontinue negotiations at any time, and shall do so if it appears to the Department that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid 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 pursuant to ORS 279.015(1)(h)(A). Negotiation with Bidders next in line for Contract award is not permitted.
- (7) **Public Records** ORS 279.015(1)(h)(C) shall not be construed as creating any additional public records where that result is not otherwise contemplated by the Public Records law, ORS Chapter 192. Records of a Bidder used in Contract negotiations under that statute may not become public records unless they are also submitted to the County.

Stat. Auth.: ORS 279.015(1), 279.049

Stats. Implemented: ORS 279.015(1), 279.049

**DIVISION 60
EQUAL OPPORTUNITY IN PUBLIC CONTRACTING**

60-0010 Purpose

- (1) The purpose of this Division is to establish procedures to assure that Multnomah County provides adequate opportunities for Minority Individuals, Women, and MBE, WBE and ESB contractors and subcontractors to participate and compete for business and employment opportunities provided through Contracts with Multnomah County.

60-0030 Policy

- (1) It is the intent of Multnomah County to provide opportunities for all segments of the business population to participate in Multnomah County purchasing opportunities. In order to assure opportunity, every County Contract for construction, maintenance, or services shall include a provision barring discrimination against MBEs, WBEs and ESBs by Contractor and all subcontractors.
- (2) Multnomah County has a compelling governmental interest in prohibiting discrimination in programs, activities, services, benefits and employment whether carried out by the County itself or through a Contractor with whom the County arranges to carry out its programs and activities. Every County Contract shall contain a provision prohibiting discrimination by Contractor and all subcontractors based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income.

60-0031 Good Faith Effort Program

- (1) The activities described in ORS 200.045 are standards for Good Faith Efforts to provide equitable opportunities for MBEs, WBEs, and ESBs to participate in subcontract opportunities created through Multnomah County Contracts.
- (2) The CPCA Manager shall implement a Good Faith Effort program utilizing the standards described in ORS 200.045 that are determined to be effective to achieve the purpose of this section together with such other standards as are appropriate to such a program. Bid or Proposal Specifications for Contracts requiring Good Faith Effort shall state the requirements necessary to show that a Good Faith Effort has been made and shall require documentation of such effort. The CPCA Manager shall cooperate with other municipal and state agencies to design, to the maximum extent possible, a program that is uniform between agencies.
- (3) The CPCA Manager shall determine if the Bid complies with Bid Specifications for Good Faith Effort.
- (4) Failure of the Offeror to submit Good Faith Effort documentation required by the Bid Specifications shall be determined nonresponsive to the Bid Specifications. Non-responsive bids will be rejected by the Multnomah County CPCA Manager.

60-0040 Requirement for Certification as Equal Employment Opportunity Employer

- (1) No vendor shall furnish goods or services to the County in any year, whether by single Contract or multiple Contracts, for an amount in excess of the dollar limit set forth in Rule 310.0012 (1) unless such vendor is certified as an Equal Employment Opportunity Employer. No County Department shall enter into a Contract by which a vendor shall exceed such limitation unless the vendor is, at the time of such Contract, certified by the CPCA Manager as an EEO Employer.

- (2) Contractors furnishing goods and services to the County in excess of the dollar limit set forth in Rule 310.0012 (1) shall apply for and obtain EEO certification from the City of Portland as an EEO employer. The CPCA Manager shall maintain a list of certified vendors based upon City of Portland certification. A contractor may appeal a decision to deny certification or revoke certification in accordance with the procedure prescribed in 30-0006 for denial of prequalification.

60-0050 Workforce Requirements in Construction Contracts

- (1) For all Contracts designated by the CPCA Manager as being appropriate for such a program, the CPCA Manager shall establish Specifications to be included in the Bid Specifications which require for such Contracts that contractors make reasonable efforts to increase apprenticeship training and work opportunities for Women and Minority Individuals, and, to ensure that their workforce reflects the diversity of Multnomah County and is reasonably consistent with the availability of qualified Women and Minority Individuals. The Specifications shall state the requirements necessary to show that a reasonable effort has been made, shall require documentation of such effort, and shall provide for remedies to the County for failure to comply with any of the specified requirements.

60-0060 Sheltered Market Program

- (1) There is hereby established a Sheltered Market Program for MBE, WBE, DBE and ESB contractors performing Public Works Contracts for Multnomah County. The purpose of the program is to provide prime contracting experience for small contractors in order to increase the number of contractors available to bid on Multnomah County Public Works projects, and to increase participation of MBE, WBE, DBE and ESB contractors acting as prime contractors on county Public Works projects to ensure uniform access to public contracting dollars and to improve opportunities for minorities and Women acting as business owners in the regional construction industry.
- (2) Contractors shall be selected for participation in the Sheltered Market Program based on an application approved by the CPCA Manager. Criteria for selection shall include the following:
 - (a) Contractor shall be a state certified MBE, WBE, DBE or ESB; and
 - (b) Contractor shall have prior experience performing construction work and shall be currently in business doing construction work; and
 - (c) Contractor's average annual gross receipts for the three calendar years prior to the application shall be less than \$1,000,000. The CPCA Manager shall have the discretion to waive this requirement if waiver will advance the purposes of the program and if all other criteria are met; and
 - (d) Contractor shall have reported that contractor has experienced barriers in the conduct of contractor's business based on race, gender or size of the business.
- (3) The CPCA Manager may develop additional criteria for selection of contractors for participation in the program which further the purpose of the program.
- (4) A contractor may appeal a decision to deny participation in the program to the Public Contract Review Board in accordance with the procedure prescribed in Rule 30-0006 for denial of prequalification.
- (5) Contracts to be included in the Sheltered Market Program shall be selected by the CPCA Manager from projects estimated at the time of bidding to result in a Contract in excess of the dollar limit set forth in Rule 310.0012(1) and less than \$200,000. The CPCA Manager may include in the program additional Contracts up to \$250,000 if inclusion will further the purposes of the program. In the selection of Contracts to be included in the program, the CPCA Manager shall consider the number of contractors in the program which have the qualifications and the capacity to perform the Work. If necessary to assure that all Sheltered Market contractors have an opportunity to participate, Contracts may be offered for bid to only selected contractors within the Sheltered Market Program.

- (6) Contracts selected for inclusion in the Sheltered Market Program shall be offered for bid only to contractors admitted to the Sheltered Market Program. Except as provided in subsection (7) below, the Contract shall be awarded to the lowest Responsive Responsible Bidder among those bidding.
- (7) For each project selected for the Sheltered Market Program, the Department for the program shall forward to the CPCA Manager a cost estimate for the project. If the lowest Responsive Responsible Bid is more than the cost estimate, the CPCA Manager shall have the option to award the Contract, re-bid the project within the Sheltered Market Program, or open the bidding on the project to all Bidders. If bidding is opened to all Bidders, the Contract shall then be awarded to the lowest Responsive Bid from among all Bids received.
- (8) The CPCA Manager shall promulgate rules setting forth conditions for continued participation in the program and for graduation from the program. Participation in the Program shall be limited to three years absent extraordinary circumstances.
- (9) The CPCA Manager shall prepare a report to the Board of County Commissioners on an annual basis, which provides an evaluation of the program, including information on the subjects set forth in ORS 279.103. The annual report shall include a recommendation whether the program should be continued. If the CPCA Manager recommends that the Program be continued, the recommendation shall include any proposed improvements to the Program.

DIVISION 70
PURCHASE OF GOODS AND SERVICES FROM QRFs

70-0010 Purpose

- (1) The purpose of this Chapter is to establish policies and procedures governing the acquisition of goods and services produced by QRFs and to insure that QRFs are provided opportunities to enter into contractual relationships with Multnomah County, State of Oregon.

70-0030 Policy

- (1) It is the policy of Multnomah County to encourage and assist Disabled Individuals to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for sheltered workshop and activity center products and services, thereby enhancing their dignity and capacity for self-support. And minimizing their dependence on welfare and need for costly institutionalization. An essential element of this policy is to support sheltered employment by contracting for needed goods and services available from QRFs. The County shall identify contracting opportunities within the organization and encourage awarding of Contracts to QRFs. This policy shall be equally applicable to all County Departments and shall be administered by the CPCA Manager.

Replaces former 70.030

Incorporates policy statement from ORS 279.840

70-0050 Procurement of Product or Service from QRFs

- (1) If any Department intends to procure any product or service on the procurement list established by the State pursuant to ORS 279.845(2), the Department shall procure such product or service at the price established by the State from a QRF provided the product or service is of the appropriate Specification and is available within the period required by the Department.
- (2) The CPCA Manager will review on a regular basis the procurement list established and published by the State of Oregon, Department of Administrative Services to determine sources and potential sources of products and services produced by QRFs. This procurement list will be distributed annually to all County departments.

Replaces 70.050

Subsection (1) revised

DIVISION 75
ALTERNATE SELECTION PROCEDURES: ARCHITECTS, ENGINEERS AND RELATED
PROFESSIONAL CONSULTANTS

75-0000 Definitions

(1) The following definitions apply to the Rules in this Division:

- (a) **Agreement-To-Agree:** A Written document of understanding negotiated between a Department and the consultant for the provision of services on a single project, or on more than one project, which contains contract clauses that will apply to future contracts during its term to be established through work orders and which will incorporate the required and applicable clauses of the Agreement-To-Agree.

- (b) **Architectural, engineering or related services:** Personal Services related to the planning, design, engineering, or oversight of Public Improvement projects or components thereof, including but not limited to architectural services, landscape architectural services, engineering services, space planning services, land surveying services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, and project/construction management services as well as other Personal Services that must be performed by registered architects, registered professional engineers and registered professional land surveyors.

75-0005 Purpose

(1) The purpose of these rules is to specify the policy and procedures of the County regarding selection of professional consultants to perform architectural, engineering or related services required by the County for construction, improvement, planning and related activities. It is the policy of the County to select as expeditiously as possible the most qualified consultant based on the consultant's demonstrated competence and qualifications to perform the Personal Services required at a fair and reasonable price.

75-0015 Solicitation

- (1) Responses shall be solicited through public advertisement, which shall be made for each project, or at other designated times to develop a list of consultants interested in providing services to the County by the following procedure:
 - (a) All advertisements shall appear at least once in at least one newspaper of general circulation in the area where the project is to be located, and in as many additional issues and publications as may be necessary or desirable to achieve adequate competition. The advertisement(s) shall be published no fewer than fourteen (14) calendar Days before close of the Solicitation. The advertisement(s) shall briefly describe:
 - (A) the project
 - (B) the Personal Services sought;
 - (C) where copies of the Solicitation may be obtained; and
 - (D) the deadline for submitting a response.

- (2) At other designated times, the County may announce that it will accept from professional consultant firms providing architectural, engineering or related services, a statement of qualifications, credentials, and other data expressing interest in providing services.

- (3) The CPCA Manager may provide a standard form for this purpose. Materials received will be retained by the CPCA Manager for use in:
 - (a) direct notice to consultants providing services similar to those required for the project;
 - (b) the Informal Selection Procedure provided for in Rule 75.0025; and
 - (c) where possible, in the Direct Appointment Procedure provided in Rule 75.0030.
- (4) Materials on file with the CPCA Manager may be purged periodically, unless the County is notified otherwise by firms desiring to continue expressing interest in performing services.
- (5) The CPCA Manager may at any time during the solicitation or negotiation process reject all consultant Proposals and cancel the Solicitation without liability therefore, after making a Written finding that there is good cause for rejecting all Proposals and that it would be in the public interest to cancel the Solicitation.
- (6) Unless consultant compensation is expressly provided for in the Solicitation Document, under no circumstances shall the County be responsible for any consultant costs and expenses incurred in submitting responses to the Solicitation under any part of this rule. All prospective consultants who respond to Solicitations do so solely at the consultant's cost and expense.

75-0020 Formal Selection Procedure

- (1) The formal selection procedure shall be used whenever the estimated cost of architectural, engineering, or related services exceeds the dollar limit set forth in Rule 310.0012 (1), or a lesser sum at the discretion of the County. Responses shall be solicited through public advertisement, and may then include a Request for Qualifications (RFQ) to establish a short list, followed by an RFP. However, if a limited number of responses are anticipated, or if it is determined to be in the County's best interest, Solicitation may proceed directly to an RFP process with or without an interview.
- (2) The Request for Qualifications shall, at a minimum, contain:
 - (a) The Solicitation; and
 - (b) A statement of the particular consultant qualifications required for the project; and
 - (c) The evaluation criteria (including the weights or points applicable to each criterion); and
 - (d) The screening or evaluation method to be used.
- (3) The RFP may require any or all of the following:
 - (a) The consultant's particular capability to perform the architectural, engineering, or related services required for the project, and the consultant's recent, current, and projected workloads;
 - (b) The number of the consultant's experienced staff available to perform the Personal Services required by the project, including such personnel's specific qualifications and experience;
 - (c) A list of similar projects completed by the consultant with references concerning past performance;
 - (d) Experience in providing outreach and equal opportunity to participate in projects to MBEs, WBEs and ESBs.
 - (e) Any other information which is deemed reasonably necessary to evaluate consultant qualifications.
- (4) A pre-submission meeting may be held for all interested consultants to discuss the proposed project and the required services. Attendance at such a meeting, if held, may be mandatory.
- (5) A consultant screening and evaluation committee of no fewer than three, and recommended no more than seven, individuals shall be established to review, score and rank the consultants according to the Solicitation criteria. The committee may be composed of members who, collectively, have experience in areas such as architecture, engineering, construction, and public contracting. Members may be appointed from qualified professional employees of the County or other agencies, and may include private practitioners of architecture, engineering, or related professions, and representatives of user groups. One member of the committee from the County shall be designated as the chairperson.

- (6) Following screening and evaluation, a short list of at least three qualified professional consultants shall be established. Unless the RFQ is canceled, every consultant placed on a short list shall receive a copy the RFP and have an opportunity to submit a Proposal.
- (7) The Request for Proposals shall describe or contain the following information:
 - (a) General background information, including a description of the project and the specific consultant services sought, and may include the estimated construction cost and the time period in which the project is to be completed; and
 - (b) The evaluation process and the criteria which will be used to select the consultant; including the weight or points applicable to each criterion; and
 - (c) The Closing date and time of the Solicitation and the delivery locations for consultant Proposals; and
 - (d) The date and time for interviews, if planned; and
 - (e) Reservation of the right to seek clarifications of each consultant's Proposal, and the right to negotiate a final Contract which is in the best interests of the County, considering cost effectiveness and the level of consultant time and effort required for the project;
 - (f) Reservation of the right to reject, based on Written findings, any or all Proposals if there is good cause, and to cancel the Solicitation, if doing so would be in the public interest; and
 - (g) A sample of the contract the consultant will be expected to execute; and
 - (h) Any other information which is reasonably necessary to evaluate, rank and select consultants.
- (8) A pre-qualification or pre-proposal meeting may be held for all interested consultants to discuss the proposed project and the required services. Attendance at such a meeting, if held, may be mandatory.
- (9) An RFP consultant selection committee of no fewer than three, and recommended no more than seven, individuals shall be established to review, score and rank the consultant's responses to the RFP. The committee may be composed of members who, collectively, have experience in areas such as architecture, engineering, construction and public contracting. Members may be appointed from professional employees of the County or other agencies, and private practitioners of architecture, engineering, or related professions, and user groups. One member of the committee from the County shall be designated as the chairperson.
- (10) The RFP consultant selection committee shall review, score and rank all Responsive Proposals according to criteria which may include, but are not limited to, the following:
 - (a) Availability and capability to perform the Work;
 - (b) Experience of key staff on comparable project(s);
 - (c) Demonstrated ability to successfully complete similar projects on time within budget;
 - (d) References and recommendations from past clients, public and private;
 - (e) Consultant's performance history in
 - (A) meeting deadlines;
 - (B) submitting accurate estimates;
 - (C) producing quality work; and
 - (D) meeting financial obligations;
 - (f) Status and quality of any required licensing or certification;
 - (g) Consultant's knowledge and understanding of the project as shown through the consultant's:
 - (A) proposed approach to the project's staffing and scheduling needs and
 - (B) suggested alternatives to any perceived design and constructability problems;
 - (h) Consultant's proposed fee;
 - (i) Results from oral interviews, if conducted;
 - (j) Design philosophy and project approach;
 - (k) Availability of any special required resources or equipment;
 - (l) Identity of proposed subcontractors; and

- (m) Experience in providing outreach and equal opportunity to participate in projects to MBEs, WBEs and ESBs; and
 - (n) Any other criteria that are deemed to be relevant to the project, including where the nature and budget of the proposed project so warrant, a design competition between competing professional consultants
- (11) Contract negotiations with the highest ranked consultant shall be directed toward obtaining Written agreement on:
- (a) The consultant's tasks, staffing, and a performance schedule; and
 - (b) A maximum, not-to-exceed contract price which is consistent with the consultant's Proposal and fair and reasonable to the County, taking into account the estimated value, scope, complexity, and nature of the Personal Services.
- (12) Negotiations may be formally terminated if they fail to result in a Contract within a reasonable amount of time. Negotiations will then ensue with the second ranked consultant, and if necessary, the third ranked consultant. If the second or third round of negotiations fails to result in a Contract within a reasonable amount of time, the Solicitation may be formally terminated. Services of a qualified consultant may then be obtained through the direct appointment procedure under Rule 75.0030.
- (13) If a project for which a consultant has been selected and awarded a Contract becomes inactive, or is materially altered or terminated, whether due to project phasing, insufficient appropriations, or other reasons, the County may, if the project is reactivated or continued after material alteration, retain the same consultant to complete the project if the County makes Written findings that retaining the consultant will:
- (a) not encourage favoritism in the awarding of architectural, engineering, or related services contracts or substantially diminish competition for such contracts; and
 - (b) will result in substantial cost savings to the County.
- (14) Contracts entered into under the formal selection procedure set forth in Rule 75.0020 may be amended, provided the services to be provided under the amendment are included within, or directly related to, the scope of services that were described in the original Solicitation Document. Provided, further, that each such amendment must be in Writing, Signed by an authorized representative of the consultant and the County, and receive all necessary approvals before it becomes binding on Multnomah County.

75-0025 Informal Selection Procedure

- (1) The informal selection procedure may be used to obtain architectural, engineering, or related services if the consultant's estimated fee is equal to or less than the dollar limit set forth in Rule 310.0012 (1).
- (a) A Written Solicitation inviting Written Proposals shall be sent to a minimum of three prospective consultants.
 - (b) Of the three Proposals sought, one must be obtained from an MBE, one from a WBE, and one from an ESB.
 - (c) If a Proposal is not available in a particular category from an MBE, WBE, or ESB consultant certified by the State of Oregon for the type of work required, an additional Proposal shall be obtained from one of the other categories. If three Proposals are not available from all of the categories combined, the remaining Proposal(s) may be obtained from any other contractor.
 - (d) A Proposal shall be "not available" in a specific category (MBE, WBE, or ESB) if all consultants certified by the State in that category and located within 75 miles from the place where the Contract is to be performed, have been advised of the contracting opportunity, have been given a reasonable period of time under the circumstances to submit a Proposal, and have failed or declined to provide a Proposal within the time specified.

- (e) All Proposals shall be reviewed and the three most qualified consultants selected and ranked.
- (f) The informal selection procedure shall be competitive to the maximum extent practicable and the selection and ranking may be based on criteria which include, but are not limited to each consultant's:
 - (A) Particular capability to perform the architectural, engineering, or related services for the project being considered;
 - (B) Number of experienced staff available to perform the services required by the project, including each consultant's recent, current, and projected workloads;
 - (C) Performance history on past projects for public or private clients,
 - (D) Project approach and design philosophy;
 - (E) Consultant's proposed fee.
 - (F) Geographic proximity to the project. The County may also consider the volume of work, if any, previously awarded to each consultant, with the object of effecting an equitable distribution of contracts among qualified consultants, provided such distribution does not violate the principle of selecting the most highly qualified consultant.
- (g) Contract negotiations with the highest ranked consultant shall be directed toward obtaining Written agreement on:
 - (A) The consultant's tasks, staffing, and a performance schedule; and
 - (B) A maximum, not-to-exceed contract price which is consistent with the consultant's Proposal and fair and reasonable to the County, taking into account the estimated value, scope, complexity, and nature of the Personal Services.
- (h) Negotiations may be formally terminated if they fail to result in a Contract within a reasonable amount of time. Negotiations will then ensue with the second ranked consultant, and if necessary, the third ranked consultant. If the second or third round of negotiations fails to result in a Contract within a reasonable amount of time, the Solicitation may be formally terminated. Services of a qualified consultant may then be obtained through the direct appointment procedure under Rule 75.0030.
- (i) If the scope of a project is revised during negotiations so that the estimated cost of the consultant's services exceeds the dollar limit set forth in Rule 310.0012 (1), then the informal process shall be terminated and the services of a qualified consultant solicited using the formal selection procedure set forth in Rule 75.0020. Provided however, that negotiations with the informally selected consultant may continue if the County makes Written findings that contracting with the consultant will:
 - (A) not encourage favoritism in the awarding of architectural, engineering, or related services contracts; and
 - (B) result in substantial cost savings to the County.

75-0030 Direct Appointment Procedure

- (1) A qualified consultant may be appointed directly from:
 - (a) the County's current list of consultants;
 - (b) another public jurisdiction's current list of consultants; or
 - (c) among all consultants offering the necessary services that the Department reasonably can locate, which may include public advertisement.
- (2) The direct appointment procedure may be used when:
 - (a) Circumstances which could not reasonably have been foreseen create a substantial risk of loss, damage, interruption of services or threat to the public health or safety and require the prompt performance of architectural, engineering, or related services to remedy the situation; or
 - (b) The consultant's estimated fee does not exceed \$10,000; or
 - (c) The project:
 - (A) consists of work which has been substantially described, planned or otherwise

- previously studied or rendered in an earlier Contract, as in continuation of a project;
 - (B) the consultant's estimated fee for such project does not exceed the dollar limit set forth in Rule 310.0012 (1); and
 - (C) the selection procedure used for the original project was the formal selection procedure set forth in Rule 75.0020 or a substantially equivalent procedure if the consultant services for the original project were procured prior to adoption of these rules; or
 - (D) The consultant will be assisting legal counsel, through expert analysis, testing, testimony or otherwise, on a project which is, or is reasonably anticipated to be, the subject of a claim, lawsuit or other form of action, whether legal, equitable, administrative or otherwise.
- (3) If the consultant's estimated fee does not exceed \$10,000 the direct appointment shall be made to an MBE, WBE or ESB consultant certified by the State of Oregon for the type or work required unless such consultant is not available.
- (4) A consultant shall be considered "not available" in a particular category if all consultants certified by the State in that category and located within 75 miles from the place where the Contract is to be performed, have been advised of the opportunity, have been given a reasonable period of time under the circumstances to respond and have failed or declined to respond. A direct appointment then may be made to any other qualified consultant.
- (5) A direct appointment under this Rule shall be competitive to the extent practicable and may be based on criteria which include but are not limited to the consultant's availability, capabilities, staffing, experience, and compensation requirements and the location of the project.

75-0035 Contract Provisions

- (1) Except as otherwise required by law, no consultant contract for architectural, engineering, or related services shall be awarded which contains fee provisions or fee schedules that are based on or limited to:
- (a) cost-plus-a-percentage-of-cost; or
 - (b) a percentage of construction or project costs.
- (2) Except in cases of emergency as defined in ORS 279.011(4), no building materials, supplies or equipment for any building, structure or facility constructed by or for the County shall be sold by or purchased from any person or firm employed as a consultant by the County to provide architectural, engineering, or related services for such building, structure or facility, unless the consultant is providing:
- (a) construction manager/general contractor services, or
 - (b) Design-Build services, or where that portion of the Contract relating to the acquisition of building materials, supplies or equipment was awarded pursuant to applicable law governing the award of such contracts.

75-0040 Protest Procedures

- (1) The procedures in Rules 30-0050 and 30-0104 shall apply to all Solicitations under Division 75.

75-0085 Contract Reinstatements

- (1) When a Contract expires and is reinstated pursuant to this rule, a Department may compensate the Contractor for Architectural, Engineering or Related Services performed in the interim between the expiration of the original Contract and the reinstatement.

- (2) When an Agreement-To-Agree expires and is reinstated pursuant to this rule, a Department may compensate the Consultant for Architectural, Engineering or Related Services performed under a Contract resulting from a work order issued under the Agreement-To-Agree, during the time period between the expiration of the Agreement-To-Agree and the reinstatement.
- (3) Contracts and Agreements-To-Agree may be reinstated for any of the following reasons:
 - (a) When an administrative error or oversight is discovered, the Department may submit, for approval of the CPCA Manager, an amendment to reinstate the Contract; or
 - (b) If the project for which the Contractor has been selected and awarded becomes inactive, or is terminated, whether due to project phasing, and/or insufficient appropriations, the Department may, if the project is reactivated, retain the same consultant to complete the Architectural, Engineering or Related Services required under the Contract if the Department makes informal Written findings that retaining the consultant:
 - (A) Is not likely to encourage favoritism or substantially diminish competition in the awarding of Architectural, Engineering or Related Services personal service contracts;
 - (B) Will result in substantial cost savings to the Department; and
 - (C) Is in the best interest of the County.

75-0087 Alternative Contract Processes

- (1) Consultants for Agreements-To-Agree shall be selected, and the Department shall obtain Architectural, Engineering or Related Services by selecting a consultant or consultants in the following manner:
 - (a) The Department selects one or more consultants under the applicable provisions of 75-0020 0025, or 0030.
 - (b) The Department develops a document that includes the general provisions required under 75-0035 and a specific Statement of Work for each anticipated Contract under the Agreement-To-Agree document.
 - (c) When the Department selects more than one consultant under the Agreement-To-Agree solicitation process, the Department must identify a standard in the Solicitation Document and the Agreement-to-Agree to be used in assigning particular Architectural, Engineering or Related Services under the Agreements-To-Agree.
- (2) Design-Build Contracts involve the provision of both design and construction services for Public Improvements under one Contract. Under most circumstances, Design-Build Contracts are mixed Contracts with the predominate purpose of the Contract involving construction of the Public Improvement. If the predominate purpose of the Contract is to obtain Architectural, Engineering or Related Services, selection may proceed under Division 75 of these Rules.

75-0090 Performance Record

- (1) A record of each consultant's performance, including information gained during an exit interview, may be compiled and maintained by the Department. A copy of such record shall be made available upon request to the consultant unless lawfully exempt.

75-0091 Contracts Subject to ORS 279.057(9)

- (1) For architectural, engineering or related services Contracts that are subject to the provisions of ORS 279.057(9) because the County is receiving funds from the State of Oregon that will be used to pay for all or a portion of the design and construction of the project, the Department shall follow the selection process set forth in ORS 279.057.

DIVISION 300
PUBLIC CONTRACT EXEMPTIONS-PURPOSE AND PROCEDURE

300-0000 Purpose and Statutory Authority

- (1) **Purpose** Pursuant to ORS 279.015 the Rules in Divisions 300 to 340 establish Public Contract Exemptions from the competitive bidding requirements of state law. These Exemptions may be used regardless of dollar amount, unless otherwise specified in the Rule. These Exemptions may be used without the Board making and approving additional findings of fact pursuant to Rule 300-0050, except where a Rule expressly requires such additional findings.
- (2) **Statutory Authority.** The Board is the local contract review board for Multnomah County. The Board has rulemaking authority to carry out its powers and duties regarding public contracting under ORS 279.011 to 279.063. The rules contained herein have been duly adopted by the Board in the manner prescribed by state law and Board policy.
Statutory Authority: ORS 184.305, 184.340, 279.712
Stats. Implemented: ORS 279.015, 279.017

300-0005 Exemption Procedure

- (1) **Exemption Requests for Contracts Equal to or Less Than the Dollar Limit in Rule 310.0012 (1)** The CPCA Manager shall review and approve or deny Exemption requests equal to or less than the dollar limit set forth in Rule 310.0012 (1).
- (2) **Exemption Requests for Contracts Exceeding the Dollar Limit in Rule 310.0012 (1)** Exemption requests for Contracts exceeding the dollar limit set forth in Rule 310.0012 (1) shall be submitted to the CPCA Manager who shall refer the requests to the Board with a recommendation to approve or deny the request. The Board shall review and approve or deny each such Exemption request.
- (3) **Chair May Grant Temporary Exemption** In appropriate cases, the County Chair may grant a temporary Exemption from Competitive Bidding pending formal consideration of a specific Exemption.

300-0010 Exemptions

- (1) All Public Contracts shall be based upon Competitive Solicitation, except:
 - (a) Contracts specifically exempted under section 300-0050 of these Rules;
 - (b) The following Contracts which are exempt under ORS 279.015 (1):
 - (A) Contracts made with other public agencies or the Federal Government;
 - (B) Contracts made with QRFs;
 - (C) A Public Contract exempt under Rule 300-0050 of this section;
 - (D) A Contract for products, services or supplies if the value of the Contract is less than the dollar limit set forth in Rule 310.0012 (2);
 - (E) Contracts between public agencies utilizing an existing solicitation or current requirement contract of one of the public agencies that is party to the contract for which:
 - (i) The original contract met the requirements of these Rules; and
 - (ii) The contract allows other public agencies usage of the contract; and
 - (iii) The original contracting public agency concurs.
 - (c) Contracts covered by the class Exemptions in Divisions 310 through 360 of these Rules.
- (2) No Written agreement under ORS Chapter 190 is necessary under subsection (1)(b)(E) of this Rule if the arrangement is with or among units of local government.

300-0050 Exemptions Requests

- (1) A Department may request that a particular Contract or Contracts be exempt from competitive Solicitation where such Contract or Contracts are not otherwise exempted under these rules.
- (2) Exemption requests shall contain the following:
 - (a) The nature of the Contract;
 - (b) Estimated amount to be paid on the Contract;
 - (c) Findings supporting the substantial cost savings anticipated by the Exemption from Competitive Bidding; such findings may consider the type, cost and amount of the Contract, the number of persons available to bid, and such other factors as are appropriate.
 - (d) Findings supporting why it is unlikely that an Exemption from Competitive Bidding would encourage favoritism or diminish competition for the Public Contract;
 - (e) Information regarding the following, as applicable:
 - (A) Operational, budget and financial data;
 - (B) Public benefits;
 - (C) Value engineering;
 - (D) Specialized expertise required;
 - (E) Public safety;
 - (F) Market conditions;
 - (G) Technical complexity;
 - (H) Funding sources;
 - (f) Proposed alternative contracting and purchasing practices to be employed; and
 - (g) The estimated date by which it would be necessary to let the Contract; and
 - (h) The contract expiration date
- (3) All Exemption requests shall be submitted to the CPCA Manager. Requests for Exemption for Contracts in excess of the dollar limit set forth in Rule 310.0012 (1) shall be signed by the Department director. Requests for Exemption for Contracts equal to or less than the dollar limit set forth in Rule 310.0012 (1) shall be submitted in accordance with procedures established by the CPCA Manager.
- (4) If a Department is requesting an Exemption from Competitive Bidding for a Contract for Public Improvements in excess of the dollar limit set forth in Rule 310.0012 (1), the Department shall comply with the following requirements:
 - (a) Follow the procedures required in sections (1), (2) and (3) of this Rule; and
 - (b) Before final adoption of the findings, hold a public hearing on the Exemption request that meets the following requirements:
 - (A) Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of 14 Days prior to the hearing.
 - (B) The notice shall state that the public hearing is for the purpose of taking comments on the Department's draft findings for an Exemption from the Competitive Bidding requirement. At the time of the notice, copies of the draft findings shall be made available to the public. At the option of the Department, the notice may describe the process by which the findings are finally adopted and may indicate the opportunity for any further public comment.
 - (C) At the public hearing, the Board shall offer an opportunity for any interested party to appear and present comment.
 - (c) If a Department is required to act promptly due to circumstances beyond its control that do not constitute an Emergency, notification of the public hearing can be published simultaneously with the Department's Solicitation of contractors for the alternative public contracting method,

as long as responses to the Solicitation are due at least five Days after the meeting and approval of the findings.

- (5) The Board may require any additional information deemed necessary to determine whether a particular Contract is to be exempt from Competitive Bidding.
- (6) The Exemption Order is effective only after the Board's approval of the findings.
- (7) Upon completion of and final payment for any Public Improvement Contract in excess of \$100,000 for which the Department did not use the Competitive Bidding process, the Department shall prepare and deliver to each member of the Board an evaluation of the Public Improvement project. The evaluation shall include but not be limited to the following matters:
 - (a) Actual project cost as compared with original project estimates;
 - (b) Amount of any guaranteed maximum price;
 - (c) Number of project change orders issued by the Department;
 - (d) Narrative description of successes and failures during the design, engineering and construction of the project;
 - (e) Objective assessment of the use of the alternative contracting process as compared to the findings required by subsections (2)(c) and (2)(d) above;
- (8) Evaluations shall be made available for public inspection;
- (9) The evaluations must be completed within thirty (30) days of the date that the Department accepts the Public Improvement project.

Statutory Authority: ORS 184.305, 184.340, 279.712
Statutory. Implemented: ORS 279.015, 279.019, 279.103
Replaces AR 10.140.

**DIVISION 310
GENERAL EXEMPTIONS**

310-0005 Advertising Contracts

- (1) A Department may purchase advertising from newspapers, magazines and other related print media, and from radio and television stations and related media regardless of dollar value, without Competitive Bidding.

Statutory Authority: ORS 184.305, 184.340, 279.712, 279.727

Stats. Implemented: ORS 279.015, 279.019, 279.727

Replaces AR 10.040

Finding 1

310-0010 Contract Amendments (Including Change Orders and Extra Work)

- (1) An amendment for additional Work or product which is reasonably related to the scope of Work under the original Contract, including change orders, extra Work, field orders, or other change in the original Specifications that increases the original Contract Price, may be made with the Contractor without Competitive Bidding subject to the following conditions:

- (a) The original Contract was let by Competitive Bidding or alternative procurement process and unit prices or additive alternates were provided that established the cost basis for the additional Work or product and a binding obligation exists on the parties covering the terms and conditions of the additional Work; or
- (b) The original Contract was let pursuant to a declaration of Emergency, in accordance with Rule 310-0030; or
- (c) The additional Work is required by reason of existing regulations or ordinances of federal, state or local agencies, dealing with the prevention of environmental pollution and the preservation of natural resources, that affect performance of the original Contract and such regulations or ordinances, as provided in ORS 279.318, either were not cited in the original Contract or were enacted or amended after submission of the successful Bid or Proposal; or
- (d) The original Contract was for the renovation or remodeling of a building.
- (e) Except for amendments entered into pursuant to subsections (a) to (c) of this rule, the aggregate increase resulting from all amendments to a Contract shall not exceed 20 percent of the initial Contract Price. Amendments to Contracts for the renovation or remodeling of a building shall not exceed 33 percent of the initial Contract Price.
- (f) If the original Contract required the Contractor to provide a performance and payment bond, and the Department has terminated the Contract and notified the surety of such termination, the Department may allow the Contractor's surety an opportunity to provide a substitute contractor to complete performance of the original Contract. Such substitute performance, and any Contract that makes a substitute contractor subject to the terms of the original Contract, is not an award of a Public Contract for purposes of ORS 279.015(1), shall not be subject to the competitive procurement provisions of ORS 279.005 through 279.111.

Statutory Authority: ORS 184.305, 184.340, 279.712

Stats. Implemented: ORS 279.015, 279.019

Replaces 10.130

Finding 2

310-0012 Contracts Under Certain Dollar Amounts

- (1) **Solicitation Requirements for Contracts between \$5,000 and \$75,000 Per Fiscal Year** A

Department may, in its discretion, let Public Contracts between \$5,000 and \$75,000 per fiscal year for the purchase of goods, materials, supplies and services without Competitive Bid or RFP if:

- (a) the Contract is for a single project or purpose and is not a component of or related to any other project or purpose during the fiscal year, and

- (b) the required goods and services are unavailable from a QRF as provided in ORS 279.850, and
- (c) Solicitation for purchase of the goods, materials, supplies or services is by Informal Quote or Formal Quote as provided in this section.

(2) **Solicitation Requirements for Contracts for \$5,000 or Less.** When the amount of the Contract does not exceed \$5,000 and the Contract otherwise meets the requirements of section (1)(a) and (1)(b) of this section, Departments are exempt from Competitive Solicitation; however, Departments shall where practicable, obtain Informal Quotes.

(3) **Requirements for Use of Informal Quotes** An Informal Quote may be used for Contracts up to 12 month's duration. The Solicitation for an Informal Quote shall be made by the Department. The Solicitation and the Offer for an Informal Quote may be electronic, in Writing or oral. The requirements for an Informal Quote are as follows:

- (a) A minimum of three Quotes shall be solicited from vendors who can reasonably be expected to provide the required goods, materials, supplies or services;
- (b) One of every three Quotes solicited shall be from an MBE, WBE or ESB contractor, if available.
- (c) The Department shall make a Written record of all vendors from whom Quotes were solicited and the 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.

(4) **Requirements for Use of Formal Quotes** A Formal Quote may be used for Requirements Contracts up to five years so long as purchases in any fiscal year do not exceed \$75,000. Solicitations for Formal Quotes shall be in Writing and shall be made by the CPCA Manager. Solicitations for Formal Quotes shall be made to a broad base of vendors, including MBE, WBE, and ESB firms as available and shall include all contract renewal language.

(5) **Solicitations for Contracts for Public Improvements or Public Works between \$5,000 and \$75,000 Per Fiscal Year**

Departments may let Public Contracts between \$5,000 and \$75,000 per fiscal year for trade-related projects, *i.e.*, construction, maintenance, repair, or similar labor and materials Contracts without formal Competitive Bidding if the Contract is for a single project and is not a component of or related to any other project during the fiscal year and the requirements of this subsection are met. When the amount of the Contract does not exceed \$5,000 and the Contract otherwise meets the requirements of this section, Departments are exempt from Competitive Bidding; however, Departments shall where practicable, obtain Informal Quotes. When the amount of the Contract is more than \$5,000 but equal to or less than \$75,000, Quotes shall be solicited in the following manner:

- (a) A minimum of three Quotes shall be solicited from vendors who can reasonably be expected to provide a Quote. If three Quotes are not available, a lesser number will suffice provided a Written record is made of the effort to obtain the Quotes.
- (b) Of the three Quotes provided for in subsection (5)(a) above, one must be obtained from an MBE, one from a WBE, and one from an ESB. More than three Quotes may be solicited providing that the additional Quotes are solicited from MBEs, WBEs and ESBs. Additional Quotes shall not be solicited except as provided in subsection 5(c) below.
- (c) If a Quote is not available in a particular category from an MBE, WBE, or ESB contractor certified by the State of Oregon for the type of Work required, an additional Quote shall be obtained from one of the other categories. If three Quotes are not available from all of the categories combined, the remaining Quote(s) may be obtained from any other contractor. A Quote shall be "not available" in a specific category (MBE, WBE, or ESB) if all contractors certified by the State in that category and located within 75 miles from the place where the Contract is to be performed, have been advised of the contracting opportunity, have been given a reasonable period of time under the circumstances to make a Quote, and have failed to provide a Quote within the time specified.

- (6) The Department shall make a Written record of all vendors from whom Quotes were solicited and the amount of the Quotes received and forwarded to CPCA.
- (7) When the Contract is for a Public Improvement or for Public Works, the Department shall comply with:
 - (a) The prevailing wage provisions of ORS 279.348 to 279.365, when applicable;
 - (b) The performance bond requirements of ORS 279.029;
 - (c) The contractor registration requirements of ORS 701; and
 - (d) Any other law applicable to such a Contract.
 - (e) The CPCA Manager shall prepare a report to the Board on an annual basis which provides an evaluation of the procedures for obtaining Quotes in subsection (5)(c). The annual report shall include a recommendation whether the program should be continued. If the CPCA Manager recommends that the Program be continued, the recommendation shall include any proposed improvements to the Program.

Statutory Authority: ORS 184.305, 184.340, 279.712, 279.727

Stats. Implemented: ORS 200.035, 279.015, 279.019, 279.727

Replaces 10.120

Finding 3

310-0030 Emergency Contracts

- (1) Pursuant to the requirements of this rule, a Department, may in its discretion, enter into a public Contract without competitive Solicitation if an Emergency exists. Emergency means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to public health or safety that requires prompt execution of a contract to remedy the condition.
- (2) Regardless of the dollar value of the Contract, a Department entering into an Emergency Contract shall:
 - (a) Make a Written declaration of Emergency, including findings describing the Emergency circumstances that require the prompt performance of the Contract, stating the anticipated harm from failure to establish the Contract on an expedited basis; and
 - (b) Encourage competition to the extent reasonable under the circumstances; and
 - (c) Record the measures taken under subsection (b) of this section to encourage competition, the amounts of the Bids, Quotes or Proposals obtained, and the reason for selecting the Contractor.
- (3) Notwithstanding Rule 300-0005 (2) the Board delegates to the Chair the authority to declare the existence of an Emergency, stating with specificity the Emergency condition necessitating the prompt execution of a contract, and to approve Exemptions under this Rule for Contracts in excess of the dollar limit set forth in Rule 310-0012(1).
- (4) Any Contract awarded under this Exemption and delegation shall be awarded within 60 Days following declaration of the Emergency unless an extension is granted by the Chair.

Statutory Authority: ORS 184.305, 184.340, 279.712, 279.727

Stats. Implemented: ORS 279.011, 279.015, ORS 279.727

Finding 4

310-0035 Equipment Maintenance, Repair and Overhaul

- (1) A Department, may enter into a Contract for equipment maintenance, repair or overhaul without Competitive Bidding, subject to the following conditions:
 - (a) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

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

(c) Written documentation supporting (a) or (b) above is submitted with the purchase request.

Statutory Authority: ORS 184.305, 184.340, 279.712, 279.727

Stats. Implemented: ORS 279.015, 279.019, 279.727

Replaces 10.045

Finding 5

310-0040 Contracts for Price Regulated Items

(1) A Department may, regardless of dollar value and without Competitive Bidding, contract for the direct 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 184.305, 184.340, 279.712

Stats. Implemented: ORS 279.015, 279.019.

Replaces 10.020

Finding 6

310-0044 Purchases Under Federal Contracts

(1) When the price of goods and services has been established by a contract with a department of the federal government pursuant to a federal contract award based on a competitive Bid or Proposal, a Department may purchase the goods and services in accordance with the federal contract without subsequent Competitive Bidding. In exercising this authority under this Exemption, the Department shall:

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

(b) Include in the contract file documentation showing the cost savings to be gained from anticipated purchases from the federal contract.

(2) A Department shall not contract pursuant to this rule in the absence of a substantial cost savings to be realized by using this method.

Statutory Authority: ORS 184.305, 184.340, 279.712, 279.015

Stats. Implemented: ORS 279.015

Finding 7

310-0060 Copyrighted Materials

(1) A Department may, without Competitive Bidding and regardless of dollar amount, purchase copyrighted materials if there is only one known supplier available for such goods. Examples of copyrighted materials covered by this Exemption include, but are not limited to, textbooks, workbooks, curriculum kits, reference materials, audio and visual media, and software which is available only from the manufacturer or developer.

Statutory Authority: ORS 184.305, 184.340, 279.712, 279.727

Stats. Implemented: ORS 279.015, 279.017, 279.019, 279.727

Finding 8

310-0090 Investment Contracts

(1) A Department may, without Competitive Bidding, and regardless of dollar amount, 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 184.305, 184.340, 279.712, 279.727

Stats. Implemented: ORS 279.015, 279.019, 279.727

Replaces 10.070

310-0100 Brand Names or Products, “or Equal,” Single Seller and Sole Source

- (1) Solicitation Specifications for Public Contracts shall not expressly or implicitly require any product of any particular manufacturer or seller except as expressly authorized in subsections (2) and (3) of this rule.
- (2) “Or Equal” Specification. A Department may specify a particular brand name, make or product suffixed by “or equal,” “or approved equal,” “or equivalent,” “or approved equivalent,” or similar language if there is no other practical method of Specification.
- (3) Specifying a Particular Brand Name, Make, or Product. A Department may specify a brand name, make, or product without an “or equal” or equivalent suffix if there is no other practical method of Specification after forwarding the following information to the CPCA Manager for review and submittal to the Board for approval:
 - (a) A brief description of the Solicitation(s) to be covered including contemplated future purchases;
 - (b) The brand name, mark, or product to be specified; and
 - (c) The reasons the Department is seeking this procurement method, which shall include any of the following findings:
 - (A) It is unlikely that Specification of the brand name, mark or product will encourage favoritism in the award of the Public Contracts or substantially diminish competition; or
 - (B) Specification of the brand name, mark or product would result in substantial cost savings to the Department; or
 - (C) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.
 - (d) The Department shall make reasonable effort to notify all known suppliers of the specified product and invite such vendors to submit competitive Bids or Proposals.
- (4) Purchasing From Sole Source, Single Seller. A Department may purchase a particular product or service available from only one source after forwarding to the CPCA Manager for review and submittal to the Board for approval:
 - (a) The Department's findings of current market research to support the determination that the product or service is available from only one source; and
 - (b) A brief description of the Contract or Contracts to be covered including contemplated future purchases;
 - (c) Description of the product or service to be purchased; and
 - (d) The reasons the Department is seeking this procurement method, which may include any of the following:
 - (A) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment, supplies, or services; or
 - (B) The required product is software or data processing equipment which will be used for research where there are requirements for exchange of software or data with others; or
 - (C) The particular product is for use in a pilot or an experimental project.
- (5) Single Manufacturer, Multiple Sellers. A Department may specify a product or service available from only one manufacturer but available through multiple sellers subject to the following:
 - (a) If the total purchase is equal to or less than the dollar limit set forth in Rule 310.0012 (1), the Department may obtain Informal or Formal Quotes in accordance with the requirements of Rule 310.0012; or
 - (b) If the amount of the purchase exceeds the dollar limit set forth in Rule 310.0012 (1), the product or service shall be obtained through Competitive Bidding , or

- (c) If a product is available for purchase directly from the manufacturer at a price less than that offered by distributors, a Department may purchase directly from the manufacturer regardless of the amount of the purchase.
- (6) If a Department intends to make several purchases of the product of a particular manufacturer or seller for a period not to exceed five years, it may so state in the Solicitation file and in the Solicitation Document, if any. Such documentation shall be sufficient notice as to subsequent purchases. If the total purchase amount is estimated to exceed the dollar limit set forth in Rule 310.0012 (1), this shall be stated in the advertisement for Bids or Proposals.
- (7) Copies of all documents submitted to the CPCA Manager shall be maintained in the procurement file.
Statutory Authority: ORS 184.305, 184.340, 279.712
Stats. Implemented: ORS 279.017
Replaces AR 20.000, 20.010, 20.030, 20.040, 20.050

310-0180 Product Prequalification

- (1) When specific design or performance Specifications must be met or such Specifications are impractical to create or reproduce, for a type of product to be purchased, a Department may specify a list of approved or qualified products by reference to the prequalified product(s) of particular manufacturers or sellers in accordance with the following product prequalification procedure:
 - (a) The Department makes reasonable efforts to notify all known manufacturers and vendors of competing products of the Department's intent to compile a list of prequalified products and of the opportunity to submit applications to include their product(s) on the list of prequalified products; and
 - (b) The Department permits application for prequalification of similar products up to 15 Days prior to advertisement for bids on the product.
- (2) A Department which has followed the procedure set forth in subsection (1) above shall maintain a record of the procedure followed in the procurement file
- (3) If an application for including a product in a list of prequalified products is denied, the Department shall promptly provide the applicant with Written notice of the denial.
Statutory Authority: ORS 184.305, 184.340, 279.712
Stats. Implemented: ORS 279.015, 279.017, 279.019, 279.729
Replaces 20.040
Finding 10

310-0220 Request for Proposal-Construction Manager/ General Contractor

- (1) A Department may seek individual or class Exemptions from the Board to use a Request for Proposal procedure for the selection of construction manager/general contractor firms (CM/GC) who will be required to establish guaranteed maximum prices for constructing public improvements, subject to the following conditions:
 - (a) Contractual requirements are stated clearly in the Solicitation Document. The Contract shall describe the methods by which the CM/GC shall competitively select other contractors and subcontractors to perform the Work of the improvement. Further, the Contract shall describe completely the methods by which the CM/GC and its affiliated or subsidiary entities, if any, may compete to perform the Work of the improvement; such methods shall include, at a minimum, public Opening of sealed Bids at a pre-announced time and place.
 - (b) Evaluation criteria to be applied in selecting the CM/GC firm are stated clearly in the Solicitation Document. Criteria used to identify the CM/GC firm which best meets the public contracting needs may include but are not limited to cost, quality, experience relevant to the improvement to be constructed, time required to commence and complete the improvement, and experience promoting MBE, WBE and ESB participation on projects.

- (2) The Department shall prepare Written findings to support the use of the CM/GC contracting method and submit them to the CPCA Manager. The findings must show compliance with ORS 279.011(5), 279.015(2)(a) and (b). The CPCA Manager shall then publish an advertisement of the public hearing provided for in this Rule and prepare and submit required documentation to the Board. The Department shall retain the findings and make them available upon request. These findings shall address as many of the following items as are applicable:
- (a) The Department has competitively Bid a Public Improvement project and failed to receive a Responsive, Responsible Bid within the cost estimate established by the Department or its consultant. There are de facto cost savings from not redesigning and rebidding the project;
 - (b) There are expected substantial savings on direct construction costs;
 - (c) The owner needs to have use of the project within the stated project schedule and there will be program and cost consequences if the required use is delayed;
 - (d) The technical complexity or unique character of the project requires the coordination of multiple disciplines;
 - (e) The use of value engineering through cooperation among the architect, engineer, contractor and owner is important to the project's delivery on time and within budget;
 - (f) There are other factors which demonstrably affect cost.
- (3) The County shall hold a public hearing in accordance with ORS 279.015(3).
- (4) Upon completion of and the final payment for any CM/GC Contract in excess of \$100,000, the Department shall prepare and deliver to the Board an evaluation of the project in accordance with ORS 279.103.

Statutory Authority: ORS 184.305, 184.340, 279.712, 279.015, 279.103

Stats. Implemented: ORS 279.005, 279.103, 279.015, 279.019

Replaces 10.086

Finding 11

310-0300 Requirements Contracts

- (1) Requirements Contracts in excess of the dollar limit set forth in Rule 310.0012(1) per fiscal year may be established for a maximum period of five years for the purposes of minimizing paper work, achieving continuity of product, securing a source of supply, reducing inventory, combining Department requirements for volume discounts, standardization among agencies, and reducing lead time for ordering. The County may enter into requirements Contracts whereby it is agreed to purchase goods or services for an anticipated need at a predetermined price provided the Contract is let by a competitive procurement process pursuant to the requirements of ORS 279.005 to 279.111 and these rules.
- (2) Requirements Contracts for less than the dollar limit set forth in Rule 310.0012(1) per fiscal year may be let for a maximum period of five years through a Formal Quote in accordance with the provisions of Rule 310.0012(4).

Statutory Authority: ORS 184.305, 184.340, 279.712

Stats. Implemented: ORS 279.005, 279.015, 279.019, 279.710, 279.712, 279.717; 279.727

Replaces 10.060

Finding 12

310-0500 Purchase of Used Personal Property

- (1) A Department may purchase used property or equipment without competition, if it has determined that the purchase will result in cost savings to the Department and will not diminish competition or encourage favoritism. "Used personal property or equipment" is property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used," at the time of the

Department purchase. "Used personal property or equipment" generally does not include property or equipment if the Department was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(2) For purchases of used personal property or equipment costing less than the dollar limit set forth in Rule 310.0012(1), Departments shall, where feasible, obtain Informal Quotes in accordance with the requirements of Rule 310-0012.

(3) Purchases of used personal property or equipment costing more than the dollar limit set forth in Rule 310.0012(1) shall be by Invitation to Bid or Request for Proposal.

Statutory Authority: ORS 184.305, 184.340, 279.712, 279.727

Stats. Implemented: ORS 279.005, 279.015, 279.019, 279.727

Finding 13

DIVISION 320
INFORMATION CONTRACT EXEMPTIONS

320-0010 Information Technology Contracts

- (1) A Department may enter into a Contract to acquire information technology hardware and software, without Competitive Bidding, subject to the following conditions:
- (a) If the Contract amount is less than the dollar limit set forth in Rule 310.0012(1), the Department shall, at a minimum, solicit Informal Quotes in accordance with Rule 310.0012.
 - (b) If the Contract amount exceeds the dollar limit set forth in Rule 310.0012(1), the CPCA Manager shall determine and use the best procurement method, pursuant to ORS 279.005 through 279.111, and shall solicit Written Proposals in accordance with the requirements of these Rules. The evaluation and award process shall be documented.
- (2) A Department may enter into a Contract for information technology hardware or software maintenance and upgrades without Competitive Bidding where these services are available from only one source.

Statutory Authority: ORS 184.305, 184.340, 279.712
Stats. Implemented: ORS 279.005, 279.015, 279.019, 279.710, 279.712, 279.727
Replaces 10.090
Finding 14

320-0020 Telecommunications Systems Contracts

- (1) A Department may enter into a Contract for telecommunications system hardware and software without Competitive Bidding, subject to the following conditions:
- (a) If the Contract amount is less than the dollar limit set forth in Rule 310.0012(1), the Department shall at a minimum solicit Informal Quotes in accordance with Rule 310.0012;
 - (b) If the Contract amount exceeds the dollar limit set forth in Rule 310.0012(1), the Department shall determine and use the best procurement method, pursuant to ORS 279.005 through 279.111, and shall solicit Written Proposals in accordance with the requirements of these Rules.
- (2) The telecommunications Solicitation authorized in subsection (1)(b) of this rule shall:
- (a) State the contractual requirements in the Solicitation Document;
 - (b) State the evaluation criteria to be applied in awarding the Contract and the role of the evaluation committee. Criteria to be used to identify the Proposal that best meets the Department's needs may include, but are not limited to, cost, quality, service and support, compatibility and interconnectivity with the county's existing telecommunications systems, product or system reliability, vendor viability and financial stability, operating efficiency, and expansion potential;
 - (c) State the provisions made for Bidders or Proposers to comment on any Specifications which they feel limit competition; and
 - (d) Be advertised in accordance with ORS 279.025 and Rule 30-0015.

Statutory Authority: ORS 184.305, 184.340, 279.712, 283.505
Stats. Implemented: ORS 279.005, 279.015, 279.019, 279.710, 279.712, 279.727, 283.505
Replaces 10.091
Finding 15

320-0025 Telecommunications Services

- (1) This rule is intended to allow a Department to secure the most competitive, cost-effective telecommunications services of the quality needed to meet all service performance requirements while minimizing administrative and service delivery costs.

- (2) In determining the appropriate procurement method for telecommunications services, the Department shall determine whether competition exists. In determining whether competition exists, the Department may consider the following factors:
- (a) The extent to which alternative providers exist in the relevant geographic and service market. The relevant market will vary with the geographic area and from service category to service category, depending upon changes in the regulatory environment and competitive marketplace. Thus, the relevant market will depend on the facts and circumstances of each case;
 - (b) The extent to which alternative services offered are comparable or substitutable in technology, service provided, and performance. (For example, if the Department requires digital services, analog services are not comparable or substitutable, or if the Department requires fiber optic technology, then copper, microwave or satellite transmission technology may not be comparable or substitutable);
 - (c) The extent to which alternative providers can respond to the Department's interests in consistency and continuity of services throughout its service area, volume discounts, equitable service for all users, centralized management, and limiting Department liability. For example, to be considered as the County's telephone long distance provider, any long distance service vendor must be able to meet, support and interface with the County's centralized automated billing requirements. The Department must document for the record its findings on these factors or any other factors used in determining whether competition exists. In developing its findings, the Department may solicit the information either through informal telephone or Written contacts, or through a formal Request for Information (RFI).
- (3) Upon determining that competition does not exist for the relevant service and geographical area, the Department may proceed to secure the service on a sole source basis, as described in Rule 310-0100, and follow all applicable rules and procedures.

Statutory Authority: ORS 184.305, 184.340, 283.505, 279.712

Stats. Implemented: ORS 279.005, 279.015, 279.019, 279.710, 279.712, 279.727

Finding 16

**DIVISION 330
SPECIFIC EXEMPTIONS**

330-0200 Hazardous Material Removal; Oil Cleanup

- (1) A Department may enter into Public Contracts without Competitive Bidding, regardless of dollar amount, when ordered to clean up oil or hazardous waste pursuant to the authority granted the Department of Environmental Quality (DEQ) under ORS Chapter 466, and such DEQ order necessitates the prompt establishment and performance of the Contract in order to comply with the statutes regarding spill or release of oil or hazardous material that have created an Emergency condition. In exercising its authority under this Exemption the Department shall:
- (a) To the extent reasonable under the circumstances, encourage competition by attempting to solicit Informal Quotes in accordance with Rule 310.0012 from potential suppliers of goods or services;
 - (b) Make Written findings describing the circumstances requiring cleanup or a copy of the DEQ order ordering such cleanup; and
 - (c) Record the measures taken under subsection (a) of this section to encourage competition, the amount of the Quotes or Proposals obtained, if any, and the reason for selecting the Contractor selected.
- (2) A Department shall not contract pursuant to this Exemption in the absence of an order from the Department of Environmental Quality to cleanup a site with a time limitation that would not permit hiring a contractor as otherwise required by these Rules.
- Statutory Authority: ORS 184.305, 184.340, 279.712, 279.727
Stats. Implemented: ORS 279.015, 279.019, 279.727
Finding 17

330-0260 Employee Benefit Insurance

- (1) A Department may purchase employee benefit insurance without Competitive Bidding, regardless of dollar amount.
- Statutory Authority: ORS 184.305, 184.340, 279.712
Stats. Implemented: ORS 279.015, 279.019
Finding 18

330-0340 Medical and Laboratory Supplies

- (1) A Department is not required to purchase laboratory and medical supplies on the basis of a single award to the lowest Responsible Offeror, but instead may purchase different brands of the same item by awarding Contracts, after a Solicitation, to the lowest Responsible Offeror for each brand. The laboratory and medical supplies affected by this rule include, but are not limited to:
- (a) Drugs, biologicals, blood fractions, and blood components;
 - (b) Intravenous solutions and associated supplies for administration;
 - (c) Microbiologicals, biochemicals, and diagnostic reagents;
 - (d) Surgical dressings;
 - (e) Heart valves;
 - (f) E.E.G., E.K.G., electrodes, charts, and associated supplies;
 - (g) Sterilizing wraps;
 - (h) Catheters, medical tubes, and associated supplies;
 - (i) Surgical and orthopedic instruments;
 - (j) Hearing aids;
 - (k) Pacemakers;
 - (l) Dental supplies;

(m) Laboratory small package chemicals;

(n) Biology supplies; and

(o) Therapeutic or cosmetic implants.

Statutory Authority: ORS 184.305, 184.340, 279.712, 279.727

Stats. Implemented: ORS 279.005, 279.007, 279.015, 279.017, 279.019, 279.727

Finding 19

330-0450 Office Copier Purchases

(1) The County may enter into multiple Requirements Contracts for either the purchase, rental or lease of office copying equipment. Except for this multiple award Exemption, such Contracts shall otherwise conform to the requirements of Rule 310-0300.

(2) In exercising this Exemption, the CPCA Manager shall fully consider the operating capabilities, limitations and cost of each brand or model and select the brand which will produce the best combination of performance and cost per copy for each application.

Statutory Authority: ORS 184.305, 184.340, 279.712, 279.727

Stats. Implemented: ORS 279.005, 279.007, 279.015, 279.017, 279.019, 279.727

Finding 20

**DIVISION 340
MULTNOMAH COUNTY EXEMPTIONS**

340-1000 Rating Agency Contracts

- (1) The County may purchase the services of Moody's Investors Service, Standard and Poor's or similar rating agencies without Competitive Solicitation.

*Replaces 10.071
Finding 21*

340-1010 Library Databases, Interactive Computer Services and Circulation Materials

- (1) A Department may, without Competitive Solicitation, purchase databases, interactive computer services and circulation materials such as books, videos, tapes and CDs for Multnomah County Libraries.

*Replaces 10.025
Finding 22*

340-1020 Periodicals

- (1) The County may purchase subscriptions for periodicals, including journals, magazines and similar publications without Competitive Bidding.

*Replaces 10.031
Finding 23*

340-1030 Institutional Commissaries and Sheriff's Inmate and Juvenile Detainee Welfare Funds

- (1) Institutional and residential commissaries and Sheriff's Inmate and Juvenile Detainee Welfare Funds may, without Competitive Bidding, make purchases from these funds based upon Written policies and procedures approved by the CPCA Manager.

*Replaces 10.035
Finding 24*

340-1060 Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalt

- (1) The County is exempt from formal Competitive Bidding for the purchase of gasoline, diesel fuel, heating oil, lubricants and asphalt subject to the following conditions:

- (a) The County solicits Informal Quotes in accordance with Rule 310.0012; and
- (b) Makes its purchases from the least expensive source; and
- (c) Retains Written justification for the purchase made.

*Replaces 10.055
Finding 25*

340-1070 Ballots

- (1) The County is exempt, regardless of dollar amount, from Competitive Bidding requirements for the printing of ballots.

*Replaces 10.081
Finding 26*

340-1080 Personal Services Contracts

- (1) A Contract for "Personal Services" calls for specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic, or management discretion or judgment. Qualifications and performance history, expertise, knowledge

and creativity, and the ability to exercise sound professional judgment are typically the primary considerations when selecting a Personal Services Contractor, with the price being secondary. "Architect, Engineer, and Related Services" are a special class of Personal Services Contracts, which are defined by AR 75.000.

- (2) The screening and selection procedures for the award of Personal Services Contracts are governed by Administrative Procedures PUR-1 and CON-1.
- (3) This rule describes a method for distinguishing Contracts for "Personal Services" from Public Contracts for services. Following are examples of Public Contracts for services: Contracts for trade-related activities, including labor and/or material to accomplish repair or maintenance of all types of equipment and structures, and contracts for services which can be provided by any competent laborer, such as janitorial, maintenance and data entry contracts.
- (4) A Department may enter into a "Personal Services" Contract with an independent contractor when:
 - (a) The Work to be performed requires specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or exercise of professional, artistic, or management discretion or judgment;
 - (b) The Department will not control the means or manner of the Contractor's performance, but must rely on the Contractor's specialized skills, knowledge and expertise to accomplish the Work (a Department's reservation of the right to determine and modify the delivery schedule, evaluate the quality of completed performance, and accept or reject the completed performance does not mean that the Department will control the means and manner of the performance.); and
 - (c) Selecting a contractor primarily on the basis of qualifications, rather than price, in accordance with the provisions of PUR-1, would most likely meet the Department's needs and result in obtaining satisfactory Contract performance and optimal value for the County.
- (5) "Personal Services" Contracts may include, but are not limited to, the following:
 - (a) Contracts for services performed as an independent contractor in a professional capacity including, but not limited to, the services of an accountant; attorney; land use planner; physician or dentist; commercial pilot; aerial photographer; data processing consultant or broadcaster;
 - (b) Contracts for services as an artist in the performing or fine arts including, but not limited to, any person identified as a photographer, filmmaker, painter, weaver, or sculptor;
 - (c) Contracts for services that are specialized, creative, and research-oriented;
 - (d) Contracts for services as a consultant; and
 - (e) Contracts for educational services.
- (6) "Personal Services" Contracts do not include:
 - (a) Contracts, even though in a professional capacity, if primarily for a product; e.g., a contract with a data processing consultant to develop a new computer system design is for Personal Services, but a contract to design a computer system and supply all the hardware is primarily for a tangible product;
 - (b) Contracts with a temporary service or personnel agency to supply labor, which is of a type that can generally be done by any competent worker, e.g., data entry, keypunch, janitorial, security guard, crop spraying, laundry, and landscape maintenance services Contracts;
 - (c) Contracts with a management contractor that primarily supplies labor that can generally be done by any competent or skilled worker including, but not limited to, the following services: most conference planning, collection, crowd management, first aid training, courier, and data collection surveys;
 - (d) Contracts for trade-related activities considered to be labor and material Contracts; and

- (e) Contracts for services of a trade-related activity to accomplish routine, continuing and necessary functions, even though a specific license is required to engage in the activity. Examples include, but are not limited to, repair and/or maintenance of all types of equipment or structures.

Replaces 10.092

Finding 27

340-1090 Underwriter Contracts

- (1) Underwriter Contracts. The County may contract for the purchase of underwriter services, without Competitive Bidding regardless of dollar value subject to the following conditions:
 - (a) The County shall use a competitive selection process, including advertisement of notice of issuance of a RFP to solicit Proposers for underwriter Contracts.
 - (b) The County shall award Contracts to underwriters as provided by the RFP.
 - (c) The highest scoring Responsive and Responsible Proposer shall be selected by a selection committee composed of at least three individuals, one of whom must be a representative from the private sector.
 - (d) The County shall prepare or have prepared a bond purchase agreement. The Finance Director of the Finance Division shall be authorized to execute the bond purchase agreement after the bond resolution is approved by County.

Finding 28

340-1100 Undercover Vehicles

- (1) The Sheriff's Office may, without Competitive Bidding, purchase vehicles for use for undercover operations.

Finding 29

Exhibit 2 – Resolution No. 02-130

Finding 1 Advertising Contracts 310-0005

This exemption relates to advertising. The County has traditionally purchased advertising primarily in newspapers, so the following findings relate primarily to newspapers and other written publications. However, the County may also purchase advertising for programs in other media, such as radio or television, where these findings apply:

- a. By their nature, media sources are generally unique. Advertisements are placed in a particular source because of the specific audience that source serves.
- b. Competition is limited to furnish advertising space in daily newspapers of general, trade or business circulation in the vicinity of the County. There is only one daily newspaper of general circulation in the greater Portland metropolitan area, The Oregonian. ORS 279.025 requires that advertisements for bids for public improvements in excess of \$125,000 be published in at least one trade newspaper of general statewide circulation. There is only one daily newspaper of general statewide trade circulation in which most government agencies in the northern Willamette Valley routinely advertise procurements of public improvements or construction, the Portland Daily Journal of Commerce.
- c. Cost savings are difficult to quantify where the sources are unique and not interchangeable. For example, the newspaper industry's practice is to establish advertising contract rates for advertising purchasers. The purchaser can maximize cost savings based through a contractual commitment to advertise, based on volume, format and placement of commitment to a advertisements. Where the volume of purchases warrants, the County may enter into advertising contracts to get the best price on its advertising needs.
- d. Advertisements may be placed to satisfy legal notice of County policy requirements. The County advertises its public procurements in the one trade newspaper of general statewide circulation, The Portland Daily Journal of Commerce.
- e. Other published advertisements or notices, such as routine public notices, personnel recruitment information, etc., are placed in one or more of the publications of general circulation in the local area, and other publications as appropriate.
- f. The Portland community relies upon newspapers as central sources of news and information regarding County activities.
- g. It is unknown whether contracts for advertisements placed with radio, television- or other broadcast media will result in cost savings if not placed for competitive bid or request for proposal. If possible savings could be obtained through competitive means, the County will attempt to obtain competitive quotes or bids as appropriate.
- h. Due to limited competition and unique nature of sources, it is unlikely that this class exemption will encourage favoritism in the awarding of County contracts or substantially diminish competition for County contracts, as required by ORS 279.015(2)(a). Further, any contracts awarded under this exemption would result

in the most substantial cost savings available to the County as required by ORS 279.015(2)(b), where the County can achieve volume savings through contracts for advertising with a particular media source.

Finding 2 Contract Amendments 310-0010

- a. This class exemption permits the County to make contract amendments, including change orders, extra work, field orders, or other change in the original specifications that increase the original contract price, without further competitive bidding, subject to the limitations of this rule.
- b. The exemption allows contract amendments to be made to existing contracts for goods and services where the initial contract was obtained through competitive means and awarded to the lowest, responsive and responsible bidder or to the highest, responsive and responsible proposer, in accordance with state law and County policies and procedures or where the contract was otherwise exempt from competition. This practice ensures that the substantial cost savings achieved by the County in the initial selection process will be carried forward in the contract amendments.
- c. The exemption is necessary because in the course of the contract, it is impossible for County staff to know or plan for all possible contingencies, including additional requirements, emergencies, unplanned environmental cleanup and other unforeseen circumstances. The County must have the flexibility it needs to respond to contingent circumstances in a prompt and cost-effective manner.
- d. There is no need for dollar limits on contract amendments where unit prices or additive alternate prices were provided during the bidding or proposal process that established the cost basis for the additional work or product and a binding obligation exists on the parties covering the terms and conditions of the additional work or product. Therefore, subsection (1) permits amendments in unlimited dollar amounts. However, where these conditions are not met, but there is a need to amend the contract, subsection (5) permits contract amendments within limits which are reasonable and which do not exceed a certain percentage of the initial contract price, in order to guarantee that competition for public contracts is not substantially diminished.
- e. Substitute performance by a contractor's surety, as described in subsection (6) of this rule, must be allowed as an exempted practice so the County can realize the full benefit of the performance bond which secured the initial contract award. In such cases, the contractor's surety must be enabled to fulfill its obligations to the County on behalf of the secured contractor. Therefore, such substitute performance by contractors surety shall not be deemed a public contract for the purposes of ORS 279.015(l).
- f. This rule generally allows the County to complete the work at hand, or to purchase additional needed products, without the additional costs in time, project start-up, and project coordination if the additional work or product required must be competitively bid. There is also a substantial, though indirect, cost component represented by the knowledge and awareness of the on-site contractor about the additional work needed. However, the conditions and dollar limits of this exemption ensure that competitive means will be used to procure work to be

performed or product to be provided in cases which do not meet the requirements of this rule.

These findings indicate that it is unlikely that this class exemption will encourage favoritism in the awarding of County contracts or substantially diminish competition for County contracts as required by ORS 279.015(2)(a). Amendments under subsection (1) will be made under conditions where pricing or contractual commitment have already been established by competitive means, or there is an emergency or unplanned environmental cleanup. Amendments under subsection (2) are limited in dollar amount. Substitute performance by a contractor's surety under subsection (3) is necessary to get the full value of the performance bond requirement in the initial contract. The use of this exemption to amend County contracts under the specific conditions outlined will result in substantial cost savings to the County as required by ORS 279.015(2)(b).

Finding 3 Contracts Under Certain Dollar Amounts 310-0012

- a. Section (1) of this class exemption permits the County to award contracts not to exceed the current formal bid threshold on an informal basis, if the County has determined that (1) the awarding of the contract through informal competitive quotes will result in cost savings and (2) certain conditions are met which are designed to enhance competition.
- b. Section (2) of this class exemption permits the County to award contracts for public improvements not to exceed the current formal bid threshold under the requirements of section (2) and further conditions relating to public works contracts. The purpose of these requirements is to ensure that all public improvements or public works are performed in accordance with state law.
- c. It is unlikely that this exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts, in accordance with ORS 279.015(2)(a). This exemption applies only to purchases of goods and services under a limited dollar amount, and then, only after efforts to obtain competitive quotes are made. The County has extensive vendor services, including open lists from which vendors are contacted for quotations. The informal quotation process encourages competition from smaller firms who can respond easily and without great expense to submit quotes on County business. If the contract is for a public improvement, all state requirements relating to performance bonds and contractor registration are required to be met.
- d. The awarding of public contracts pursuant to this exemption will result in substantial cost savings to the County as required by ORS 279.015(2)(b). Informal competition will be maintained in order to achieve cost savings in price. It is faster and cheaper for the County to use informal rather than formal means of obtaining competitive quotes for goods and services for purchases under the current formal bid threshold. Document preparation expense is saved. Advertising and postage expenses are saved. Purchases of goods and services for County programs can be made more quickly.
- e. The provisions of Section (3) are supported by the findings in Ordinance 898 and in the Oregon Regional Consortium Disparity Study.

Finding 4 Emergency Contracts 310-0030

- a. Under ORS 279.015(4)(a), public contracts may be exempted from the requirements of ORS 279.015(l) if emergency conditions exist which require prompt execution of the contract, subject to the additional requirements of ORS 279.015(4).
- b. ORS 279.015(5) requires the Local Contract Review Board to adopt rules allowing the Board and its designee for contracts under \$50,000 to declare that an emergency exists and to establish procedures for determining when emergency conditions are present. Further, ORS 279.015(5) requires that the rules shall prescribe that if an emergency is declared, any contract awarded under this exemption must be awarded within 60 days following the declaration of the emergency, unless the Board grants an extension.

Finding 5 Equipment Maintenance, Overhaul and Repair 310-0035

- a. County staff cannot anticipate the need for equipment repair or overhaul. If a piece of equipment is broken or not working properly, the County incurs cost of downtime, possible replacement equipment rental fees, staff time and other inconveniences or disabilities to its programs.
- b. Generally, there are a limited number of vendors who are able to perform repair or overhaul on a particular piece of equipment because of its make or manufacture. Sophisticated equipment may require specially trained personnel available from only one source. Often a piece of equipment will have a partial warranty in place which will guarantee some savings to the County in the parts and/or labor needed to do the repair or overhaul. This warranty saving may only be achieved if the original manufacturer or provider of the equipment performs the necessary repair or overhaul.
- c. It is unlikely that this class exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts, as required by ORS 279.015(2)(a). The Department which needs to have equipment repaired or overhauled, will seek quotes or bids where it is practical. If it is not practical to obtain competitive quotes or bids, the requisitioning Department must provide written justification to the Purchasing Administrator, which will become part of the public record of the contract.
- d. The awarding of public contracts pursuant to this exemption will result in substantial cost savings to the County, as required by ORS 279.015(2)(b), because the County incurs direct and indirect costs from the moment equipment breaks down or becomes unusable. This exemption only applies to equipment already owned by the County. Time is of the essence in contracts for the repair or overhaul of County-owned equipment. The County must be able to purchase necessary services and parts as quickly as possible in order to minimize equipment downtime.

Finding 6 Price Regulated Items 310-0040

Competition is not a relevant issue in the procurement of goods or services where the provider, rate or price of the goods or services being purchased is established by federal, state, or local regulatory authority. The goods or services are provided through a sole source and the prices or rates are set by the regulatory authority. Examples are:

- a. Postage - postal rates and services are regulated and provided by the United States Postal Service, a federal agency.
- b. Electricity - Service providers and rates in the County are regulated by the Oregon Public Utilities Commission.
- c. Garbage - In the County, service areas are regulated. Service providers are licensed and franchised to furnish hauling within their service areas. Rates are established and regulated.
- d. Water - Water service is a regulated function of the various municipalities within the County.
- e. It is unlikely that this exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts, as required by ORS 279.015(2)(a), since there is virtually no competition available in these price regulated services. The awarding of public contracts pursuant to this exemption will result in substantial cost savings to the County as required by ORS 279.015(2)(b) because the County is not in a position to economically provide these goods and services to itself in any other manner.

Finding 7 Purchases Under Federal Contracts 310-0044

- a. Federal government contracts for goods and services are established by federal agencies with private vendors through competitive processes which meet the standards of ORS Chapter 279. These processes include open competitive bidding, to which all interested vendors are invited to participate. No Oregon company is excluded from or disadvantaged in participation in bidding on federal contracts.
- b. The prices or rates for goods and services under federal contracts are based upon competitive bids or proposals.
- c. The County is required to obtain the permission of both the federal agency and the federal vendor to use the federal contract.
- d. This exemption will not encourage favoritism or substantially diminish competition in the awarding of County contracts, as required by ORS 279.015(2)(a). All vendors, including Oregon businesses, are able to compete for the initial federal contract. Also, the County will not use a federal contract without agency and vendor permission.
- e. This exemption will result in substantial cost savings to the County, as required by ORS 279.015(2)(b). Federal contracts are based on competitive bidding, which results in the most advantageous price to the federal agency. This will ensure that the County purchases the desired goods or services at the best price available.

Finding 8 Copyrighted Materials 310-0060

- a. By their nature, copyrighted materials are protected for the use of a single owner. Copyrighted materials may not be duplicated by others without the copyright

owner's permission or license. Copyrights are established and regulated under federal law.

- b. Often copyrighted materials are produced by only one supplier, who may be the owner of the copyright or their licensee.
- c. This exemption will not encourage favoritism or substantially diminish competition in the awarding of County contracts, as required by ORS 279.015(2)(a). The production and distribution of copyrighted materials is controlled by the owner of the copyright and may only be permitted through a sole source. The County has no control over this process.
- d. The awarding of contracts pursuant to this exemption will result in substantial cost savings available County as required by ORS 279.015(2)(b), where it needs to purchase copyrighted materials and there is only one known supplier for such goods.

Finding 9 Investment Contracts 310-0090

- a. The County invests or borrows funds on a short term basis in accordance with County policy and state law in order to achieve County fiscal management goals. Among other considerations, two of the County's goals are to maximize investment performance and safety, and to minimize the cost of borrowing. All County investment and borrowing activities are closely regulated by various state laws. The County's investment and borrowing activities are also regulated or closely monitored by the County auditors and others.
- b. Within the formal limits of allowable investments, the County uses an alternative method of procuring sources for investment placement. First, the County maintains an approved vendor list based on an evaluation of vendor qualifications as investment institutions. Every year, the County updates the entire list. Each vendor on the list provides current financial qualifications (such as financial statements, investment performance profiles, risk management reports, etc.) to the County fiscal office. The fiscal office evaluates the vendor qualifications and makes a determination whether the vendor is qualified to be on the approved vendor list. In the interim between vendor list updates, vendors may apply to the County for placement on the approved vendor list by providing the required financial information to the County fiscal office. The current approved vendor list for investments includes most of the larger financial institutions in the Northwest. A second source of investment placements is through investment pools. For example, there is a state pool of public agency investors operated through the state Treasury.
- c. Time is literally equal to money in the investment activity. This activity does not lend itself well to the traditional methods of public sector competitive bidding, where advertisements are placed, a written invitation to bid is sent to all interested parties, and sealed bids are opened two weeks later. Rates of return on particular maturities and the allowable types of investment instruments offered by any one institution may literally change within minutes. Also, the County tries to place the investment as quickly as it receives the funds in order to maximize earnings. Since County investments are generally made in the very short term, it would not be the best use of County funds to lie idle while a formal bidding process takes place.

- d. When the time comes for an investment to be placed, County fiscal officers follow a competitive quotation process. They contact at least three sources from the approved vendor list by phone before making a placement decision. The decision is based on the quote which fits with County portfolio requirements and which offers the most advantageous performance over the maturity or term of the investment.
- e. The Legislative Assembly has found that meaningful competition can be achieved through a variety of methods when procuring products or services. The County's policy provides the procedure for selection of investment instruments and the maintenance of a list of qualified institutions from which competitive quotations will be sought at the time an investment is anticipated. This same process is followed for short term borrowing for fiscal management purposes.
- f. The exemption from traditional competitive bidding requirements of short-term investment of County funds or the short term borrowing of funds for fiscal management purposes is in compliance with the requirements of ORS 279.015(2)(a) and (b). Since the County is following an alternate method of competitive selection of vendors in accordance with a County policy, it is unlikely that such exemption will encourage favoritism in the awarding of County contracts or substantially diminish competition for County contracts; and the awarding of County contracts pursuant to this exemption results in maximum return on investment or minimum cost of borrowing to the County.

Finding 10 Product Prequalification 310-0180

- a. There are occasions when the County needs to establish a list of prequalified products before it invites bids or proposals to furnish the products. The County has a specific performance or design need, but it is impractical for the County to create a specification for the type of products to be purchased. An example is audio-visual equipment. There is a tremendous variety of audio-visual products offered in the market and the equipment technology is complex and constantly changing. It would be very burdensome and – time consuming for the County to generate non-brand name, generic performance specifications for such equipment every time it wants to make a purchase.
- b. Also, competition would be poorly served because bidders and proposers would not know in advance whether their offered product would meet the general specification substantially enough to be considered a responsive offer. The decision to make an award would be slow, because each product offered would have to be analyzed against the County's specification. Slowdown in the award process affects both bidders, who are asked to hold their bids open until award is made, and County programs, because staff are not able to order the equipment they need until the contract is awarded.
- c. In this case, it might be more cost-effective and efficient for the County to prequalify products and establish a list of approved products before invitations to bid are sent out. The prequalification process can be done some time before the need for a new contract; once the prequalified product list is established, the bidding and contract award process can go quickly and smoothly.
- d. A second occasion when prequalification of products will be useful is when the specific design or performance specifications for a product are so exacting that the County must have time to carefully consider what is offered in the market that

may or may not meet the specifications and, if necessary, reconsider its options before issuing an invitation to bid.

- e. This rule sets out a process of prequalification which requires the use of advertisement or other appropriate means to notify vendors of competing products of their opportunity to submit items for prequalification.
- f. This rule includes a 15-day time limit between the closure of a prequalification list and a related invitation to bid. This time factor ensures that vendors have a reasonable time to apply to include their products on a prequalified product list.
- g. Subsection 2 of this rule provides vendors with an appeal process to follow if their application for prequalification is denied.
- h. Where prequalification of products is appropriate, it is unlikely that this exemption will encourage favoritism in the award of County contracts or diminish competition for County contracts (ORS 279.015(a)). There are several safeguards in the rule to prevent this, including notice, advertising, time and appeal process requirements to ensure that vendors are given a fair and open opportunity to participate in the prequalification process.
- i. The prequalification of products process is a time-consuming effort for the County. It is not a shortcut procurement method. The County would use this method only after balancing cost-saving considerations, such as the ability of the County to create or generate non-brand name generic specifications for types of products or the need for lengthy product evaluation prior to contract award. If the prequalification method is chosen, it will result in substantial cost savings to the County as required by ORS 279.015(b) because the normal method of product selection is too cumbersome and costly to pursue.

Finding 11 Request for Proposal – Construction Manager/General Contractor 310-0220

- a. Under ORS 279.009, public improvement contracts shall not be subject to the requirements of ORS 279.005 and 279.007, in which the Oregon Legislative Assembly made findings of fact to support the use of alternate competitive selection methods, such as the Request for Proposals. However, this does not mean that the findings regarding competition contained in ORS 279.005 and the suggestions for methods of fostering, competition included in ORS 279.007 cannot be used to provide guidance and suggestions for County contracting under the exemption requirements of ORS 279.015(2).
- b. There are occasions when the County needs to contract for the services of a Construction Manager/General Contractor (CM/GC) or a Design/Build (D/B) professional in order to get a particular construction project completed on time, within the technical complexities of the design and the site, and within budget. The use of CM/GC or D/B is a partnering concept of construction where the vendor provides professional construction management and value engineering services to the County and the Architect in the design and planning phases of the project. The CM/GC or D/B then serves as a general contractor to build the project. Because of the nature of the work performed by the CM/GC or D/B, vendor selection has to include considerations other than hard-dollar bid price. The request for proposal method lends itself best to the selection of a CM/GC or D/B, where competition can be evaluated on factors including the contractor's fee, the guaranteed maximum price of the project, and the contractor's

qualifications. This rule requires the County to use its standard request for proposal rule to select a GM/CM or D/B.

- c. The CM/GC or D/B concept of service delivery is an accepted practice in the construction industry, which has been used in both the private and public sectors successfully for many years. Most construction firms in the County's area who compete for County projects have some experience in CM/GC or D/B contracts.
- d. This exemption adds further conditions to the standard request for proposal rule when a CM/GC or D/B is going to be selected to guarantee an open and competitive selection process. This exemption requires that the County's contract with the CM/GC or D/B firm describe the competitive methods the CM/GC or D/B must use to select contractors and subcontractors to perform work on the project. The County reserves the right to restrict the CM/GC or D/B firm's bidding process in order to make sure the construction work is open to competition.
- e. This exemption states that award of a CM/GC or D/B contract will be made to the firm that best meets the County's needs based on evaluation criteria stated clearly in the solicitation document.
- f. This exemption requires the County to prepare findings to support the use of the CM/GC or D/B contracting method for each project. The findings must show compliance with the state law on exemptions and be submitted to the Board for approval.
- g. The use of this exemption will not encourage favoritism in the award of County contracts or substantially diminish competition for County contracts, as required by ORS 279.015(2)(a). The requirements of this rule ensure that competition will be carefully addressed and protected, if the Board finds it in the public's best interest to use the CM/GC or D/B method to build a project.
- h. The award of County contracts pursuant to this exemption will result in substantial cost savings to the County, as required by ORS 279.015(2)(b). When the situation requires, a fast track construction process, value engineering, and management of technically complex construction elements are best achieved with the early involvement of a CM/GC or D/B firm. When circumstances preclude the use of traditional design-bid-build contracting methods, this exemption allows the County to use a competitive request for proposal process which provides the County with a guaranteed maximum price for the project, a value-engineering partnership between the CM/GC or D/B, the Architect and the County, and timely completion of the project.

Finding 12 Requirements Contracts 310-0300

- a. This exemption permits the County to enter into requirements contracts, in which the vendor agrees to provide specified goods and services over the term of the contract at the bid price or discount rate. A requirements contract is useful when the purchase of the goods or services are routine and repetitive. For example, office, custodial and facilities maintenance supplies are customarily purchased through requirements contracts.
- b. Requirements contracts are a common method of minimizing paper work, achieving continuity of product, security a source of supply, reducing inventory,

obtaining volume discounts, standardizing usage among bureaus and reducing lead time for ordering.

- c. The County establishes requirements contracts as a result of open competitive bidding, informal quotation or request for proposals processes, unless otherwise exempted.
- d. The County limits the term of requirements contracts, including all renewal options, to a maximum of five (5) years before competitive solicitation must be done, unless otherwise exempted.
- e. The County may use the requirements contracts established by other public agencies, subject to certain conditions of state-law and County policy.
- f. It is unlikely that this exemption will result in favoritism in the awarding of County contracts or diminish competition for County contracts as required by ORS 279.015(2)(a). The County will only enter into requirements contracts which result from open competitive solicitation processes, unless otherwise exempted. This condition applies also to the use of requirements contracts established by other public contracting agencies.
- g. The awarding of County requirements contracts will result in substantial cost savings to the County, as required by ORS 279.015(2)(b). It would be costly and inefficient to make routine, repetitive purchases of goods and services through individual transactions. Also, the guaranteed volume of a requirements contract allows the County to get better prices from bidders.

Finding 13 Purchase of Used Personal Property 310-0500

- a. The County is responsible for managing expenditures in the best interests of the public. Cost savings can be achieved through the purchase of used property and equipment. The County purchases used property and equipment when it meets the County's needs and is cost-effective. Considerations include type, quantity, quality and estimated useful life of the used item.
- b. Used equipment and property becomes available sporadically and without notice. Used equipment and property is generally sold on a first-come, first-served basis. When used property or equipment does become available, the County must be able to respond immediately in order to obtain the property or equipment.
- c. Some types of property or equipment may not be readily available in the new goods market. The County may have to look for used items to fill the need.
- d. Competition to provide used property and equipment may be very limited and inconsistent, depending on the type of product.
- e. It is unlikely that this exemption will encourage favoritism in the award of County contracts or substantially diminish competition for County contracts as required by ORS 279.015(2)(a). The purchase of used property or equipment depends on an inconsistent, sporadic market. When a used item is available, there is often little competition available, however, sources for used items of the type, quality and quantity required by the County are inconsistent. This rule requires the County to document use of solicitation processes as appropriate to the dollar value of the purchase.

- h. The use of this exemption will result in substantial cost savings to the County as required by ORS 279.015(2)(b). The cost of used equipment or property is generally substantially less than that of new. Savings of 20 percent to 50 percent are not uncommon. Development of a practical method that will allow the County to purchase used equipment can provide good value to the County and help ensure the continuation of County services and programs.

Finding 14 Information Technology (Data and Word Processing) Contracts 320-0010

- a. It is unlikely that this exemption will encourage favoritism in the award of County contracts or substantially diminish competition for County contracts as provided by ORS 279.015(2)(a). The purchase of high technology data and word processing hardware and software will be made in accordance with other competitive solicitation rules herein. If the anticipated purchase is over the current formal bid threshold, the County will advertise its need.
- b. The use of this exemption will result in substantial cost savings to the County as required by ORS 279.015(2)(b). Competition will be encouraged at all dollar levels of purchase of computer hardware and software. This rule gives the County some flexibility in selecting the method of competitive purchasing to allow consideration of factors other than price, but requires adherence to the rules on brand name or sole source acquisitions if those situations occur.

Finding 15 Telecommunications Systems Contracts 320-0020

- a. It is unlikely that this exemption will encourage favoritism in the award of County contracts or substantially diminish competition for County contracts as provided by ORS 279.015(2)(a). The purchase of telecommunications systems will be made in accordance with other competitive solicitation rules herein. If the anticipated purchase is over the current formal bid threshold, the County will advertise its need.
- b. The use of this exemption will result in substantial cost savings to the County as required by ORS 279.015(2)(b). Competition will be encouraged at all dollar levels of telecommunications systems. This rule gives the County some flexibility in selecting the method of competitive purchasing to allow consideration of factors other than price, but requires adherence to the rules on brand name or sole source acquisitions if those situations occur.

Finding 16 Telecommunications Services 320-0025

- a. Since deregulation, there is generally adequate competition among vendors of telecommunication services to allow the County to make competitive purchases.
- b. Since there is competition, price competition exists in the market place. It is important for the County to take advantage of existing competition.
- c. The County will follow the requirements of this exemption and document reasonable efforts to obtain at least three informally solicited quotes for purchases less than the current formal bid threshold.

- d. If a purchase of service is expected to cost more than the current formal bid threshold, the County will use a formal competitive bidding or proposal process in accordance with PCC Chapter 5.33.
- e. There may be occasions where there is limited competition that can furnish telecommunications services of the quality and extent required by County operations. In such instances, the County will follow the exemption to purchase needed services from the sole source.
- f. It is unlikely that this exemption will encourage favoritism in the award of County contracts or substantially diminish competition for County contracts as provided by ORS 279.015(2)(a). Routinely, the purchase of telecommunications services will be made in accordance with other competitive bidding practices. If the anticipated purchase is over the current formal bid threshold, the County will advertise its need, issue a written solicitation document and invite written bids or proposals to be furnished in response.
- g. However, there may be circumstances where sufficient competition does not exist in the relevant geographic and service market. In such cases, the County will follow this exemption in determining whether sufficient competition exists to make a competitive purchase.
- h. The use of this exemption will result in substantial cost savings to the County as required by ORS 279.015(2)(b). Competition will be encouraged at all dollar levels of purchase of computer hardware and software. This exemption gives the County some flexibility in selecting the method of competitive purchasing, but requires adherence to the rule on brand name or sole source acquisitions if those situations occur. This exemption also states the steps to be taken to document situations where sufficient competition may not exist and a sole source purchase needs to be made.

Finding 17 Hazardous Material Removal; Oil Cleanup 330-0200

- a. When the DEQ orders the County to remove or clean up hazardous material or oil, the County must respond within a very short time, which is stated on the DEQ order. This time period does not generally allow the County to take the time necessary to solicit written bids or proposals for the work to be performed. The County would be liable for any delay in responding to DEQ orders to perform hazardous material removal or cleanup.
- b. Cost savings are achieved through this exemption because the County can be liable for DEQ penalties and fines if it does not timely remove hazardous materials or oil as ordered. There is also serious risk in these situations that property damage or personal injury could result if the County is slow to act.
- c. It is unlikely that this exemption will encourage favoritism in the award of County contracts or substantially diminish competition for County contracts as required by ORS 279.015(2)(a). If it is under DEQ order to act immediately, the County will still attempt to obtain competitive quotes for the work to be performed as it has the ability and time to do so. Unless the County is faced with an emergency situation based on a DEQ order to remove or clean up hazardous waste or oil, it will follow normal competitive procedures to obtain these services.

- d. The award of public contracts pursuant to this exemption will result in substantial cost savings to the County in these situations because the County must comply with the law and avoid and minimize risk to persons and property. Where possible, it will seek competitive quotes for the work to be performed and will award the contract to the lowest, responsive and responsible bidder as required by ORS 279.015(2)(b).

Finding 18 Employee Benefit Insurance 330-0260

- a. The nature, type, specific services to be provided and timing of employee benefit insurance are dictated by labor contracts between the County and represented labor groups. County administration must fulfill its contractual obligations to represented employee groups to provide appropriate employee benefits.
- b. When it is time to solicit proposals to furnish employee benefit coverages, the County advertises the solicitation in the Daily Journal of Commerce newspaper.
- c. After receipt of proposals, the County evaluates them and negotiates contract awards with those firms, which provide the most comprehensive and best services at the most cost-effective rates.
- d. The County resolicits proposals to provide employee benefit coverages approximately every 2 to 3 years.
- e. It would be impractical and costly for the County to attempt to purchase employee benefit insurance "in house" without the guidance and help provided by the professional insurance agent. The County saves substantially by using professional insurance brokerage services.
- f. It is unlikely that use of this exemption will encourage favoritism in the awarding of County contracts or substantially diminish competition for County contracts; and the award of County contracts pursuant to this exemption will result in substantial cost savings to the County as provided by ORS 279.015(2)(a) and (b). The County solicits proposals from employee benefit insurance providers under conditions that foster competition among a sufficient number of potential suppliers. The County evaluates the proposals submitted to furnish employee benefit insurance for the best value to the County, given the requirements specified by the employee benefits portions of the County's agreements with represented employee groups.

Finding 19 Medical and Laboratory Supplies 330-0330

- a. It is unlikely that use of this exemption will encourage favoritism in the award of County contracts or substantially diminish competition for County contracts because competitive bidding is required and the products will be purchased from the lowest responsible bidder for each brand.
- b. The awarding of contracts under this exemption will result in substantial cost savings to the County because separate awards to the lowest responsible bidder for each brand will result in lower prices than if an award was made to a single supplier with the lowest aggregate bid for multiple items.

Finding 20 Office Copier Purchases 330-0450

- a. The County has over 120 sites and many departments with a variety of copying needs. A multiple price agreement allows the County to select the right equipment to meet each application.
- b. Manufacturers of copier equipment tend to specialize in meeting certain applications with their various brands and models.
- c. A multiple award price agreement structure allows for enhanced competition. Several different vendors are awarded County contracts, not just one.
- d. Multiple price agreements for copier equipment allows the County to select equipment that produces the best combination of performance and cost per copy for each application. This achieves the most substantial cost savings available to the County for copier equipment purchases.
- e. It is unlikely that use of this exemption will encourage favoritism in the award of County contracts or substantially diminish competition for County contracts, as required by ORS 279.015(2)(a). Competition is enhanced by multiple award contracts because more than one contract is awarded. Solicitations to furnish copier equipment to the County are otherwise processed in accordance with standard open competitive procedures.
- f. The award of County contracts pursuant to this exemption will result in substantial cost savings to the County as required by ORS 279.015(2)(b). The County can purchase or lease the right piece of equipment for each need and open competition for County contracts encourages competitive prices. The number of multiple awards is based on the best proposals received in each equipment category.

Finding 21 Rating Agency Contracts 340-1000

- a. The services of rating agencies are only available from a limited number of vendors who charge standardized prices for their services. Therefore, it is unlikely that use of this exemption will encourage favoritism or diminish competition in the awarding of County contracts, and use of this exemption will save the cost of competitive bidding and will therefore result in substantial cost savings to the County in accordance with ORS 279.015(2)(a) and (b).

Finding 22 Library Databases, Interactive Computer Services and Circulation Materials 340-1010

- a. Newspaper subscriptions are purchased directly from the newspaper company that publishes them. Rates are established by the publisher and since this is a unique item, there is no competition. Periodicals are likewise selected for their unique content. The County selects a particular magazine or other periodical because of its information and format. Many periodicals are only available from the publisher. This is different than selecting other goods and services where there may be several makes of the same good that will serve the County's purposes. Because newspapers and periodicals are unique products, it is unlikely that this exemption will encourage favoritism in the awarding of County contracts or substantially diminish competition. The County on a regular basis seeks volume discounts, where such discounts are available, and informally

solicits and receives proposals for provision of subscriptions. Therefore, the awarding of public contracts pursuant to this exemption will result in substantial cost savings available to the County.

Because the County receives and considers proposals from competing vendors on a regular basis, it is unlikely that this exemption will encourage favoritism in the awarding of County contracts or substantially diminish competition. The County on a regular basis informally solicits and receives proposals for provision of library circulation materials. Formal competition would need to be done on a very frequent basis in order to achieve the best price and service available. Awarding public contracts pursuant to this exemption will result in substantial cost savings to the County in the form of reduced solicitation costs and the ability to immediately achieve financial benefits from acceptance of proposals that are received on a periodic basis without the necessity of formal competition.

- b. Databases and interactive computer services are generally available exclusively from the publisher and are not sold by multiple vendors. Databases and interactive computers services are generally selected based on library patron interest and need and the unique content, interfaces and functionality to meet those needs. These services include, but are not limited to, such things as homework help and live reference and information services. Because of the unique nature of these products, in most instances, similar databases and interactive computer services are not offered by competing vendors who would respond to a solicitation. Therefore this exemption will not result in favoritism or substantially diminish competition.

The Library purchases many databases through its participation in various library consortia, resulting in price discounts much greater than can be achieved by an individual purchase. Additional substantial costs savings accrue from foregoing a costly solicitation process that will produce only one bidder or proposer.

Finding 23 Periodicals

Some periodicals are unique items available from only from the publisher or one supplier and therefore no competition is available. Other items are available from multiple vendors but the availability of items varies constantly. Many items are time sensitive and must be obtained at the earliest possible date to provide the best possible service to library patrons. Services that the vendors offer such as discounts, timely delivery, free shipping, and bar coding are constantly changing and being updated. The County invites informal proposals from suppliers on a regular basis and receives and considers unsolicited proposals to provide library circulation materials on a regular basis in order to avail itself of the best service from competing vendors.

- b. Because the County receives and considers proposals from competing vendors on a regular basis, it is unlikely that this exemption will encourage favoritism in the awarding of County contracts or substantially diminish competition. The County on a regular basis informally solicits and receives proposals for provision of periodicals. Formal competition would need to be done on a very frequent basis in order to achieve the best price and service available. Awarding public contracts pursuant to this exemption will result in substantial cost savings to the County in the form of reduced solicitation costs and the ability to immediately achieve financial benefits from acceptance of proposals that are received on a periodic basis without the necessity of formal competition.

Finding 24 Institutional Commissaries and Sheriff's Inmate and Juvenile Detainee Welfare Funds 340-1030

- a. This rule requires that all purchases shall be based upon written policies and procedures approved by the CPCA Manager. These procedures provide that for purchases be made based on a competitive comparison of prices and that three quotes be obtained for all items over \$2500.
- b. Because the County purchases under this exemption are based on procedures approved by the CPCA Manager which require price comparison and competitive quotes, it is unlikely that this exemption will encourage favoritism in County purchases or substantially diminish competition. Awarding public contracts pursuant to this exemption will result in substantial cost savings to the County in the form of reduced solicitation costs.

Finding 25 Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalt 340-1060

- a. The market pricing of these products varies on a daily basis. Where it is practical, the County uses requirements contracts where award is based on the best discount off "pump" or list price to fill its needs. There are times, however, when it is not practical to maintain a requirements contract for these commodities. At these times, the County may get "spot market" quotes and purchase an item from the vendor offering the lowest price at the moment of need.
- b. The County maintains lists of vendors who supply these products. Any vendor may ask to be placed on the list. When the County makes a purchase, it contacts at least three vendors and makes its purchase from the least expensive source. Because of the nature of these products and the way they are supplied, most vendors are in the local area. For example, heating oil suppliers in Portland do not generally compete with heating oil suppliers out of Portland because of the cost of transportation.
- c. The County saves the most money if it has the flexibility to purchase in the best manner indicated by the state of the market at the time of purchase, whether this is through quotes or a requirements contract.
- d. It is unlikely that this exemption will encourage favoritism in the award of County contracts or substantially diminish competition for County contracts as required by ORS 279.015(2)(a). Local vendors have open access to the County's vendor lists and may submit price quotes at any time. The County will contact at least three vendors for a quote before making a spot purchase. If a requirements contract is established for a period of time, the County will solicit informal or written bids as appropriate to the dollar value of the purchases made.
- e. The use of this exemption will result in substantial cost savings to the County as required by ORS 279.015(2)(b) since the County can use whatever method of purchasing it finds in the best interest of the County at the time of need to obtain gasoline, heating oil and like products.

Finding 26 Ballots, Ballot Pages and Ballot Cards 340-1070

- a. Ballots are printed on a strict time schedule dictated by state law. Printing of ballots also requires specialized skill. Items on the ballots must be located with precision so that the machines can correctly record the votes. Minor location errors cause votes to be miscounted or not counted at all. Because ballots meeting these stringent requirements must be printed on a short timeline, it is essential that they be printed correctly the first time. If ballots need to be reprinted because of errors, the county incurs extra costs in overtime pay to county employees and to vendors so that the ballots can be delivered on time. The county realizes substantial cost savings when ballots are printed without errors by a printer experienced in printing ballots.
- b. There are few companies that have experience printing ballots. At this time there is only one company located in Oregon that has substantial experience printing ballots. The county has traditionally selected its ballot printer based on the printer's successful experience printing ballots for prior elections and its location in Oregon which facilitates delivery under the short timelines. Other printers have occasionally inquired about opportunities to print ballots but have declined to enter the field after being informed of the stringent requirements for printing ballots. Because there are few printers available to perform this work, this exemption will not encourage favoritism in the award of ballot printing contracts or substantially diminish competition.

Finding 27 Personal Services 340-1080

- a. A competitive process for selection of personal services is provided in administrative procedure PUR-1 which will ensure cost savings and competition.

Finding 28 Underwriter Contracts 340-1090

- a. The services of underwriters are unique and not suitable to purchase by regular competitive bid processes. The County has established an alternative process for purchase of underwriter services. Therefore, it is unlikely that use of this exemption will encourage favoritism or diminish competition in the awarding of County contracts. Use of this exemption and the alternative purchasing process for underwriter services will save the cost of competitive bidding and will therefore result in substantial cost savings to the County in accordance with ORS 279.015(2)(a) and (b).

Finding 29 Purchase of Undercover Vehicles

- a. The Sheriff must be able to purchase vehicles for use for undercover operations in private purchases that involve as few people as possible knowing about the purchase. This is critical to keeping the identity of such vehicles secret from the "criminal community." When a vehicle used for undercover operations becomes known to be a Sheriff's Department vehicle, it must be replaced quickly for operations to continue uninterrupted. For each purchase, three vendors will be contacted to determine the best price available for the type of car needed. To the extent possible, competition will be solicited and the most competitive price will be obtained for each vehicle.
- b. The vehicles being purchased are unique and, because of the need for secrecy, formal public competitive bid processes are not suitable. Because three vendors will be contacted for each purchase and competitive prices will be privately solicited, it is unlikely that use of this exemption will encourage favoritism or

diminish competition in the purchase of these vehicles. Use of this exemption and the alternative purchasing process for undercover vehicles will save the cost of competitive bidding which would otherwise be required for each individual purchase and will therefore result in substantial cost savings to the County.