

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 99-209

Adopting the Current Version of Multnomah County's Public Contract Review Board Rules and stating that the State of Oregon Attorney General's model rules do not apply to Multnomah County.

The Multnomah County Board of Commissioners Finds:

- a) House Bill 2024, which is effective October 23, 1999 requires that a public agency in the State of Oregon either adopt it's own contracting rules or be subject to the Attorney General's model rules. The bill further requires that if the public agency adopts its own rules, it must specifically state that the Attorney General's model rules do not apply to the agency.
- b) Multnomah County has previously adopted it's own Public Contract Review Board (PCRB) Rules. It is in the best interests of Multnomah County to continue to operate under its own rules rather than adopting the Attorney General's model rules.

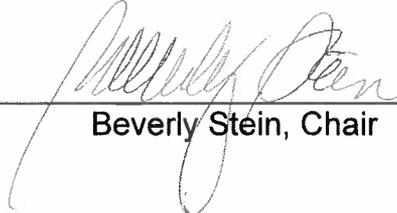
The Multnomah County Board of Commissioners Resolves:

1. The Board affirms and adopts the current Public Contract Review Board Rules attached hereto and dated October 21, 1999. The Attorney General's model rules do not apply to Multnomah County.

Adopted this 21st day of October, 1999.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON



Beverly Stein, Chair

REVIEWED:

Thomas Sponsler, County Counsel
For Multnomah County, Oregon

By 

John Thomas, Assistant County Counsel

**MULTNOMAH COUNTY
PUBLIC CONTRACT REVIEW BOARD**

INTRODUCTION

ORS 279.055 authorizes the creation of a County Public Contract Review Board.

The County Code, Section 3.100 provides that The Multnomah County Board of County Commissioners shall act as the Public Contract Review authority for County. Section 3.100 of the County Code also provides that the Board may adopt rules by Board resolution.

Effective Date: October 21, 1999

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**MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD
ADMINISTRATIVE RULES**

DIVISION 10

10.000 Definitions

- (1) "Administrative Rule" or "AR" means Public Contract Review Board Administrative Rules
- (2) "Agency" means any unit of Multnomah County with the authority to initiate/request purchases.
- (3) "Architect, Engineer, or Related Services" professional services related to the planning, design, engineering, or oversight of public improvement projects or components thereof, including but not limited to architects, landscape architects, engineers, space planners, surveyors, cost estimators, appraisers, material testers, mechanical system balances, and project managers.
- (4) "Bid" means a competitive offer in which price, delivery (or project completion) and conformance to specification and requirements of the Invitation to bid will be the predominant award criteria.
- (5) "Bidder" means a person or company offering to supply goods or services to the County in response to an invitation to bid or other competitive bidding method where price or cost, delivery and/or project completion will be the predominant award criteria.
- (6) "Board" means the Multnomah County Public Contract Review Board (PCRB).
- (7) "Compensation Requirements" a general indication of the cost of architectural, engineering, or related services based on factors which may include, but are not necessarily limited to, each consultant's: (i) costing procedures and/or pricing structure; (ii) hourly rates and fee schedules; (iii) overhead costs; and (iv) fee range, as a percentage of direct construction costs, on previous similar projects. Compensation requirements provide only a general indication of the cost of professional services and, particularly during a formal selection process, should not be used to calculate firm, fixed prices for each consultant, or as the sole basis for selecting a consultant.
- (8) "Competitive Bidding" means the solicitation by Multnomah County of competitive offers which follow the formal process for advertising, bid and bid opening required by ORS Chapter 279.025 - .027, rules of the Multnomah County Public Contract Review Board and applicable sections of Multnomah County Code.
- (9) "Competitive Quotes" or "Informal Quotation" means the solicitation of offers by Multnomah County from competing vendors. The solicitation may be by advertisement or by Multnomah County initiating a request to vendors to make an offer. The solicitation and offer may be in writing or oral.
- (10) "Construction Manager/General Contractor" means a method of public improvement contracting that uses a Construction Manager to perform value engineering, act as General Contractor, coordinate and manage the building process, provide general contractor expertise, establish a guaranteed maximum price for construction and be a member of the construction team with the agency, architect/engineers and other consultants as the agency and/or project may require.
- (11) "Contract" means the written agreement between the County and the contractor describing the work to be done and the obligations between parties.
- (12) "Contract Amendment" means any amendment which changes the scope of work or is for additional work including change orders, extra work, field orders, or other changes in the original specifications and contract price.
- (13) "Cost" includes not only the product price but also other items of expense such as the actual or reasonably estimated costs related to quality or conversion, and may include such actual or estimated items as shipping, delivery, setup, installation, and training.
- (14) "The County" or, "County" means Multnomah County, Oregon.

- (15)"Department Manager" means the Director of an Administrative Department as defined in the Multnomah County Charter.
- (16)"Department" means the Administrative Department under and pursuant to Chapter 1 of the Multnomah County Charter.
- (17)"Direct Labor" includes all work required for preparation, production, processing, and packing, but does not include supervision, administration, inspection, and shipping.
- (18)"Disabled Individual" means a severely handicapped individual who, because of the nature of the disabilities, is not able to participate in competitive employment, and for whom specialized employment opportunities must be provided.
- (19)"Equal Employment Opportunity" or "EEO" means non-discrimination in hiring and employment on the basis or race, religion, color, national origin, sex, age, or handicap.
- (20)"Emerging Small Business" or "ESB" means 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.
- (21)"Exemption" is a formal process, which allows a public contract to be entered into through use of an alternative procurement 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.
- (22)"Good Faith Effort": The objectively demonstrated effort that a bidder has exerted positive efforts to maximize the use of Minority, Women-owned and Emerging Small Businesses through sub-contracting opportunities on the project being bid.
- (23)"Guaranteed Maximum Price" means the price provided to the agency by the contractor that includes all costs of the work, as defined in the Contract documents, excepting material changes in the scope of work. This pricing mechanism is most often used in Construction Manager/General Contractor or Design/Build contracts where the guaranteed maximum price is provided early in the design to assist the agency in determining whether or not the project scope is within the agency's budget, allowing for design changes to be made at the preliminary design phase rather than after significant design work has been completed.
- (24)"Invitation to Bid" means the solicitation of competitive offers in which specifications, price or delivery (or completion time) will be the predominant award criteria.
- (25)"Life Cycle Costing" means determining the cost of a product for its estimated useful life, including its disposal.
- (26)"Minority Business Enterprise" or "MBE" means a minority business concern described in ORS 200.005(6) and certified as such with the State of Oregon pursuant to ORS 200.055.
- (27)"Minority Individual" means a person described in ORS 200.005(7).
- "Post-consumer waste" means 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.
- (28)"Price Agreement" means the same as Requirements Contracts defined below (#43).
- (29)"Professional Services Contracts" means a contract for services performed as an independent contractor in a professional capacity as defined in AR 10.092.
- (30) "Proposal" means a competitive written offer submitted in response to a Request for Proposals.
- (32)"Public Contract" means any purchase, lease or sale by the County of personal property, public improvements or services other than agreements, which are for Professional Services.
- (33)"Public Contract Review Board" or "PCRB:" By ordinance the Multnomah County Board of Commissioners acts as the local PCRB. The PCRB is responsible for adopting and administering rules governing public

contracting, considering requests for exemptions from public contracting requirements, and hearing appeals from bidder disqualification decisions.

- (34) "Public Improvement" means a project for construction, reconstruction or major renovation of real property by or for the County. "Public Improvement" does not include emergency work, minor alteration, ordinary repairs or maintenance necessary in order to preserve a public improvement.
- (35) "Public Works" include but are not limited to roads, highways, buildings, structures and improvements of all types, the constructions, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency the primary purpose of which is to serve the public interest regardless of whether title thereof is in a public agency but does not include the reconstruction or renovation of privately owned property which is leased by a public agency.
- (36) "Purchasing Manager" means the Manager of the Purchasing Section, Finance Division for Multnomah County or his/her designee.
- (37) "Qualified Rehabilitation Facility" (QRF) means a non-profit sheltered workshop or non-profit work activity center whose purpose is to assist and encourage handicapped individuals and is:
- (a) In the manufacture of products and in the provision of services, whether or not the products or services are procured under this rule, and during the fiscal year employs handicapped individuals for not less than 75 percent of the direct labor required for the manufacture or provision of the products or services.
 - (b) A QRF must be either a Sheltered Workshop or a Work Activity Center certified through the State of Oregon, Department of Administrative Services.
- (38) "Recycled Material" means 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.
- (39) "Recycled Paper" means a paper product with not less than:
- (a) Twenty five percent of its total weight consisting of post-consumer waste.
- (40) "Recycled Product" means 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.
- "Request for Proposals" (RFP) means a written document soliciting competitive written proposals and setting forth the criteria and method to be used to select the best proposal. The document: (i) provides a general description of a proposed project or projects, including a proposed statement of work; (ii) indicates the type of services needed; and (iii) requests prospective contractors to submit written proposals that address the proposed statement of work.
- (41) "Request for Qualifications" (RFQ) means a written document which: (i) provides a general description of a proposed project; (ii) indicates the type of services needed, including, if deemed necessary or appropriate, a description of particular services needed for part or all of a proposed project or projects; and (iii) requests each prospective contractor to provide a written response setting forth the contractor's specific experience and qualifications for performing the type of services required.
- (43) "Requirements Contracts" means 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.
- (44) "Statement of Work" means a written statement that describes the: (i) phases of work, major tasks, or area of responsibility to be performed by the contractor; (ii) for an individual or series of projects, or within a particular locale during a stated period of time. Such statement may be altered or modified during contract negotiations, but only as reasonably necessary to accurately describe the project approach and exact scope of services agreed to by the County and the contractor.

(45)"Secondary Waste Materials" means 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.

(46)"Service Contract" means a trade related contract that calls primarily for a contractor's time and effort rather than for an end product.

(47)"Women Business Enterprise" or "WBE" means a woman business concern described in ORS 200.005(6) and certified as such with the State of Oregon pursuant to ORS 200.055.

10.010 Contracts Exempt From Competitive Bidding

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

- (a) Contracts made with other public agencies or the federal government.
- (b) Contracts made with Qualified Rehabilitation Facilities providing employment opportunities disabled individuals.
- (c) Contracts specifically exempt under the provisions of these rules.
- (d) 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:
 - (1) The original contract met the requirements of Multnomah County Public Contract Review Board Rules
 - (2) The contract allows other public agency usage of the contract; and
 - (3) The originating contracting public agency concurs.
- (e) No written agreement under ORS 190, which grants authority to local governments to make intergovernmental agreements, is necessary under (d) above if the arrangement is between or among units of local government.

10.020 Contracts For Price Regulated Items

(1) The County may, without competitive bidding, contract for the purchase of goods or services other than professional services (AR10.092), where the rate or price for the goods or services being purchased is established by federal, State or local regulatory authority.

10.025 Library Circulation Material

(1) The County may, without competitive bidding, purchase circulation materials such as books, videos, tapes and CD's for Multnomah County Libraries.

10.030 Copyrighted Materials

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

10.031 Periodicals

(1) The County may purchase subscriptions for periodicals, including journals, magazines and similar publications without competitive bidding.

10.035 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 purchase from these funds subject to each office or department written policies and procedures.

10.040 Advertising Contracts

- (1) The County may purchase advertising, regardless of dollar amount, without competitive bidding.

10.045 Equipment Maintenance, Repair and Overhaul

- (1) Contracts for equipment maintenance, repair, or overhaul may be let without competitive bidding, subject to the following conditions:
 - (a) The services and/or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or
 - (b) The services and/or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source.
- (2) Written documentation supporting (a) or (b) above must be provided with the purchase request.

10.047 Sales, Liquidation Sales and Disposal of Personal Property

- (1) The County may sell personal property, including recyclable or reclaimed materials, without formal competitive bidding if the Purchasing Section has determined that a negotiated sale will result in increased net revenue and the following conditions are complied with:
 - (a) When the current market value per item is deemed to be equal to or less than \$1,000, the Purchasing Section may establish a selling price, schedule and advertise a sale date, and sell to the first qualified buyer meeting the sale terms;
 - (b) When the current value per item is deemed to exceed \$1,000, the personal property must be offered for competitive written bid and be advertised in accordance with ORS 279.025 or be offered for sale at public auction in accordance with this rule. If no bids are received or if a determination is made that the market value of the property exceeds the offer of the highest responsive bidder, all bids may be rejected and the County may negotiate a sale subject to the following conditions:
 - (1) An appraisal of the market value of the property is obtained and documented and the negotiated sale price exceeds the market value; or
 - (2) The sale amount exceeds the highest bid received through the bidding or auction process.
- (2) The County may sell personal property through a commercially recognized third party liquidator if the Purchasing Director has determined that a liquidation sale will result in increased net revenue and the following is complied with:
 - (a) The selection of the liquidator was made in accordance with these PCRB Rules.
- (3) The County may dispose of personal property without a competitive process if it is deemed by the Program Manager to be any one of the following:
 - (a) Property whose net value is under \$250
 - (b) Hazardous
 - (c) Property is inoperable and not reasonably repairable.
 - (d) Recyclable material
- (4) This section does not apply to the Titlewave Book Store operations.

10.048 Donations of Personal Property

- (1) The County may transfer personal property, including recyclable or reclaimed materials, without remuneration or only nominal remuneration without competitive bids to the following agencies:
 - (a) Another public agency; or

- (b) Any sheltered workshop, work activity center, or group care home which operates under contract or agreement with, or grant from, any State agency and which is certified to receive federal surplus property; or
 - (c) Any recognized non-profit organization, which is eligible to receive surplus property.
- (2) The County may donate or sell, without competitive bids, surplus personal property to recognized private non-profit social or health service agencies, subject to the following conditions:
- (a) A determination has been made that the property is not needed for other public purposes;
 - (b) If the property has a current market value of \$1,000 or more, the donation or sale shall:
 - (1) Be approved by the County Chair/Sheriff as appropriate;
 - (2) Be documented by the County to be clearly in the public interest and the most efficient/cost effective method of disposing of the property.
- (3) The County shall maintain a record of all transfers, donations, or sales authorized by subsection (1) or (2) of this rule.

10.050 (Hist: PCRB Eff. 4-8-76, Repealed by PCRB 1994.)

10.052 (Hist: PCRB Eff. 5-1-81, Repealed by PCRB 1989.)

10.055 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 seeks competitive quotes from at least three (3) vendors in the area; and
 - (b) Makes its purchases from the least expensive source; and
 - (c) Retains written justification for the purchase made.

10.060 Requirements Contract

- (1) The County may enter into requirements contracts whereby it has agreed to purchase goods or services for an anticipated need at a predetermined price provided the following conditions are complied with:
- (a) Contracts greater than \$50,000 for a twelve-month period must be let by competitive procurement pursuant to the requirements of ORS 279.005 to 279.111 and these rules.
 - (b) Requirements contracts, equal to or less than \$50,000 for a twelve month period, may be let through informal quotation providing that written quotation requests are mailed (by Purchasing) to a broad base of vendors, including MBE, WBE, and ESB firms as available. The quotation request must include all contract renewal language.
 - (c) The term of the Requirements Contract including renewals does not exceed three (3) years.
- (2) The County may request specific exemptions from the foregoing conditions in accordance with AR 10.140.

10.070 Investment Contracts

- (1) The County may, without competitive bidding, contract for the purchase 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.

10.071 Rating Agency Contracts

- (1) The County may purchase and direct pay for the services of Moody's Investors Service, Standard and Poor's or similar rating agencies without competitive bidding.

10.072 (Hist: PCRB Eff. 12-15-94, Moved to AP CON-1 by PCRB 2-27-97)

10.079 Employee Benefit Insurance

- (1) The County may purchase employee benefit insurance, regardless of dollar amount, without competitive bidding.

10.080 Hist: PCRB Eff. 4-8-76 and Repealed by PCRB 1994

10.081 Ballots, Ballot Pages and Ballot Cards

- (1) The County is exempt, regardless of dollar amount, from competitive bidding requirements for the printing of ballots, including ballot pages, labeling and mailing of ballot cards.

10.083 Hist: PCRB Eff. 5-1-82, repealed 1994.

10.085 Request for Proposals

- (1) The County may request an exemption to use the Request for Proposal process as an alternative procurement method subject to the following conditions:
 - (a) The procurement is advertised and a written solicitation document is issued that invites the submission of sealed, written offers to be opened publicly at a designated time and place; and
 - (b) Contractual requirements are stated clearly in the solicitation document; and
 - (c) Evaluation criteria to be applied in awarding the contract and the role of an evaluation committee are stated clearly in the solicitation document. Criteria used to identify the proposal that best meets the County's needs may include but are not limited to cost, quality, service, compatibility, product reliability, operating efficiency and expansion potential; and
 - (d) The solicitation document clearly states all complaint processes and remedies available.
 - (e) The solicitation document states the provisions made for proposers to comment on any specifications that they feel limit competition.
- (2) The exemption request must show that the selection process shall not inhibit competition or encourage favoritism and will result in cost savings to the County.
- (3) The Request for Proposal procedure detailed in Administrative Procedure PUR-1 shall be followed.

10.086 Construction Manager/General Contractor

- (1) County agencies may request an exemption from the Public Contract Review Board to use the Request for Proposal process in accordance with the requirements of the Public Contract Review Board Administrative rule 10.085, 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 County's needs must 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 in promoting MBE, WBE, and ESB participation on projects.

- (c) The County shall prepare written findings to support the use of this rule and submit them to the PCRB for approval. The findings must show compliance with paragraphs (a) and (b) of ORS 279.015 (2). The County shall retain the findings and make them available upon request. These findings shall address as many of the following items as are applicable:
- (1) The agency has competitively bid a public improvement project and failed to receive a responsive, responsible bid within the cost estimate established by the agency or its consultant. There are de facto cost savings from not redesigning and/or rebidding the project;
 - (2) There are expected substantial savings on direct construction costs;
 - (3) 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;
 - (4) The technical complexity or unique character of the project requires the coordination of multiple disciplines;
 - (5) 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;
 - (6) There are other factors that demonstrably affect cost.

10.089 Office Copier Purchase

- (1) The County may enter into multiple requirements contracts for the purchase, rental, or lease of office copying equipment subject to the following conditions:
- (a) The contract must be let in accordance with AR 10.060.
 - (b) The term of the agreements including renewals do not exceed three (3) years.
- (2) In exercising this exemption, the County shall fully consider the operating capabilities, limitations and cost of each brand or model and select that brand or model which will produce the best combination of performance and cost per copy for each application.

10.090 Data and Word Processing Contracts

- (1) Contracts for acquisition of data and word processing hardware and systems software may be let without competitive bidding using the Request for Proposal process subject to the following conditions:
- (a) If the contract amount is more than \$2,500, but equal to or less than \$50,000, the County shall solicit competitive quotes. Prior to selection of a vendor, reasonable efforts will be made to solicit proposals from three or more vendors. Justification of award shall be documented and become a public record of the County.
 - (b) If the contract amount exceeds \$50,000, the County shall determine and use the best procurement method and solicit written proposals. The County shall publish an advertisement in a publication of general circulation in the state and shall document the evaluation and award process, which will be part of the public record justifying the award.

10.091 Telecommunication Systems Contracts

- (1) Contracts for acquiring telecommunications system hardware and software may be made by the

County subject to the following conditions:

- (a) If the contract is more than \$2,500, but equal to or less than \$50,000, the County shall as a minimum obtain competitive quotes. Prior to selection of a contractor, reasonable efforts will be made to solicit proposals from three or more vendors. Justification of award shall be documented and become a public record of the County.
 - (b) If the contract amount exceeds \$50,000, the County shall determine and use the best procurement method, pursuant to ORS 279.005 through ORS 279.111 and shall solicit written proposals in accordance with the requirements of Public Contract Review Board Administrative Rule 10.085.
- (2) The telecommunications solicitation authorized in subsection (1)(b) of this rule shall:
- (a) State the contractual requirements in the solicitations document:
 - (b) State the evaluation criteria to be applied in awarding the contract and the roles of any evaluation committee. Criteria that would be used to identify the proposal that best meets the County's needs may include, but are not limited to, cost, quality, service and support, and 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 that they feel limit competition: and
 - (d) Be advertised in accordance with ORS 279.025.

10.092 Professional Services Contracts

- (1) A contract for "professional 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 professional services Contractor, with the price being secondary. "Architect, Engineer, and Related Services" are a special class of professional services contracts, which are defined by AR 75.000.
- (2) The screening and selection procedures for the award of professional services contracts are governed by Administrative Procedure PUR-1.
- (3) This rule describes a method for distinguishing "professional services" contracts from "public contracts" (particularly service contracts; e.g., janitorial, maintenance, data entry, and similar services customarily provided by any competent laborer, and trade-related services; e.g., contracts for trade-related activities, including labor and/or material to accomplish repair or maintenance of all types of equipment and structures).
- (4) An agency may enter into a "professional 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) an agency 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. (Note: An agency'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 agency 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 an agency's needs and result in obtaining satisfactory contract performance and optimal value for the County.

- (5) "Professional 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) Professional 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 professional 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, key punch, 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.

10.100 Single Seller of Product Required

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

10.110 Emergency Contracts

- (1) The County may, at its discretion, let public contracts exceeding \$50,000 without formal competitive bidding, if an emergency exists and the emergency consists of circumstances creating a substantial risk of loss, damage, interruption of services or threat to public health or safety that could not have been reasonably foreseen and requires prompt execution of a contract to remedy the condition.
- (2) Documentation supporting the need for emergency contracting, must be prepared, signed by the Department Director, and submitted to the Purchasing Manager. Purchasing will forward this documentation along with recommendations to the County Chair.

- (3) The Board of County Commissioners delegates to the Chair of the Board the authority to, by official action, declare the existence of the emergency stating with specificity in its declaration, the emergency condition necessitating the prompt execution of the contract. Written findings describing the emergency conditions necessitating prompt execution of the contract must be prepared and sent to the Board.
- (4) Any contract awarded under this exemption shall be awarded within 60 days following declaration of the emergency unless an extension is granted pursuant to ORS 279.015(4).

10.120 Exemption of Contracts Under Certain Dollar Amounts

- (1) The County may let public contracts equal to or less than \$50,000 for the purchase of goods, materials, supplies, and services without formal competitive bidding when the following conditions are complied with:
 - (a) The contract is for a single project and is not a component of or related to any other project in any one fiscal year and is a non-repetitive acquisition that will not be repeated within the next six months; and
 - (b) When the amount of the contract is equal to or less than \$2,500, the County should, where feasible, obtain competitive quotes.
 - (c) When the amount of the contract is more than \$2,500 but equal to or less than \$50,000, the County must obtain a minimum of three competitive quotes. A written record of the source and amount of the quotes received must be kept. If three quotes are not available, a lesser number will suffice provided a written record is made of the effort to obtain the quotes.
 - (d) One of every three quotes must be from a MBE, WBE or ESB contractor if available.
- (2) PUBLIC WORKS CONTRACTS: The County may let public contracts equal to or less than \$50,000 for trade-related projects, i.e., construction, maintenance, repair, or similar labor and materials contracts without formal competitive bidding when the following are complied with:
 - (a) The contract is for a single project and is not a component of or related to any other project in any one fiscal year and is a non-repetitive acquisition that will not be repeated within the next six months; and
 - (b) When the amount of the contract is equal to or less than \$2,500, the County should, where feasible, obtain competitive quotes.
 - (c) When the amount of the contract is more than \$2,500 but equal to or less than \$50,000, the County must obtain a minimum of three competitive quotes. A written record of the source and amount of the quotes received must be kept. If three quotes are not available, a lesser number will suffice provided a written record is made of the effort to obtain the quotes.
- (3) Of the three quotes provided for in subsection (2)(c) above, one must be obtained from an MBE, one from a WBE, and one from an ESB.
 - (a) 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.
 - (b) 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 or declined to provide a quote within the time specified.

- (4) When a public contract for "public improvements" as defined in ORS 279.011 (7) and/or for "public works" as defined in ORS 279.348(3) and the contract price exceeds \$25,000 but is less than or equal to \$50,000, the County shall comply with:
 - (a) The prevailing Wage Rate provisions in ORS 279.348 to 279.365, when applicable; and
 - (b) The performance bond requirements of ORS 279.029; and
 - (c) The contractor registration requirements of ORS 701; and
 - (d) Any other law applicable to such a contract.
- (5) The Purchasing Manager shall prepare a report to the Board of County Commissioners on an annual basis that provides an evaluation of the procedures for obtaining quotes in this Section. The annual report shall include a recommendation whether the program should be continued. If the Purchasing Manager recommends that the Program be continued, the recommendation shall include any proposed improvements to the Program.

10.125 Life Cycle Cost Analysis

- (1) The County may, as a part of its competitive bidding requirements, use life cycle cost evaluation subject to the following requirements:
 - (a) The bid specifications must include an explanation of the factors and evaluation formula to be used and;
 - (b) The bidder whose bid results in the lowest ownership cost, taking into account the life cycle costing adjustments, shall be considered the lowest responsible bidder.

10.130 Contract Amendments (Including Change Orders and Extra Work)

- (1) An amendment which changes the scope of work or is 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 changes 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, unit prices or bid alternatives were provided that established the cost basis for 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; 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; or
 - (e) Except for amendments entered into pursuant to subsections (a) to (d) of this rule, the aggregate increase resulting from all amendments to a contract shall not exceed 20 percent of the initial contract price. Contracts for the renovation or remodeling of buildings may have aggregate amendments not exceeding 33 percent to the initial contract price. Provided however, that amendments made pursuant to subsection (a) of this rule are not to be applied against either the 20 percent or the 33 percent aggregate limit on contract amendments. Provided further, that contracts amended pursuant to subsections (b) or (c) of this rule are not subject to either the 20 percent or the 33 percent aggregate limit on contract amendments.

10.135 Hist: PCRB Eff. 4-8-76 and Repealed by PCRB 1994

10.136 Preference to Recycled Materials

- (1) It is the policy of Multnomah County to purchase materials and product 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;
 - (b) The recycled product meets applicable standards;
 - (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) The cost of recycled paper does not exceed the cost of non-recycled paper by more than 15 percent.
- (2) Departments shall review and work with Purchasing 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.
- (3) 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 (1) (a) of this rule, or the fifteen percent preference set forth in subsection (1) (e) or this rule.
- (4) Any invitation to bid or request for proposal under ORS 279 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."
- (5) In any bid that 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.
- (6) 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 and secondary waste 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 contractor 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.
- (7) 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 an agency'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 279.739(3).

10.140 Specific Exemptions

- (1) The Purchasing Section may apply to the Board for a ruling under AR 30.010 through 30.040 exempting a particular contract or contracts from competitive bidding requirements of ORS 279.015 that are not otherwise exempted under these rules. The application shall contain the following information:
 - (a) The nature of the project;
 - (b) Estimated cost of the project;
 - (c) A narrative description of the cost savings anticipated by the exemption from competitive bidding and the reasons competitive bidding would be inappropriate;
 - (d) Proposed alternative contracting and purchasing practices to be employed; and
 - (e) The estimated date by which it would be necessary to let the contract.
- (2) The Board may require such additional information as it deems necessary to determine whether a specific contract is to be exempt from competitive bidding.

**MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD
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DIVISION 15

15.000 Authority and Duties of the Purchasing Manager

(1) The authority and duties of the Purchasing Manager are as follows:

- (a) Purchase or contract for supplies, materials, equipment and services when authorized by ordinance or administrative rule.
- (b) Ensure compliance with all applicable federal and state laws, Multnomah County ordinances, rules, policies and procedures governing public and professional services contracts.
- (c) Establish and enforce specifications to procure supplies, materials equipment and services.
- (d) Execute County contracts on behalf of the County Chair when authorized by the Chair, using the signature of the County Chair and the initials or the name of the Purchasing Manager.
- (e) Recommend to the Board of Commissioners and the County Chair new ordinances and amendments to the Public Contract Review Board Rules and County Administrative Procedures, as well as adopt new internal procedures to comply with applicable statues, ordinances and administrative procedures.
- (f) Review and recommend action to be taken on exemption requests.
- (g) Manage and Monitor printing services required by County agencies for greater efficiency and economy.

15.003 Authority and Duties of the Materiel Manager

(1) The authority and duties of the Materiel's Manager are as follows:

- (a) Operate a Central Stores warehouse of supplies commonly used by County agencies and approved outside agencies.
- (b) Receive and distribute surplus County property to County agencies or provide for the sale or disposal of property no longer needed or obsolete.

15.006 Authority and Duties of the Contracts Administrator

(1) The authority and duties of the Contracts Administrator are as follows:

- (a) Maintain a central file of all original executed copies of contracts.
- (b) Maintain a Countywide contracts information system.
- (c) Manage the County contract approval process.

15.010 Definitions as used in this section

- (1) "Actual conflict of interest", means 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.
- (2) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for

economic gain.

- (3) "Business with which the person is associated" means 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.
- (4) "Potential conflict of interest" means 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.
 - (1) 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.
 - (2) Membership in a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.
- (5) "Public official" means 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.
- (6) "Relative" means 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.
- (7) "Contract official" means any public official responsible for processing, awarding, funding or monitoring a county contract.
- (8) "Appointing authority" means the elected official having administrative authority over the affected public official, or such elected official's designee.

15.015 Actual and Potential Conflicts of Interest

- (1) 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 Purchasing Manager of any potential or actual conflicts of interest of such contract official with respect to such proposed contract.
- (2) Upon receiving any information that a proposed contract involves a potential 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.
- (3) No contract shall be awarded or executed on behalf of the County without review and approval by the County Auditor if any contract official has a potential or actual conflict of interest in connection with the contract.

15.020 Competitive bidding and RFP restrictions

- (1) Contracts based upon formal competitive bidding or Requests for Proposals, if not awarded to the

lowest responsive bidder or the responsive proposer with highest evaluation, shall not take effect until approved by at least three members of the board of commissioners.

15.025 Semi-Annual Reports

- (1) The Contracts Administrator shall file a semi-annual report of contract activity by September 30 for the six-month period ending June 30 and March 31 for the six-month period ending December 31 with the Multnomah County Chair and Board of Commissioners. The report shall contain the following:
 - (a) An index of contracts, contract price and contractors.
 - (b) Information regarding contracts with minority, women-owned, and emerging small business enterprises as well as Qualified Rehabilitation Facilities.
 - (c) A summary of contract totals by department or function for the prior and current year.
 - (d) A summary of contract processing costs for the prior and current year; and
 - (e) A summary of contracting procedure changes implemented during the year.
 - (f) Listing of contracts awarded through the competitive bid process to a contractor(s) who did not score the highest evaluation or have the lowest responsive bid.
 - (g) Listing of contracts exceeding \$50,000, for which only one bid or proposal was received.

15.030 Unauthorized Purchases

- (1) Unauthorized Purchases shall mean any County contract or agreement other than Professional Service contracts equal to or less than \$50,000, that is not binding solely because the County representative who made it lacked the authority to enter into the agreement on behalf of the County without compliance with all applicable public contracting requirements.
- (2) Claims for payment arising from unauthorized purchases or commitments shall require approval by the Board of County Commissioners upon recommendation of the Purchasing Manager.
- (3) Prior to processing requests for approval of unauthorized purchases or commitments, the Purchasing Manager shall require the following information:
 - (a) Description of the property or services furnished as a result of the unauthorized contract or commitment;
 - (b) A detailed statement of facts relating to the unauthorized commitment, including the name and position of the person who made the unauthorized purchase and an explanation of the reason normal purchasing procedures were not used;
 - (c) Documentation that the amount claimed by the supplier or contractor is fair and reasonable;
 - (d) Copies of all invoices and other documents pertinent to the transaction;
 - (e) Verification that the property or services have been received and accepted by the County;
 - (f) The fund, organization and object codes for the purchase;
 - (g) A statement of the steps taken or planned to prevent recurrence of such unauthorized purchases.

**MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD
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DIVISION 20

20.000 BRAND NAMES OR MARKS

20.010 Specification of Particular Brand Names or Products

- (1) Specifications for public contracts shall not expressly or implicitly require any product of any particular manufacturer or seller except as expressly authorized under AR 20.020 (Copyrighted Materials), 20.030 (Single Manufacturer or Compatible Products), 20.040 (Product Prequalifications) or 20.050 (Brand Name or Mark Exemption Applications).
- (2) If there is no other practical method of specification, the County may designate a particular brand name, make or product, supplied by, "or equal", or "approved equal", or "equivalent", or similar language, but this practice should be avoided whenever possible.

20.020 Copyrighted Materials

- (1) The County may specify a copyrighted product. This exemption does not include patented or trade mark goods.

20.030 Single Manufacturer or Compatible Products

- (1) If there is only one manufacturer or seller of a product of the quality required or if the efficient utilization of the existing equipment or supplies requires compatible product of a particular manufacturer, the County may specify such particular product subject to the following conditions:
 - (a) The product is selected on the basis of the most competitive offer considering quality and cost. The term "cost" includes not only the product cost, but also other items of expense such as costs related to quality or conversion.
 - (b) Prior to awarding the contract, the County has made reasonable effort to notify known vendors of competing or comparable products of the intended specifications and invited such vendors to submit competing proposals. If the purchase does not exceed \$50,000, such notice and invitation may be informal. If the amount of the purchase exceeds \$50,000, such notice shall include advertisement in at least one newspaper of general circulation in the area where the contract is to be performed and shall be timely to allow competing vendors a reasonable opportunity to make proposals.
- (2) If the amount of the purchase exceeds \$50,000 and is not also pursuant to the data and word processing exemption AR 10.090, the Purchasing Section shall document its actions in the bid file. Such documentation shall include:
 - (a) A brief description of the proposed contract or contracts.
 - (b) A detailed description of the reasons why the product and/or seller was selected and any competing products and/or sellers that were rejected. The description shall also include the efforts taken by the Purchasing Section to notify and invite proposals from competing vendors.
- (3) If the County intends to make several purchases of the product of a particular manufacturer or seller for a period not to exceed three (3) years, it may so state in the documentation required by section (2) and subsection (2)(b) and such documentation shall be sufficient notice as to subsequent purchases.

20.040 Product Prequalification

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

20.050 Brand Name or Mark Exemption Applications

- (1) The Purchasing Section may apply for and receive a brand name or mark exemption ruling from the Board for current and contemplated future purchases. Applications shall contain the following information:
 - (a) A brief description of the solicitation(s) to be covered. The description should include contemplated future purchases.
 - (b) The brand name, mark, or product to be specified.
 - (c) The reasons the agency is seeking the exemption which shall include any of the following findings:
 - (1) It is unlikely that specification of the brand name, mark or product will encourage favoritism in the award of the contracts or substantially diminish competition; or
 - (2) Specification of the brand name, mark or product would result in substantial cost savings to the agency; or
 - (3) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.
 - (d) The County shall make reasonable effort to notify all known suppliers of the specified product and invite such vendors to submit competitive bids or proposals; or shall document the procurement file with findings of current market research to support the determination that the product is available from only one seller.

20.060 Conditions of Exemptions

- (1) The Board may grant exemptions if any of the following conditions are met:
 - (a) The exemption is not likely to encourage favoritism in public contracts or substantially diminish competition and result in cost savings; or
 - (b) There is only one manufacturer or seller of the product of the quality required, efficient utilization of existing equipment, or supplies requires acquisition of compatible equipment or supplies; or
 - (c) The exemption is requested for the purchase of a particular product to be used in an experimental project.

**MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD
ADMINISTRATIVE RULES**

DIVISION 30

30.000 SPECIFIC EXEMPTION PROCEDURE

30.010 Notice of Application

- (1) Upon receipt of an application for an exemption ruling under these rules, the County Chair shall cause a notice of intention to adopt an order to be posted in full public view in the Multnomah County Courthouse and may set the matter for public hearing to receive data, views, and arguments.

30.020 Board Hearing

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

30.030 Temporary Rules Exemptions

- (1) In appropriate cases, the County Chair may grant a temporary exemption from public bidding pending formal consideration of a specific exemption.

30.040 Unanimous Consent Calendar

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

**MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD
ADMINISTRATIVE RULES**

DIVISION 40

40.000 COMPETITIVE BIDDING PROCEDURE

40.010 Statutory Requirements

- (1) The County is required to award contracts to the lowest responsible, responsive bidder except in the following circumstances:
 - (a) The bidder has failed to substantially comply with either the specifications or any statutory requirement relating to public contracting;
 - (b) The bidder is disqualified by the County pursuant to the applicable statutes and Rule 40.020.
 - (c) If in the judgment of the department head and the Purchasing Manager it is in the public interest to reject all bids pursuant to ORS 279.035.

40.015 Receipt and Opening of Bids

- (1) In any contract that is subject to competitive bidding as defined in Rule AR 10.000, the advertisement must state the time and date when bids will be publicly opened. The bids should be sealed and shall not be examined or opened by anyone until the time of the public opening as specified in the advertisement. Such bids are not public records under ORS 192.500 et seq. until the public opening.

40.020 Bidder Disqualification

- (1) Bidders may be disqualified on any of the following grounds:
 - (a) Lack of financial ability. If a performance bond is required to insure performance of a contract, proof that the bidder can acquire a surety bond in the amount required shall be sufficient to establish financial ability. If no performance bond is required, the public contracting agency may require such information as it deems necessary to determine the bidders financial ability. In determining whether a surety company is to be considered "good and sufficient", the public contracting agency may utilize the list maintained by the U.S. Department of Treasury of surety companies acceptable on federal bonds; Best's Rating, published by A.M. Best Company; or information maintained by the Oregon State Department of Transportation.
 - (b) The bidder lacks the available equipment or key personnel with sufficient experience to perform the contract.
 - (c) The bidder has repeatedly breached contractual obligations.

40.030 Prequalification

- (1) Prequalification of contractors for public improvements in excess of \$50,000 may be required. All persons desiring to bid for such contracts shall submit a completed pre-qualification statement. Such statements must be prepared during the period of one year prior to the bid date and must be actually received or postmarked to Multnomah County by no later than 10 days prior to bid opening. Prequalification granted pursuant to this rule shall be effective for a period of one year. Prequalification granted pursuant to this rule shall be for only those contracts not exceeding a certain monetary limit based upon the financial ability of the particular contractor. Such limits will be designated by Multnomah County.

40.040 Prequalification Application

- (1) Prequalification statements required by AR 40.030 adopted pursuant to ORS 279.039 and Prequalification requests submitted pursuant to ORS 279.041 shall be in the form of the State of

40.045 Prequalification Prior To The Effective Date

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

40.050 Qualification Statement

- (1) Upon establishment of Prequalification, the County shall issue a qualification statement in substantially the following form:

"This is to certify that
Name of Contractor

is qualified to perform the classes of work as requested in its Prequalification application dated _____, or contracts not to exceed \$_____."

40.060 Proof Of Presumed Qualification

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

40.070 Notice of Denial of Qualification

- (1) If the County does not qualify the applicant, it shall notify the applicant in the following form:

"Multnomah County Qualification Denial"

Name of Contract

Date

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

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

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

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

___ Contractor has repeatedly breached contractual obligations.

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

___ Other (Agency must specify).

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

Signature

40.080 Notice of Revocation Or Revision Of Prequalification

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

"Multnomah County Qualification Revocation or Revision"

Name of Contract

Date

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

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

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

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

_____ Contractor has repeatedly breached contractual obligations.

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

_____ Other (State Reasons for Revocation or Revision)

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

Signature

40.090 Appeals of Prequalification Status

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

**MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD
ADMINISTRATIVE RULES**

DIVISION 50

50.000 WAIVER OF SECURITY BID AND PERFORMANCE BOND

50.010 Bid Security Requirements

- (1) The County may, in its discretion, waive the bid security requirements of ORS 279.027 for contracts other than those for public improvements. At the discretion of the Purchasing Manager, the County may accept blanket bid bonds.

50.020 Contracts Equal to or Less Than \$50,000

- (1) The County may, at its discretion, waive the bid security requirements of ORS 279.027 and performance bond requirements of ORS 279.029 if the amount of the contract for the public improvement is equal to or less than \$50,000.

50.030 Deposits in Lieu of Retainage on Public Contracts

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

50.040 Approved Securities Acceptable in Lieu of Retainage Fees

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

50.050 Retainage Deposited in Interest -Bearing Account

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

**MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD
ADMINISTRATIVE RULES**

DIVISION 60

60.000 AFFIRMATIVE ACTION IN PUBLIC CONTRACTS

60.010 Purpose

- (1) The purpose of this Chapter is to establish procedures to assure that Multnomah County contractors and vendors provide 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, State of Oregon.

60.015 Affirmative Action Contracts

- (1) Public contracts may be awarded pursuant to a specific Affirmative Action plan. This rule sets forth the Multnomah County Affirmative Action Plan.

60.030 Policy

- (1) It is the intent of Multnomah County to provide opportunities for all segments of the business population to participate in the Multnomah County Purchasing Program. In order to assure opportunity, every County contract and/or subcontract for construction, maintenance or services shall include provisions barring discrimination against or differential treatment of MBE's, WBE's and ESB's.
- (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 the contractor based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, source of income, or political affiliation in programs, activities, services, benefits and employment.
- (2) For all contracts designated by the Purchasing Manager, bid specifications shall require compliance with a "good faith effort" program.

60.031 Good Faith Effort Program

- (1) The activities described in ORS 200.045 are standards for good faith efforts to provide equitable opportunities for MBE's, WBE's, and ESB's to participate in subcontract opportunities created through Multnomah County contracts.
- (2) The Purchasing 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 Purchasing Manager shall cooperate with other municipal and state agencies to design, to the maximum extent possible, a program that is uniform between agencies.

60.032 Evaluation of Good Faith Effort

- (1) The Purchasing Manager or his/her designee shall determine if the bid complies with bid specifications for good faith effort.
- (2) Failure of bidder to submit good faith effort documentation required by the bid specifications shall be determined "non-responsive" to the bid specifications. Non-responsive bids will be rejected by the Multnomah County Purchasing Manager.

60.040 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 limit set for formal bids in AR 10.010 unless such vendor is certified as an Equal Employment Opportunity Employer. No County agency 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 Purchasing Manager as an EEO Employer.

60.041 Certification Procedure/Appeal

- (1) Vendors furnishing goods and services to the County in excess of the limits set forth in AR 60.040 shall apply for and obtain EEO certification from the City of Portland as an EEO employer. The Purchasing Manager shall maintain a list of certified vendors based upon City of Portland certification. A vendor may appeal from a decision to deny certification or revoke certification in accordance with the procedure prescribed in AR 40.090 for denial or revocation of prequalification.

60.050 Workforce Requirements in Construction Contracts

- (1) For all contracts designated by the Purchasing Manager as being appropriate for such a program, the Purchasing 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.

60.060 Sheltered Market Program

- (1) There is hereby established a Sheltered Market Program for MBE, WBE 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, 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 developed by the Purchasing Manager. Criteria for selection shall include the following:
 - (a) Contractor shall be a state certified MBE, WBE or ESB.
 - (b) Contractor shall have prior experience performing construction work and shall be currently in business doing construction work.

- (c) Contractor shall have gross receipts for the calendar year prior to the application of less than \$1,000,000 or if gross receipts for that year are greater than \$1,000,000, then the average gross receipts for the three calendar years prior to the application shall be less than \$1,000,000. The Purchasing 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.
- (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.

The Purchasing Manager may develop additional criteria for selection of contractors for participation in the program which further the purpose of the program.

- (3) A contractor may appeal from a decision to deny participation in the program to the Public Contract Review Board in accordance with the procedure prescribed in AR 40.090.
- (4) Contracts to be included in the Sheltered Market Program shall be selected by the Purchasing Manager from projects estimated at the time of bidding to result in a contract in excess of \$50,000 and less than \$200,000. The Purchasing 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 Purchasing 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.
- (5) 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 (6) below, the contract shall be awarded to the lowest responsive responsible bidder among those bidding.
- (6) For each project selected for the Sheltered Market Program, the project manager for the program shall forward to the Purchasing Manager a cost estimate for the project. If the lowest responsive responsible bid is more than the cost estimate, the Purchasing 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 responsible bid from among all bids received.
- (7) The Purchasing 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.
- (8) The Purchasing 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 Section 4 of HB 2910. The annual report shall include a recommendation whether the program should be continued. If the Purchasing Manager recommends that the Program be continued, the recommendation shall include any proposed improvements to the Program.

**MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD
ADMINISTRATIVE RULES**

DIVISION 70

70.000 PURCHASE OF GOODS AND SERVICES FROM QUALIFIED REHABILITATION FACILITIES

70.010 PURPOSE

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

70.030 Policy

- (1) It is the policy of Multnomah County to encourage employment of the handicapped. An essential element of this policy is to support sheltered employment by contracting for needed goods and services available from QRF's. The County shall identify contracting opportunities within the organization and encourage awarding of contracts to QRF's. This policy shall be equally applicable to all County organizations and shall be administered by the Director of Purchasing.

70.040 Certification

- (1) It shall be the policy of Multnomah County to use the QRF Certification established by the State of Oregon, Department of General Services, when applicable.
- (2) All entities wishing to qualify for QRF status with the County must furnish proof of certification with the State of Oregon, Department of General Services.

70.050 Set Aside Program for QRF Firms

- (1) The designation of contracts to the set aside program will be made by the joint determination of the department manager and the Purchasing Manager or agents appointed by them. The procedure for bidding and awarding of contracts shall be consistent with AR 40.000, except for the restriction limiting competition to QRF firms. In situations where a set aside has been established, and there is only one certified QRF available on the State Certificate list, the County shall negotiate a contract with the QRF provided the product or service is in accordance with the price established by the Purchasing Section and it meets all minimum specifications, and is available within the period required by the Purchasing Section.
- (2) The Purchasing Section will review on a regular basis the procurement list established and published by the State of Oregon, Department of General Services to determine sources and potential sources of products and services produced by QRF's. This procurement list will be distributed annually to all County departments.

**MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD
ADMINISTRATIVE RULES**

DIVISION 75

75.000 Alternate Selection Procedures: Architects, Engineers and Related Professional Consultants

75.005 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, and 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 professional services required at a fair and reasonable price.

75.015 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: (i) the project (ii) the professional services sought; (iii) where copies of the solicitation may be obtained; and (iv) the deadline for submitting a response.
 - (b) At other designated times, the County may announce that it will accept from architectural, engineering, and other related professional consultant firms, a statement of qualifications, credentials, and other data expressing interest in providing services.
 - (1) The County may provide a standard form for this purpose. Materials received will be retained by the County for use in: (i) direct notice to consultants providing services similar to those required for the project; (ii) the Informal Selection Procedure; (iii) and, where possible, in the Direct Appointment Procedure.
 - (2) Materials on file with the County may be purged periodically, unless the County is notified otherwise by firms desiring to continue expressing interest in performing services.
 - (c) The County may at any time during the solicitation or negotiation process reject all consultant proposals and cancel the solicitation without liability therefor, 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.
 - (d) 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.
 - (e) All solicitation documents 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 documents".

75.020 Formal Selection Procedure

- (1) The formal selection procedure shall be used whenever the estimated cost of architectural, engineering, or related services exceeds \$50,000, 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: (i) the solicitation; (ii) a statement of the particular consultant qualifications required for the project; (iii) the evaluation criteria (including the weights or points applicable to each criterion); and (iv) the screening or evaluation method to be used. 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 professional 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 promoting MBE, WBE and ESB participation on projects; and
 - (e) Any other information which is deemed reasonably necessary to evaluate consultant qualifications.
- (3) 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.
- (4) A consultant screening and evaluation committee of no fewer than three, and recommended no more than five, 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.
- (5) 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.
- (6) 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;
 - (b) The evaluation process and the criteria which will be used to select the consultant; including the weight or points applicable to each criterion;
 - (c) The closing date and time of the solicitation and the delivery locations for consultant proposals;
 - (d) The date and time for interviews, if planned;
 - (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;
 - (g) A sample of the contract the consultant will be expected to execute; and
 - (h) Any other information that is reasonably necessary to evaluate, rank and select consultants.
- (7) 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.
- (8) 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 include practitioners of architecture, engineering, or related professions, and user groups. One member of the committee from the County shall be designated as the chairperson.
- (9) 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 (i) meeting deadlines; (ii) submitting accurate estimates; (iii) producing quality work; and (iv) 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: (i) proposed approach to the project's staffing and scheduling needs and (ii) suggested alternatives to any perceived design and constructability problems;
 - (h) Consultant's compensation requirements as defined under AR 75.010(2), unless prohibited by Federal requirements, such as this in 40 USC **541-544 (Public Law 92-583, Brooks Architect-Engineers Act);
 - (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 promoting MBE, WBE and ESB participation on projects; 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
- (10) 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 professional services.
- (11) 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 AR 75.030.
- (12) 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: (i) not encourage favoritism in the awarding of architectural, engineering, or related personal service contracts or substantially diminish competition for such contracts; and (ii) will result in substantial cost savings to the County.
- (13) Contracts entered into under the formal selection procedure set forth in AR 75.020 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.

75.025 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 \$50,000.
- (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.
 - (1) 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.
 - (2) 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.
 - (c) All proposals shall be reviewed and the three most qualified consultants selected and ranked.
 - (d) 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:
 - (1) Particular capability to perform the architectural, engineering, or related services

for the project being considered;

- (2) Number of experienced staff available to perform the services required by the project, including each consultant's recent, current, and projected workloads;
 - (3) Performance history on past projects for public or private clients,
 - (4) Project approach and design philosophy;
 - (5) Consultant's compensation requirements as defined under AR 75.010(2), unless prohibited by Federal requirements.
 - (6) 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.
- (d) Contract negotiations with the highest ranked consultant shall be directed toward obtaining written agreement on:
- (1) The consultant's tasks, staffing, and a performance schedule; and
 - (2) 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 professional services.
- (e) 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 user AR 75.030.
- (f) If the scope of a project is revised during negotiations so that the estimated cost of the consultant's services exceeds \$50,000, then the informal process shall be terminated and the services of a qualified consultant solicited using the formal selection procedure set forth in AR 75.020. Provided however, that negotiations with the informally selected consultant may continue if the County makes written findings that contracting with the consultant will: (i) not encourage favoritism in the awarding of architectural, engineering, or related personal service contracts; and (ii) will result in substantial cost savings to the County.

75.030 Direct Appointment Procedure

- (1) A qualified consultant may be appointed directly from: (i) the County's current list of consultants; (ii) another public jurisdiction's current list of consultants, pursuant to an interagency or intergovernmental agreement entered into in accordance with ORS chapter 190; or (iii) among all consultants offering the necessary services that the agency reasonably can locate, which may include public advertisement.
 - (a) The direct appointment procedure may be used when:
 - (1) 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
 - (2) The consultant's estimated fee does not exceed \$10,000; or
 - (3) The project: (i) 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; (ii) the consultant's estimated fee for such project does not exceed \$50,000; and (iii) the selection procedure used for the original project was the formal selection procedure set forth in AR 75.020 (or a substantially equivalent procedure if the consultant services for the original project were procured prior to adoption of these rules); or

- (4) 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.
- (b) A direct appointment pursuant to (1)(a) or (b), above, shall be competitive to the extent practicable and may be based on criteria which include but are not limited to: (i) the consultant's availability, capabilities, staffing, experience, and compensation requirements and (ii) the project's location.
- (c) If the consultants estimated fee does not exceed \$10,000 as stated in (1) (a) (2) above:
 - (1) 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.
 - (2) 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.

75.035 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: (i) cost-plus-a-percentage-of-cost; or (ii) 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: (i) construction manager/general contractor services, or (ii) 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.

75.040 Protest Procedures

- (1) All protests of solicitation or selection processes are limited to the following issues and filing times:
 - (a) Solicitation protest: Unless a different deadline is specified in the solicitation document, prospective consultants must submit a written protest, or request for change, or particular solicitation provisions, specifications or contract terms and conditions to Purchasing no later than five (5) working days prior to the close of the solicitation. Such protest or request for change shall include the reasons for the protest or request, and any proposed changes to the solicitation provisions, specifications, or contract terms and conditions. No protest against selection of a consultant or award of a consultant contract, because of the content of solicitation provisions, specifications, or contract terms and conditions, shall be considered after the deadline established for submitting such protest.
 - (b) Selection protest: Every consultant who submits a proposal in response to an RFP shall

be mailed a copy of the selection notice sent to the highest ranked consultant. Unless a different deadline is specified in the RFP, a consultant who has submitted a proposal and claims to have been adversely affected or aggrieved by the selection of a competing consultant, shall have five (5) working days after receiving the notice of selection to submit a written protest of the selection to Purchasing. To be adversely affected or aggrieved, a protester must claim that the protester was the highest ranked consultant eligible for selection, i.e., the protester must claim that all higher ranked consultants were ineligible for selection because their proposals were non-responsive or the consultants non-responsive. The County shall not consider a selection protest submitted after the time period established in this section (2), unless a different deadline is provided in the RFP.

- (c) The procedure and authority to settle or resolve a written protest submitted in accordance with sections (1) or (2) or this rule shall be in accordance with Multnomah County Administrative Procedure PUR-1.

**MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD
ADMINISTRATIVE RULES**

DIVISION 90

90.000 NOTICES AND AGENDA

90.010 Notices

- (1) Notices of amendment, adoption or repeal of rules, including contract exemption rulings and of meetings of the Public Contract Review Board and the agenda of the meetings shall be sent to the following at least seven (7) days prior to the meeting:
- (a) Press: The Oregonian, The Gresham Outlook, and The Daily Journal of Commerce.
 - (b) Management and Labor: Association of Oregon Industries; Associated General Contractors; Oregon Construction Industry Council; Oregon AFL-CIO, and Oregon State Building Trades Council.
 - (c) Any persons requesting notice in writing who show themselves in a position to be affected by the Board's determination.

90.020 Agenda

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