

TITLE 10

SPECIAL ORDINANCES, REGULATIONS, RULES, POLICIES, AND BARGAINING AGREEMENTS

LCPR 137-047

PUBLIC PROCUREMENTS FOR GOODS OR SERVICES GENERAL PROVISIONS

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[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20]
 Stats. Implemented: ORS 279B.015

137-047-0100 Definitions

(1) "**Advantageous**" means in the County's best interests, as assessed according to the judgment of the County.

(2) "**Affected Person**" or "**Affected Offeror**" means a Person whose ability to participate in a Procurement is adversely affected by a County decision.

(3) "**Class Special Procurement**" as used in LCPR 137-047, means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of Contracts over time or for multiple projects.

(4) "**Contract-Specific Special Procurement**" as used in LCPR 137-047, means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related Contracts on a one-time basis or for a single project.

(5) "**Failed Procurement**" means a competitive Procurement in which no Responsive Offers were received by the County.

(6) "**Good Cause**" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the County. The County shall document in the Procurement file the basis for the determination of Good Cause for specification otherwise. The County will have Good Cause to specify otherwise under the following circumstances:

(a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;

(b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be

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Legislative History of LCPR 137-047

I. GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR GOODS AND SERVICES

137-047-0000 Application

Division 47 implements ORS chapter 279B, Public Procurements and applies to the Procurement of Goods or as defined in ORS 279B.005(1)(b), but specifically does not include personal services contracts except as provided in LCPR 137-047-0910 to 137-047-0930.

compatible with or will operate efficiently or effectively with components, equipment, parts, Services or information technology including hardware, Services or software with which the Goods or Services will be used, integrated, or coordinated;

(c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;

(d) Any other circumstances in which County's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the County's practical need for the highest prevalent standard in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

(7) "**Special Procurement**" means, unless the context requires otherwise, a Class Special Procurement, a Contract Specific Special Procurement, or both.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20]
Stats. Implemented: ORS 279A.065

137-047-0110 Policies; Written Cost Analysis Required for Service Contracts Over \$250,000

(1) In addition to the general Code policies set forth in ORS 279A.015, ORS 279B.030-279B.036 shall apply to these Division 47 rules.

(2) Before conducting a Procurement for Services with an estimated Contract Price that exceeds \$250,000, the County shall:

(a) Demonstrate, by means of a Written cost analysis in accordance with ORS 279B.033, that the County would incur less cost in conducting the Procurement than in performing the Services with the County's own personnel and resources; or

(b) Demonstrate, by means of a Written determination in accordance with ORS 279B.036,

that performing the Services with the County's own personnel and resources is not feasible.

(3) The Written cost analysis and/or feasibility determination shall become part of the Procurement file.

[Adopted 2020-163 eff 06/23/20]

II. SOURCE SELECTION

137-047-0250 Methods of Source Selection

Except as permitted by ORS 279B.065 through 279B.085 and ORS 279A.200 through 279A.225, the County shall Award a Public Contract for Goods or Services, or both, based on Offers received in response to either competitive sealed Bids pursuant to ORS 279B.055 or competitive sealed Proposals pursuant to ORS 279B.060.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279B.050; OL 2009, c 880 & § 2-4

137-047-0255 Competitive Sealed Bidding

(1) **Generally.** The County may procure Goods or Services by competitive sealed bidding as set forth in ORS 279B.055. An Invitation to Bid is used to initiate a competitive sealed bidding solicitation and shall contain the information required by ORS 279B.055(2) and by Section 2 of this rule. Linn County shall provide public notice of the competitive sealed bidding solicitation as set forth in LCPR 137-047-0300.

(2) **Invitation to Bid.** In addition to the provisions required by ORS 279B.055(2), the Invitation to Bid may include the following:

(a) **General Information.**

(A) Notice of any pre-Offer conference as follows:

- (i) The time, date and location of any pre-Offer conference;
- (ii) Whether attendance at the conference will be mandatory or voluntary; and
- (iii) A provision that provides that statements made by the County's representatives at the conference are

not binding upon the County unless confirmed by Written Addendum.

(B) The form and instructions for submission of Bids and any other special information, e.g., whether Bids may be submitted by electronic means (See LCPR 137-047-0330 for required provisions of electronic Bids);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

(E) A statement that each Bidder must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120(1);

(F) Bidder's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4) (see LCPR 137-046-0210(2)); and

(G) How the County will notify Bidders of Addenda and how the County will make Addenda available (see LCPR 137-047-0430).

(b) County's Need to Purchase. The character of the Goods or Services the County is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. As required by Oregon Laws 2009, chapter 880, Section 5, the County's description of its need to purchase must:

(A) Identify the scope of the work to be performed under the resulting Contract, if the County awards one;

(B) Outline the anticipated duties of the Contractor under any resulting Contract;

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the County, for Good Cause, specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the County is purchasing.

(c) Bidding and Evaluation Process.

(A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;

(B) The County shall set forth objective evaluation criteria in the Solicitation Document in accordance with the requirements of ORS 279B.055(6)(a). Evaluation criteria need not be precise predictors of actual future costs, but to the extent possible, such evaluation factors shall be reasonable estimates of actual future costs based on information available to the County and

(C) If the County intends to Award Contracts to more than one Bidder pursuant to LCPR137-047-0600(4)(C), the County shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.

(d) Applicable preferences pursuant to ORS 279B.055(6)(b).

(e) All contractual terms and conditions in the form of Contract provisions the County determines are applicable to the Procurement. As required by Oregon Laws 2009, chapter 880, Section 5, the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The County's reduction or withholding of payment under the Contract;

(B) The County's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the resulting Contract; and

(C) The County's rights, which the County may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]

137-047-0257 Multi-step Sealed Bids

(1) **Generally.** Linn County may procure Goods or Services by using multi-step competitive sealed Bids pursuant to ORS 279.055(12).

(2) **Phased Process.** Multi-step bidding is a phased process that seeks necessary information or unpriced submittals in the initial phase combined with regular competitive sealed bidding, inviting Bidders who submitted technically eligible submittals in the initial phase to submit competitive sealed price Bids in the final phase. The Contract shall be Awarded to the lowest Responsible Bidder. If time is a factor, the County may require Bidders to submit a separate sealed price Bid during the initial phase, to be opened immediately following the initial evaluation.

(3) **Public Notice.** Whenever multi-step sealed Bids are used, public notice for the first phase shall be given in accordance with LCPR 137-047-0300. Public notice is not required for the subsequent phases. However, the County shall give notice of the second phase to all Bidders, inform Bidders of the right to protest Addenda issued after the initial Closing under LCPR 137-047-0430, and inform Bidders excluded from the second phase of the right, if any, to protest their exclusion under LCPR137-047-0720.

(4) Procedures Generally.

(a) In addition to the procedures set forth in LCPR 137-047-0300 through LCPR 137-047-0490, the County shall employ the procedures set forth in this rule for multi-step bidding and in the Invitation to Bid.

(A) That the County requests unpriced submittals and that The County shall consider price Bids only in the second phase and only from those Bidders whose unpriced submittals are found eligible in the first phase;

(B) Whether Bidders must submit price Bids at the same time as unpriced submittals and, if so, that Bidders must submit the price Bids in a separate sealed envelope;

(C) The criteria to be used in the evaluation of unpriced submittals;

(b) Evaluation. The County shall evaluate unpriced submittals in accordance with the criteria set forth in the Invitation to Bid.

(5) Procedure for Initial Phase of Multi-step Sealed Bids.

(a) Form. The County shall initiate multi-step sealed bidding by issuing an Invitation to Bid in the form and manner required for competitive sealed Bids except as provided in this rule. In addition to the requirements set forth in LCPR 137-047-0255(2), the multi-step Invitation to Bid shall state:

(A) That the solicitation is a multi-step sealed Bid Procurement and describe the process the County will use to conduct the Procurement ;

(B) That the County requests un-priced submittals and that the County will consider price Bids only in the final phase and only from those Bidders whose un-priced submittals are found eligible in the first phase;

(C) Whether Bidders must submit price Bids at the same time as un-priced technical Bids; if they are, that such price Bids shall be submitted in a separate sealed envelope;

(D) The criteria to be used in the evaluation of un-priced submittals; and

(E) That the County, to the extent that it finds necessary, may conduct oral or Written discussions for the purposes of clarification of the un-priced technical Bids.

(b) Addenda to the Invitation to Bid. After receipt of un-priced submittals, Addenda to the Invitation to Bid shall be distributed only to Bidders who submitted un-priced submittals.

(c) Receipt and Handling of Un-priced Technical Bids. Un-priced submittals need not be opened publicly.

(d) Evaluation of Un-Priced Submittals. Un-priced submittals submitted by Bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation to Bid.

(e) Notice of Ineligible Un-priced Technical Bid. If the County determines a Bidder's un-priced submittal is ineligible, such Bidder shall not

be afforded an additional opportunity to supplement its submittal.

(f) Mistakes During Multi-step Sealed Bidding. Mistakes may be corrected or submittals may be withdrawn during phase one:

(A) Before un-priced submittal are considered;

(B) After any discussions have commenced under subsection(5)(e);

(C) When responding to any Addenda of the Invitation to Bid; or

(D) In accord with LCPR 137-047-0470.

(6) Procedure for Final Phase of Multi-step Sealed Bids.

(a) After the completion of the initial phase, if the County does not cancel the Solicitation, the County shall invite each eligible Bidder to submit a price Bid. The County shall conduct a final phase as any other competitive sealed Bid Procurement except:

(A) As specifically set forth in this Section or the Invitation to Bid; No public notice need be given of the invitation to submit price Bids because such notice was previously given.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279B.055

137-047-0260 Competitive Sealed Proposals

(1) **Generally.** The County may procure Goods or Services by competitive sealed Proposals as set forth in ORS 279B.060. A Request for Proposal is used to initiate a competitive sealed Proposal solicitation and shall contain the information required by ORS 279B.060(2) and by Section 2 of this rule. The County shall provide public notice of the competitive sealed Proposal as set forth in LCPR 137-047-0300.

(2) **Request for Proposal.** In addition to the provisions required by ORS 279B.060(2), the Request for Proposal may include the following:

(a) General Information.

(A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process.

(B) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference; and

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the County's representatives at the conference are not binding upon the County unless confirmed by Written Addendum.

(C) The form and instructions for submission of Proposals and any other special information, e.g., whether Proposals may be submitted by electronic means (See LCPR 137-047-0330 for required provisions of electronic Proposals);

(D) The time, date, and place of Opening;

(E) The office where the Solicitation Document may be reviewed;

(F) Proposer's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4); and

(G) How the County shall notify Proposers of Addenda and how the County shall make Addenda available. (See LCPR 137-047-0430).

(H) Applicable Preferences, including those described in ORS 279A.120, 279A.125(2) and 282.210.

(b) County Need to Purchase. The character of the Goods or Services the County is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. As required by ORS 279B.060(2)©, the County's description of its need to purchase must:

(A) Identify the scope of the work to be performed under the resulting Contract, if the County awards one;

(B) Outline the anticipated duties of the Contractor under any resulting Contract;

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the Contractor under any resulting Contract will provide architectural, engineering, photogrammetric mapping, transportation planning, or land surveying services, or related services that are subject to ORS 279C.100 to 279C.125, or the County, for Good Cause, specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the County is purchasing.

(c) Proposal Evaluation Process.

(A) The County shall set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.060(2)(h)(E). Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall:

- (i) Afford the County the ability to compare the Proposals and Proposers, applying the same standards of comparison to all Proposers;
- (ii) Rationally reflect Proposers' abilities to perform the resulting Contract in compliance with the Contract's requirements; and
- (iii) Permit the County to determine the relative pricing offered by the Proposers, and to reasonably estimate the costs to the County of entering into a Contract based on each Proposal, considering information available to the County and subject to the understanding that the actual Contract

costs may vary as a result of the Statement of Work ultimately negotiated or the quantity of Goods or Services for which the County contracts.

(B) If the County's solicitation process calls for the County to establish a Competitive Range, the County shall generally describe, in the Solicitation Document, the criteria or parameters the County will apply to determine the Competitive Range. The County, however, subsequently may determine or adjust the number of Proposers in the Competitive Range in accordance with LCPR 137-047-0261(6).

(d) Contractual Terms and Conditions.

(A) The County shall set forth all contractual terms and conditions the County determines are applicable to the Procurement. The County's determination of contractual terms and conditions that are applicable to the Procurement may take into consideration, as authorized by ORS 279B.060(3), those contractual terms and conditions the County will not include in the Request for Proposal because the County either will reserve them for negotiation, or will request Proposers to offer or suggest those terms or conditions. (See LCPR137-047-0260(3)).

(B) As required by ORS 279B.060(2)(h), the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

- (i) The County's reduction or withholding of payment under the Contract;
- (ii) The County's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the scope of work or to meet the performance stan-

dards established by the resulting Contract; and

- (iii) The County's rights, which the County may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(3) The County may include the applicable contractual terms and conditions in the form of Contract provisions, or legal concepts to be included in the resulting Contract. Further, the County may specify that it will include or use Proposer's terms and conditions that have been pre-negotiated under LCPR 137-047-0550(3), but the County may only include or use a Proposer's pre-negotiated terms and conditions in the resulting Contract to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The County shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under LCPR137-047-0420.

(4) For multiple Award Contracts, the County may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The County shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under LCPR137-047-0420.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279B.060, OL 2015 & ch 325 (HB 2716)

137-047-0261 Multi-tiered and Multi-step Proposals

(1) **Generally.** The County may procure Goods or Services employing any combination of the methods of Contractor selection as set forth in ORS 279B.060(7), 279B.060(8), and this rule to procure Goods or Services. In addition to the procedures set forth in LCPR 137-047-0300

through LCPR 137-047-0490 for methods of Contractor selection, the County may provide for a multi-tiered or multi-step selection process that permits award to the highest ranked Proposer at any tier or step, calls for the establishment of a Competitive Range, or permits either serial or competitive simultaneous discussions or negotiations with one or more Proposers..

(2) When conducting a multi-tiered or multi-step selection process, the County may use any combination or series of Proposals, discussions, negotiations, demonstrations, offers, or other means of soliciting information from Proposers that bears on the selection of a Contractor or Contractors. In multi-tiered and multi-step competitions, the County may use these means of soliciting information from prospective Proposers and Proposers in any sequence or order, and at any stage of the selection process, as determined in the discretion of the County.

(3) When the County's Request for Proposals prescribes a multi-tiered or multi-step Contractor selection process, the County nevertheless may, at the completion of any stage in the competition and on determining the most Advantageous Proposer (or, in multiple-award situations, on determining the awardees of the Public Contracts), award a Contract (or Contracts) and conclude the Procurement without proceeding to subsequent stages. The County also may, at any time, cancel the Procurement under ORS 279B.100.

(4) **Exclusion Protest.** The County may provide, before the notice of an intent to Award, an opportunity for a Proposer to protest exclusion from the Competitive Range or from subsequent phases of multi-tiered or multi-step sealed Proposals as set forth in LCPR 137-047-0720.

(5) **Award Protest.** The County shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and LCPR 137-047-0740. An Affected Proposer may protest, for any of the bases set forth in LCPR 137-047-0720(2), its exclusion from the Competitive Range or any phase of a multi-tiered or multi-step sealed Proposal, or an Addendum issued following initial

Closing, if the County did not previously provide Proposers the opportunity to protest such exclusion or Addendum. The failure to protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the County.

(6) **Competitive Range.** When the County's solicitation process conducted under ORS 279B.060(8) calls for the County to establish a Competitive Range at any stage in the Procurement process, the County may do so as follows:

(a) Determining Competitive Range.

(A) The County may establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria in the Request for Proposals, the County may determine and rank the Proposers in the Competitive Range. Notwithstanding the foregoing, however, in instances in which the County determines that a single Proposer has a reasonable chance of being determined the most Advantageous Proposer, the County need not determine or rank Proposers in the Competitive Range. In addition, notwithstanding the foregoing, the County may establish a Competitive Range of all Proposers to enter into discussions to correct deficiencies in Proposals.

(B) The County may establish the number of Proposers in the Competitive Range in light of whether the County's evaluation of Proposals identifies a number of Proposers who have a reasonable chance of being determined the most Advantageous Proposer, or whether the evaluation establishes a natural break in the scores of Proposers that indicates that a particular number of Proposers are closely competitive or have a reasonable chance of being determined the most Advantageous Proposer.

(b) Protesting Competitive Range. The County must provide Written notice to all Proposers identifying Proposers in the Competitive Range. The County may provide an opportunity for Proposers excluded from the Competitive Range

to protest the County's evaluation and determination of the Competitive Range in accordance with LCPR 137-030-0720.

(7) **Discussions.**

(a) The County may initiate oral or Written discussions with all "eligible Proposers" on subject matter within the general scope of the Request for Proposals. In conducting discussions, the County:

(A) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(B) Shall not disclose private discussions leading to best and final offers;

(C) Shall not disclose other eligible Proposers' Proposals or discussions; and

(D) May adjust the evaluation of a Proposal as a result of discussions. The conditions, terms, or price of the Proposal may be changed during the course of the discussions provided the changes are within the scope of the Request for Proposals.

(d) At any time during the time allowed for discussions, the County may:

(A) Continue discussions with a particular eligible Proposer;

(B) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or

© Conclude discussions with all remaining eligible Proposers and provide, to the then-eligible Proposers, notice requesting best and final Offers.

(8) **Negotiations.** The County may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers. The County may negotiate: (1) the statement of work; (2) the Contract Price as it is affected by negotiating the statement of work and other terms and conditions authorized for negotiation in the Request for Proposals or Addenda thereto; and (3) any other terms and conditions reasonably related to those authorized for negotiation in the Request for Proposals or Addenda thereto. Proposers shall not submit for negotiation, and a County shall not

accept, alternative terms and conditions that are not reasonably related to those authorized for negotiation in the Request for Proposals or any Addendum.

(a) Terminating Negotiations. At any time during discussions or negotiations that the County conducts under this rule, the County may terminate discussions or negotiations with the highest-ranked eligible Proposer, or the eligible Proposer with whom it is currently discussing or negotiating, if the County reasonably believes that:

(A) The eligible Proposer is not discussing or negotiating in good faith; or

(B) Further discussions or negotiations with the eligible Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

(b) Continuing Serial Negotiations. If the County is conducting serial negotiations and the County terminates negotiations with an eligible Proposer in accordance with this rule, the County may then commence negotiations with the next highest scoring eligible Proposer in the Competitive Range, and continue the process described in Section 3 of this rule until the County has either:

(A) Determined to Award the Contract to the Proposer with whom it is currently discussing or negotiating; or

(B) Decided to cancel the Procurement under ORS 279B.100.

(c) Competitive Simultaneous Negotiations. If the County chooses to conduct competitive negotiations, the County may negotiate simultaneously with competing eligible Proposers. The County:

(A) Shall treat all Proposers fairly and shall not favor any Proposer over another;

(B) May disclose other eligible Proposer's Proposals, or the substance of negotiations with other Proposers, only if the County notifies all of the eligible Proposers with whom the County will engage in negotiations of the County's intent to disclose before engaging in negotiations with any eligible Proposer.

(d) Modifications in Writing. Any oral modification of a Proposal must be reduced to Writing.

(9) **Best and Final Offers**. If best and final Offers are required, the County shall establish a common date and time by which eligible Proposers must submit best and final Offers. Best and final Offers shall be submitted only once; provided, however, the County may make a Written determination that it is in the County's best interest to conduct additional discussions, negotiations or change the County's requirements and require another submission of best and final Offers. Otherwise, no discussion of or changes in the best and final Offers shall be allowed prior to Award. Proposers shall also be informed if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offer will be construed as their best the final Offer. The County shall evaluate Offers as modified by the best and final Offer. The County shall conduct evaluations conducted as described in LCPR 137-047-0600. The County will not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

(10) **Multi-step Sealed Proposals**. The County may procure Goods or Services by using multi-step competitive sealed Proposals pursuant to ORS 279.060(8)(g).

(a) Phased Process. Multi-step sealed Proposals is a phased Procurement process that seeks necessary information or un-priced technical Proposals in the initial phase and invites Proposers who submitted technically qualified Proposals in the initial phase to submit competitive sealed price Proposals on the technical Proposers in the final phase. The Contract shall be Awarded to the Responsible Proposer submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the final phase. If time is a factor, the County may require Proposers to submit a separate sealed price Proposal during the initial phase to be opened after the technical evaluation.

(b) Public Notice. Whenever multi-step sealed Proposals are used, the County shall give public notice for the first phase in accordance with LCPR 137-047-0300. Public notice is not required for the subsequent phases. However, the County shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the second phase of their right, if any, to protest exclusion under LCPR 137-047-0720.

(c) Procedure for Phase One of Multi-step Sealed Proposals.

(A) *Form*. The County may initiate a multi-step sealed Proposals Procurement by issuing a Request for Proposal in the form and manner required for competitive sealed Proposals except as provided in this rule. In addition to the requirements set forth in LCPR 137-0470260(2), the multi-step Request for Proposal may state:

- (i) That un-priced technical Proposals are requested;
- (ii) Whether price Proposals are to be submitted at the same time as un-priced technical Proposals; that if they are, such price Proposals shall be submitted in a separate sealed envelope;
- (iii) That the solicitation is a multi-step sealed Proposal Procurement, and that priced Proposals will be considered only in the subsequent phases from those Proposers whose un-priced technical Proposals are found qualified in the first phase;
- (iv) The criteria to be used in the evaluation of un-priced technical Proposals;
- (v) That the County may conduct oral or Written discussions of the un-priced technical Proposals; and
- (vi) That the Goods or Services being procured shall be

furnished generally in accordance with the Proposer's technical Proposal and shall meet the requirements of the Request for Proposals.

(B) *Addenda to the Request for Proposal*. After receipt of un-priced technical Proposals, Addenda to the Request for Proposal shall be distributed only to Proposers who submitted un-priced technical Proposals.

(C) *Receipt and Handling of Un-priced Technical Proposals*. Un-priced technical Proposals need not be opened publicly.

(D) *Evaluation of Un-Priced Technical Proposals*. Un-priced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for Proposal.

(E) *Discussion of Un-priced Technical Proposals*. The County may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified technical Proposal. During the course of such discussions, the County shall not disclose any information derived from one un-priced technical Proposal to any other Proposer.

(d) Methods of Contractor Selection for Phase One. In conducting phase one, the County may employ any combination of the methods of Contractor selection that call for the establishment of a Competitive Range or include discussions, negotiations, or best and final Offers as set forth in this rule.

(e) Procedure for Phase Two of Multi-step Sealed Proposals. Upon the completion of phase one, the County shall invite each qualified Proposer to submit price Proposals. The County shall conduct phase two as any other competitive sealed Proposal Procurement except as set forth in this rule.

(A) No public notice need be given of the request to submit price Proposals because such notice was previously given.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]
Stats. Implemented: ORS 279B.060

137-047-0262 [repealed]

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; repealed 2020-163 eff 06/23/20]
Stats. Implemented: ORS 279B.060

137-047-0263 [repealed]

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; repealed 2020-163 eff 06/23/20]
Stats. Implemented: ORS 279B.060

137-047-0265 Small Procurements

(1) **Generally.** For Procurements of Goods or Services less than or equal to the dollar amount stated in ORS 279B.065, the County may Award a Contract as a small Procurement pursuant to ORS 279B.065. The County may award a small procurement in any manner deemed practical or convenient by the County, including by direct selection, appointment, or Award.

(2) **Amendments.** The County may amend a Contract Awarded as a small Procurement in accordance LCPR 137-047-0800, but the cumulative amendments shall not increase the total Contract Price to greater than one hundred twenty-five percent (125%) of the dollar amount stated in ORS 279B.065.

(3) A Procurement may not be artificially divided or fragmented so as to constitute a small Procurement under this rule.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20]
Stats. Implemented: ORS 279B.065

137-047-0270 Intermediate Procurements

(1) **Generally.** For Procurements of Goods or Services greater than the dollar amount stated in ORS 279B.065 and less than or equal to the higher dollar amount stated in ORS 279B.070, the County may Award a Contract as an intermediate Procurement pursuant to ORS 279B.070.

(2) **Solicitation.** The County shall seek at least three informally solicited competitive price quotes or competitive proposals from prospective Contractors. The County shall keep a Written record of the sources of the quotes or proposal received. If three quotes or proposals are not reasonably available, fewer will suffice, but the County shall make a Written record of the effort made to obtain the quotes or proposals.

(3) **Negotiations.** The County may negotiate with an Offeror to clarify its quote, Bid, or Proposal or to effect modifications that will make the quote, Bid, or Proposal acceptable or make the quote, Bid, or Proposal more Advantageous to the County.

(4) **Award.** If a Contract is awarded, the County shall award the Contract to the offeror whose quote, Bid or proposal will best serve the interests of the County, taking into account price as well as experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility under ORS 279B.110.

(5) **Amendments.** The County may amend a Contract Awarded as an intermediate Procurement in accordance with LCPR 137-047-0800, but the cumulative amendments shall not increase the total Contract Price to a sum that exceeds the higher dollar amount stated in ORS 279B.070 or one hundred twenty-five percent (125%) of the original Contract Price, whichever is greater.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]
Stats. Implemented: ORS 279B.070

137-047-0275 Sole-source Procurements

(1) **Generally.** The County may Award a Public Contract without competition as a sole-source Procurement pursuant to the requirements of ORS 279B.075.

(2) **Delegated Authority.** The Linn County Administrative Officer is hereby delegated the authority to declare that the Goods or Services are available from only one source.

(3) **Written Findings.** The declaration of a sole source must be based on Written findings that may include:

(a) That the efficient utilization of existing goods requires acquiring compatible Goods or Services;

(b) That the Goods or Services required to exchange software or data with other public or private agencies are available from only one source;

(c) That the Goods or Services are for use in a pilot or an experimental project; or

(d) Other findings that support the conclusion that the Goods or Services are available from only one source.

(4) **Public Notice.** If, but for the County's determination that it may enter into a Contract as a sole-source, the County would be required to select a Contractor with competitive sealed bids or proposals, the County shall give public notice of the County's determination that the Goods or Services, or class of Goods or Services, are available from only one source in a manner similar to public notice of competitive sealed Bids under ORS 279B.055(4) and LCPR 137-047-0300. The public notice shall describe the Goods or Services to be acquired by a sole-source Procurement, identify the prospective Contractor, and include the date, time and place that protests are due. The County shall give Affected Persons at least seven (7) days from the date of the notice of the determination that the Goods or Services are available from only one source to protest the sole source determination.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20]
Stats. Implemented: ORS 279B.075

137-047-0280 Emergency Procurements

(1) The County may Award a Contract as an Emergency Procurement pursuant to the requirements of ORS 279B.080. The County shall document the nature of the emergency and describe the method used for the selection of the particular Contractor. When an Emergency Procurement is authorized, the Procurement shall be made with competition that is practicable under the circumstances.

(2) The Linn County Administrative Officer is hereby delegated the authority to declare the need for an Emergency Procurement.

(3) For an Emergency Procurement of construction services that are not Public Improvements, the County shall ensure competition for a Contract that is reasonable and appropriate under the Emergency circumstances. In conducting the Procurement, the County shall set a solicitation time period that the County determines to be reasonable under the emergency circumstances and

may issue Written or oral requests for offers or make direct appointments without competition in cases of extreme necessity.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]
Stats. Implemented: ORS 279B.080

137-047-0285 Special Procurements

(1) **Generally.** The County may Award a Public Contract as a Special Procurement pursuant to the requirements of ORS 279B.085.

(2) **Authorization of a Special Procurement.** Excluding Class Special Procurements described in Section (6) of this rule, Special Procurements may be authorized by the Board in the following manner:

(a) The Board receives a Written request for a Special Procurement that describes the proposed contracting procedure, the goods or services or class of goods or services to be acquired through the Special Procurement and the circumstances that justify the use of a Special Procurement; and

(b) The Board finds that the Special Procurement requested will:

(A) Unlikely encourage favoritism in the awarding of Public Contracts or to substantially diminish competition for Public Contracts; and

(B) Result in substantial cost savings to the County or to the public; or

(C) Otherwise substantially promote the public interest in a manner that could not be practicably realized by complying with ORS 279B.065, 279B.060, 279B.065 or 279B.070 or the LCPR.

(3) **Public Notice.** The County shall give public notice of the Board's approval of a Special Procurement in the same manner as public notice of competitive sealed Bids under ORS 279B.055(4) and LCPR 137-047-0300. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement. The County shall give Affected Persons at least seven (7) days from the date of the notice of approval of the Special Procurement to protest the Special Procurement.

(4) **Protest.** An Affected Person may protest the request for approval of a Special Procurement in accordance with ORS 279B.400 and LCPR 137-047-0700.

(5) **Class Special Procurements.** If the County is considering awarding a Contract for a Class Special Procurement authorized under LCPR 137-047-810 to 137-047-905, the County may award the Contract in accordance with the requirements for the particular Class Special Procurement without making a request for a Special Procurement or making any findings.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]
Stats. Implemented: ORS 279B.085

137-047-0286 [repealed]

Adopted 2005-052 eff 3/1/05; repealed 2020-060 eff 03/17/20]
Stats. Implemented: ORS 279B.085

137-047-0287 [repealed]

[Adopted 2005-052 eff 3/1/05; repealed 2020-060 eff 03/17/20]
Stats. Implemented: ORS 279B.085

137-048-0288 [repealed]

[Adopted 2005-052 eff 3/1/05; repealed 2020-060 eff 03/17/20]
Stats. Implemented: ORS 279B.085

137-047-0290 Cooperative Procurements

The County may participate in, sponsor, conduct, or administer Cooperative Procurements as set forth in ORS 279A.200 through 279A.225 and LCPR 137-046-0400 through 137-046-0480.

[Adopted 2005-052 eff 3/1/05 amd 2020-060 eff 03/17/20]
Stats. Implemented: ORS 279A.205

III. PROCUREMENT PROCESS

137-047-0300 Public Notice of Solicitation Documents

(1) **Notice of Solicitation Documents; Fee.** The County shall provide public notice of every Solicitation Document in accordance with Section (2) of this rule. The County may give additional notice using any method it determines appropriate to foster and promote competition, including:

(a) Mailing notice of the availability of the Solicitation Document to Persons that have ex-

pressed an interest in the particular type of Procurement requested in the Solicitation Document;

(b) Placing notice on an Electronic Procurement System; or

(c) Placing notice on the County's Internet World Wide Web site (www.co.linn.or.us).

(2) **Advertising.** The County shall advertise notice of a Solicitation Document if required by the Code or the LCPR as follows:

(a) The County shall publish the advertisement for Offers in accordance with the requirements of ORS 279B.055(4) and 279B.060(4); or

(b) The County may publish the advertisement for Offers on an Electronic Procurement System instead of publishing notice in a newspaper of general circulation as required by ORS 279B.055(4)(b) if, by rule or order, the Board has authorized the County to publish notice of Solicitation Documents on an Electronic Procurement System.

(3) **Content of Advertisement.** All advertisements for Offers shall set forth:

(a) Where, when, how, and for how long the Solicitation Document may be obtained;

(b) A general description of the Goods or Services to be acquired;

(c) The interval between the first date of notice of the Solicitation Document given in accordance with subsection 2(a) or (b) above and Closing, which shall not be less than fourteen (14) Days for an Invitation to Bid and for a Request for Proposals, unless the County determines that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with subsection 2(a) or (b) above and Closing be less than seven (7) Days. The County shall document the specific reasons for the shorter public notice period in the Procurement file;

(d) The date that Persons must file applications for prequalification if prequalification is a requirement and the class of Goods or Services is one for which Persons must be prequalified;

- (e) The office where Contract terms, conditions and Specifications may be reviewed;
- (f) The scheduled Opening; and
- (g) Any other information the County deems appropriate.

(4) **Posting Advertisement for Offers.** The County shall post a copy of each advertisement for Offers at the principal business office of the County department responsible for releasing the Solicitation. An Offeror may obtain a copy of the advertisement for Offers upon request.

(5) **Fees.** The County may charge a fee or require a deposit for the Solicitation Document.

(6) **Notice of Addenda.** The County shall provide known potential Offerors notice of any Addenda to the Solicitation Document in accordance with LCPR 137-047-0430.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]
Stats. Implemented: ORS 279B.055 & ORS 279B.060

137-047-0310 Bids or Proposals are Offers

(1) **Offer and Acceptance.** The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract.

(a) The Offer is a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the County's acceptance for the period specified in LCPR 137-047-0480. The County may elect to accept the Offer at any time during the period specified in the Solicitation Document. If no specified period is provided in the Solicitation Document, an Offer is considered accepted by the County only when the Contract is fully executed in Writing by both parties.

(b) Notwithstanding the fact that a competitive Proposal is a "Firm Offer" for the period specified in LCPR 137-047-0480, the County may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document, with the Proposer. Where negotiation is permitted by the rules or the Solicitation Document, Proposers are obligated to negotiate in good faith and only on those terms or conditions that the rules or the Solicitation Document have reserved for negotiation.

(2) **Contingent Offers.** Except to the extent the Proposer is authorized to propose certain terms and conditions pursuant to LCPR 137-047-0262, a Proposer shall not make its Offer contingent upon the County's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(3) **Offeror's Acknowledgment.** By Signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative terms under LCPR 137-047-0262, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the County in Writing, and Offeror's agreement to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]
Stats. Implemented: ORS 279A.065, ORS 279B.055 & ORS 279B.60

137-047-0320 Facsimile Bids and Proposals

(1) **County Authorization.** The County may authorize Offerors to submit facsimile Offers. If the County determines that Bid or Proposal security is required, the County will not authorize facsimile Offers unless the County has another method for receipt of such security. In addition, the County shall establish administrative procedures and controls:

- (a) To receive, identify, record, and safeguard facsimile Offers;
- (b) To ensure timely delivery of Offers to the location of Opening; and
- (c) To preserve the Offers as sealed.

(2) **Provisions To Be Included in Solicitation Document.** In addition to all other requirements, if the County authorizes a facsimile Offer, the County shall include in the Solicitation Document the following:

- (a) A provision substantially in the form of the following: "A 'facsimile Offer,' as used in

this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the County via a facsimile machine";

(b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document";

(c) A provision that requires Offerors to Sign their facsimile Offers;

(d) A provision substantially in the form of the following: "The County reserves the right to Award the Contract solely on the basis of a facsimile Offer. However, upon the County's request the apparent successful Offeror shall promptly submit its complete original Signed Offer";

(e) The County's receiving facsimile machine's telephone number and compatibility characteristics, if any; and

(f) A provision that the County is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:

(A) Receipt of garbled or incomplete documents;

(B) Availability or condition of the receiving facsimile machine;

(C) Incompatibility between the sending and receiving facsimile machine;

(D) Delay in transmission or receipt of documents;

(E) Failure of the Offeror to properly identify the Offer documents;

(F) Illegibility of Offer documents; and

(G) Security and confidentiality of

data.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279A.065

137-047-0330 Electronic Procurement

(1) Electronic Procurement Authorized.

(a) The County may conduct all phases of a Procurement, including without limitation the posting of Electronic Advertisements and the receipt of Electronic Offers, by electronic methods

if and to the extent the County specifies in a Solicitation Document, a request for quotes, or any other Written instructions on how to participate in the Procurement.

(b) The County shall open an Electronic Offer in accordance with electronic security measures in effect at the County at the time of its receipt of the Electronic Offer. The Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.

(c) The County's use of electronic Signatures will be consistent with applicable statutes and rules. The County may limit the use of electronic methods of conducting a Procurement as Advantageous to the County.

(d) If the County determines that Bid or Proposal security is required, The County shall not authorize Electronic Offers unless the County has another method for receipt of such security.

(2) **Rules Governing Electronic Procurements.** The County shall conduct all portions of an electronic Procurement in accordance with these division 47 rules, unless otherwise set forth in this rule.

(3) **Preliminary Matters.** As a condition of participation in an electronic Procurement the County may require potential Contractors to register with the County before the date and time on which the County will first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the Procurement, such as procedures that the County may use to attribute, authenticate or verify the accuracy of an Electronic Offer, or the actions that constitute an electronic Signature.

(4) **Offer Process.** The County may specify that Persons must submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the County specifies that Persons may submit multiple Electronic Offers during a specified period of time, the County shall designate a

time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers. When the County will accept Electronic Offers for a period of time, then at the designated date and time that the County will first receive Electronic Offers, the County shall begin to accept real time Electronic Offers on the County's Electronic Procurement System, and shall continue to accept Electronic Offers in accordance with subsection 4(a) of this rule until the date and time specified by the County, after which the County shall no longer accept Electronic Offers.

(5) Receipt of Electronic Offers.

(a) When the County conducts an electronic Procurement that provides that all Electronic Offers must be submitted by a particular date and time, the County shall receive the Electronic Offers in accordance with these division 47 rules.

(b) When the County specifies that Persons may submit multiple Offers during a period of time, the County shall accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:

(c) Following receipt of the first Electronic Offer after the day and time the County first receives Electronic Offers, the County shall post on the Electronic Procurement System, and updated on a real time basis, the lowest Electronic Offer price or the highest ranking Electronic Offer. At any time before the date and time after which the County shall no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.

(A) A Person may not increase the price set forth in an Electronic Offer after the day

and time that the County first accepts Electronic Offers.

(B) A Person may withdraw an Electronic Offer only in compliance with these division 47 rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

(6) Failure of the E-Procurement System. In the event of a failure of the County's Electronic Procurement System that interferes with the ability of Persons to submit Electronic Offers, protest or to otherwise participate in the Procurement, the County may cancel the Procurement in accordance with LCPR 137-047-0660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the Electronic Procurement System becomes available.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20]
Stats. Implemented: ORS 279A.065

IV. BID AND PROPOSAL PREPARATION

137-047-0400 Offer Preparation

(1) **Instructions.** An Offeror shall submit and Sign its Offer in accordance with the instructions set forth in the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to Opening in accordance with the requirements for submitting an Offer set forth in the Solicitation Document.

(2) **Forms.** An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, if any, unless an Offeror is otherwise instructed in the Solicitation Document.

(3) **Documents.** An Offeror shall provide the County with all documents and descriptive literature required by the Solicitation Document.

(4) **Electronic Submissions.** If the Solicitation Document permitted Electronic Offers under LCPR 137-047-0330, an Offeror may submit its Offer electronically. The County shall not consider

Electronic Offers unless authorized by the Solicitation Document.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]
Stats. Implemented: ORS 279A.065

137-047-0410 Offer Submission

(1) **Product Samples and Descriptive Literature.** The County may require product samples or descriptive literature if the County determines either is necessary or desirable to evaluate the quality, features or characteristics of an Offer. The County shall dispose of product samples or make them available for the Offeror to retrieve in accordance with the Solicitation Document.

(2) **Identification of Offers.**

(a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked. If the County permits Electronic Offers or facsimile Offers in the Solicitation Document, the Offeror may submit and identify Electronic Offers or facsimile Offers in accordance with the LCPR and the instructions set forth in the Solicitation Document.

(b) Notwithstanding the LCPR, the County is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(3) **Receipt of Offers.** The Offeror is responsible for ensuring the County receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]
Stats. Implemented: ORS 279A.065

137-047-0420 Pre-Offer conferences

(1) **Purpose.** The County may hold a pre-Offer conference with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information, or to conduct site inspections.

(2) **Required Attendance.** The County may require attendance at the pre-Offer conference as a condition for making an Offer.

(3) **Scheduled Time.** If the County holds a pre-Offer conference, it shall be held within a

reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

(4) **Statements Not Binding.** Statements made by a County representative at the pre-Offer conference does not change the Solicitation Document unless the County confirms such statements with a Written Addendum to the Solicitation Document.

(5) **County Announcement.** The County shall set forth notice of any pre-Offer conference in the Solicitation Document in accordance with LCPR 137-047-0255(2) or LCPR 137-047-0260(2).

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20]
Stats. Implemented: ORS 279A.065

137-047-0430 Addenda to Solicitation Document

(1) **Issuance; Receipt.** The County may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the County otherwise specifies in the Addenda.

(2) **Notice and Distribution.** The County shall notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document shall specify how the County will provide notice of Addenda and how the County will make the Addenda available before Closing, and at each subsequent step or tier of evaluation if the County will engage in a multi-step competitive sealed Bid process in accordance with LCPR 137-047-0257, or a multi-tiered or multi-step competitive sealed Proposal process in accordance with LCPR 137-047-0261. The following is an example of how the County may specify how it will provide notice of Addenda: "County will not mail notice of Addenda, but will publish notice of any Addenda on County's web site. Addenda may be downloaded off the County's web site. Offerors should frequently check the County's web site until Closing, i.e., at least once

weekly until the week of Closing and at least once daily the week of the Closing."

(3) Timelines; Extensions.

(a) The County shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The County may extend the Closing if the County determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent justified by a countervailing public interest, the County shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

(b) Notwithstanding subsection 3(a) of this rule, an Addendum that modifies the evaluation criteria, selection process or procedure for any tier of competition under a multi-step sealed Bid or a multi-tiered or multi-step sealed Proposal issued in accordance with ORS 279B.060(6)(d) and OAR 137-047-0261 must be issued no fewer than five (5) Days before the beginning of that tier or step of competition, unless the County determines that a shorter period is sufficient to allow Offerors to prepare for that tier or step of competition. The County shall document the factors it considered in making that determination, which may include, without limitation, the scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next tier or step of competition favors or disfavors any particular Proposer or Proposers.

(4) Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written protest to the Addendum, as provided in LCPR 137-047-0730, by the close of the County's next business day after issuance of the Addendum, or up to the last day allowed to submit a protest under LCPR 137-047-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with LCPR 137-047-0730, then the County may consider an Offeror's

protest to the Addendum only, and the County shall not consider a protest to matters not added or modified by the Addendum. Notwithstanding any provision of this Section (4) of this rule, the County is not required to provide a protest period for Addenda issued after initial Closing during a multi-tier or multi-step Procurement process conducted pursuant to ORS 279B.055 or ORS 279B.060.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279B.060

137-047-0440 Pre-Closing Modification or Withdrawal of Offers

(1) **Modifications.** An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the County in accordance with LCPR 137-047-0400 and 137-047-0410, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:

- (a) Bid (or Proposal) Modification; and
- (b) Solicitation Document Number (or other identification as specified in the Solicitation Document).

(2) **Withdrawals.**

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the individual and location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the County prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and evidence of authority satisfactory to the County.

(b) The County may release an unopened Offer withdrawn under subsection (2)(a) of this rule to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror shall mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

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

(3) **Documentation.** The County shall include all documents relating to the modification or withdrawal of Offers in the appropriate Procurement file.

[Adopted 2020-060 eff 03/17/20]
Stats. Implemented: ORS 279B.055

137-047-0450 Receipt, Opening, and Recording of Offers; Confidentiality of Offers

(1) **Receipt.** The County shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The County shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the County inadvertently opens an Offer or a modification prior to the Opening, the County shall return the Offer or modification to its secure and confidential state until Opening. The County shall document the resealing for the Procurement file (e.g. "County inadvertently opened the Offer due to improper identification of the Offer.").

(2) **Opening and Recording.** The County shall publicly open Offers including any modifications made to the Offer pursuant to LCPR 137-047-0440(1). In the case of Invitations to Bid, to the extent practicable, the County will read aloud the name of each Bidder, and such other information as the County considers appropriate. However, the County may withhold from disclosure information in accordance with ORS 279B.055(5)(c) and 279B.060(5). All other Offers will be opened pursuant to the Solicitation Document.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]
Stats. Implemented: ORS 279B.055

137-047-0460 Late Offers, Late Withdrawals and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The County shall not consider late Offers, withdrawals or modifications except as permitted in LCPR 137-047-0470 or 137-047-0261.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]
Stats. Implemented: ORS 279B.055

137-047-0470 Mistakes

(1) **Generally.** To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, the County may consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) **Treatment of Mistakes.** The County shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the County discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the County may take the following action:

(a) The County may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) The County may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the County's correction in Writing. A clerical error is an Offeror's error in

transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). In the event of a discrepancy, unit prices shall prevail over extended prices.

(c) The County may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;
(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this Section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the County does not grant the Offeror permission to withdraw the Offer;

(G) That the County's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the County or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the County.

(d) The criteria in subsection (2)(c) of this rule shall determine whether the County will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether a County will permit an

Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the County based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the County, whether by Award to the next lowest Responsive and Responsible Bidder or the most Advantageous Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) **Rejection for Mistakes.** The County shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) **Identification of Mistakes after Award.** The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to the LCPR only to the extent permitted by applicable law.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]

ORS 279B.055 Stats. Implemented: ORS 279B.055

137-047-0480 Time for County Acceptance

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

[Adopted 2005-052 eff 3/1/05; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279A.065

137-047-0490 Extension of Time for Acceptance of Offer

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

[Adopted 2005-052 eff 3/1/05; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279A.065

V. QUALIFICATIONS AND DUTIES

137-047-0500 Responsibility of Bidders and Proposers

(1) Before Awarding a Contract the County will determine that the Bidder submitting the lowest Bid or Proposer submitting the most Advantageous Proposal is Responsible. The County will use the standards set forth in ORS 279B.110 and LCPR 137-047-0640(1)(c)(F) to determine if a Bidder or Proposer is Responsible. In the event the County determines a Bidder or Proposer is not Responsible it shall prepare a Written determination of non-Responsibility as required by ORS 279B.110 and shall reject the Offer.

(2) In addition to making the responsibility determination under ORS 279B.110 and LCPR 137-047-0640(1)(c)(F), the County may consider (as authorized by House Bill 2094 (2019 Oregon Laws, chapter 124)), as part of the County's evaluation of a Bid or Proposal, whether the Bidder or Proposer owes a liquidated and delinquent debt to the State.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279B.110

137-047-0525 Qualified Products Lists

The County may develop and maintain a qualified products list pursuant to ORS 279B.115.

[Adopted 2005-052 eff 3/1/05; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279B.115

137-047-0550 Prequalification of Prospective Offerors

(1) The County may prequalify prospective Offerors pursuant to ORS 279B.120 and 279B.125.

(2) Notwithstanding the prohibition against revocation of prequalification in ORS 279B.120 (3), the County may determine that a prequalified Offeror is not Responsible prior to Contract Award.

(3) A County may pre-negotiate some or all Contract terms and conditions including prospective Proposer Contract forms such as license

agreements, maintenance and support agreements or similar documents for use in future Procurements. Such pre-negotiation of Contract terms and conditions (including prospective Proposer forms) may be part of the prequalification process of a Proposer in Section (1) or the pre-negotiation may be a separate process and not part of a prequalification process. Unless required as part of the prequalification process, the failure of the County and the prospective Proposer to reach agreement on pre-negotiated Contract terms and conditions does not prohibit the prospective Proposer from responding to Procurements. A County may agree to different pre-negotiated Contract terms and conditions with different prospective Proposers. When a County has pre-negotiated different terms and conditions with Proposers or when permitted, Proposers offer different terms and conditions, a County may consider the terms and conditions in the Proposal evaluation process.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279B.120

137-047-0575 Debarment of Prospective Offerors

(1) **Generally.** The County may Debar prospective Offerors for the reasons set forth in ORS 279A.110 or after providing notice and the opportunity for hearing as set forth in ORS 279B.130.

(2) **Responsibility.** Notwithstanding the limitation on the term for Debarment in ORS 279B.130 (1) (b), the County may determine that a previously Debarred Offeror is not Responsible prior to Contract Award.

(3) **Imputed Knowledge.** The County may attribute improper conduct of a Person or its affiliate or affiliates having a contract with a prospective Offeror to the prospective Offeror for purposes of Debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.

(4) **Limited Participation.** The County may allow a Debarred Person to participate in solicitations and Contracts on a limited basis during the

Debarment period upon Written determination that participation is Advantageous to a County. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

[Adopted 2005-052 eff 3/1/05; amd 2020-163 eff 06/23/20]
Stats. Implemented: ORS 279B.130

VI. OFFER EVALUATION AND AWARD

137-047-0600 Offer Evaluation and Award

(1) **Evaluation.** The County shall evaluate Offers as set forth in the Solicitation Document, pursuant to ORS 279B.055(6)(a) and 279B.060(6)(b) as applicable, and in accordance with applicable law. The County shall not evaluate Offers using any other requirement or criterion.

(a) Evaluation of Bids.

(A) *Nonresident Bidders.* In determining the lowest Responsive Bid, the County will apply the reciprocal preference set forth in ORS 279A.120(2)(b) and LCPR 137-046-0310 for Nonresident Bidders.

(B) *Public Printing.* The County may for the purpose of evaluating Bids apply the public printing preference set forth in ORS 282.210.

(C) *Award When Bids are Identical.* If the County determines that one or more Bids are identical under LCPR 137-046-0300, the County shall Award a Contract in accordance with the procedures set forth in LCPR 137-046-0300.

(b) Evaluation of Proposals.

(A) *Award When Proposals are Identical.* If the County determines that one or more Proposals are identical under LCPR 137-046-0300, the County shall Award a Contract in accordance with the procedures set forth in LCPR 137-046-0300.

(B) *Public Printing.* The County may for the purpose of evaluating Proposals apply the public printing preference set forth in ORS 282.210.

(c) Recycled Materials. When procuring Goods, the County shall give preference for

recycled materials as set forth in ORS 279A.125 and LCPR 137-046-0320.

(2) **Clarification of Bids or Proposals.** After Opening, the County may conduct discussions with apparent Responsive Offerors for the purpose of clarification to assure full understanding of the Bids or Proposals. All Bids or Proposals, in the County's sole discretion, needing clarification shall be accorded such an opportunity. The County shall document clarification of any Offerors's Offer in the Procurement file.

(3) **Negotiations.**

(a) Bids. The County shall not negotiate with any Bidder. After Award of the Contract, the County and Contractor may modify the Contract in accordance with LCPR 137-047-0800.

(b) Requests for Proposals. The County may conduct discussions or negotiate with Proposers only in accordance with ORS 279B.060(6)(b) and LCPR 137-047-0262. After Award of the Contract, the County and Contractor may only modify the Contract in accordance with LCPR 137-047-0800.

(4) **Award.**

(a) General. If Awarded, the County will Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous, Responsive Proposal. The County may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

(b) Multiple Items. An Invitation to Bid or Request for Proposals may call for pricing of multiple items of similar or related type with Award based on individual line item, group total of certain items, a "market basket" of items representative of the County's expected purchases, or grand total of all items.

(c) Multiple Awards - Bids.

(A) Notwithstanding subsection 4(a) of this rule, the County may Award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. Multiple Awards will not be made if a single

Award will meet the County's needs, including but not limited to adequate availability, delivery, service, or product compatibility. A multiple Award may be made if Award to two or more Bidders of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be Awarded for any Invitation to Bid shall not preclude the County from Awarding a single Contract for such Invitation to Bid.

(B) If an Invitation to Bid permits the Award of multiple Contracts, the County shall specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services.

(d) Multiple Awards – Proposals.

(A) Notwithstanding subsection 4(a) of this rule, the County may Award multiple Contracts under a Request for Proposals in accordance with the criteria set forth in the Request for Proposals. Multiple Awards will not be made if a single Award will meet the County's needs, including but not limited to adequate availability, delivery, service or product compatibility. A multiple Award may be made if Award to two or more Proposers of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to obtaining the most Advantageous Contract. A notice to prospective Proposers that multiple Contracts may be Awarded for any Request for Proposals shall not preclude the County from Awarding a single Contract for such Request for Proposals.

(B) If a Request for Proposals permits the Award of multiple Contracts, the County shall specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services, which may

include consideration and evaluation of the Contract terms and conditions agreed to by the Contractors.

(e) Partial Awards. If after evaluation of Offers, the County determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

(A) The County may Award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or

(B) The County may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.

(f) All or none Offers. The County may Award all or none Offers if the evaluation shows an all or none Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279B.055 & ORS 279B.060

137-047-0610 Notice of Intent to Award

(1) **Notice of Intent to Award.** The County shall post or provide notice of its intent to Award to all Bidders and Proposers pursuant to ORS 279B.135 at least seven (7) Days before the Award of a Contract, unless the County determines that circumstances require prompt execution of the Contract, in which case the County may provide a shorter notice period. The County will document the specific reasons for the shorter notice period in the Procurement file.

(2) **Finality.** The County's Award shall not be final until the later of the following:

(a) The expiration of the protest period provided pursuant to LCPR 137-047-0740; or

(b) The County provides Written responses to all timely-filed protests denying the protests and affirming the Award.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279B.135

137-047-0620 Documentation of Award

(1) **Basis of Award.** After Award, the County shall make a record showing the basis for deter-

mining the successful Offeror part of the County's Procurement file.

(2) **Contents of Award Record.** The Contracting Agency's record shall include:

- (a) **For Bids:**
 - (A) Bids;
 - (B) Completed Bid tabulation sheet;

and

- (C) Written justification for any rejection of lower Bids.

- (b) **For Proposals:**
 - (A) Proposals;
 - (B) The completed evaluation of the

Proposals;

- (C) Written justification for any rejection of higher scoring Proposals; and

- (D) If the County engaged in any of the methods of Contractor selection described in ORS 279B.060(6)(b) and OAR 137-047-0261, Written documentation of the content of any discussions, negotiations, best and final Offers, or any other procedures the County used to select a Proposer to which the County Awarded a Contract.

[Adopted 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]
Stats. Implemented: ORS 279B.065

137-047-0630 Availability of Award Decisions

(1) **Contract Documents.** The County will deliver to the successful Offeror a Contract, Signed purchase order, Price Agreement, or other Contract documents as applicable.

(2) **Availability of Award Decisions.** A Person may obtain tabulations of Awarded Bids or evaluation summaries of Proposals for a minimal charge, in person or by submitting to the County a Written request accompanied by payment. The requesting Person shall provide the Solicitation Document number and enclose a self-addressed, stamped envelope. In addition, the County may make available tabulations of Bids and Proposals through the Electronic Procurement System of the County or the County's website.

(3) **Availability of Procurement Files.** After notice of intent to Award, the County will make Procurement files available in accordance with applicable law.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20]
Stats. Implemented: ORS 279B.055 & ORS 279B.060

137-047-0640 Rejection of an Offer

(1) Rejection of an Offer.

(a) The County may reject any Offer as set forth in ORS 279B.100.

(b) The County shall reject an Offer upon the County's finding that the Offer:

- (A) Is contingent upon the County's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

- (B) Takes exception to terms and conditions (including Specifications) set forth in the Solicitation Document;

- (C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;

- (D) Offers Goods or Services that fail to meet the Specifications of the Solicitation Document;

- (E) Is late;

- (F) Is not in substantial compliance with the Solicitation Document; or

- (G) Is not in substantial compliance with all prescribed public Procurement procedures.

(c) The County will reject an Offer upon the County's finding that the Offeror:

- (A) Has not been prequalified under ORS 279B.120 and the County required mandatory prequalification;

- (B) Has been Debarred as set forth in ORS 279B.130 or has been disqualified pursuant to LCPR 137-046-0210 (Disqualification);

- (C) Has not met the requirements of ORS 279A.105, if required by the Solicitation Document;

- (D) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

- (E) Has failed to provide the certification of non-discrimination required under ORS 279A.110 (4); or

(F) Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the County must have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible Offeror, the County will determine pursuant to ORS 279B.110 that the Offeror:

- (i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the Offeror to meet all contractual responsibilities;
- (ii) Has a satisfactory record of contract performance. The County may scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the County may determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The County may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The County shall make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(b);
- (iii) Has a satisfactory record of integrity. An Offeror may

lack integrity if a County determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a County. The County may find an Offeror non-Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. The County shall make its basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(c);

- (iv) Is legally qualified to contract with the County;
- (v) Has attested in Writing that the Offeror complied with the tax laws of this state and of political subdivisions of this state; and
- (vi) Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the County con-

cerning Responsibility, the County shall base the determination of Responsibility upon any available information, or may find the Offeror non-Responsible.

(2) For the purposes of subparagraph (1)(c)(F)(v) of this rule:

(a) The period for which the Offeror must attest that it complied with the applicable tax laws must extend no fewer than six years into the past from the date of the Closing.

(b) Tax laws include, but are not limited to, ORS 305.620, ORS chapters 316, 317 and 318, any tax provisions imposed by a political subdivision that apply to the Offeror or to the performance of the Contract, and any rules and regulations that implement or enforce those tax laws.

(c) The County may exercise discretion in determining whether a particular form of attesting to compliance with the tax laws is "credible and convenient" under ORS 279B.110(2)(e), taking into consideration the circumstances in which the attestation is made and the consequences of making a false attestation. Therefore, the County may accept forms of attestation that range from a notarized statement to a less formal document that records the Offeror's attestation.

(3) **Form of Business Entity.** For purposes of this rule, the County may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Debarment provisions of ORS 279B.130.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279B.100 & 279B.110

137-047-0650 Rejection of All Offers

(1) The County may reject all Offers as set forth in ORS 279B.100. The County shall notify all Offerors of the rejection of all Offers.

(2) **Criteria.** The County may reject all Offers based upon the following criteria:

(a) The content of or an error in the Solicitation Document, or the Procurement process unnecessarily restricted competition for the Contract;

(b) The price, quality or performance presented by the Offerors are too costly or of insufficient quality to justify acceptance of any Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive process. These causes may include, without limitation, those that tend to limit competition, such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;

(e) The Procurement or solicitation is canceled in accordance with LCPR 137-047-0660; or

(f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279B.100

137-047-0655 Failed Procurements; Direct Negotiation Permitted

(1) When the County experiences a Failed Procurement, the County may:

(a) Cancel and reissue the solicitation; or

(b) Subject to subsection (2), directly negotiate with a Person for the goods and/or services.

(2) The determination as to whether a Procurement may be made by direct negotiation must be made by the Board and must:

(a) Be in Writing;

(b) Describe how the original solicitation was adequately advertised;

(c) Explain why no responsive Offers were received; and

(d) State the basis for the selection of the Person that the County will be entering into direct negotiations with.

(3) The County may conduct negotiations as appropriate as to price, delivery, and terms.

[Adopted 2020-060 eff 03/17/20]

137-047-0660 Cancellation of Procurement or Solicitation

(1) **Cancellation in the Public Interest.** The County may cancel a Procurement or solicitation as set forth in ORS 279B.100.

(2) **Notice of Cancellation Before Opening.** If the County cancels a Procurement or solicitation prior to Opening, the County shall provide notice of cancellation. Such notice of cancellation will:

- (a) Identify the Solicitation Document;
- (b) Briefly explain the reason for cancellation;

and

(c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

(3) **Notice of Cancellation After Opening.** If the County cancels a Procurement or solicitation after Opening, the County shall provide notice of cancellation to all Offerors who submitted Offers.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279B.100

137-047-0670 Disposition of Offers if Procurement or Solicitation Canceled

(1) **Prior to Opening.** If the County cancels a Procurement or solicitation prior to Opening, the County shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the County shall open the Offer to determine the source and then return it to the Offeror. For Electronic Offers, the County shall delete the Offers from the County's Electronic Procurement System or information technology system.

(2) **After Opening.** If the County cancels a Procurement or solicitation after Opening, the County:

(a) May return Proposals in accordance with ORS 279B.060(5)(c); and

(b) Shall keep Bids in the Procurement file.

(3) **Rejection of All Offers.** If the County rejects all Offers, the County shall keep all Proposals and Bids in the Procurement file.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279B.100

VII. LEGAL REMEDIES

137-047-0700 Protests and Judicial Review of Special Procurements

(1) **Purpose.** An Affected Person may protest the approval of or request for approval of a Special Procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the approval or request for approval of a Special Procurement, an Affected Person must file a Written protest with the Board and exhaust all administrative remedies.

(2) **Delivery.** Notwithstanding the requirements for filing a writ of review under ORS Chapter 34 pursuant to ORS 279B.400(4)(a), an Affected Person must deliver a Written protest to the Board within seven (7) Days after the first date of public notice of the approval of a Special Procurement by the Board, unless a different protest period is provided in the public notice of the approval of a Special Procurement.

(3) **Content of Protest.** The Written protest must include:

- (a) A detailed statement of the legal and factual grounds for the protest;
- (b) A description of the resulting harm to the Affected Person; and
- (c) The relief requested.

(4) **Board Response.** The Board or designee shall not consider an Affected Person's protest of the approval of a Special Procurement submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the public notice of the approval of a Special Procurement. The Board or designee shall issue a Written disposition of the

protest in a timely manner. If the Board upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special Procurement, or revoke the approval of the Special Procurement.

(5) **Judicial Review.** An Affected Person may seek judicial review of the Board or designee's decision relating to a protest of the approval of a Special Procurement in accordance with ORS 279B.400.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]
Stats. Implemented: ORS 279B.400

137-047-0710 Protests and Judicial Review of Sole-source Procurements

(1) **Purpose.** For sole-source Procurements requiring public notice under LCPR 137-047-0275, an Affected Person may protest the determination of the Board or designee that the Goods or Services or class of Goods or Services are available from only one source. Pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Person must file a Written protest with the Board or designee and exhaust all administrative remedies.

(2) **Delivery.** Unless otherwise specified in the public notice of the sole-source Procurement, an Affected Person must deliver a Written protest to the Board or designee within seven (7) Days after the first date of public notice of the sole-source Procurement, unless a different protest period is provided in the public notice of a sole-source Procurement.

(3) **Content of Protest.** The Written protest must include:

- (a) A detailed statement of the legal and factual grounds for the protest;
- (b) A description of the resulting harm to the Affected Person; and
- (c) The relief requested.

(4) **Board Response.** The Board or designee shall not consider an Affected Person's sole-source Procurement protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the public notice of the sole-source

Procurement. The Board or designee shall issue a Written disposition of the protest in a timely manner. If the Board or designee upholds the protest, in whole or in part, the Board shall not enter into a sole-source Contract.

(5) **Judicial Review.** Judicial review of the Board or designee's disposition of a sole-source Procurement protest shall be in accordance with ORS 279B.420.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]
Stats. Implemented: ORS 279B.075

137-047-0720 Protests and Judicial Review of Multi-tiered and Multi-step Solicitations

(1) **Purpose.** An Affected Offeror may protest exclusion from the Competitive Range or from subsequent tiers or steps of a solicitation in accordance with the Solicitation Document. When such a protest is permitted by the Solicitation Document, then pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Offeror must file a Written protest with the County and exhaust all administrative remedies.

(2) **Basis for Protest.** An Affected Offeror may protest its exclusion from a tier or step of competition only if the Offeror is Responsible and submitted a Responsive Offer and but for the County's mistake in evaluating the Offeror's or other Offerors' Offers, the protesting Offeror would have been eligible to participate in the next tier or step of competition. (For example, the protesting Offeror must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Offerors are removed from consideration, and that those ineligible Offerors are ineligible for inclusion in the Competitive Range because: their Proposals were not Responsive, or the County committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or the LCPR, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.)

(3) **Delivery.** Unless otherwise specified in the Solicitation Document, an Affected Offeror must

deliver a Written protest to the County within seven (7) Days after issuance of the notice of the Competitive Range or notice of subsequent tiers or steps.

(4) **Content of Protest.** The Affected Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

(5) **County Response.** The County shall not consider an Affected Offeror's multi-tiered or multi-step solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The County shall issue a Written disposition of the protest in a timely manner. If the County upholds the protest, in whole or in part, the County may in its sole discretion either issue an Addendum under LCPR 137-047-0430 reflecting its disposition or cancel the Procurement or solicitation under LCPR 137-047-0660.

(6) **Judicial Review.** Judicial review of the County's decision relating to a multi-tiered or multi-step solicitation protest shall be in accordance with ORS 279B.420.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279B.060

137-047-0730 Protests and Judicial Review of Solicitations

(1) **Purpose.** A prospective Offeror may protest the Procurement process or the Solicitation Document for a Contract solicited under ORS 279B.055, 279B.060 and 279B.085 as set forth in ORS 279B.405(2). Pursuant to ORS 279B.405(3), before seeking judicial review, a prospective Offeror must file a Written protest with the County and exhaust all administrative remedies.

(2) **Delivery.** Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a Written protest to the County not less than ten (10) Days prior to Closing.

(3) **Content of Protest.** In addition to the information required by ORS 279B.405(4), a prospective Offeror's Written protest shall include a statement of the desired changes to the Procure-

ment process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.

(4) **County Response.** The County shall not consider a prospective Offeror's solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The County shall consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). The County shall issue a Written disposition of the protest in accordance with the timeline set forth in ORS 279B.405(6). If the County upholds the protest, in whole or in part, it may in its sole discretion either issue an Addendum reflecting its disposition under LCPR 137-047-0430 or cancel the Procurement or solicitation under LCPR 137-047-0660.

(5) **Extension of Closing.** If the County receives a protest from a prospective Offeror in accordance with this rule, the County may extend Closing if it determines an extension is necessary to consider and respond to the protest.

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

(7) **Judicial Review.** Judicial review of the County's decision relating to a solicitation protest shall be in accordance with ORS 279B.405.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279B.405

137-047-0740 Protests and Judicial Review of Contract Award

(1) **Purpose.** An Offeror may protest the Award of a Contract, or the intent to Award of a Contract, whichever occurs first, if the conditions set forth in ORS 279B.410(1) are satisfied. An Offeror must file a Written protest with the County

and exhaust all administrative remedies before seeking judicial review of the County's Contract Award decision.

(2) **Delivery.** Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to the County within seven (7) Days after issuance of the notice of intent to Award the Contract.

(3) **Content of Protest.** An Offeror's Written protest shall specify the grounds for the protest to be considered by the County pursuant to ORS 279B.410(2).

(4) **County Response.** The County shall not consider an Offeror's Contract Award protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The County shall issue a Written disposition of the protest in a timely manner as set forth in ORS 279B.410(4). If the County upholds the protest, in whole or in part, it may in its sole discretion either Award the Contract to the successful protestor or cancel the Procurement or solicitation.

(5) **Judicial Review.** Judicial review of the County's decision relating to a Contract Award protest shall be in accordance with ORS 279B.415.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279B.410 & ORS 279B.415

137-047-0745 Protests and Judicial Review of Qualified Products List Decisions

(1) **Purpose.** A prospective Offeror may protest the County's decision to exclude the prospective Offeror's Goods from the County's qualified products list under ORS 279B.115. A prospective Offeror must file a Written protest and exhaust all administrative remedies before seeking judicial review of the County's qualified products list decision.

(2) **Delivery.** Unless otherwise stated in the County's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list, a prospective Offeror must deliver a Written protest to the County within five

(5) Days after issuance of the County's decision to exclude the prospective Offeror's Goods from the qualified products list.

(3) **Content of Protest.** The prospective Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

(4) **County Response.** The County shall not consider a prospective Offeror's qualified products list protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the County's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list. The County shall issue a Written disposition of the protest in a timely manner. If the County upholds the protest, it will include the successful protestor's Goods on the qualified products list.

(5) **Judicial Review.** Judicial review of the County's decision relating to a qualified products list protest will be in accordance with ORS 279B.425.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279B.115

137-047-0750 Judicial Review of Other Violations

Any violation of ORS chapter 279A or 279B by the County for which no judicial remedy is otherwise provided in the Public Contracting Code is subject to judicial review as set forth in ORS 279B.420.

[Adopted 2005-052 eff 3/1/05; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279B.420

137-047-0760 Review of Prequalification and Debarment Decisions

Review of the County's prequalification and Debarment decisions shall be as set forth in ORS 279B.425.

[Adopted 2005-052 eff 3/1/05; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279B.425

137-047-0800 Amendments to Contracts and Price Agreements

(1) **Generally.** The County may amend a Contract without additional competition in any of the following circumstances:

(a) The amendment is within the scope of the Procurement as described in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approved Special Procurement, if any. An amendment is not within the scope of the Procurement if the County determines that if it had described in the Procurement the changes to be made by the amendment, it would likely have increased competition or affected award of the Contract.

(b) The LCPR otherwise permit the County to Award a Contract without competition for the Goods or Services to be procured under the Amendment.

(c) The amendment is necessary to comply with a change in law that affects performance of the Contract.

(d) The amendment results from renegotiation of the terms and conditions, including the Contract Price, of a Contract and the amendment is Advantageous to the County, subject to all of the following conditions:

(A) The Goods or Services to be provided under the amended Contract are the same as the Goods or Services to be provided under the unamended Contract.

(B) The County determines that, with all things considered, the amended Contract is at least as favorable to the County as the unamended Contract.

(C) The amended Contract does not have a total term greater than allowed in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approved Special Procurement, if any, after combining the initial and extended terms. For example, a one-year Contract described as renewable each year for up to four additional years, may be renegotiated as a two to five-year Contract, but not beyond a total of five years.

(1) **Small or Intermediate Contract.** The County may amend a Contract Awarded as small or intermediate Procurement pursuant to Section (1) of this rule, provided that the total increase in Contract Price does not exceed the amount set forth in LCPR 137-047-0265 for small Procurements and LCPR 137-047-0270 for intermediate Procurements.

(2) **Emergency Contract.** The County may amend a Contract Awarded as an emergency Procurement if the emergency justification for entering into the Contract still exists, and the amendment is necessary to address the continuing emergency.

(3) **Price Agreements.** The County may amend or terminate a Price Agreement as follows:

(a) As permitted by the Price Agreement;

(b) As permitted by this rule;

(c) If the circumstances set forth in ORS 279B.140 (2) exist; or

(d) As permitted by applicable law.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20; amd 2021-191 eff 07/20/21]
Stats. Implemented: ORS 279A.065

VIII. CLASS SPECIAL PROCUREMENTS

137-047-0810 Types of Class Special Procurements

Class Special Procurements authorized by the Linn County Board of Commissioners by the LCPR are described in LCPR 137-047-815 to 137-047-0905 below.

[Adopted 2005-052 eff 3/1/05; amd 2020-163 eff 06/23/20]
Stats. Implemented: ORS 279B.085

137-047-0815 Equipment Repair and Overhaul

(1) Contracts for equipment repair or overhaul may be let without using the methods of source selection described in the LCPR, subject to the following conditions:

(a) Service and/or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

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

(2) If the contract exceeds \$10,000, the County shall document in its Procurement file the reasons why competitive quotes were deemed to be impractical.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279A.065 ORS 279B.085

137-047-0820 Contracts for Price-regulated Items

The County may contract for the direct purchase of Goods or Services where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority.

[Adopted 2005-052 eff 3/1/05; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279A.065 ORS 279B.085

137-047-0825 Laboratory and Medical Supplies

(1) The County is not required to purchase drugs, laboratory or medical supplies on the basis of a single award to the lowest responsible bidder, but instead may purchase different brands of the same item by awarding contracts, after a Request for Proposal for drugs, laboratory or medical supplies from a single supplier.

[Adopted 2005-052 eff 3/1/05; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279A.065 ORS 279B.085

137-047-0830 Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalts

The County is exempt from the methods of source selection described in the LCPR for the purchase of gasoline, diesel fuel, heating oil, lubricants and asphalts if the County seeks competitive quotes from a majority of vendors in the area, makes its purchase from the least expensive source, and retains Written justification for the purchase made.

[Adopted 2005-052 eff 3/1/05; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279A.065 ORS 279B.085

137-047-0835 Copyrighted Materials

If the contract is for the purchase of copyrighted materials and there is only one known supplier available for such goods, the County may contract for the purchase of the goods without using the methods of source selection described in the LCPR.

[Adopted 2005-052 eff 3/1/05; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279B.085

137-047-0840 Periodicals

The County may purchase subscriptions for periodicals, including journals, magazines, and similar publications without using methods of source selection described in the LCPR.

[Adopted 2005-052 eff 3/1/05]

Stats. Implemented: ORS 279B.085

137-047-0845 Purchases of Used Personal Property

The County may purchase used personal property for \$10,000 or less without going through the methods of source selection described in the LCPR if the County has determined that the direct purchase without competitive bidding will result in cost savings. For purchases of used personal property over \$10,000, three competitive quotes shall be obtained. If three quotes are not available, a Written record must be made of the attempt to obtain quotes.

[Adopted 2005-052 eff 3/1/05; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279B.085

137-047-0850 Advertising Contracts

The County may purchase advertising without competitive bidding.

[Adopted 2005-052 eff 3/1/05; amd 2020-163 eff 06/23/20]

Stats. Implemented: ORS 279A.065 ORS 279B.085

137-047-0855 Food Service Contracts

(1) For purposes of this rule food service means a contract in which the contractor agrees to perform for the County all of the following functions: the purchase, preparation, and service of meals and related services.

(2) Contracts for food services may be let without using the methods of source selection described in the LCPR subject to the following conditions:

(a) Prior to the selection of a contractor, the County has made reasonable efforts to inform known companies providing food services of the subject matter of the contract and solicit proposals including public advertisements in at least one newspaper of general circulation in the area where the contract is to be performed;

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

[Adopted 2005-052 eff 3/1/05; amd 2020-163 eff 06/23/20]
Stats. Implemented: ORS 279A.065 ORS 279B.085

137-047-0860 Employee Benefit Insurance

(1) The County may purchase employee benefit insurance without competitive bidding.

[Adopted 2005-052 eff 3/1/05; amd 2020-163 eff 06/23/20]
Stats. Implemented: ORS 279B.085

137-047-0865 Insurance Contracts

Contracts for insurance where either the annual or aggregate premium exceeds \$5,000 must be let by using the methods of source selection described in Division 47 or by one of the following procedures:

(1) *Agent of Record*: The County may appoint a licensed insurance agent ("agent of record") to perform insurance services in connection with more than one insurance contract. Among the services to be provided is the securing of competitive proposals from insurance carriers for all coverages for which the agent of record is given responsibility:

(a) Prior to the selection of an agent of record, the County shall make reasonable efforts to inform known insurance agents in the competitive market area that it is considering such selection. These efforts shall include a public advertisement in at least one newspaper of general circulation in Linn County. The advertisement shall generally describe the nature of the insurance that the County requires. If the amount of the annual premium for insurance, other than employee benefits insurance is likely to exceed \$10,000 per year, such notice shall also include a public advertisement

in at least one trade publication of general circulation in the state;

(b) Any appointment period shall not exceed five years. Agents may serve more than one appointment period. Agents must qualify for appointment prior to each period as if each appointment period were the first;

(c) In selecting an agent of record, the County shall select the agent(s) most likely to perform the most cost-effective services and who are knowledgeable in providing such services to governmental agencies.

(2) *Specific Proposals for Insurance Contracts*: The County may solicit proposals from licensed insurance agents for the purpose of acquiring specific insurance contracts subject to the following conditions:

(a) The County shall make reasonable efforts to inform known insurance agents in the competitive market area of the subject matter of the contract, and to solicit proposals for providing the services required in connection with the contract. Such efforts shall include public advertisements in at least one newspaper of general circulation in Linn County. If the amount of annual premium for insurance, other than employee benefits insurance is likely to exceed \$10,000 per year, such notice shall also include a public advertisement in at least one trade publication of general circulation in the state;

(b) The County shall select an agent on the basis of the most competitive offer considering coverage, premium cost, and service to be provided.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20; amd 2024-041 eff 02/13/24]
Stats. Implemented: ORS 279B.085

137-047-0870 Ballots, Ballot Pages, and Ballot Cards

Linn County is exempt from competitive bidding requirements for the printing of ballots, including ballot pages, insertions, and mailing of ballots.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]
Stats. Implemented: ORS 279B.085

137-047-0875 Requirements Contracts

The County may enter into requirements contracts whereby it is agreed to purchase requirements for an anticipated need at a pre-determined price providing the following conditions are complied with:

(1) The contract must be let by competitive Procurement process pursuant to the requirements of Division 47.

(2) The term of the contract including renewals does not exceed three years.

[Adopted 2005-052 eff 3/1/05; amd 2020-163 eff 06/23/20]
Stats. Implemented: ORS 279B.085

137-047-0880 Purchases Under Requirements Contracts

(1) When the price of Goods and Services has been established by a requirements contract the County may purchase the goods and services from the supplier without subsequent competitive bidding.

(2) One public contracting agency may use the requirements contract entered into by another public contracting agency when a formal inter-agency agreement exists between the two agencies.

[Adopted 2005-052 eff 3/1/05; amd 2020-163 eff 06/23/20]
Stats. Implemented: ORS 279B.085

137-047-0885 Oil or Hazardous Material Removal

(1) The County may enter into a contract without competitive bidding when ordered to cleanup oil or hazardous waste pursuant to the authority granted the Department of Environmental Quality (DEQ) under ORS Chapter 466, especially ORS 466.605 through 466.680, and this order necessitates the prompt establishment and performance of the contract in order to comply with the statutes regarding spill or release of oil or hazardous material that have created an emergency condition. Comprehensive cleanup rules are set forth at LCPR 340-122-205 to 340-122-360. In exercising its authority under this exemption, the County shall :

(a) To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain

informal quotes from potential suppliers of goods or services;

(b) Make Written findings describing the circumstances requiring cleanup or a copy of the DEQ order ordering such cleanup;

(c) Record the measures taken under subsection (a) of this Section to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the Contractor selected.

(2) The County shall not contract pursuant to this exemption in the absence of an order from the Department of Environmental Quality to cleanup a site with a time limitation that would not permit hiring a Contractor under the usual competitive bidding procedures.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]
Stats. Implemented: ORS 279B.085

137-047-0890 Sponsorship Agreements

The County may solicit sponsorship and receive a gift or donation in exchange for recognition of the donor at the discretion of the County as the opportunity arises.

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.085

137-047-0891 Police Dogs

The County may purchase police dogs at the discretion of the County.

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.085

137-047-0892 COTS Software

The County may purchase commercially-available off-the-shelf (COTS) software without competitive bidding. The COTS software must not be in any way modified from the form in which it is sold in the commercial marketplace.

[Adopted 2020-060 eff 03/17/20]
Stats. Implemented: ORS 279B.085

137-047-0893 Renewals

The County may renew existing contracts in accordance with the terms and conditions of the contract. Such renewals are not subject to competitive Procurement procedures.

[Adopted 2005-052 eff 3/1/05]

137-047-0894 Temporary Extensions or Renewals

The County may temporarily extend or renew a contract that is for a single period of one year or less that is expiring or recently expired.

[Adopted 2005-052 eff 3/1/05]

137-047-0895 Student Affiliation Agreements

The County may contract with higher educational systems, public or otherwise, to provide practicum-learning experience to students, including, but not limited to, supervised clinical fieldwork or internship programs.

[Adopted 2020-163 eff 06/23/20]

IX. PERSONAL SERVICE CONTRACTS

137-047-0910 Personal Service Contracts Generally; Statutory Authority

(1) ORS 279A.070 requires the County to create procedures for the screening and selection of persons to perform Personal Services. Personal Services Contracts shall be awarded pursuant to LCPR 137-047-0925.

(2) Personal Services Contracts are not Contracts for the purposes of ORS Chapters 279A, 279B, 279C, and, unless otherwise provided, the LCPR. This rule was created in accordance with, and pursuant to, ORS 279A.055.

(3) Contracts for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Related Services are subject to the provisions of LCPR 137-048-0100 to 137-048-0320.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2021-191 eff 07/20/21]

Stats. Implemented: ORS 279A.055

137-047-0915 [repealed]

[Adopted 2005-052 eff 3/1/05; repealed 2020-060 eff 03/17/20]

Stats. Implemented: ORS 279A.055

137-047-0920 Scope

(1) The following are considered Personal Services Contracts:

(a) Contracts for services performed as an independent Contractor in a professional capacity, including but not limited to, the services of an accountant, attorney, physician or dentist, passen-

ger aircraft pilot, aerial photographer, timber cruiser, data processing consultant, or broadcaster.

(b) Contracts for services as an artist in the performing or fine arts, including but not limited to, persons identified as photographer, filmmaker, painter weaver, or sculptor.

(c) Contracts for services of a specialized, creative and/or research-oriented nature;

(d) Contracts for marketing;

(e) Contracts for educational and human custodial care services;

(f) Contracts for mental health, public health, developmental disabilities, addiction services specialists and counselors, and other licensed individuals;

(g) Contracts for consultants not otherwise provided for under LCPR Division 48;

(h) Contracts for custom-built software design and maintenance;

(i) Contracts for computer software, hardware, and networking system implementation, support, repair, and maintenance services, including but not limited to such services for software purchased as COTS software pursuant to LCPR 137-047-0892;

(j) Contracts for unemployment claims administration, including management of the County's unemployment cost control program, administration of all County unemployment compensation claims, unemployment hearings representation, and any related endorsement services;

(k) Contracts for legislative representation;

(l) Contracts for property managers; and

(m) Contracts for any other Services determined to be a Personal Services Contract by the Board.

(2) The following are not considered Personal Services:

(a) Contracts, even though in a professional capacity, if predominately for a product, e.g. a Contract with a marketing consultant is for Personal Services, but a Contract to produce

marketing booklets is predominately for a tangible product.

(b) A Service Contract to supply labor which is of a type that can generally be done by any competent worker, e.g. data entry, key punch, crowd management, crop spraying, janitorial, security guard, laundry and landscape maintenance service contracts; and

(c) Contracts for trade-related activity, even though a specific license is required to engage in the activity, e.g. repair and/or maintenance of all types of equipment or structures.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2021-191 eff 07/20/21; amd 2024-041 eff 02/13/24]
Stats. Implemented: ORS 279A.055

137-047-0925 Personal Service Contracts

(1) Personal Service Contracts may be awarded in the following manner:

(a) For Personal Services Contracts with an estimated Contract Price less than or equal to \$250,000 per year, by direct selection without competition;

(b) For Personal Services Contracts with an estimated Contract Price greater than \$250,000 per year, in accordance with the informal selection procedures outlined in LCPR 137-047-0270;

(c) Through any Procurement process described in LCPR 137-047-0000 to 137-047-0900.

(2) Renewal of an existing Personal Services Contract is permitted so long as the Contract Price does not exceed \$250,000 per year, and the total Contract term does not exceed ten (10) years.

(3) The decision to award a Contract in any manner described in this rule is in the sole discretion of the County.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20; amd 2021-191 eff 07/20/21; amd 2024-041 eff 02/13/24]
Stats. Implemented: ORS 279A.055

137-047-0930 Multi-Year Personal Services Contracts

The County may enter into multi-year Personal Services Contracts. However, a multi-year Personal Services Contract shall not exceed ten (10) years, and the Contract Price shall not exceed \$250,000 per year.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20; amd 2021-191 eff 07/20/21; amd 2024-041 eff 02/13/24]
Stats. Implemented: ORS 279A.055

Statutory References and Other Authorities:
ORS 203; ORS 279A, 279B, 279C; OAR137-047

Legislative History of LCPR 137-047:

1st Adopted 2005-052 eff 3/1/05; effectiveness reaffirmed 2010-003 eff 1/5/10

Amendments to 2005-052:

#1 2020-060 eff 03/17/20

#2 2020-163 eff 06/23/20

#3 2021-191 eff 07/20/21

#4 2024-041 eff 02/13/24
