

CHAPTER 15

PUBLIC CONTRACTS AND PURCHASING

15.105 ADMINISTRATION

- (1) Enabling Clause. Polk County Code of Ordinances Chapter 15 shall be binding upon all officers and employees of Polk County and shall govern all purchasing and contracting by officers and employees of Polk County. The Polk County Board of Commissioners may delegate all powers or duties given or assigned by this chapter to employees, officials or agents through a Board order.
- (2) Local Contract Review Board. The Polk County Board of Commissioners shall act as the Local Contract Review Board pursuant to the authority granted to that Board by ORS Chapter 279A.060.
- (3) Preference to Polk County Goods and Services. For purposes of awarding a public contract, a department shall give preference to goods or services that have been manufactured or produced in Polk County and immediate surrounding area if price, fitness, availability and quality are otherwise equal.
- (4) Attorney General's Rules Inapplicable.
 - (a) The Attorney General's Model Contract Rules adopted under ORS 279A.065 do not apply to Polk County unless specifically referenced.
 - (b) Unless otherwise specified, this chapter shall also contain the procurement rules applicable to all County departments and divisions.
- (5) Contract Signing Authority. Except as set out in this section, the Board of Commissioners, shall have the authority to enter into contracts on behalf of the department and the County.
 - (a) Notwithstanding the above, for contracts not to exceed \$150,000.00, the County Administrative Officer and the Director of Public Works may enter into and sign contracts on behalf of the County.
 - (b) Notwithstanding the above, for contracts not to exceed \$25,000.00 all elected heads of departments, and the directors of Administrative Services, Community Development, Behavioral Health, Community Corrections, Family and Community Outreach and Information Services may enter into and sign contract on behalf of the County.
 - (c) All contracts executed pursuant to subsection (a) and (b) must be provided to the appropriate person within the Commissioner's Office.
- (6) All Contracts in Writing. All contracts to which Polk County is a party shall be in writing.

15.110 DEFINITIONS

As used in Polk County Code of Ordinances Chapter 15:

- (1) "Bid" means a competitive offer, binding on the Bidder and submitted in response to an Invitation to Bid.
- (2) "Board" means the Board of Commissioners of Polk County, acting as the local Contract Review Board.

- (3) "Commissioners" means the Polk County Board of Commissioners.
- (4) "Competitive Bid" means issuing an invitation to bid following the formal process for advertising, bid and bid opening.
- (5) "Competitive Process" means the solicitation of competitive offers which follow the formal process for advertising, request for proposal, bid and bid opening, and applicable rules of the Board.
- (6) "Competitive Quotes" means the solicitation of offers from competing vendors by advertisement or a request to vendors to make an offer. The solicitation and the offer may be in writing or oral. Oral quotes shall be reduced to writing in the procurement file.
- (7) "County" means the Polk County Board of Commissioners or its public contracting officer(s).
- (8) "Department" means a Polk County department such as, but not limited to, the Public Works Department or the Community Development Department.
- (9) "Electronic Advertisement" means advertisement of an Offer available electronically over the internet via (i) the World Wide Web, or (ii) telnet, provided the County maintains an internet World Wide Web site that provides explicit instructions how an Entity can access the advertisement through the internet via a telnet application. The County may maintain the World Wide Web site directly or through any third party service provider.
- (10) "Emergency" means that a substantial risk of loss, damage, interruption of services, or threat to the public health or safety has arisen from circumstances that could not have been reasonably foreseen.
- (11) "Informal procurement" means any form of procurement outlined in this chapter that is not an invitation to bid or request for proposals.
- (12) "Invitation to Bid" means the solicitation of competitive offers in which specification, price and delivery (or project completion) will be the predominant award criteria.
- (13) "Material and Service Contract" means an agreement in which the vendor agrees to supply all the purchaser's requirements that arise for an item or items within a specified time period. Also referred to as a Price Agreement.
- (14) "Offer" means a bid, proposal, or quotation.
- (15) "Offeror" means a person or firm submitting an offer.
- (16) "Personal Property" means everything subject to ownership which is not real property, and which has exchangeable value.
- (17) "Personal Services Contracts" means a contract that calls for specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment. Qualifications and performance history, expertise, knowledge and creativity, and the ability to exercise sound professional judgment are typically the primary considerations when selecting a Personal Services Contractor, with price being secondary.
- (18) "Proposal" means a competitive Offer, binding on the Proposer and submitted in response to a Request for Proposals.
- (19) "Public Agency or Public Contracting Agency" means any agency of the federal government, State of Oregon or any political subdivision thereof authorized by law to enter into public contracts, municipality and any other public body created by intergovernmental agreement.

- (20) "Public Contract" means any purchase, lease or sale by a public agency of personal property, public improvements or services other than agreements which are for personal services.
- (21) "Public Contracting Officer" means the person or persons designated by the Commissioners to negotiate public contracts for the County.
- (22) "Public Improvement" means a project for construction, reconstruction or major renovation on real property by or for a public agency. "Public Improvement" does not include emergency work, minor alterations, ordinary repair or maintenance necessary in order to preserve a public improvement.
- (23) "Request for Proposal" means a solicitation of competitive proposals, or offers, to be used as a basis for making an acquisition, or entering into a contract when specification and price will not necessarily be the predominant award criteria.
- (24) "Service Contract" means a contract that calls primarily for a contractor's time and effort rather than for an end product
- (25) "Solicitation document" means an invitation for bids, a request for proposals, or a written request for quotations.
- (26) "Telecommunications Systems" mean devices, components, facilities and applications that provide telecommunications services for the County and enable the aggregation and transmission of voice, video or data between and among County users. Telecommunications Systems may include gateway devices used to connect to private telecommunications networks or the Internet

15.115 PROCUREMENT METHODS

- (1) Competitive Bids; Exemptions. All contracts shall be based upon competitive bids or proposals except the following:
 - (a) Contracts otherwise allowed or required in ORS 279A.025 (Application of Contracting Code) 279A.100 (Affirmative Action), , 279A.125 (Recycled Materials), 279A.128 (In-State Preference),
 - (b) Contracts that are for personal services. Such contracts may include incidental materials such as written reports or opinions, architectural or engineering renderings, and other supplemental materials required for providing the services.
 - (c) Contracts that may be procured by an alternative method based on ORS 279A.050; 279A.055 and 279A.070.
 - (d) The county may, in its discretion, let public contracts not to exceed \$150,000 for the purchase of goods, materials, supplies, and services or for trade related projects, i.e., construction, maintenance, repair, or similar labor and materials contracts without competitive bidding, if the county has determined that the awarding of the contract without competitive bidding will result in cost savings and the contract is for a single project, and is not a component of or related to any other project.
- (2) Exemptions for Contracts for Goods, Services, Construction and Maintenance Under Certain Dollar Amounts.
 - (a) When the amount of the contract does not exceed \$15,000, the County may, but is not required to, obtain competitive quotes.
 - (b) When the amount of the contract is more than \$15,000, but less than \$150,000, , the County shall obtain a minimum of three competitive quotes. The County shall keep a written record of

the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

- (c) When the contract is for a "public improvement" as defined in PCCC 15.110(23) or for "public works" as defined in ORS 279C.800, and the contract price exceeds \$50,000, the County and the contractor shall comply with:

- (i) The prevailing wage provisions of ORS 279C.800 to 279C.870, when applicable;
- (ii) The performance bond requirements of PCCC 15.115(21) and ORS 279C.380;
- (iii) The contractor registration requirements of ORS ch. 701; and
- (iv) Any other law applicable to such a contract.

(3) Material and Service Contracts.

- (a) Material and service contracts may be entered into without competitive bidding when it is in the best interests of the County to do so. The County may enter into material and service contracts whereby it is agreed to purchase goods or services for an anticipated need at a predetermined price provided the term of the contract, including renewals, does not exceed five years or \$150,000.
- (b) The County may also use the material and service contract entered into by another public contracting agency when a formal inter-agency agreement exists between the two agencies.

(4) Equipment Repair and Overhaul. Contracts for equipment repair or overhaul may be let without competitive bidding, if:

- (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.

(5) Emergency Contracts.

- (a) The county may, at its discretion, let public contracts without formal competitive bidding if an emergency exists and requires prompt execution of a contract to remedy or respond to the condition.
- (b) The Commission may adopt a resolution indicating the existence of the emergency and stating with specificity the emergency conditions necessitating the prompt execution of the contract.
- (c) Any contract awarded under this exemption shall be awarded within 60 days following declaration of the emergency unless an extension is granted by the Board, but such declaration shall not be required prior to entering into the contract depending on the circumstances of the emergency.
- (d) The Commissioners may waive requirements for performance and payment bonds in the event of an emergency.

15.120 SOLICITATION PROCESS

(1) Solicitation Methods.

- (a) Request for Proposal. The county may, at its discretion, use request for proposal competitive procurement methods subject to the following conditions:
 - (i) Contractual requirements shall be stated clearly in the solicitation document.
 - (ii) Evaluation criteria to be applied in awarding the contract and the role of an evaluation committee (if any) shall be stated clearly in the solicitation document. Criteria used to identify the proposal that best meets the county needs may include but are not limited to cost, quality, service, compatibility, product reliability, operating efficiency and expansion potential.
 - (iii) The solicitation document shall clearly state all complaint processes and remedies available.
 - (iv) The solicitation document shall state the provisions made for vendors to comment on any specifications which they feel limit competition.

(2) Invitation to Bid. The County may use an Invitation to Bid if the County believes it will receive optimal value by selecting the lowest priced offer that meets the technical requirements of the County's specifications.

(3) Negotiations.

- (a) When All Bids Exceed Estimate. The County may negotiate with the lowest responsible bidder or proposer submitting a responsive bid if all responsive bids from responsible bidders or proposers exceed the County's cost estimate. If a written cost estimate was not prepared prior to bidding, the amount budgeted for the public contract shall be deemed the cost estimate for the purposes of this subsection.
- (b) Other Bids. The County may negotiate with a proposer to clarify its quote, bid or proposal or to effect modifications that will make the quote, bid or proposal acceptable or more advantageous to the County.

(4) Prequalification.

- (a) The County, in its sole discretion, may require bidders or proposers to prequalify before being eligible to submit bids or proposals for a class of public contracts or for a particular public contract. The method used to prequalify bidders or proposers shall be determined by the Department letting the contract.
- (b) The County shall, in response to the receipt of a prequalification application submitted under this section, notify the prospective bidder or proposer whether the prospective bidder or proposer is qualified based on the standards identified by the County and ORS 279B.110(2), the type and nature of contracts that the prospective bidder or proposer is qualified to compete for and the time period for which the prequalification is valid. If the County does not prequalify a prospective bidder or proposer as to any contracts covered by the prequalification process, the notice must specify which of the County's criteria and/or standards of responsibility listed in ORS 279B.110(2) the prospective bidder or proposer failed to meet. Unless the reasons are specified, the prospective bidder or proposer shall be deemed to have been prequalified in accordance with the application.

- (c) Disqualification. Disqualification of a previously prequalified bidder or proposer shall be in accordance with this chapter and the provisions of ORS 279B.120(3) regarding prequalification and disqualification.
- (5) Product Prequalification.
- (a) When it is impractical to create or reproduce specific design or performance specifications for a type of product to be purchased, the county may specify a list of approved or qualified products by reference to a particular manufacturer or seller in accordance with the following product prequalification procedure:
 - (i) The County shall make reasonable efforts to notify all known manufacturers and vendors of competitive products of its intention to accept applications for inclusion in its list of prequalified products. Notification shall include advertisement in a trade journal of state-wide distribution when possible. In lieu of advertising, the County may notify vendors and manufacturers appearing on the appropriate list maintained by the State of Oregon.
 - (ii) The County shall permit application for prequalification of similar products up to 15 days prior to advertisement for bids on the product.
 - (b) If an application for inclusion in a list of prequalified products is denied, or an existing prequalification revoked, the County shall notify the applicant in writing. The applicant may appeal to the local Contract Review Board.
- (6) Life Cycle Costing. In determining the lowest responsible bidder in the award of a contract, the county may use the concept of life cycle costing. As used in this section, life cycle costing means determining the cost of a product for its useful life.
- (a) Prior to the time of writing specifications for the product, the public contracting agency shall identify those factors which will have cost implications over the life of the product.
 - (b) The Invitation to Bid shall set out clearly the factors and methodology to be used in life cycle cost adjustments.
 - (c) At or after the bid opening, the results of life cycle costing adjustments shall be applied to the base bid, and the bidder whose total bid results in the lowest ownership cost, taking into account the life cycle costing adjustments, shall be considered the lowest responsible bidder.
- (7) Advertisement. Advertisements of invitations for bids and requests for proposals shall be published as set forth herein, and any other time the County concludes that advertisement is desirable.
- (a) An advertisement, other than for a public improvement contract estimated to cost more than \$150,000, shall be deemed sufficient for the purposes of this chapter if it appears once in the Itemizer Observer or the Statesman Journal, or, if the Local Contract Review Board has authorized electronic advertisement, it appears electronically in a commercially reasonable manner. Nothing in this section shall be deemed to prevent a department from satisfying the advertisement requirements of applicable statutes and this ordinance by publishing an advertisement once in any newspaper of general circulation in the Polk County metropolitan area.
 - (b) An advertisement for a public improvement contract estimated to cost more than \$150,000 shall be deemed sufficient if it appears once in the Daily Journal of Commerce or a similar trade newspaper of general statewide circulation and once in the Itemizer Observer or Statesman Journal.

- (c) A department may publish an advertisement more than once, and in addition to publication designed to satisfy the requirements of applicable statutes and this ordinance, may publish one or more advertisements in any local, regional, or national publication deemed by the department to be appropriate for the particular procurement.
 - (d) A department shall give public notice at least seven (7) days before the solicitation closing date.
- (8) Contents of Advertisements. All advertisements for offers or proposals shall state:
- (a) The date after which bids will not be received, which shall not be less than seven (7) days after the date of the last publication of the advertisement;
 - (b) The date that prequalification applications must be filed if applicable and the class or classes of work for which bidders must be prequalified if prequalification is a requirement;
 - (c) A general description of the work to be done or the material or things to be purchased;
 - (d) The office where the specifications for the work, material or things may be reviewed;
 - (e) The name, title and address of the person designated to receive offers or proposals;
 - (f) The date, time and place that the County will open the bids;
 - (g) If the contract is for a public work subject to ORS 279C.800 to 279C.870 or the Davis- Bacon Act (40 U. S. C. 276a).
- (9) Requirements for Bid or Proposal Documents and Bids; Disclosure of First-tier Subcontractors.
- (a) Bid or proposal documents for a public contract shall, at a minimum, include:
 - (i) A general description of the work to be done or the material or things to be purchased and performance expectations, including a statement that the contractor shall meet the highest applicable industry or business standards in providing the goods or services;
 - (ii) The office where the specifications for the work, material or things may be reviewed;
 - (iii) The date, time and place that prequalification applications must be filed if applicable and the class or classes of work for which bidders or proposers must be prequalified if prequalification is a requirement;
 - (iv) The date and time after which bids or proposals will not be received, which shall be at least seven (7) days after the date of the last publication of the advertisement;
 - (v) The place, name and title of the person designated for receipt of bids or proposals;
 - (vi) The date, time and place that the County will open the bids;
 - (vii) A statement that each bid or proposal must identify whether the bidder is a resident bidder, as defined in ORS 279A.120.
 - (viii) A description of the selection criteria to be utilized in evaluating bids or proposals and determining the successful bid or proposal.
 - (ix) A statement that the County may reject any bid not in compliance with all prescribed bidding procedures and requirements, and may reject for good cause any or all bids or proposals upon a finding of the County that it is in the public interest to do so;

- (x) All contractual terms and conditions applicable to the bid or proposal and consequences for failure to perform the work to industry or business standards;
- (b) All bids or proposals made to the County shall be:
 - (i) In writing;
 - (ii) Filed with the person designated for receipt of bids; and
 - (iii) Bids, but not proposals, opened at the time designated in the advertisement.
- (c) In addition to the requirements of subsections (a) and (b) of this section, bid or proposal documents for public improvement contracts shall also include:
 - (i) A statement that, if the contract is for a public work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276a), no bid will be received or considered unless the bid or proposal contains a statement that the provisions of ORS 279C.838 or 279C.840 or 40 U.S.C. 276a are to be complied with;
 - (ii) Information addressing whether a contractor or subcontractor must be licensed under ORS 468A.720;
 - (iii) A statement that no bid or proposal for a public improvement contract shall be received or considered unless the bidder or proposers are licensed by the Construction Contractors Board or the State Landscape Contractors Board;
 - (iv) A statement that every public improvement contract shall contain a condition that the contractor shall:
 - (A) Make payment promptly, as due, to all persons supplying to such contractor labor or material for the performance of the work provided for in such contract.
 - (B) Pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract.
 - (C) Not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
 - (D) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - (v) In addition to the conditions specified in subsection (a) of this section, every public improvement contract shall contain a condition that the contractor shall demonstrate that an employee drug testing program is in place.
 - (vi) Within two working hours after the date and time of the deadline when the bids or proposals are due for a public improvement, a bidder shall submit to the County a disclosure of any first-tier subcontractor that:
 - (A) Will be furnishing labor or labor and materials in connection with the public improvement; and
 - (B) Whose contract value is equal to or greater than five percent of the total project bid or \$15,000, whichever is larger, or \$350,000, regardless of the percentage of the total project bid.

- (vii) The disclosure of first-tier subcontractors shall include:
 - (A) The name of each subcontractor;
 - (B) The category of work each subcontractor will perform; and
 - (C) The dollar value of each subcontract.
 - (viii) For each contract to which subsections (c) (vi) and (vii) applies, the County shall designate a deadline for submission of bids or proposals that has a date on a Tuesday, Wednesday or Thursday and a time between 2 p.m. and 5 p.m., except that this subsection does not apply to public contracts for maintenance or construction of highways, bridges or other transportation facilities.
 - (ix) Subsections (c) (vi) and (vii) shall apply only to public improvements with an estimated contract value of more than \$100,000.
- (10) Offer Preparation.
- (a) Instructions. An offeror or proposer shall submit and sign its offer or proposal in accordance with the solicitation document. An offeror or proposer shall initial any alteration or erasure to an offer or proposal, if any, in accordance with the solicitation document.
 - (b) Documents. An offeror or proposer shall provide the County with all documents and descriptive literature required under the solicitation document.
- (11) Method of Submitting Offers.
- (a) Receipt. Bids must be submitted in writing. The County shall not open the offeror modification, but shall date and time stamp the offer and store it in a secure place until opening. If the County inadvertently opens an offer, proposal or a modification, prior to the opening, the County shall reseal and store the opened offer, proposal or modification for opening. The County shall document the resealing for the solicitation file (e.g. County inadvertently opened the offer or proposal due to improper identification of the offer).
 - (b) Timeliness. Offerors or proposers are responsible for ensuring their offers or proposals are timely. The County may decline to consider a late offer, even if the offer or proposal is late because of a delay in the County's internal handling of mail or documents or because the County's receiving equipment was unavailable.
 - (c) Completeness. Offerors or proposers are responsible for ensuring their offers or proposals are received by the County in a complete, legible, ungarbled form. The County may decline to consider an offer that is incomplete, illegible, or garbled, even if the problem is caused by the County's hardware or software.
 - (d) Facsimile or electronic mail Submissions. Notwithstanding subsection (a), an offeror or proposer may submit its offer or proposal by facsimile or electronic mail only if expressly allowed under the solicitation document. The County shall not consider facsimile or electronic mail offers or proposals unless authorized by the solicitation document
- (12) Bid and Proposal Opening.
- (a) Bids shall be opened by the contracting officer as described in the solicitation documents.
 - (b) The County may open proposals at any time. There is no requirement for proposals to be opened in public.

- (c) Subject to any exemptions under Oregon public records statutes, bids and proposals shall be available for public inspection only after the County has finished evaluating them.
- (13) Retainage on Public Contracts. Retainage, if any, shall be determined on a case by case basis by the public contracting officer, shall be specified by contract between the parties and shall conform to the requirements of ORS 279C.550 through 279C.570.
- (14) Bid Evaluation
 - (a) Generally. Opened bids shall be evaluated in accordance with the evaluation criteria outlined in the bid documents applicable statutes and this Chapter. When a bid is determined to be unresponsive to the invitation for bids, it will not be evaluated further.
 - (b) Correction of Certain Errors. Arithmetic errors apparent on the face of a bid shall be corrected by the County before comparing bid prices. Discrepancies between a unit price and an extended total price for a bid item shall be resolved in favor of the unit price unless there is evidence apparent on the face of the bid establishing that the extended price is correct.
- (15) Proposal Evaluation. Proposals shall be evaluated based upon the evaluation criteria established by the request for proposals. Changes in evaluation criteria shall be communicated to all proposers or prospective proposers by addendum. If evaluation criteria are changed after proposals have been submitted, all proposers shall have an opportunity to supplement their proposals or submit best and final offers after receipt of the addendum changing the evaluation criteria.
- (16) Rejection of Bid or Proposal.
 - (a) The County may reject a bid or proposal if it finds:
 - (i) The person has not substantially complied with all prescribed bidding procedures and requirements.
 - (ii) If it is in the public interest to reject some or all of the bids or proposals.
 - (iii) The person has not met the standards of responsibility. In making a written determination whether a prospective bidder or proposer has met the standards of responsibility, the County shall consider whether a prospective bidder or proposer has:
 - (A) 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 prospective bidder or proposer to meet all contractual responsibilities;
 - (B) Current, necessary licenses;
 - (C) Liability and other insurance in amounts necessary to meet bid or proposal requirements;
 - (D) Workers compensation coverage pursuant to ORS 656.407 or 656.128;
 - (E) Made the first-tier subcontractor disclosure required by ORS 279C.370;
 - (F) A satisfactory record of performance. The County shall document the record of performance of a prospective bidder or proposer if the County finds the prospective bidder or proposer not to be responsible under this sub-subparagraph;

- (G) A satisfactory record of integrity. The County shall document the record of integrity of a prospective bidder or proposer if the County finds the prospective bidder or proposer not to be responsible under this sub-subparagraph;
 - (H) Qualified legally to contract with the County;
 - (I) Supplied all necessary information in connection with the inquiry concerning responsibility. If a prospective bidder or proposer fails to promptly supply information requested by the County concerning responsibility, the County shall base the determination of responsibility upon any available information, or may find the prospective bidder or proposer not to be responsible; and
 - (J) Not been debarred by the County under ORS 279B.130.
 - (b) The County may make such investigation as is necessary to determine whether a person is qualified. If a bidder or prospective bidder fails to supply promptly information as requested by the public contracting officer pursuant to such investigation, such failure is grounds for disqualification.
- (17) Irrevocability of Offers
- (a) Bids. All bids received by the County for a particular public contract become binding offers when the first bid is opened, and remain irrevocable for 30 calendar days after opening unless a different period is specified in the invitation for bids.
 - (b) Proposals. All proposals received by the County for a particular contract shall become binding offers on the last date for the receipt of best and final offers or, if best and final offers are not invited or permitted, at the beginning of the County's final evaluation of proposals, and shall remain irrevocable for 60 calendar days thereafter unless a different period is specified in the request for proposals.
 - (c) Extensions by County. The County may request, orally or in writing, that offerors extend, in writing, the time during which the County may accept their offer(s). If an offeror agrees to such extension, the offer shall be irrevocable, valid and binding on the offeror for the agreed upon extension.
- (18) Cancellation. The County may cancel a procurement at any time before a contract is signed, if the County determines cancellation is in the County's best interests. If a procurement is canceled, the County shall not be liable for any costs incurred by prospective offerors. If a procurement is canceled before bids or proposals are opened, the bids or proposals shall be returned to the bidders and proposers unopened, except that the County may open a bid or proposal to determine the identity and address of the bidder or proposer if the name and address are not shown on the outside of the envelope. If a procurement is canceled after bids or proposals are opened, the County shall retain the bids or proposals. The reason[s] for the cancellation shall be made part of the solicitation file.
- (19) Contract Amendments. Any contract amendment, including change orders, extra work, field orders, or other change in the original specifications which increases the original contract price or alters the work to be performed, may be made with the contractor subject to the following conditions:
- (a) The original contract, regardless of price, was awarded pursuant to these rules or ORS chapter 279A, 279B or 279C, unit prices or bid alternatives were provided that established the cost for additional work, and a binding obligation exists on the parties covering the terms and conditions of the additional work; or
 - (b) The amount of the aggregate cost increase resulting from all amendments does not exceed 20% of the initial contract, or 25% of the initial contract when the initial contract is for a face amount not exceeding \$150,000. Amendments made pursuant to subsection (1) of this section

are not included in computing the aggregate amount under this section.

- (20) Notice of Intent to Award. At least seven (7) days before the award of a public contract by bid or proposal, unless the department determines seven days is impractical, the department shall post or provide to each bidder or proposer notice of the department's intent to award a contract. This section does not apply to a contract awarded for less than \$150,000, an emergency procurement, a sole source procurement or a contract awarded under any exemption or alternative contracting method listed in this chapter.
- (21) Performance Security Requirements.
- (a) **Public Improvements Contracts.** Unless the contract review board waives the required performance bond, or in the event of an emergency, or unless the local contract review board exempts a contract or classes of contracts from the required performance bond pursuant to these rules, the contractor shall execute and deliver to the County a performance bond and a payment bond each in a sum equal to the contract price for all public improvement contracts in excess of \$100,000, or in the case of contracts for highways, bridges or other transportation projects in excess of \$50,000.
 - (b) **Public Improvement Contracts Under \$100,000.** The County may require a performance bond and/or a payment bond for public improvement contracts under \$100,000, but the County shall not use such requirement to discourage competition.
 - (c) **Other Public Contracts.** The County may require performance security for other public contracts. Such requirements shall be expressly set forth in the solicitation document.
 - (d) **Form of Security.** The County may accept only the following forms of Bid or Proposal security:
 - (i) A surety bond from a surety company authorized to do business in the State of Oregon;
 - (ii) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or
 - (iii) A cashier's check or certified check.
 - (e) **Time for Submission.** Upon the County's request, the apparent successful offeror must furnish the required performance bond and/or payment bond within 10 days. If the offeror fails to furnish the bond within the 10 day period, the County may reject the offer and award the contract to the next lowest responsive, responsible bidder or next highest-scoring responsive, responsible proposer, and, at the County's discretion, the offeror shall forfeit its bid or proposal security.

15.125 PERSONAL SERVICES CONTRACTS

- (1) **Generally**
- (a) Personal service contracts are not public contracts subject to competitive bidding provisions of ORS Chapters 279A, 279B, 279C or this Chapter.
 - (b) A department may enter into a personal service contract with an independent contractor without competitive bidding when the department needs to have a personal service performed as provided in this section. Each department may establish screening and selection processes.

(2) Cost Analysis.

- (a) No personal service contract exceeding \$250,000 in total value shall be entered without competitive procurement unless a cost-benefit analysis is first performed to determine whether it is more cost efficient to perform the service in-house.
- (b) A personal service shall not be procured unless the department can demonstrate, in writing, by means of a cost analysis that:
 - (i) The overall cost to procure the service(s) is less than the cost to perform the service(s) in-house; or
 - (ii) Performing the service(s) with existing county personnel or resources is not feasible.
- (c) The cost benefit analysis shall be conducted pursuant to ORS 279B.030.
- (d) A cost benefit analysis is not required for the following categories of services or contracts:
 - (i) Public improvement contracts;
 - (ii) Client services, including mental health and human services described in OAR 125-246-0110; or
 - (iii) Situations in which the county does not have the staff available or the necessary expertise to perform the service(s).

(3) Personal Services.

- (a) The nature of the tasks to be performed, the needs of the department and the interests of the public form the basis for distinguishing between personal service contracts and public contracts. Hence, if the department requires goods or services for which the department has developed or is reasonably able to develop, respectively, adequate design and/or performance specifications; and selecting a contractor on the basis of lowest price would be likely to meet the department's needs, then the tasks should be performed pursuant to a public contract let in accordance with the competitive bidding provisions of this Chapter.
- (b) Conversely, if a department is reasonably unable to develop adequate design and/or performance specifications but must instead have the assistance of the contractor's training, knowledge and expertise to develop a scope of work statement and selecting the contractor on the basis of lowest price would be unlikely to meet the department's needs, then the tasks would most appropriately be performed under a personal service contract. In determining whether its needs will be met through award of a personal service contract rather than a public contract, the department should consider whether selecting the contractor on the basis of qualifications rather than lowest price will result in the department obtaining the best value for its money.
- (c) A personal service contract is not appropriate where price is or should be the primary selection criterion. A public contract, in contrast to a personal service contract, will be awarded primarily on the basis of price; criteria such as technical skill, creativity, artistic ability, performance history, and demonstrated ability to be taken into account during the selection process, will be of only secondary importance. Unless otherwise statutorily excepted, a public contract must be awarded based on either competitive bidding, or an alternative competitive process under this Chapter.

- (4) Examples of Personal Service Contracts. Personal service contracts may include, but are not limited to the following:
- (a) Contracts for services performed as an independent contractor in a professional capacity, including but not limited to the services of an accountant, attorney, architectural or land use planning consultant, physician or dentist, registered professional engineer, appraiser or surveyor, passenger aircraft pilot, aerial photographer, timber cruiser, information technology 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, film maker, painter, weaver, or sculptor;
 - (c) Contracts for services of a specialized creative and research-oriented, noncommercial nature;
 - (d) Contracts for services as a consultant;
 - (e) Contracts for educational and human custodial care services.
- (5) Examples of Contracts Not for Personal Services. The following are not personal service contracts:
- (a) Contracts, even though in a professional capacity, if predominately for a product e.g., a contract with a landscape architect to design a garden is for personal services, but a contract to design a garden and supply all the shrubs and trees is predominately for a tangible product;
 - (b) A service contract, including a contract with a temporary service or personnel agency, to supply labor which is of a type that can generally be done by any competent worker, e.g., data entry, key punch, janitorial, security guard, crowd management, crop spraying, laundry, and landscape maintenance service contracts;
 - (c) Contracts for trade-related activities considered to be labor and material contracts;
 - (d) Contracts for services of a trade-related activity, to accomplish routine, continuing and necessary functions, even though a specific license is required to engage in the activity. Examples are repair and/or maintenance of all types of equipment or structures.

15.130 CONTRACTS EXEMPT FROM COMPETITIVE BIDDING

- (1) Purchases Under Federal Contracts or from Federal Agencies.
- (a) When the price of goods and services has been established by a contract with an agency of the federal government pursuant to a federal contract award, the County may purchase the goods and services in accordance with the federal contract without subsequent competitive bidding. In exercising this authority under this exemption, the County shall:
 - (i) Include in the contract file a letter or memoranda from the appropriate federal agency granting permission to purchase under the federal contract; and
 - (ii) Include in the contract file documentation showing the cost savings to be gained from anticipated purchases from the federal contract.
 - (b) Departments may also purchase equipment and supplies from federal government catalogues maintained by the United States Administrator of General Services without competitive bidding.

- (c) Departments may purchase goods and equipment from the federal government under 10 U.S.C. 381, the Electronic Government Act of 2002 or other federal law that is similar, or section 211 of that Act.
 - (d) The County shall not contract pursuant to this provision if there is an existing state price agreement for the same item(s).
- (2) Food Contracts. Procurement of food or food products which are available at “lower than normal” prices.
- (3) Purchases of Used Personal Property. The County may purchase used personal property for \$100,000 or less without competitive bidding if the department has determined that the direct purchase without competitive bidding will result in cost savings and if no violation of ORS 244.040 will result from the purchase. For purchases of used personal property over \$100,000, three competitive quotes shall be obtained. If three quotes are not available, a written record must be made of the attempt to obtain quotes.
- (4) Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalts. The County is exempt from formal competitive bidding requirements for the purchase of gasoline, diesel fuel, heating oil, lubricants and asphalts if the county seeks competitive quotes from the majority of vendors in the area, makes its purchase from the least expensive source, and retains written justification for the purchase made.
- (5) Cooperative Procurements. A department that chooses to participate in, sponsor, conduct or administer a Joint Cooperative Procurement, Permissive Cooperative Procurement or Interstate Cooperative Procurement may do so only in accordance with ORS 279A.210, 279A.215 or 279A.220. If a department utilizes this exemption and the estimated value of the contract exceeds \$250,000, the department shall follow the process set forth in ORS 279A.215(2) and (3).
- (6) Hazardous Material Removal; Oil Cleanup.
 - (a) The County may enter into public contracts without competitive bidding, regardless of dollar amount, when ordered to clean up oil or hazardous waste pursuant to the authority granted the State Department of Environmental Quality (DEQ), under ORS chapter 466, and in particular, ORS 466.605 through 466.680. In exercising its authority under this exemption the County shall:
 - (i) 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;
 - (ii) Make written findings describing the circumstances requiring cleanup or a copy of the DEQ order ordering such cleanup; and
 - (iii) Record the measures taken under subsection (a) to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the contractor selected.
 - (b) The County shall not contract pursuant to this exemption in the absence of an order from DEQ to clean up a site with a time limitation that would not permit hiring a contractor under the usual competitive bidding procedures.
- (7) Other Exempt Contracts. The County may, regardless of dollar value and without competitive bidding, enter into contracts for the direct purchase of the following goods or services:
 - (a) Advertising and Promotional Contracts.

- (b) Ballots, Ballot Pages, and Ballot Cards. The County may enter into contracts for the printing of ballots, including ballot pages and labeling of ballot cards.
- (c) Copyrighted Materials. The County may purchase copyrighted materials if there is only one known supplier available for such goods. Examples of copyrighted materials covered by this exemption may include, but are not limited to, new adopted textbooks, workbooks, curriculum kits, reference materials, books, periodicals, audio and visual media, and non-mass- marketed software.
- (d) Employee Benefit Insurance. The County may purchase insurance products including property, liability, workers compensation and employee benefit insurance or plans.
- (e) Equipment Maintenance. Contracts for the purchase of services, equipment, or supplies for the maintenance, repair or conversion of existing equipment are exempt if required for the efficient utilization of the equipment. Where practicable, competitive quotes shall be obtained.
- (f) Investment Contracts. The County may contract for the purpose of the investment of public funds or the borrowing of funds pursuant to a resolution, statute, ordinance, or charter.
- (g) Laboratory and Medical Supplies. The County may contract for the following:
 - (i) Drugs, including 340B pharmacy drugs (government regulated drugs), biologicals, blood fractions, and blood components;
 - (ii) Intravenous solutions and associated supplies for administration;
 - (iii) Microbiologicals, biochemicals, and diagnostic reagents;
 - (iv) Surgical dressings;
 - (v) Heart valves;
 - (vi) E.E.G., E.K.G, electrodes, charts, and associated supplies;
 - (vii) Sterilizing wraps;
 - (viii) Catheters, medical tubes, and associated supplies;
 - (ix) Surgical and orthopedic instruments;
 - (x) Hearing aids;
 - (xi) Pacemakers;
 - (xii) Dental supplies;
 - (xiii) Laboratory small package chemicals;
 - (xiv) Biology supplies; and
 - (xv) Therapeutic or cosmetic implants.
- (h) Medical Purchasing Cooperatives. A department which is a member of a legally established purchasing cooperative may purchase hospital and medical supplies and equipment, as well as lab testing services and pharmacy services through the cooperative.

- (i) Office Supplies. Consumable office supplies including, but not limited to copy paper, pens, copier toner, binders, etc.
 - (j) Pass-Through Grants. A grant under which the county passes through to another recipient all or a portion of the money or property received by the county from a federal or state agency, provided that:
 - (i) The county does not add or modify the original grant except as necessary to provide proper administration; and
 - (ii) The grant contains a clause substantially in the following form: “The recipient of grant funds, pursuant to this agreement with the County, shall assume sole liability for recipient’s breach of the conditions of the grant, and shall upon recipient’s breach of grant conditions that causes or requires the County to return funds to the grantor, hold harmless and indemnify the County for an amount equal to the funds which the County is required to pay to the grantor.
 - (k) Periodicals. The County may purchase subscriptions for periodicals, including journals, magazines, and similar publications without competitive bidding.
 - (l) 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.
 - (m) The County may engage in cooperative procurements as set forth in ORS 279A.200-225.
- (8) Specific Exemptions
- (a) Exemptions Requests. The Contract Review Board may exempt a particular contract or contracts from the bidding requirements of this chapter or ORS 279C.335 which are not otherwise exempted under these sections upon approval of the following findings:
 - (i) The nature of the project;
 - (ii) Estimated cost of the project;
 - (iii) A narrative description of the cost savings anticipated by the exemption from competitive bidding and the reasons competitive bidding would be inappropriate;
 - (iv) Proposed alternative contracting and purchasing practices to be employed;
 - (v) The estimated date by which it would be necessary to let the contract;
 - (vi) It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and
 - (vii) The awarding of public contracts pursuant to the exemption will result in substantial cost savings to the County. In making such finding, the board may consider the type, cost and amount of the contract, number of persons available to bid and such other factors as may be deemed appropriate.
 - (viii) Otherwise substantially promotes the public interest in a manner that could not practically be realized by complying with this chapter.
 - (ix) The Board may require such additional information as is deemed necessary to determine whether a specific contract is to be exempt from competitive bidding.

- (b) Approval of Requests. Before final adoption of the findings required by this section exempting a contract for a public improvement from the requirement of competitive bidding, the County shall hold a public hearing pursuant to ORS 279C.335(5).

15.135 DISPOSITION OF SURPLUS PERSONAL PROPERTY

(1) Sales of Surplus Personal Property.

- (a) Prior to sale pursuant to this chapter, personal property must be declared surplus. County department heads may declare property with an estimated value below \$3,000.00 surplus. Property with an estimated value above \$3,000.00 must be declared surplus by the Board of Commissioners.
- (b) Surplus Personal property may be sold at auction if the County determines that the auction contemplated may result in a higher net return than if the property were sold by competitive written bid.
- (c) The County may sell surplus personal property, including recyclable or reclaimed materials, without formal competitive bidding if it has determined that a negotiated sale will result in increased net revenue or the current market value per item is deemed to be less than \$15,000. The County may establish a selling price, schedule and advertise a sale date, and sell to the first qualified buyer meeting the sale terms.
- (d) When the current value per item is deemed to exceed \$15,000, the surplus personal property must be offered for competitive bid and be advertised, or be offered for sale at public auction in accordance with this Chapter. If no bids are received or if a determination is made that the market value of the property exceeds the offer of the highest responsible bidder, all bids may be rejected and the county may negotiate a sale subject to the following conditions:
 - (i) An appraisal of the market value of the property is obtained and documented and the negotiated sale price exceeds the market value; or
 - (ii) The sale amount exceeds the highest bid received through the bidding or auction process.
- (e) The County may sell surplus personal property through a commercially recognized third party liquidator if it has determined that a liquidation sale will result in increased net revenue.

(2) Donations of Personal Property.

- (a) The County may donate or sell surplus personal property of any value, without competitive bidding, including recyclable or reclaimed materials to another public agency, or any sheltered workshop, or nonprofit organization, after a determination has been made that the personal property is not needed for other county purposes.
 - (b) The County shall maintain a record of all transfers or donations sales authorized by this section.
- (3) For the purposes of this section, the trade in or exchange of surplus County personal property to an equipment dealer in conjunction with a purchase from that dealer will not be considered a disposition of personal property nor subject to any requirements in this section.

15.140 CONTRACTS REQUIRING MODIFIED PROCUREMENT PROCEDURES

- (1) Information and Telecommunication Systems Contracts.
 - (a) Contracts for acquisition of information technology and/or telecommunication system hardware and software may be let using alternate competitive procurement methods subject to the following conditions:
 - (i) If the contract amount does not exceed \$150,000, the County contracting agency shall, as a minimum, follow informal competitive procurement methods. Prior to selection of a vendor, reasonable efforts will be made to solicit proposals from three or more vendors. Justification of award shall be documented and become a public record of the county.
 - (ii) If the contract amount exceeds \$150,000, the County may use the request for proposal process and shall solicit written proposals pursuant to this chapter. The County shall document the evaluation and award process, which will be part of the public record justifying the award.
 - (iii) If the amount of the contract is estimated to exceed \$500,000, in addition to the requirements of subsections (1)(b) of this section, the County shall provide proposers the opportunity to review the evaluation of their proposal before final management review and selection.
 - (b) Telecommunications solicitation authorized in subsection (1) shall:
 - (i) State the contractual requirements in the solicitation document;
 - (ii) State the evaluation criteria to be applied in awarding the contract and the roles of any evaluation committee. Criteria that would be used to identify the proposal that best meets the County's needs may include, but are not limited to, cost, quality, service and support, compatibility and interconnectivity, product or system reliability, vendor viability and financial stability, operating efficiency, and expansion potential;
 - (iii) State the provisions made for vendors to comment on any specifications which they feel limit competition.
- (2) Telecommunications Services and Equipment.
 - (a) In determining the appropriate procurement method for telecommunications services, the department will determine whether competition exists. In determining competition, the department may consider the following factors:
 - (i) The extent to which alternative providers exist in the relevant geographic and service market. The relevant market will vary from service category to service category and cannot be pre-determined in advance. For example, an alternative long distance provider might offer services in Portland, but not in Medford, or the rest of the state.
 - (ii) The extent to which alternative services offered are comparable or substitutable in technology, service provided, and performance. For example, if the department requirement is for digital services, analog services are not comparable or substitutable.
 - (iii) The extent to which alternative providers can respond to the department's interests in consistency and continuity of services throughout its service area, volume discounts, equitable service for all users, centralized management, and limiting the County's liability.
 - (b) Upon determination that competition does not exist for the relevant service and geographical area, the department may proceed to secure the service on a sole source basis.
- (3) Office Copier Purchases.

- (a) The County may enter into multiple price agreements or material and service contracts for the purchase, rental or lease of office copying equipment. Except for this multiple award exemption, such agreements shall otherwise conform to the requirements of PCCO 15.115.
 - (b) In exercising this exemption the County shall fully consider the operating capabilities, limitations and cost of each brand or model and select the brand which will produce the best combination of performance and cost per copy for each application.
- (4) Specification of Particular Brand Names or Product.
 - (a) A brand name or equal specification may be used when the use of a brand name or equal specification is advantageous to the department, because the brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by the department.
 - (b) The department is entitled to determine what constitutes a product that is equal or superior to the product specified, and any such determination is final.
 - (c) Nothing in this section may be construed as prohibiting a department from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the department.
 - (d) A brand name specification may be prepared and used only if the department determines for a solicitation or a class of solicitations, including for public improvements, that only the identified brand name specification will meet the needs of the department based on one or more of the following written findings:
 - (i) It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts;
 - (ii) The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to the department;
 - (iii) There is only one manufacturer or seller of the product of the quality, performance or functionality required; or
 - (iv) Efficient utilization of existing goods requires the acquisition of compatible goods or services.
- (5) Purchasing From Sole Source, Single Seller.
 - (a) A department may purchase a particular product or service available from only one source, after documenting the procurement file with findings of current market research to support the determination that the product is available from only one seller or source. The department's findings shall also include:
 - (i) A brief description of the contract or contracts to be covered including contemplated future purchases;
 - (ii) Description of the product or service to be purchased; and
 - (iii) The reasons the department is seeking this procurement method, which shall include any of the following:
 - (A) Efficient utilization of existing goods requires the acquisition of compatible goods or services; or

- (B) That the goods or services required for the exchange of software or data with other public or private entities are available from only one source; or
 - (C) The particular goods or services are for use in a pilot or an experimental project.
 - (D) Other findings that support the conclusion that the goods or services are available from only one source.
- (b) If the department intends to make several purchases of the product or service from a sole source for a period not to exceed five years, it may so state in the solicitation file and in the solicitation document, if any. Such documentation shall be sufficient notice as to subsequent purchases.
- (6) Single Manufacturer, Multiple Sellers.
 - (a) The County may specify a product or service available from only one manufacturer but available through multiple sellers, after documenting the procurement file with the County's information required in this subsection, and subject to the following:
 - (i) If the total purchase is \$15,000 or more but does not exceed \$150,000 and a comparable product or service is not available under an existing state requirements contract, competitive quotes shall be obtained and retained in the procurement file; or
 - (ii) If the amount of the purchase exceeds \$150,000, the product or service shall be obtained through competitive bidding.
 - (b) If the County intends to make several purchases of the product of a particular manufacturer or seller for a period not to exceed five years, it may so state in the solicitation file and in the solicitation document, if any. Such documentation shall be sufficient notice as to subsequent purchases. If the total purchase amount is estimated to exceed \$150,000, this shall be stated in the advertisement for bids or proposals.

15.145 APPEALS

- (1) Procedure. The procedure for appeals from decisions of the public contracting officer shall be as follows:
 - (a) Notices of appeal shall be in writing addressed to the public contracting officer and must be submitted no later than 14 calendar days from the date of the challenged decision.
 - (b) Immediately upon receipt of written notice of appeal, the public contracting officer shall inform the Board.
 - (c) Upon receipt of notice of appeal, the Board shall notify the person appealing of the time and place of the hearing.
 - (d) The Board shall conduct a de novo hearing according to the provisions of ORS 279.045(3) and decide the appeal within 30 days after receiving the notification and shall set forth in writing the reasons for its decisions.