

# TITLE 10

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

### LCPR 137-046

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### I. GENERAL APPLICATION

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#### 137-046-0100 Application; Federal Law Supremacy

(1) The Linn County Public Contracting Rules (LCPR) are rules of procedure for Public Contracting as required and authorized under ORS 279A.065 and ORS 279A.070 and consist of the following four divisions:

(a) Division 46, which is applicable to all Public Contracting;

(b) Division 47, which describes procedures for Public Contracting for Goods, Services, and Personal Services other than Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, and Related Services;

(c) Division 48, which describes procedures for Public Contracting for Architectural,

Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, and Related Services; and

(d) Division 49, which describes procedures for Public Contracting for Construction Services.

(2) In the event of conflict between rules in Division 46 and rules in Divisions 47, 48 and 49, the rules in Divisions 47, 48 and 49 take precedence over the rules in Division 46.

(3) Except as otherwise expressly provided in ORS 279C.800 through ORS 279C.870 (Prevailing Wage Rate), and notwithstanding ORS Chapters 279A, 279B, and ORS 279C.005 through 279C.670, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of ORS chapters 279A, 279B, and ORS 279C.005 through 279C.670 or the LCPR, or require additional conditions in Public Contracts not authorized by ORS chapters 279A, 279B, and ORS 279C.005 through 279C.670 or the LCPR.

[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.030 & ORS 279A

### 137-046-0110 Definitions for LCPR

Unless the context of a specifically applicable definition in the Code requires otherwise, capitalized terms used in LCPR will have the meaning set forth in the division of the LCPR in which they appear, and if not defined there, the meaning set forth in Division 46, and if not defined in Division 46, the meaning set forth in the Code. The following terms, when capitalized in the LCPR, shall have the meaning set forth below:

(1) "**Addendum**" or "**Addenda**" means an addition to, deletion from, a material change in, or general interest explanation of a Solicitation Document.

(2) "**Administering Contracting Agency**" has the meaning set forth in ORS 279A.200(1)(a) and for Interstate Cooperative Procurements includes the entities specified in ORS 279A.220(4). For purposes of the LCPR, "Administering Contracting Agency" may also mean Linn County.

(3) "**Award**" means, as the context requires, identifying the Person with whom the County intends to enter into a Public Contract following the resolution of any protest of the County's selection of that Person and the completion of all Contract negotiations. The award of a Contract is not binding on the County nor considered acceptance until the Contract is executed and delivered by the County.

(4) "**Bid**" means a Written Offer to an Invitation to Bid.

(5) "**Bidder**" means Person that submits a Bid.

(6) "**Board**" means the Linn County Board of Commissioners.

(7) "**Closing**" means the date and time announced in a Solicitation Document as the deadline for submitting Offers.

(8) "**Code**" or "**Public Contracting Code**" means ORS Chapters 279A, 279B and 279C.

(9) "**Competitive Range**" means the Proposers with whom the County intends to conduct discussions or negotiations with if the County intends to conduct discussions or negotiations in accordance with LCPR 137-047-0262 or LCPR 137-049-0650. The size of the Competitive Range will be stated in the Solicitation Document. The size of the Competitive Range will be decreased if the number of Proposers that submit Proposals is less than the specified number and may be increased by the County in accordance with LCPR 137-047-0262 or 137-049-0650.

(10) "**Contract**" A "**Public Contract**," has the meaning set forth in ORS 279A.010.

(11) "**Contract Price**" means, as the context requires, (I) the maximum monetary obligations that the County either will or may incur under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract, (ii) the maximum not-to-exceed total cost specified in the Contract, or (iii) the unit prices for Goods or Services or Personal Services as set forth in the Contract.

(12) "**Contract Review Authority**" means the Linn County Board of Commissioners or its delegatee as provided for in LCC Chapter 630.

(13) "**Contracting agency**" has the meaning set forth in ORS 279A.010(b). For the purposes of the LCPR, "Contracting agency" may also mean Linn County.

(14) "**Contractor**" means the Person, including a Consultant as defined in LCPR 137-048-0110(1), with whom the County enters into a Contract.

(15) "**County**" means Linn County.

(16) "**Cooperative Procurement**" means a Procurement conducted on behalf of more than one governmental body.

(17) "**Descriptive Literature**" means the materials submitted in response to a Solicitation Document to provide additional information concerning an Offer or Bid.

(18) "**Department Head**" has the meaning set forth in LCC 630.020(E).

(19) "**Disqualification**" means a disqualification, suspension or debarment pursuant to ORS 200.065, 200.075 or 279A.110.

(20) "**Electronic Advertisement**" means the County's Solicitation Document, Request for Quotes, request for information, or other document inviting participation in the County's Procurements available over the Internet via (a) the World Wide Web or some other Internet protocol; or (b) the County's Electronic Procurement System.

(21) "**Electronic Offer**" means a response to the County's Solicitation Document or Request for Quotes submitted to the County via (a) email; (b) the World Wide Web or some other Internet protocol; or c) through the County's Electronic Procurement System.

(22) "**Electronic Procurement System**" means an information system that Persons may access through the Internet using the World Wide Web or some other Internet protocol, or that Persons may otherwise remotely access using a computer, that enables Persons to send Electronic Offers and the County to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to a Procurement.

(23) "**Emergency**" means circumstances that create a substantial risk of loss, damage or interruption of services or a substantial threat to prop-

erty, public health, welfare or safety; and require the prompt execution of a Contract to remedy the condition.

(24) "**Goods**" has the meaning set forth in 279A.010(I)

(25) "**Goods and Services**" or "**Goods or Services**" means any combination of Goods and/or Services.

(26) "**Intermediate Procurement**" has the meaning as set forth in either LCPR 137-047-0270 or LCPR 137-049-0160.

(27) "**Interstate Cooperative Procurement**" means a Permissive Cooperative Procurement in which one or more of the participating governmental bodies are located outside the state of Oregon.

(28) "**Invitation to Bid**" or "**ITB**" means the Solicitation Document issued to invite Bids from prospective Contractors in accordance with either ORS 279B.055 or 279C.335.

(29) "**Joint Cooperative Procurement**" means a Cooperative Procurement in which the County is identified in the Solicitation Document as a participating governmental body, and the County's contract requirements, or estimated contract requirements, are included in the Solicitation Document.

(30) "**Linn County Public Contracting Rules**" or "**LCPR**" means the rules of procedure for Contracting established for Linn County by the Linn County Board of Commissioners which are set forth in LCPR Chapter 137, Divisions 46,47, 48, and 49.

(31) "**Model Rules**" means the Attorney General's model rules of procedure for Public Contracting as required under ORS 279A.065, which are set forth in OAR Chapter 137, Divisions 46, 47, 48 and 49.

(32) "**Nonresident Bidder**" has the meaning as set forth in ORS 279A.120(a).

(33) "**Offer**" means a Written offer submitted in response to a Solicitation Document.

(34) "**Offeror**" means a Person who submits an Offer.

(35) "**Opening**" means the date, time and place specified in the Solicitation Document for the public opening of Offers or Bids.

(36) "**Permissive Cooperative Procurement**" means a Cooperative Procurement in which the County was not identified in the Solicitation Document as a participating governmental body.

(37) "**Person**" means any of the following with legal capacity to enter into a Contract: individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

(38) "**Personal Services**" means the services or type of services performed under a Personal Services Contract.

(39) "**Personal Services Contract**" or "**Contract for Personal Services**" means a contract or member of a class of contracts, other than a contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services (as defined in LCPR 137-048-0110), that predominantly requires specialized skills, knowledge, and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic, or management discretion or judgment, and that the County has designated as a Personal Services Contract pursuant to ORS 279A.055. See LCPR 137-047-920 for specific designations.

(40) "**Procurement**" has the meaning as set forth in ORS 279A.010(1)(w).

(41) "**Product Sample**" means the exact Goods, or a representative portion of the Goods, offered in an Offer, or the Goods requested in the Solicitation Document as a sample. Unless otherwise provided in the Solicitation Document, the Product Sample shall be the exact product or a representative portion of that product offered by the Offeror.

(42) "**Proposal**" means a Written response to a Request for Proposals.

(43) "**Proposer**" means a Person that submits a Proposal.

(44) "**Public Contracting**" means Procurement activities described in the Public Contracting Code and the LCPR relating to obtaining, modifying or administering public contracts or price agreements.

(45) "**Public Improvement**" has the meaning as set forth in LCPR 137-049-0120(7).

(46) "**Recycled Materials**" means recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as defined in ORS 279A.010(1)(ii)).

(47) "**Request for Proposals**" or "**RFP**" means the Solicitation Document issued to invite Proposals in accordance with ORS.279B.060, 279C.110, 279C.337, or 279C.400.

(48) "**Request for Qualifications**" or "**RFQ**" means a Written document issued by the County to which Contractors respond in Writing by describing their experience with and qualifications for the Services, Personal Services, or Architectural, Engineering or Land Surveying Services, or Related Services (as defined in LCPR 137-048-0110), described in the document.

(49) "**Request for Quotes**" means a Written or oral request for prices, rates, or other conditions under which a potential Contractor would provide Goods or perform Services, Personal Services or Public Improvements described in the request.

(50) "**Responsible Offeror**" (also, "**Responsible Bidder**" or "**Responsible Proposer**," as applicable) means a Person that has submitted an Offer and meets the standards set forth in LCPR 137-047-0640 or LCPR 137-049-0390(2), and that has not been debarred or disqualified by the County under LCPR 137-047-0575 or LCPR 137-049-0370. When used alone, "**Responsible**" or "**Responsibility**" means meeting the aforementioned standards.

(51) "**Responsive Offer**" (also, "**Responsive Bid**" or "**Responsive Proposal**," as applicable) means an Offer that substantially complies in all material respects with applicable solicitation requirements. When used alone, "**Responsive**" means having the characteristic of substantially complying in all material respects with applicable solicitation requirements.

(52) "**Signed**" or "**Signature**" means any mark, word or symbol attached to or logically

associated with a document and executed or adopted by a Person with the intent to be bound.

(53) "**Services**" mean services, other than Personal Services as so designated under LCPR 137-047-920.

(54) "**Solicitation Document**" means a Request for Quotes, an Invitation to Bid, Request for Proposals or other document issued to invite Offers from prospective Contractors pursuant to ORS Chapter 279B or ORS Chapter 279C. The following are not Solicitation Documents unless they invite Offers from prospective Contractors: a Request for Qualifications, a prequalification of bidders, a request for information, a sole source notice, an approval of a Special Procurement, or a request for product prequalification. A project-specific selection document under a Price Agreement that has resulted from a previous Solicitation Document is not itself a Solicitation Document.

(55) "**Specification**" means any description of the physical or functional characteristics, or of the nature of, Goods, Services, Personal Services, or Public Improvement, including any requirement for inspecting, testing or preparing a Goods, Services, Personal Services, or Public Improvement for delivery and the quantities or qualities of materials to be furnished under a Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed.

(56) "**Surplus Property**" means all personal property, vehicles and titled equipment property that a County elected official or department head has determined is no longer needed by the elected official or department head to perform the duties of the office or department, and the personal property has resale value.

(57) "**Work**" means the furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual item in a Contract and successful completion of all duties and obligations imposed by the Contract.

(58) "**Written**" or "**Writing**" means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression,

intended to represent or convey particular ideas or meanings. "Writing," when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings. It also includes electronic transmissions or facsimile documents when required by applicable law or permitted by a Solicitation Document or Contract.

[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

### **137-046-0120 Policy**

The County shall conduct Public Contracting to further the policies set forth in ORS 279A.015, elsewhere in the Code, and the LCPR.

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

Stats. Implemented: ORS 279A.015 & ORS 279A.065

### **137-046-0130 Application of the Code the Model Rules and LCPR; Exceptions**

(1) Except as set forth in this Section, the County shall exercise all rights, powers and authority related to Public Contracting in accordance with the Code and the LCPR.

(2) The County opts out of the Model Rules and adopts the LCPR as its own rules of procedure for Public Contracting pursuant to 279A.065.

(3) Except as otherwise provided in the LCPR, the Code and the LCPR do not apply to Personal Services Contracts or classes of contracts designated by the County pursuant to ORS 279A.055 and found at LCPR 137-047-920.

(4) The LCPR does not apply to the contracts or the classes of contracts described in ORS 279A.025(2).

(5) The County may enter into Public Contracts under a federal program described in ORS 279A.180 without following the procedures set forth in ORS 279B.050 through ORS 279B.085.

(6) The County may enter into contracts for Goods or Services with non-profit agencies providing employment opportunities for individuals with disabilities pursuant to ORS 279.835 through 279.855 without following the source selection procedures set forth in either ORS 279A.200

through ORS 279A.225, or ORS 279B.050 through ORS 279B.085. However, the County must enter into such contracts in accordance with administrative rules promulgated by the State of Oregon, Department of Administrative Services, under OAR Chapter 125, Division 55.

(7) The LCPR shall not apply to those contracts specifically exempted from the Procurement process by another provision of law.

[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.050, ORS 279A.055, 279A.065 & 279A.180

### **137-046-140 Delegation of Authority**

(1) Pursuant to LCC Chapter 430, and except as otherwise provided in the LCPR, the powers and duties of the Local Contract Review Board under the Public Contracting Code shall be exercised and performed by the Board.

(2) All powers and duties given or assigned to Department Heads by the Board shall be exercised or performed pursuant to LCC Chapter 630.

(3) The Linn County Administrative Officer is hereby delegated the following authority:

(a) To declare Goods, Services, or Personal Services to be available from one source; and

(b) To declare the need for an Emergency Procurement.

[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.060, ORS 279A.0070, ORS 279A.075, & ORS 203.010

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## **II. MINORITIES, WOMEN AND EMERGING SMALL BUSINESSES**

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### **137-046-0200 Affirmative Action; Limited Competition Permitted**

Pursuant to ORS 279A.100, the County may limit competition on Public Contracts for Goods and Services, or on other Public Contracts with an estimated cost of \$50,000 or less, to carry out affirmative action policies in accordance with policies and procedures that are or may be established by the County.

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

Stats. Implemented: ORS 279A.065 & ORS 279A.100

### **137-046-0210 Subcontracting to and Contracting with Emerging Small Businesses; Disqualification**

(1) Pursuant to ORS 279A.105, the County may require a Contractor to subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:

(a) A business enterprise that is certified under ORS 200.055 as an emerging small business;

(b) A business enterprise that is:  
(A) Certified under ORS 200.055 as an emerging small business; and

(B) Is located in or draws its workforce from economically distressed areas, as designated by the Oregon Economic and Community Development Department.

(2) A subcontractor certified under ORS 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:

(a) Its principal place of business is located in an area designated as economically distressed by the Oregon Economic and Community Development Department; or

(b) The Contractor certifies in Writing to the County that a substantial number of the subcontractor's employees or subcontractors that will manufacture the goods or complete the services under the contract reside in an area designated as economically distressed by the Oregon Economic and Community Development Department. For the purposes of making the foregoing determination, the County shall determine in each particular instance what proportion of a Contractor's subcontractor's employees or subcontractors constitute a substantial number.

(3) The County shall include in each Solicitation Document a requirement that Offerors certify in their Offers in a form prescribed by the County, that the Offeror has not discriminated, and will not discriminate, against a subcontractor in the awarding of a subcontract because the subcontractor is certified under ORS 200.055 as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, an emerging small

business, or a business that a service-disabled veteran owns.

**(4) Disqualification.**

(a) The County may disqualify a Person from consideration of Award of Contracts under ORS 200.065(5), or suspend a Person's right to bid on or participate in any public contract pursuant to ORS 200.075(1) after providing the Person with notice and a reasonable opportunity to be heard in accordance with subsections (d) and (e) of this Section.

(b) As provided in ORS 200.065 and 200.075 the County may disqualify or suspend a Person's right to submit an Offer or to participate in a Contract (e.g. act as a subcontractor) as follows:

(A) For a Disqualification under ORS 200.065, the County may disqualify a Person upon finding that the Person engaged in any of the activities made unlawful by ORS 200.065(1) or (2), or if the Person has been disqualified by another contracting agency pursuant to ORS 200.065.

(B) For a Disqualification under ORS 200.075, the County may suspend a Person upon finding that the Person engaged in any of the acts prohibited by ORS 200.075(a) through (c).

(c) The County may disqualify, or suspend a Person's right to submit Offers or participate in Public Contracts, only for the length of time permitted by ORS 200.065 or ORS 200.075, as applicable.

(d) The County will notify the Person in Writing of a proposed Disqualification pursuant to this Section, served personally or by registered or certified mail, return receipt requested. This notice shall:

(A) State that the County intends to disqualify or suspend the Person;

(B) Set forth the reasons for the Disqualification;

(C) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the County does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived its right to a hearing;

(D) Include a statement of the authority and jurisdiction under which the hearing will be held;

(E) Include a reference to the particular sections of the statutes and LCPR involved;

(F) State the proposed DBE Disqualification period; and

(G) State that the Person may be represented by legal counsel.

(e) Hearing. The County shall schedule a hearing upon receipt of the Person's timely request. Within a reasonable time prior to the hearing, the County shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing.

(f) Notice of Disqualification. The County shall notify the Person in Writing of its Disqualification, served personally or by registered or certified mail, return receipt requested. The notice shall contain:

(A) The effective date and period of Disqualification;

(B) The grounds for Disqualification; and

(C) A statement of the Person's appeal rights and applicable appeal deadlines.

**(5) Contract and Subcontract Conditions.** If the County awards a Contract to an Offeror that has been determined to be responsible under ORS 200.005(8) and 200.045(3), or awards a Contract under ORS 279A.100:

(a) The County must provide, as a material condition of the Contract:

(A) That the Contractor must maintain its certification under ORS 200.055 throughout the term of the Contract and any extensions (if the County used the certification as a factor in or as a basis for the award of the Contract);

(B) That the Contractor must promptly pay each subcontractor that is certified under ORS 200.055 in accordance with ORS 279B.220, or 279C.570 and ORS 279C.580, whichever apply to the Contract;

(C) That the Contractor must include, in any subcontract the Contractor establishes in connection with the Contract, a provision that

requires the subcontractor to maintain the subcontractor's certification under ORS 200.055 throughout the term of the subcontract and any extensions (if the Contractor used the certification as a factor in or as a basis for the award of the subcontract);

(D) That the County may require the Contractor to terminate a subcontract with a subcontractor that fails to maintain its certification under ORS 200.055 throughout the term of the subcontract and any extensions.

(b) In the administration of Contracts that are subject to this subsection (5), the County must verify the Contractor's and any subcontractor's compliance with subsection (5)(a) of this rule.

(c) Subsection (5)(a)(A) of this Section does not apply to an emerging small business that ceases to qualify as a tier one firm or a tier two firm (as ORS 200.005 defines those terms) due to the growth in the business's number of full-time equivalent employees or in average annual gross receipts during the term of the Contract. This subsection (5) does not apply to an emerging small business for which a certification under ORS 200.055 expires during the term of the Contract or any extensions.

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

Stats. Implemented: ORS 200.065, ORS 200.075, ORS 279A.065, ORS 279A.105 & ORS 279A.110

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### **III. CONTRACT PREFERENCES**

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#### **137-046-0300 Preference for Oregon Goods and Services; Nonresident Bidders**

(1) Pursuant to ORS 279A.120, when the County receives Offers identical in price, fitness, availability and quality, and chooses to award a Contract, the County will award the Contract based on the following order of precedence:

(a) The County shall award the Contract to the Offeror among those submitting identical offers that is offering Goods or Services, or both, or Personal Services that have been manufactured, produced, or are to be performed in Oregon.

(b) If two or more Offerors submit identical Offers, and both offer Goods or Services, or

both, or Personal Services manufactured, produced, or are to be performed in Oregon, the County shall award the Contract by drawing lots among the identical Offers. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice of the date, time, and location of the drawing of lots and an opportunity to be present when the lots are drawn.

(c) If the County receives identical Offers, and none of the identical Offers offer Goods or Services, or both, or Personal Services manufactured, produced, or are to be performed in Oregon, then the County shall award the Contract by drawing lots among the identical Offers. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice of the date, time, and location of the drawing of lots and an opportunity to be present when the lots are drawn.

(2) **Determining if Offers are Identical.** The County shall consider Offers identical in price, fitness, availability, and quality as follows:

(a) Bids received in response to an Invitation to Bid are identical in price, fitness, availability, and quality if the Bids are Responsive, and offer the Goods or Services or Personal Services described in the Invitation to Bid at the same price.

(b) Proposals received in response to a Request for Proposals are identical in price, fitness, availability, and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.

(c) Offers received in response to a Special Procurement conducted pursuant to ORS 279B.085 are identical in price, fitness, availability, and quality if, the County determines, in Writing, that two or more Offers are equally advantageous to the County.

(d) Offers received in response to an Intermediate Procurement conducted pursuant to ORS 279B.070 are identical if the Offers equally best serve the interests of the County in accordance with 279B.070(4).

(3) **Determining if Goods or Services or Personal Services are Manufactured or Pro-**

**duced in Oregon.** For the purposes of complying with subsection (1) of this Section, the County shall determine whether a Contract is predominantly for Goods, Services, or Personal Services and then use the predominant purpose to determine if the Goods, Services, or Personal Services are manufactured, produced, or performed in Oregon. The County may request, either in a Solicitation Document, following Closing, or at any other time determined appropriate by the County, any information the County determines is appropriate and necessary to allow the County to determine if the Goods or Services or Personal Services are manufactured or produced in Oregon. The County may use any reasonable criteria to determine if Goods, Services, or Personal Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that the County applies those criteria equally to each Offer.

(4) **Procedure for Drawing Lots.** In any instance when this Section calls for the drawing of lots, the County shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of being selected, and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

(5) **Discretionary Preference and Award.** Under ORS 279A.128, the County may provide, in a Solicitation Document for Goods, Services, or Personal Services, a specified percentage preference of not more than ten percent for Goods fabricated or processed entirely in Oregon, or Services or Personal Services performed entirely in Oregon. When the County provides for a preference under this Section, and more than one Offeror qualifies for the preference, the County may give a further preference to a qualifying Offeror that resides in or is headquartered in Oregon. The County may establish a preference percentage higher than ten percent by Written order that finds good cause to establish the higher percentage and which explains the County's reasons and evidence for finding good cause to establish a higher per-

centage. The County may not apply the preferences described in this Section in a Procurement for emergency work, minor alterations, ordinary repairs or maintenance of a Public Improvement, or construction work that is described in ORS 297C.320.

(6) **Nonresident Contractor.** If the Contract Price exceeds \$10,000 and the Contractor is a Nonresident Bidder, the Contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, Contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report shall be forwarded to the County. The County shall satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

[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 279A.120

### **137-046-0310 Reciprocal Preferences**

When evaluating Bids pursuant to LCPR 137-047-0255, LCPR 137-047-0257 or LCPR 137-049-0390, the County shall add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference that would be given to that Bidder in the state in which the Bidder resides. The County may rely on the list prepared and maintained by the State of Oregon pursuant to ORS 279A.120(4) to determine both (i) whether the Nonresident Bidder's state gives preference to in-state bidders, and (ii) the amount of such preference.

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

Stats. Implemented: ORS 279A.065 & ORS 279A.120

### **137-046-0320 Preference for Recycled Materials**

(1) Notwithstanding provisions of law requiring the County to award a Contract to the lowest responsible bidder or best proposer or provider of a quotation, and in accordance with subsection (2) of this Section, the County shall give preference to the Procurement of goods manufactured from recycled materials.

(2) In comparing goods from two or more Offeror, if at least one Offeror offers goods manufactured from recycled materials, and at least one Offeror does not, the County shall select the Offeror offering Goods manufactured from recycled materials if each of the following four conditions exists:

- (a) The recycled product is available;
- (b) The recycled product meets applicable standards;
- (c) The recycled product can be substituted for a comparable non-recycled product; and
- (d) The recycled product's costs do not exceed the costs of non-recycled products by more than five percent, or a higher percentage if a Written determination is made by the County and set forth in the Solicitation Document. For purposes of making the foregoing determination, the County shall consider the costs of the goods following any adjustments the County makes to the price of the goods for purposes of evaluation pursuant to LCPR 137-046-0310.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20]  
Stats. Implemented: ORS 279A.065 & ORS 279A.125

**137-046-0330 Federally Funded Transit Projects - Preference for Exceeding Federal Buy America Requirements**

(1) The County may, in its Solicitation Documents to award a Contract for a transit project that will be funded in whole or in part with funds from the federal government or a federal government agency, provide for the application of a preference in favor of an Offeror whose bid or proposal exceeds the applicable federal Buy America requirements.

(a) The County has discretion to adjust the amount or character of the preference to account for variations in the nature of the Contract or project and the degree to which each Offeror's bid or proposal exceeds the federal Buy America requirements.

(b) For example, in an ITB, the County may authorize a range of preference price percentages to account for the various degrees to which the Bidders might exceed the federal Buy America

requirements. In no event, however, may the percentage preference given to a Bidder exceed ten percent of the total bid price.

(c) Similarly, under an RFP, the County may allocate and award evaluation points to reflect the degrees to which the Proposers might exceed the applicable federal Buy America requirements. In no event, however, may those percentage points exceed ten percent of the total number of points available for award under the RFP.

[Adopted 2020-060 eff 03/17/20; amd 2020-163 eff 06/23/20]  
Stats. Implemented: ORS 279A.065 & ORS 279A.205

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**IV. COOPERATIVE PROCUREMENT**

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**137-046-0400 Authority for Cooperative Procurements**

(1) The County may participate in, sponsor, conduct, or administer Joint Cooperative Procurements, Permissive Cooperative Procurements, and Interstate Cooperative Procurements in accordance with ORS 279A.200 through 279A.225.

(2) The County shall determine, in Writing, whether a solicitation and award process for a Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in ORS 279B.055, ORS 279B.060 or ORS 279B.085, consistent with ORS 279A.200(2).

[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 279A.205

**137-046-0410 Responsibilities of the County when Administering or Participating in a Cooperative Procurement**

(1) If the County is administering a Cooperative Procurement, the County may establish the conditions under which Persons may participate in the Cooperative Procurements being administered by the County. Such conditions may include, without limitation, whether each Person that participates in the Cooperative Procurement must pay administrative fees to the County, whether the participants must enter into a Written agreement with the County, or any other matters related to the administration of the Cooperative Procurement

and the resulting Contract. If the County chooses to administer a Cooperative Contract, it may, but is not required to, include provisions in the Solicitation Document for a Cooperative Procurement or advertise the Solicitation Document in a manner to assist any purchasing contracting agency's compliance with the Code or this Section.

(2) If the County enters into a Contract based on a Cooperative Procurement, the County shall comply with the Code and this Section, including without limitation those sections of the Code and this Section that govern:

(a) The extent to which the County may participate in the Cooperative Procurement,

(b) The advertisement of the solicitation document related to the Cooperative Procurement, and

(c) Public notice of the County's intent to establish Contracts based on a Cooperative Procurement.

[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 279A.205

### **137-046-0420 Joint Cooperative Procurements**

If the County chooses to participate in, sponsor, conduct, or administer a Joint Cooperative Procurement, it may do so only in accordance with ORS 279A.210.

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

Stats. Implemented: ORS 279A.065 & ORS 279A.210

### **137-046-0430 Permissive Cooperative Procurements**

If the County chooses to participate in, sponsor, conduct, or administer a Permissive Cooperative Procurement, it may do so only in accordance with ORS 279A.215.

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

Stats. Implemented: ORS 279A.065 & ORS 279A.215

### **137-046-0440 Advertisements of Intent to Establish Contracts through a Permissive Cooperative Procurement**

(1) If the County wishes to enter into a Contract arising out of a Permissive Cooperative Procurement, it shall publish notice of its intent to do so if the County estimates that it will spend in

excess of \$250,000 on Goods, Services, or Personal Services acquired under the Contract.

(2) The notice of intent required by LCPR 137-046-0440(1) shall contain the information required by ORS 279A.215(2)(b), and the County shall advertise the notice in the same manner as provided in ORS 279B.055(4)(b) and (c). The County shall give the notice required by this Section no fewer than five (5) days before the deadline for submitting comments regarding the County's intent to establish a Contract through a Permissive Cooperative Procurement.

(3) The County may satisfy the notice requirements set forth in LCPR 137-046-0440(1) and (2) by: 1) including the information required by ORS 279A.215(2)(b) in the Solicitation Document related to the Permissive Cooperative Procurement, and 2) including instructions in the Solicitation Document to potential Offerors describing how they may submit comments in response to the County's intent to establish a Contract through the Permissive Cooperative Procurement. The content and timing of such notice shall comply in all respects with ORS 279A.215(2), ORS 279A.215(3) and the LCPR.

(4) The County shall respond to any comments on its intent to establish a Contract through a Permissive Cooperative Procurement as set forth in ORS 279A.215(3)(c).

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

Stats. Implemented: ORS 279A.065 & ORS 279A.215

### **137-046-0450 Interstate Cooperative Procurements**

If the County chooses to participate in, sponsor, conduct, or administer an Interstate Cooperative Procurement, it may do so only in accordance with ORS 279A.220.

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

Stats. Implemented: ORS 279A.065 & ORS 279A.220

### **137-046-0460 Advertisements of Interstate Cooperative Procurements**

The County may participate in an Interstate Cooperative Procurement if at least one of the following occurs:

(1) The Solicitation Document for the Interstate Cooperative Procurement lists the County, or

a Cooperative Procurement group of which the County is a member, and the Solicitation Document is advertised in Oregon in compliance with ORS 279B.055(4) or ORS 279B.060(4) by either:

- (a) The County; or
- (b) The Cooperative Procurement group, or a member of the Cooperative Procurement group of which the County is a member; or

(c) Another purchasing contracting agency, so long as such advertisement would, if given by the County, comply with ORS 279B.055(4) or ORS 279B.060(4) with respect to the County.

(2) If the Solicitation Document was not advertised in accordance with LCPR 137-046-0460(1), the County gives notice of its intent to enter into a Contract based on the terms of the Interstate Cooperative Procurement. The notice of intent shall contain the information required by ORS 279A.220 (2)(b)(B), and the County shall advertise the notice in the same manner as provided in ORS 279B.055(4)(b) and (c). The County shall give the notice required by this Section no fewer than five (5) days before the deadline for submitting comments regarding the County’s intent to establish a Contract through an Interstate Cooperative Procurement.

(3) The County shall respond to any comments on its intent to establish a contract or price agreement through an Interstate Cooperative Procurement as set forth in ORS 279A.220(3)(c).

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20]  
Stats. Implemented: ORS 279A.065 & ORS 279A.220

**137-046-0470 Protests and Disputes**

(1) An Offeror, or potential Offeror, wishing to protest the Procurement process, the contents of a Solicitation Document related to a Cooperative Procurement, or the award or proposed award of a Contract, the bidder or proposer shall direct the protest in accordance with ORS 279B.400 through ORS 279B.425.

(2) The failure of the County to exercise any rights or remedies it has under a Contract entered into through a Cooperative Procurement shall not affect the rights or remedies of any other contracting agency that participates in the Cooperative

Procurement, and shall not prevent any other purchasing contracting agency from exercising any rights or seeking any remedies that may be available to it under its own Contract arising out of the Cooperative Procurement.

(3) Any other protests related to a Cooperative Procurement, or disputes related to a Contract arising out of a Cooperative Procurement, shall be made and resolved as set forth in ORS 279A.225.

[Adopted 2005-052 eff 3/1/05; amd 2020-060 eff 03/17/20]  
Stats. Implemented: ORS 279A.065 & ORS 279A.225

**137-046-0480 Contract Amendments**

The County may amend a Contract entered into pursuant to a Cooperative Procurement as set forth in LCPR 137-047-0800.

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

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**V. REPEALED RULES**

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**137-046-0500 Repealed Rules**

- LCPR 137-030-0000, 137-030-0005, 137-030-0007, 137-030-0008, 137-030-0010, 137-030-0011, 137-030-0012, 137-030-0015, 137-030-0020, 137-030-0025, 137-030-0030, 137-030-0035, 137-030-0040, 137-030-0045, 137-030-0050, 137-030-0055, 137-030-0060, 137-030-0065, 137-030-0070, 137-030-0075, 137-030-0080, 137-030-0085, 137-030-0090, 137-030-0095, 137-030-0100, 137-030-0102, 137-030-0104, 137-030-0105, 137-030-0110, 137-030-0115, 137-030-0120, 137-030-0125, 137-030-0130, 137-030-0135, 137-030-0140, 137-030-0145, 137-030-0150, 137-030-0155, 137-040-0000, 137-040-0005, 137-040-0010, 137-040-0015, 137-040-0020, 137-040-0025, 137-040-0030, 137-040-0035, 137-040-0040, 137-040-0045, 125-300-0000, 125-300-0001, 125-300-0010, 125-310-0012, 125-310-0015, 125-310-0020, 125-310-0025, 125-310-0026, 125-310-0030, 125-310-0032, 125-310-0035, 125-310-0040, 125-310-0045, 125-310-0055, 125-310-0060, 125-310-0068, 125-310-0075, 125-310-0080, 125-310-0090, 125-310-0092, 125-310-0120, 125-310-0135, 125-310-0139, 125-310-0140, 125-310-0145, 125-310-0150, 125-310-

0225, 125-310-0230, 125-310-0300, 125-310-0310, 125-310-0315, 125-310-0320, 125-310-0330, 125-320-0010, 125-320-0020, 125-320-0025, 125-320-0030, 125-340-0010, 125-340-0020, 125-340-0030, 125-340-0040, 125-340-0050, 125-340-0060, 125-360-0123, 137-035-0000, 137-035-0010, 137-035-0020, 137-035-0030, 137-035-0040, 137-035-0050, 137-035-0060, 137-035-0061, 137-035-0066, 137-035-0070, 137-035-0080, 125-350-0005, 125-350-0010, 125-350-0015, 125-350-0020, 125-350-0025 are repealed effective March 1, 2005. The repealed rules will continue to apply to the solicitation of Public Contracts first advertised, but if not advertised then entered into, before March 1, 2005.

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

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## **VI. SURPLUS PROPERTY DISPOSAL**

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### **137-046-0505 Delegation of Property Disposition by Board**

The Board may designate a County officer or employee to act as the Board's agent to dispose of Surplus Property and complete any transaction, with authority to finalize sales and execute documents relating to title.

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

### **137-046-0510 Auction Sales of Personal Property**

(1) Surplus Property may be sold at auction if the County determines that the auction contemplated will probably result in a higher net return than if the property were sold by competitive Written bid.

(2) Notwithstanding any other provision in LCPR 137-046-0505 to 137-046-525, the auction may be conducted electronically by an on-line auction entity such as eBay upon prior approval by the Board after a determination that an on-line auction will likely result in increased net revenue.

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

### **137-046-0515 Sales of Surplus Property**

The County may sell Surplus Property, including recyclable or reclaimed materials, without

formal competitive bidding if the County has determined that a negotiated sale will result in increased net revenue and the following conditions are complied with:

(1) When the current market value per item is deemed to be less than \$1,000, the County may establish a selling price, schedule and advertise a sale date, and sell to the first qualified buyer meeting the sale terms.

(2) When the current value per item is deemed to exceed \$1,000, the Surplus Property must be offered for competitive Written bid and may be advertised in any manner including by Electronic Advertisement or be offered for sale at public auction in accordance with LCPR 137-046-0510. 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:

(a) An appraisal of the market value of the property is obtained and documented and the negotiated sale price exceeds the market value; or

(b) The sale amount exceeds the highest bid received through the bidding or auction process.

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

### **137-046-0520 Liquidation Sales of Surplus Property**

The County may sell Surplus Property through a commercially recognized third party liquidator if the County has determined that a liquidation sale will result in increased net revenue. The selection of the liquidator will be conducted pursuant to the LCPR.

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

### **137-046-0525 Donations of Surplus Property**

(1) The County may transfer Surplus Property, including recyclable or reclaimed materials, without remuneration or only nominal remuneration without competitive bids to the following entities:

(2) Another public agency; or

(a) Any sheltered workshop, work activity center or group care home which operates under

contract or agreement with, or grant from, any state agency and which is certified to receive federal surplus property; or

(b) Any recognized nonprofit entity which is certified to receive federal surplus property.

(3) The County may donate or sell, without competitive bids, Surplus Property to recognized private nonprofit social or health service entities, subject to the following conditions:

(a) A determination has been made that the property is not needed for other public purposes;

(b) If the property has a current market value of \$250 or more, the donation or sale shall:

(A) Be approved by the Board ;

(B) Be documented by the County to be clearly in the public interest.

(c) The County determines this is the most efficient and cost-effective method for disposing of the property.

(4) The County will maintain a record of all transfers, donations or sales authorized by Sections (1) and (2) of this rule.

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

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**Statutory References and Other Authorities:**  
ORS 203; ORS 279A, 279B, 279C; OAR137-046;

**Legislative History of LCPR 137-046:**  
1<sup>st</sup> 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