

TITLE 10

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

LCPR 137-047

PUBLIC PROCUREMENTS FOR GOODS OR SERVICES GENERAL PROVISIONS

TABLE OF CONTENTS

Section Title

137-047-0100	Application	137-047-0490	Extension of time for acceptance of offer
137-047-0110	Definitions	137-047-0500	Responsibility of bidders and proposers
137-047-0250	Methods of source selection	137-047-0525	Qualified products lists
137-047-0255	Competitive sealed bidding	137-047-0550	Prequalification of prospective offerors
137-047-0257	Multistep sealed bids	137-047-0575	Debarment of prospective offerors
137-047-0260	Competitive sealed proposals	137-047-0600	Offer evaluation and award
137-047-0261	Procedures for competitive range, multi-tiered and multistep proposals	137-047-0610	Notice of intent to award
137-047-0262	Competitive range, discussions and negotiations	137-047-0630	Documentation
137-047-0263	Multistep sealed proposals	137-047-0640	Rejection of an offer
137-047-0265	Small procurements	137-047-0650	Rejection of all offers
137-047-0270	Intermediate procurements	137-047-0660	Cancellation of procurement or solicitation
137-047-0275	Sole-source procurements	137-047-0670	Disposition of offers if procurement or solicitation canceled
137-047-0280	Emergency procurements	137-047-0700	Protests and judicial review of special procurements
137-047-0285	Special procurements	137-047-0710	Protests and judicial review of sole-source procurements
137-047-0286	Special Procurements Authorizations	137-047-0720	Protests and judicial review of multi-tiered and multistep solicitations
137-047-0287	Class Special Procurements	137-047-0730	Protests and judicial review of solicitations
137-047-0288	Contract Specific Special Procurements	137-047-0740	Protests and judicial review of contract award
137-047-0290	Cooperative procurements	137-047-0745	Protests and judicial review of qualified products list decisions
137-047-0300	Public notice of solicitation documents	137-047-0750	Judicial review of other violations
137-047-0310	Bids or proposals are offers	137-047-0760	Review of prequalification and debarment decisions
137-047-0320	Facsimile bids and proposals	137-047-0800	Contract amendments
137-047-0330	Electronic procurement	137-047-0810	Types of class special procurments
137-047-0400	Offer preparation	137-047-0815	Equipment repair and overhaul
137-047-0410	Offer submission	137-047-0820	Contracts for price-regulated items
137-047-0420	Bidder or proposer conferences	137-047-0825	Laboratory and medical supplies
137-047-0430	Addenda to solicitation document	137-047-0830	Gasoline, diesel fuel, heating oil, lubricants and asphalts
137-047-0450	Receipt, opening, and recording of offers; confidentiality of offers	137-047-0835	Copyrighted materials
137-047-0460	Late offers, late withdrawals and late modifications	137-047-0840	Periodicals
137-047-0470	Mistakes	137-047-0845	Purchases of used personal property
137-047-0480	Time for agency acceptance	137-047-0850	Advertising contracts
		137-047-0855	Food service contracts
		137-047-0860	Employee benefit insurance
		137-047-0865	Insurance contracts
		137-047-0870	Ballots, ballot pages, and ballot cards
		137-047-0875	Requirements contracts
		137-047-0880	Purchases under requirements contracts
		137-047-0885	Oil or hazardous material removal

137-047-0890	Sponsorship agreements
137-047-0895	Police dogs
137-047-0900	Renewals
137-047-0905	Temporary extensions or renewals
137-047-0910	Statutory authority
137-047-0915	Personal service contracts source selection method
137-047-0920	Scope
137-047-0925	Personal service contracts
137-047-0930	Multi-year personal services contracts

Statutory References and Other Authorities

Legislative History of LCPR 137-047

137-047-0000 Application

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.015

137-047-0100 Definitions

(1) **“Advantageous”** In the County’s best interests, as assessed according to the judgment of the County.

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

(3) **“Class Special Procurement”** A contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of Contracts over time for the acquisition of a specified class of Goods or Services.

(4) **“Contract Specific Special Procurement”** A contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related Contracts for the acquisition of specified Goods or Services on a one-time basis or for a single project.

(5) **“Scope”** The range and attributes of the Goods or Services described in the applicable Procurement document.

(6) **“Special Procurement”** Unless the context requires otherwise, a Class Special Procurement, a Contract Specific Special Procurement or both.

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279A.065

SOURCE SELECTION

137-047-0250 Methods of source selection

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.050

137-047-0255 Competitive sealed bidding

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

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

(a) General Information.

(A) Notice of any bidder conference as follows:

(i) The time, date and location of any bidder conference;

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

(iii) A provision that provides that statements made by the County’s representatives

at the conference are not binding upon the County unless confirmed by Written Addendum.

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

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

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

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

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

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

(b) County Needs. The character of the Goods or Services the County is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements.

(c) Bidding and Evaluation Process.

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

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.055

137-047-0257 Multistep sealed bids

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

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

(3) **Public Notice.** Whenever multistep sealed Bids are used, public notice for the first phase shall be given in accordance with LCPR 137-047-0300. Public notice is not required for the subsequent phases.

(4) **Procedures Generally.** In addition to the procedures set forth in LCPR 137-047-0300 through LCPR 137-047-0490, the County will employ the procedures set forth in this rule for multistep bidding:

(5) **Administrative Remedy.** Proposers may submit a protest to any Addenda or to any action by the County that has the effect of excluding the Proposer from the second phase of multistep bidding to the extent such protests are provided for in the Solicitation Document or required by this section. Failure to so protest shall be considered the Bidders’s failure to pursue an administrative remedy made available to the Bidder by the County.

(6) **Award Protest.** The County will provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and LCPR 137-047-0740. An Affected Bidder may protest, for any of the bases set forth in LCPR 137-047-0720(2), its exclusion from the second phase of a multistep sealed Bid, or an Addendum issued following initial Closing.

(7) **Procedure for Phase One of Multistep Sealed Bids.**

(a) Form. Multistep sealed bidding shall be initiated by the issuance of an Invitation to Bid in the form and manner required for competitive

sealed Bids except as hereinafter provided. In addition to the requirements set forth in LCPR 137-047-0255(2), the multistep Invitation to Bid shall state:

(A) That un-priced technical Bids are requested;

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

(C) That the solicitation is a multistep sealed Bid Procurement, and priced Bids will be considered only in the second phase and only from those Bidders whose un-priced technical Bids are found eligible in the first phase;

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

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

(F) That the Goods or Services being procured shall be furnished generally in accordance with the Bidder's technical Bid as found to be finally eligible and shall meet the requirements of the Invitation to Bid.

(G) Whether Bidders excluded from subsequent phases have a right to protest the exclusion before the notice of intent to Award. Such information can be given or changed by Addenda.

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

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

(d) Evaluation of Un-Priced Technical Bids. Un-priced technical Bids submitted by Bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation to Bid. Un-priced technical Bids shall be categorized as:

(A) Eligible;

(B) Potentially eligible; that is, reasonably susceptible of being made eligible; or

(C) Ineligible. The County will record the basis for determining a Bid ineligible and make it part of the Procurement file. The County may initiate phase two of the procedure if, in the County's opinion, there are sufficient eligible un-priced technical Bids to assure effective price competition in the second phase without technical discussions. If the County finds that such is not the case, the County may issue an Addendum to the Invitation to Bid or engage in technical discussions as set forth in subsection (5)(e) of this rule.

(e) Discussion of Un-priced Technical Bids. The County may seek clarification of a technical Bid by any eligible, or potentially eligible Bidder. During the course of such discussions, the County shall not disclose any information derived from one un-priced technical Bid to any other Bidder. The County may request supplemental information from the Bidder. The response from the Bidder has the effect of amending the technical Bid.

(f) Notice of Ineligible Un-priced Technical Bid. When the County determines a Bidder's un-priced technical Bid to be ineligible, such Bidder shall not be afforded an additional opportunity to supplement its technical Bids.

(g) Mistakes During Multistep Sealed Bidding. Mistakes may be corrected or Bids may be withdrawn during phase one:

(A) Before un-priced technical Bids are considered;

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

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

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

(8) Procedure for Phase Two of Multistep Sealed Bids.

(a) Initiation. Upon the completion of phase one, the County will either:

(A) Open price Bids submitted in phase one (if price Bids were required to be

submitted) from Bidders whose un-priced technical Bids were found to be eligible; or

(B) If price Bids have not been submitted, technical discussions have been held, or Addenda to the Invitation to Bid have been issued, invite each eligible Bidder to submit a price Bid.

(b) Conduct. Phase Two shall be conducted as any other competitive sealed Bid Procurement except:

(A) As specifically set forth in this rule;

(B) No public notice need be given of this invitation to submit price Bids because such notice was previously given.

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.055

137-047-0260 Competitive sealed proposals

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

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

(a) General Information.

(A) Notice of any proposer conference as follows:

(i) The time, date and location of any proposer conference; and

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

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

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

047-0330 for required provisions of electronic Proposals);

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

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

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

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

(b) County Needs. The character of the Goods or Services the County is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements.

(c) Proposal and Evaluation Process.

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

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.060

137-047-0261 Procedures for competitive range, multi-tiered and multistep proposals

(1) Generally. The County may procure Goods or Services employing any combination of the methods of Contractor selection as set forth in ORS 279B.060(6)(b). In addition to the procedures set forth in LCPR 137-047-0300 through LCPR 137-047-0490 for methods of Contractor selection that call for the establishment of a Competitive Range or include discussions or negotiations, the County may employ the procedures set forth in this

rule for Competitive Range, multi-tiered and multistep Proposals.

(2) Administrative Remedy. Proposers may submit a protest to any to any action by the County that has the effect of excluding the Proposer from subsequent phases of a multiple-tiered or multistep Request for Proposals to the extent such protests are provided for in the Solicitation Document. Failure to so protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the County.

(3) Award Protest. The County will provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and LCPR 137-047-0740. An Affected Proposer may protest, for any of the bases set forth in LCPR 137-047-0720(2), its exclusion from the Competitive Range or any phase of a multi-tiered or multistep sealed Proposal, or an Addendum issued following initial Closing, if the County did not previously provide Proposers the opportunity to protest such exclusion or Addendum.

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.060

137-047-0262 Competitive range, discussions and negotiations

(1) Competitive Range.

(a) When required by the Solicitation Document, the County will establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the County will determine and rank the Proposers in the Competitive Range.

(b) Protesting Competitive Range. The County will provide Written notice to all Proposers identifying Proposers in the Competitive Range. The County may provide an opportunity for Proposers excluded from the Competitive Range to protest the County's evaluation and determination of the Competitive Range in accordance with LCPR 137-030-0720.

(c) Intent to Award; Discuss or Negotiate. After determination of the Competitive Range and after any protest period provided in accordance with subsection (1)(b) expires, or after the County has provided a final response to any protest, whichever date is later, the County may either:

(A) Provide Written notice to all Proposers in the Competitive Range of its intent to Award the Contract to the highest-ranked Proposer in the Competitive Range. The County will then commence negotiations in accordance with section (3) of this rule with Proposers in the Competitive Range; or

(B) Engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them as set forth in section (2) of this rule and following such discussions and receipt and evaluation of revised Proposals, conduct negotiations as set forth in section (3) of this rule with the Proposers in the Competitive Range.

(2) Discussions; Revised Proposals. If the County chooses to enter into discussions with and receive best and final Offers, the County will proceed as follows:

(a) Initiating Discussions. The County may initiate oral or written discussions with all Proposers in the Competitive Range (collectively "eligible Proposers") regarding their Proposals with respect to the provisions of the RFP that the County identified in the RFP as the subject of discussions. The County may conduct discussions for the following purposes:

(A) Informing eligible Proposers of deficiencies in their initial Proposals;

(B) Notifying eligible Proposers of parts of their Proposals for which the County would like additional information; or

(C) Otherwise allowing eligible Proposers to develop revised Proposals that will allow the County to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) Conducting Discussions. The County may conduct discussions with each eligible Pro-

poser necessary to fulfill the purposes of this section 2, but need not conduct the same amount of discussions with each eligible Proposer. The County may terminate discussions with any eligible Proposer at any time.

(A) In conducting discussions, the County:

(i) Will treat all eligible Proposers fairly and will not favor any eligible Proposer over another;

(ii) Will disclose other eligible Proposer's Proposals or discussions only in accordance with 279B.060 (6) (a) (B) or (C);

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

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

(i) Continue discussions with a particular eligible Proposer;

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

(iii) Conclude discussions with all remaining eligible Proposers and provide notice pursuant to section 4 of this rule to the eligible Proposers requesting best and final Offers.

(3) Negotiations.

(a) Initiating Negotiations. The County may commence serial negotiations with the highest-ranked eligible Proposers or commence simultaneous negotiations with all eligible Proposers as follows:

(A) After initial determination of which Proposals are Responsive; or

(B) After initial determination of the Competitive Range in accordance with section (1) of this rule; or

(C) After conclusion of discussions with all eligible Proposers and evaluation of revised Proposals (See section 2 of this rule).

(b) Conducting Negotiations.

(A) Scope. The County may negotiate:

(i) The statement of Work;

(ii) The Contract Price as it is affected by negotiating the statement of Work; and

(iii) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Request for Proposals or Addenda thereto. Accordingly, Proposers shall not submit for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Request for Proposals or Addenda thereto.

(B) Terminating Negotiations. At any time during discussions or negotiations that the County conducts in accordance with sections 2 or 3 of this rule, the County may terminate discussions or negotiations with the highest-ranked Proposer, or the Proposer with whom it is currently discussing or negotiating, if the County reasonably believes that:

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

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

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

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

(B) Completed one round of discussions or negotiations with all Proposers in the Competitive Range, unless the County provided for more than one round of discussions or negotiations in the Request for Proposals, in which case the County has completed all rounds of discussions or negotiations.

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

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

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

(e) Any oral modification of a Proposal resulting from negotiations under this section 3 shall be reduced to Writing by the Proposer.

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.060

137-047-0263 Multistep sealed proposals

(1) Generally. The County may procure Goods or Services by using multistep competitive sealed Proposals pursuant to ORS 279.060(6)(b)(G).

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

(3) Public Notice. Whenever multistep sealed Proposals are used, public notice for the first phase will be given in accordance with LCPR 137-047-0300. Public notice is not required for the subsequent phases. However, the County will give notice of the subsequent phases to all Proposers.

(4) Procedure for Phase One of Multistep Sealed Proposals.

(a) Form. Multistep sealed Proposals will be initiated by the issuance of a Request for Proposal in the form and manner required for competitive sealed Proposals except as provided in this rule. In addition to the requirements set forth in LCPR 137-0470260(2), the multistep Request for Proposal may state:

(A) That un-priced technical Proposals are requested;

(B) Whether price Proposals are to be submitted at the same time as un-priced technical Proposals; that if they are, such price Proposals shall be submitted in a separate sealed envelope;

(C) That the solicitation is a multistep sealed Proposal Procurement, and that priced Proposals will be considered only in the subsequent phases from those Proposers whose un-priced technical Proposals are found qualified in the first phase;

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

(E) That the County may conduct oral or written discussions of the un-priced technical Proposals;

(F) That the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal and shall meet the requirements of the Request for Proposal.

(G) Whether Proposers excluded from subsequent phases have a right to protest the exclusion. Such information can be given or changed through Addenda.

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

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

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

(A) Qualified;

(B) Potentially qualified; that is, reasonably susceptible of being made qualified; or

(C) Unqualified. The County will record the basis for determining a Proposal unqualified and make it part of the Procurement file. The County may initiate phase two of the procurement if, in the County's opinion, there are sufficient qualified or potentially qualified un-priced technical Proposals to assure effective price competition in the second phase without technical discussions. If the County finds that such is not the case, the County will issue an Addendum to the Request for Proposal or engage in technical discussions as set forth in subsection 4(e).

(e) Discussion of Un-priced Technical Proposals. The County may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified technical Proposal. During the course of such discussions, the

County will not disclose any information derived from one un-priced technical Proposal to any other Proposer.

(f) Notice of Unqualified Un-priced Technical Proposal. When the County determines a Proposer's un-priced technical Proposal to be unqualified, such Proposer shall not be afforded an additional opportunity to supplement its technical Proposals.

(g) Mistakes During Multistep Sealed Proposals. Mistakes may be corrected or Proposals may be withdrawn during phase one:

(A) Before un-priced technical Proposals are considered;

(B) After any discussions have commenced under subsection 4(e) of this rule;

(C) When responding to any Addenda to the Request for Proposal; or

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

(5) Procedure for Subsequent Phases.

(a) Initiation. Upon the completion of phase one, the County shall either:

(A) Open price Proposals submitted in phase one (if price Proposals were required to be submitted) from Proposers whose un-priced technical Proposals were found to be qualified; or

(B) If price Proposals have not been submitted, technical discussions have been held, or Addenda to the Request for Proposals have been issued, invite each qualified Proposer to submit price Proposals.

(b) Conduct. Phase two shall be conducted as any other competitive sealed Proposal solicitation except:

(A) As specifically set forth in this rule; and

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.060

137-047-0265 Small procurements

(1) Generally. For Procurements of Goods or Services less than or equal to \$5,000 the County

may Award a Contract as a small Procurement pursuant to ORS 279B.065. The County may award a small procurement in any manner deemed practical or convenient by the County including by direct selection/appointment or award.

(2) Amendments. The County may amend a Public Contract Awarded as a small Procurement in accordance LCPR 137-047-0800, but the cumulative amendments shall not increase the total Contract Price to greater than \$6,000.

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.065

137-047-0270 Intermediate procurements

(1) Generally. For Procurements of Goods or Services greater than \$5000 and less than or equal to \$150,000, the County may Award a Contract as an intermediate Procurement pursuant to ORS 279B.070.

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

(3) Negotiations. 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 make the quote, Bid, or Proposal more Advantageous to the County.

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

(5) Amendments. The County may amend a Public Contract Awarded as an intermediate

Procurement in accordance with LCPR 137-047-0800, but the cumulative amendments shall not increase the total Contract Price to a sum that is greater than fifty percent (50%) of the original Contract price but no more than \$187,500.

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.070

137-047-0275 Sole-source procurements

(1) Generally. The County may Award a Public Contract without competition as a sole-source Procurement pursuant to the requirements of ORS 279B.075. The Linn County Administrative Officer is hereby delegated the authority to declare Goods or services to be available from one source.

(2) Public Notice. If, but for the County's determination that it may enter into a Contract as a sole-source, the County would be required to select a Contractor with competitive sealed bids or proposals, the County will give public notice of the County's determination that the Goods or Services or class of Goods or Services are available from only one source in a manner similar to public notice of competitive sealed Bids under ORS 279B.055(4) and LCPR 137-047-0300. The public notice shall describe the Goods or Services to be acquired by a sole-source Procurement, identify the prospective Contractor and include the date, time and place that protests are due. The County shall give such public notice at least five (5) Days before Award of the Contract.

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.075

137-047-0280 Emergency procurements

The County may Award a Public Contract as an Emergency Procurement pursuant to the requirements of ORS 279B.080. The Linn County Administrative Officer is hereby delegated the authority to declare the need for an emergency procurement. The County will document the nature of the emergency and describe the method used for the selection of the particular contractor. When an Emergency Procurement is authorized, the Procurement shall be made with competition that is practicable under the circumstances.

137-047-0285 Special procurements

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

(2) Purpose. Pursuant to ORS 279B.085, LCPR 137-047-0285 to 137-047-0288 and LCPR 137-047-0805 to 137-047-905 establish the criteria for procuring Goods through Special Procurements by Linn County.

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

137-047-0286 Special Procurements Authorizations

(1) Except for the Class Special Procurements already authorized in the LCPR and found at LCPR 137-047-0805 to 137-047-905, Special Procurements may be authorized by the Linn County Board of Commissioners in the following manner:

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

(b) The Board finds that the special procurement requested will:

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

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

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

(2) Public Notice. The County shall give public notice of the approval process for a proposed Special Procurement in a manner similar to public notice of competitive sealed Bids under

ORS 279B.055(4) and LCPR137-047-0300. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement. The County shall give such public notice of its request for approval of a Special Procurement at least five (5) Days prior to the approval of the Special Procurement by the Board of Commissioners. The County shall give such public notice of the approval of a Special Procurement at least five (5) Days before Award of the Contract.

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

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

137-047-0287 Class Special Procurements

Class Special Procurements currently authorized by the Linn County Board of Commissioners by the LCPR are located at LCPR 137-047-810 to 137-047-905. If the County is considering awarding a contract for which a Class Special Procurement was approved, the County may award the contract in accordance with the requirements for the particular Class Special Procurement without making a request for a Special Procurement or making any findings.

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

137-048-0288 Contract Specific Special Procurements

If a Contract is awarded through a Contract Specific Special Procurement, the County will award the Contract to the Offeror whose Offer the County determines to be the most advantageous to the County.

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

137-047-0290 Cooperative procurements

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

PROCUREMENT PROCESS

137-047-0300 Public notice of solicitation documents

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

(a) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the particular type of Procurement requested in the Solicitation Document;

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

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

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

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

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

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

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

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

(c) The interval between the first date of notice of the Solicitation Document given in accordance with subsection 2(a) or (b) above and Closing, which shall not be less than fourteen (14) Days for an Invitation to Bid and for a Request for

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

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

(e) The office where Contract terms, conditions and Specifications may be reviewed;

(f) The scheduled Opening; and

(g) Any other information the County deems appropriate.

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

(5) Notice of Addenda. The County will provide vendors who have requested the Solicitation Document notice of any Addenda to the Solicitation Document in accordance with LCPR 137-047-0430.

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.055 & ORS 279B.060

137-047-0310 Bids or proposals are offers

(1) Offer and Acceptance. The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract. The Offer is a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the County's acceptance for the period specified in LCPR 137-047-0480. An Offer is only accepted by the County when the Contract is fully executed in writing by both parties.

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

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

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

Stats. Implemented: ORS 279A.065, ORS 279B.055 & ORS 279B.60

137-047-0320 Facsimile bids and proposals

(1) Authorization. The County may authorize Offerors to submit facsimile Offers. If the County determines that Bid or Proposal security is required, the County will not authorize facsimile Offers unless the County has another method for receipt of such security.

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

(a) A provision substantially in the form of the following: "A 'facsimile Offer,' as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the County via a facsimile machine";

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

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

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

(e) The County's receiving facsimile machine's telephone number; and

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

(A) Receipt of garbled or incomplete documents;

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

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

(D) Delay in transmission or receipt of documents;

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

(F) Illegibility of Offer documents; and

(G) Security and confidentiality of

data.

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

Stats. Implemented: ORS 279A.065

137-047-0330 Electronic procurement

(1) Electronic Procurement Authorized.

(a) The County may conduct all phases of a Procurement, including without limitation the posting of Electronic Advertisements and the receipt of Electronic Offers, by electronic methods if and to the extent the County specifies in a Solicitation Document, a request for quotes, or any other Written instructions on how to participate in the Procurement.

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

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

(d) If the County determines that Bid or Proposal security is required, the County will not

authorize Electronic Offers unless the County has another method for receipt of such security.

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

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

(4) Receipt of Electronic Offers. When the County specifies that Persons may submit multiple Offers during a period of time, the County shall accept Electronic Offers, and Persons may submit

Electronic Offers, in accordance with the following:

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

(A) A Person may not increase the price set forth in an Electronic Offer after the day and time that the County first accepts Electronic Offers

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

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279A.065

BID AND PROPOSAL PREPARATION

137-047-0400 Offer preparation

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

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

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

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279A.065

137-047-0410 Offer submission

(1) Product Samples and Descriptive Literature. The County may require product samples or descriptive literature. The County will dispose of product samples or make them available for the Offeror to retrieve.

(2) Identification of Offers

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

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

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279A.065

137-047-0420 Bidder or proposer conferences

(1) Purpose. The County may hold a bidder or proposer conference with prospective Offerors prior to Closing, to explain the Procurement

requirements, obtain information, or to conduct site inspections.

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

(3) Scheduled Time. If a County holds a conference, it will be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

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

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279A.065

137-047-0430 Addenda to solicitation document

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

(2) Notice and Distribution. The Solicitation Document will specify how the County will provide notice of Addenda and how the County will make the Addenda available. The following is an example of how a County may specify how it will provide notice of Addenda: "County will not mail notice of Addenda, but will publish notice of any Addenda on County's web site. Addenda may be downloaded off the County's web site. Offerors should frequently check the County's web site until Closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."

(3) Timelines; Extensions. The County will issue Addenda within a reasonable time to allow

prospective Offerors to consider the Addenda in preparing their Offers. The County may extend the Closing if the County determines prospective Offerors need additional time to review and respond to Addenda.

(4) Protest. Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written protest to the Addendum, as provided in LCPR 137-047-0730, by the close of the County's next business day after issuance of the Addendum, or up to the last day allowed to submit a protest under LCPR 137-047-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with LCPR 137-047-0730, then the County may consider an Offeror's protest to the Addendum only, and the County shall not consider a protest to matters not added or modified by the Addendum. Notwithstanding any provision of this section of this rule, the County is not required to provide a protest period for Addenda issued after initial Closing during a multi-tier or multistep Procurement process conducted pursuant to ORS 279B.055 or ORS 279B.060.

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.060

137-047-0450 Receipt, opening, and recording of offers; confidentiality of offers

(1) Receipt. The County will not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening.

(2) Opening and Recording. In the case of Invitations to Bid, to the extent practicable, the County will read aloud the name of each Bidder, and such other information as the County considers appropriate. However, the County may withhold from disclosure information in accordance with ORS 279B.055(5)(c) and 279B.060(5). All other Offers will be opened pursuant to the Solicitation Document.

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.055

137-047-0460 Late offers, late withdrawals and late modifications

Any Offer received after Closing is late.

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.055

137-047-0470 Mistakes

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

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

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

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

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

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

(b) The County may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the County's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances

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

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

(A) The nature of the error;

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

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

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

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

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

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

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

(d) The criteria in subsection (2)(c) of this rule shall determine whether the County will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether a County will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the County based on the differ-

ence between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the County, whether by Award to the next lowest Responsive and Responsible Bidder or the most Advantageous Responsive and Responsible Proposer, or by resort to a new solicitation.

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

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

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

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

137-047-0480 Time for agency acceptance

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

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

Stats. Implemented: ORS 279A.065

137-047-0490 Extension of time for acceptance of offer

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

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

Stats. Implemented: ORS 279A.065

QUALIFICATIONS AND DUTIES

137-047-0500 Responsibility of bidders and proposers

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.110

137-047-0525 Qualified products lists

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.115

137-047-0550 Prequalification of prospective offerors

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

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.120

137-047-0575 Debarment of prospective offerors

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

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

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

(4) Limited Participation. The County may allow a Debarred Person to participate in solicitations and Contracts on a limited basis during the Debarment period upon Written determination that participation is Advantageous to a County. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.130

OFFER EVALUATION AND AWARD

137-047-0600 Offer evaluation and award

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

(a) Evaluation of Bids.

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

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

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

(b) Evaluation of Proposals.

(A) Award When Proposals are Identical. If the County determines that one or more Proposals are identical under LCPR 137-046-0300,

the County will Award a Contract in accordance with the procedures set forth in LCPR 137-046-0300.

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

(c) Recycled Materials. The County may give preference for recycled materials as set forth in ORS 279A.125.

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

(3) Negotiations.

(a) Bids. Except as permitted by Section 2 of this rule, a County will not negotiate with any Bidder. After Award of the Contract, the County and Contractor may modify the Contract in accordance with LCPR 137-047-0800.

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

(4) Award.

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

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

representative of the County's expected purchases, or grand total of all items.

(c) Multiple Awards - Bids.

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

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

(d) Multiple Awards – Proposals.

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

for any Request for Proposals shall not preclude the County from Awarding a single Contract for such Request for Proposals.

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

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

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

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

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.055 & ORS 279B.060

137-047-0610 Notice of intent to award

(1) Notice of Intent to Award. The County will post or provide notice of its intent to Award to all Bidders and Proposers pursuant to ORS 279B.135 at least five (5) Days before the Award of a Contract, unless the County determines that circumstances require prompt execution of the Contract, in which case the County may provide a shorter notice period. The County will document the specific reasons for the shorter notice period in the Procurement file.

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

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

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.135

137-047-0630 Documentation

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

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.055 & ORS 279B.060

137-047-0640 Rejection of an offer

(1) Rejection of an Offer.

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

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

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

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

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

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

(E) Is late;

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

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

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

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

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

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

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

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

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

(i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the Offeror to meet all contractual responsibilities; and

(ii) Has a satisfactory record of contract performance. The County may scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the County may determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The County may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The County will make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(b);

(iii) Has a satisfactory record of integrity. An Offeror may lack integrity if a County determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a County. The County may find an Offeror non-

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

(iv) Is qualified legally to contract with the County; and

(v) Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the County concerning Responsibility, the County will base the determination of Responsibility upon any available information, or may find the Offeror non-Responsible.

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

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

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

137-047-0650 Rejection of all offers

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

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

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

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

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

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

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

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.100

137-047-0660 Cancellation of procurement or solicitation

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

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

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

and

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

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.100

137-047-0670 Disposition of offers if procurement or solicitation canceled

(1) Prior to Opening. If the County cancels a Procurement or solicitation prior to Opening, the County will return all Offers it received to Offerors

unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the County will open the Offer to determine the source and then return it to the Offeror. For Electronic Offers, the County will delete the Offers from the County's Electronic Procurement System or information technology system.

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

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

(b) Will keep Bids in the Procurement file.

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.100

LEGAL REMEDIES

137-047-0700 Protests and judicial review of special procurements

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

(2) Delivery.

(a) Protest of Request for Approval of a Special Procurement. An Affected Person must deliver a Written protest to the Board within five (5) Days after the first date of public notice of a proposed Special Procurement, unless a different protest period is provided in the public notice of the proposed Special Procurement.

(b) Protest of Approval of a Special Procurement. Notwithstanding the requirements for filing a writ of review under ORS chapter 34 pursuant to ORS 279B.400(4)(a), an Affected Person must deliver a Written protest to the Board of Commissioners within five (5) Days after the first date of public notice of the approval of a

Special Procurement by the County, unless a different protest period is provided in the public notice of the approval of a Special Procurement.

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

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) County Response.

(a) Protest of Request for Approval of a Special Procurement: The Board will not consider an Affected Person's protest of the County's request for approval of a Special Procurement submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the public notice of the request for approval of a proposed Special Procurement. The Board will issue a Written disposition of the protest in a timely manner. If the Board upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special Procurement, or deny the request for approval of the Special Procurement.

(b) Protest of Approval of a Special Procurement: The Board will not consider an Affected Person's protest of the approval of a Special Procurement submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the public notice of the approval of a Special Procurement. The Board will issue a Written disposition of the protest in a timely manner. If the Board upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special Procurement, or revoke the approval of the Special Procurement.

(5) Judicial Review. An Affected Person may not seek judicial review of the Board's denial of a protest of a request for approval of a Special Procurement. An Affected Person may seek judicial review of the Board's decision relating to

a protest of the approval of a Special Procurement in accordance with ORS 279B.400.

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.400

137-047-0710 Protests and judicial review of sole-source procurements

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

(2) Delivery. Unless otherwise specified in the public notice of the sole-source Procurement, an Affected Person must deliver a Written protest to the Board or designee within five (5) Days after the first date of public notice of the sole-source Procurement, unless a different protest period is provided in the public notice of a sole-source Procurement.

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

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) County Response. The Board or designee shall not consider an Affected Person's sole-source Procurement protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the public notice of the sole-source Procurement. The Board or designee shall issue a Written disposition of the protest in a timely manner. If the Board or designee upholds the protest, in whole or in part, the Board shall not enter into a sole-source Contract.

(5) Judicial Review. Judicial review of the Board or designee's disposition of a sole-source

Procurement protest shall be in accordance with ORS 279B.420.

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.075

137-047-0720 Protests and judicial review of multi-tiered and multistep solicitations

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

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

(3) Delivery. Unless otherwise specified in the Solicitation Document, an Affected Offeror must deliver a Written protest to the County within five (5) Days after issuance of the notice of the Competitive Range or notice of subsequent tiers or steps.

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

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

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.060

137-047-0730 Protests and judicial review of solicitations

(1) Purpose.

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

(b) Contract Specific Special Procurements. Notwithstanding section 1(a) of this rule, a Person may not protest, challenge, or review a Contract Specific Special Procurement except upon the occurrence of the conditions set forth ORS 279B.405(2)(b).

(2) Delivery. Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a Written protest to the County not less than five (5) Days prior to Closing.

(3) Content of Protest. In addition to the information required by ORS 279B.405(4), a prospective Offeror's Written protest shall include a statement of the desired changes to the Procurement process or the Solicitation Document that the

prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.

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

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

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

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.405

137-047-0740 Protests and judicial review of contract award

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

seeking judicial review of the County's Contract Award decision.

(2) Delivery. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to the County within five (5) Days after issuance of the notice of intent to Award the Contract.

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

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

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.410 & ORS 279B.415

137-047-0745 Protests and judicial review of qualified products list decisions

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

(2) Delivery. Unless otherwise stated in the County's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list, a prospective Offeror must deliver a Written protest to the County within five (5) Days after issuance of the County's decision to

exclude the prospective Offeror's Goods from the qualified products list.

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

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

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.115

137-047-0750 Judicial review of other violations

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.420

137-047-0760 Review of prequalification and debarment decisions

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279B.425

137-047-0800 Contract amendments

(1) Additional Goods or Services. The County may amend a Contract without additional competition subject to the following conditions:

(a) The original Contract was Awarded pursuant to the LCPR; and

(b) One of the following conditions are satisfied:

(A) The additional Goods or Services are required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local government, that affect performance of the original Contract; or

(B) The amount of the aggregate cost increase does not exceed 20% of the initial contract unless otherwise provided in the LCPR; or

(C) The amendment is for a new term and the amount of the Contract does not exceed 120 % of the initial contract term for a single year.

(2) Renegotiated Contract. The County may renegotiate the terms and conditions, including the Contract Price, of a Contract without additional competition and amend a Contract if it is Advantageous to the County subject to the following conditions:

(a) The County determines that, with all things considered, the renegotiated Contract is at least as favorable to the County as the original Contract;

(b) If a Contractor offers a lower price in exchange for a change in term or condition that was expressly rejected in the original solicitation, the amended Contract may be structured with this changed term as an optional, but not as a mandatory Contract term.

(c) If the Contract is the result of a Cooperative Procurement, the amended Contract may not materially change the terms, conditions, and prices of the Original Contract.

(3) Small or Intermediate Contract. Notwithstanding Sections 1 and 2 above, the County may amend a Contract Awarded as small or intermediate Procurement provided also the total increase in Contract price does not exceed the amount set forth in LCPR 137-047-0265 for small Procurements and LCPR 137-047-0270 for intermediate Procurements.

(4) Emergency Contract. The County may amend a Contract Awarded as an emergency

Procurement if the emergency justification for entering into the Contract still exists, and the amendment is necessary to address the continuing emergency.

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

- (a) As permitted by the Price Agreement;
- (b) As permitted by this rule;
- (c) If the circumstances set forth in ORS 279B.140 (2) exist; or
- (d) As permitted by applicable law.

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279A.065

CLASS SPECIAL PROCUREMENTS

137-047-0810 Types of Class Special Procurements

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

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

137-047-0815 Equipment repair and overhaul

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

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

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

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279A.065

137-047-0820 Contracts for price-regulated items

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279A.065

137-047-0825 Laboratory and medical supplies

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279A.065

137-047-0830 Gasoline, diesel fuel, heating oil, lubricants and asphalts

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279A.065

137-047-0835 Copyrighted materials

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

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

137-047-0840 Periodicals

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

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

137-047-0845 Purchases of used personal property

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

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

137-047-0850 Advertising contracts

The County may purchase advertising without competitive bidding.

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

Stats. Implemented: ORS 279A.065

137-047-0855 Food service contracts

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

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

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

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

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

Stats. Implemented: ORS 279A.065

137-047-0860 Employee benefit insurance

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

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

Stats. Implemented: ORS 279A.065

137-047-0865 Insurance contracts

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

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

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

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

(c) In selecting an agent of record, the County will select the agent(s) most likely to perform the most cost-effective services.

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

(a) The County will make reasonable efforts to inform known insurance agents in the

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

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

[Adopted 2005-052 eff 3/1/05]
Stats. Implemented: ORS 279A.065

137-047-0870 Ballots, ballot pages, and ballot cards

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

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

137-047-0875 Requirements contracts

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

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

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

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

137-047-0880 Purchases under requirements contracts

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

(2) One public contracting agency may use the requirements contract entered into by another

public contracting agency when a formal inter-agency agreement exists between the two agencies.

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

137-047-0885 Oil or hazardous material removal

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

(a) To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services;

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

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

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

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

137-047-0890 Sponsorship Agreements

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

137-047-0895 Police Dogs

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

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

137-047-0900 Renewals

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

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

137-047-0905 Temporary Extensions or Renewals

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

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

PERSONAL SERVICE CONTRACTS

137-047-0910 Statutory Authority

Personal Service Contracts are not Public Contracts for the purposes of ORS Chapters 279A, 279B, 279C and the LCPR. ORS 279A.055 requires all Public Agencies to create procedures for the screening and selection of person to perform Personal Services.

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

137-047-0915 Personal Service Contracts Source Selection Method

(1) Personal Service Contracts are not subject to the methods of source selection described in ORS Chapters 279A and 279B.

(2) Personal service contracts for architectural or engineering services are subject to the provisions of LCPR 137-048-0100 to 137-048-0320.

(3) Unless otherwise provided below, Personal Service Contracts are not subject to LCPR 137-047-0000 to 137-047-0905.

(4) Personal Service Contracts will be awarded pursuant to LCPR 137-047-0925.

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

137-047-0920 Scope

(1) The following are Personal Service Contracts:

(a) Contracts for services performed as an independent Contractor in a professional capacity, including but not limited to, the services of an accountant, attorney, architectural or land use planning consultant, physician or dentist, registered professional engineer, appraiser or surveyor, passenger aircraft pilot, aerial photographer, timber cruiser, data processing consultant or broadcaster.

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

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

(d) Contracts for marketing;

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

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

(g) Contracts for consultants;

(h) Contracts for software design and/or maintenance;

(i) Contracts for property managers; and

(j) Contracts for any other contract determined to be a Personal Services Contract by the Linn County Board of Commissioners.

(2) The following are not Personal Services:

(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 and supply all the shrubs and trees, is predominately for a tangible product.

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

(c) Contracts for trade-related activity, 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.

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

137-047-0925 Personal Service Contracts

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

(a) Any procurement process described in LCPR 137-047-0000 to 137-047-0905.

(b) Direct appointment for Contracts with an estimated Contract price not to exceed \$150,000 a year;

(c) Informal solicitation of proposals for Contracts that exceed an estimated Contract price of \$150,000 per year;

(d) Renewal of an existing Personal Service Contract are permitted;

(e) Sole source if written findings are made by the County that Contractor is the sole source of the Personal Services to be provided.

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

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

137-047-0930 Multi-Year Personal Services Contracts

The County may enter into multi-year Personal Services Contracts. However, a multi-year Personal Services Contract will not exceed five (5) years.

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

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

Legislative History of LCPR 137-047:
1st Adopted 2005-052 eff 3/1/05; effectiveness reaffirmed 2010-033 eff 1/5/10
Amendments to 2005-052:
#1

[This page is intentionally blank]