

# TITLE 10

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

### LCPR 137-048

#### CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING, LAND SURVEYING AND RELATED SER- VICES CONTRACTS

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#### **II. CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING, LAND SURVEYING AND RE- LATED SERVICES CONTRACTS**

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##### **137-048-0100 Application; Effective Date**

Division 48 rules apply to the screening and selection of Architects, Engineers and Land Surveyors, and providers of Related Services under Contracts, and sets forth the following procedures:

(1) Procedures through which the County selects Consultants to perform Architectural, Engineering, or Land Surveying Services, or Related Services; and

(2) Two-tiered procedures for selection of Architects, Engineers, Land Surveyors and providers of Related Services for certain Public Improvements owned and maintained by the County.

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

##### **137-048-0110 Definitions**

In addition to the definitions set forth in ORS 279A.010, ORS 279C.100, and LCPR 137-046-0110, the following definitions apply to Division 48 rules:

(1) “**Consultant**” means an Architect, Engineer, Land Surveyor, or provider of Related Services. A Consultant includes a business entity that employs Architects, Engineers, Land Surveyors or providers of Related Services, or any combination of the foregoing.

(2) “**Estimated Fee**” means the County’s reasonably projected fee to be paid for a Consultant’s services under the anticipated Contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee

is used solely to determine the applicable Contract solicitation method and is distinct from the total amount payable under the Contract. The Estimated Fee shall not be used as a basis to resolve other Public Contracting issues, including without limitation, direct purchasing authority or Public Contract review and approval under ORS 291.047.

(3) “**Project**” means all components of the County’s planned undertaking that gives rise to the need for a Consultant’s Architectural, Engineering, or Land Surveying Services, or Related Services under a Contract.

(4) “**Proposer**” means a Consultant who submits a proposal to the County in response to a Request for Proposals.

(5) “**Request for Qualifications**” or “**RFQ**” means a written document issued by the County to which Consultants respond with a description of their experience with and qualifications for the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFQ and from which the County creates a list of Consultants who are qualified to perform those services, but which is not intended to result in a Contract between a Consultant and the County.

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

### **137-048-0120 Applicable Selection Procedures; Pricing Information**

(1) When selecting the most qualified Consultants to perform Architectural, Engineering, Land Surveying Services or Providers of Related Services, and the County is contracting with Consultants under the conditions listed in ORS 279C.110(2) the County will follow the applicable selection procedure under either LCPR 137-048-0210 (Informal Selection Procedure), LCPR 137-048-0220 (Formal Selection Procedure), or LCPR 137-048-0200 (Direct Appointment Procedure). When the conditions above apply, the County will not solicit or use pricing policies and proposals or other pricing information to determine a Consultant’s compensation until after the County has selected the most qualified

Consultant in accordance with the applicable selection procedure.

(2) When selecting a Consultant to perform Architectural, Engineering, Land Surveying Services or Providers of Related Services, and the conditions under ORS 279C.110(2) do not exist, the County will follow one of the following selection procedures:

(a) When selecting a Consultant on the basis of qualifications alone, the County will follow the applicable selection procedure under either LCPR 137-048-0210 (Informal Selection Procedure), LCPR 137-048-0220 (Formal Selection Procedure) or LCPR 137-048-0200 (Direct Appointment Procedure);

(b) When selecting a Consultant on the basis of price competition alone, the County will follow either the provisions under LCPR Division 47 for obtaining and evaluating Bids, or LCPR 137-048-0200 (Direct Appointment Procedure); and

(c) When selecting a Consultant on the basis of price and qualifications, the County will follow either the provisions under LCPR Division 47 for obtaining and evaluating Proposals, or LCPR 137-048-0200 (Direct Appointment Procedure).

(d) Under this subsection, the County may request and consider a Proposer’s pricing policies, proposals and other pricing information submitted with a Proposal.

(3) The County may use electronic methods to screen and select a Consultant in accordance with the procedures described in sections (1) and (2) of this rule. If the County uses electronic methods to screen and select a Consultant, the County will first promulgate rules for conducting the screening and selection procedure by electronic means, substantially in conformance with LCPR 137-047-0330 (Electronic Procurement).

[Adopted 2005-052 eff 3/1/05]  
Stats. Implemented: ORS 279A.065, ORS 279C.100

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## II. SELECTION PROCEDURES

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### 137-048-0200 Direct Appointment Procedure

(1) The County may enter into a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these rules if:

(a) The County finds that an Emergency exists; or

(b) The Estimated Fee to be paid under the Contract does not exceed \$75,000; or

(c) The Architectural, Engineering, or Land Surveying Services, or Related Services to be performed under the Contract:

(A) Consist of or are related to Architectural, Engineering, or Land Surveying Services, or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering, or Land Surveying Services, or Related Services rendered under the earlier Contract; and

(B) The County used a formal selection procedure described in rules applicable to the County under either ORS 279.049 or ORS 279A.065, whichever was in effect at the time the County selected Consultant for the earlier Contract; or

(C) Consultant will be assisting the County by providing analysis, testing services, testimony or similar services for a Project that is, or is reasonably anticipated to be, the subject of a claim, lawsuit or other form of action, whether legal, equitable, administrative or otherwise.

(2) The County may select Consultants for Contracts under this rule from all Consultants offering the required Architectural, Engineering, or Land Surveying Services, or Related Services that the County reasonably can identify under the circumstances.

(3) The County shall direct negotiations with Consultants selected under this rule toward obtaining written agreement on:

(a) Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering, or Land Surveying Services, or Related Services required under the Contract that is fair and reasonable to the County as determined solely by the County, taking into account the value, scope, complexity and nature of the Architectural, Engineering, or Land Surveying Services, or Related Services; and

(c) Any other provisions the County believes to be in the County's best interest to negotiate.

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

Stats. Implemented: ORS 279C.110, ORS 279C.115

### 137-048-0210 Informal Selection Procedure

(1) The County may use the informal selection procedure described in this rule to obtain a Contract if the Estimated Fee is expected not to exceed \$150,000.

(2) Under this rule the County will:

(a) Create a Request for Proposals that may include, but is not limited to, the following:

(A) A description of the Project for which Consultant's Architectural, Engineering, or Land Surveying Services, or Related Services are needed and a description of the Architectural, Engineering, or Land Surveying Services, or Related Services that will be required under the resulting Contract;

(B) Anticipated Contract performance schedule;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) Date and time Proposals are due and other directions for submitting Proposals;

(E) Criteria upon which most qualified Consultant will be selected. Selection criteria may include, but are not limited to, the following:

(i) Amount and type of resources and number of experienced staff Consultant has available to perform the Architectural, Engineer-

ing, or Land Surveying Services, or Related Services described in the Request for Proposals within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering, or Land Surveying Services, or Related Services;

(ii) Proposed management techniques for the Architectural, Engineering, or Land Surveying Services, or Related Services described in the Request for Proposals;

(iii) Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering, or Land Surveying Services, or Related Services, including but not limited to quality of work, ability to meet schedules, cost control methods and contract administration practices;

(iv) Approach to Architectural, Engineering, or Land Surveying Services, or Related Services described in the Request for Proposals and design philosophy, if applicable;

(v) Proposer's geographic proximity to and familiarity with the physical location of the Project;

(vi) Volume of work, if any, previously awarded to Proposer;

(vii) Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(viii) Pricing policies, proposals and other pricing information if the County is selecting a Consultant when the conditions under ORS 279C.110 (2) do not exist.

(F) A Statement that Proposers responding to the RFP do so solely at their expense, and the County is not responsible for any Proposer expenses associated with the RFP; and

(G) A statement directing Proposers to the protest procedures set forth in Division 48.

(b) Provide a Request for Proposals to a minimum of five prospective Consultants.

(c) Review and rank all Proposals received according to the criteria set forth in the Request for

Proposals, and select the three highest ranked Proposers.

(3) If the County does not cancel the RFP after it reviews and ranks each Proposer, the County will begin negotiating a Contract with the highest ranked Proposer. The County shall direct negotiations toward obtaining written agreement on:

(a) Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering, or Land Surveying Services, or Related Services required under the Contract that is fair and reasonable to the County as determined solely by the County, taking into account the value, scope, complexity and nature of the Architectural, Engineering, or Land Surveying Services, or Related Services; and

(c) Any other provisions the County believes to be in the County's best interest to negotiate.

(4) The County shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if the County and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The County may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, in accordance with section (3) of this rule, until negotiations result in a Contract. If negotiations with any of the top three Proposers do not result in a Contract within a reasonable amount of time, the County may end the particular informal solicitation and thereafter may proceed with a new informal solicitation under this rule or proceed with a formal solicitation under LCPR 137-048-0220 (Formal Selection Procedure).

(5) The County shall terminate the informal selection procedure and proceed with the formal selection procedure under LCPR 137-048-220 if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed \$150,000. Notwithstanding the foregoing, the County may continue Contract negotiations

with the Proposer selected under the informal selection procedure if the County makes written determinations that contracting with that Proposer will:

(a) Promote efficient use of the County's resources and result in substantial cost savings to the County; and

(b) Protect the integrity of the Public Contracting process and the competitive nature of the procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.

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

### **137-048-0220 Formal Selection Procedure**

(1) Subject to LCPR 137-048-0130, the County will use the formal selection procedure described in this rule to select Consultants if the Consultants cannot be selected under either LCPR 137-048-0200 (Direct Appointment Procedure) or under LCPR 137-048-0210 (Informal Selection Procedure). The formal selection procedure described in this rule may otherwise be used at County's discretion.

(2) Under this rule, the County will obtain Contracts through public advertisement of Requests for Proposals, or Requests for Qualifications followed by a Request for Proposals.

(a) Except as provided in subsection (b) of this section, The County will advertise each RFP and RFQ at least once in at least one newspaper of general circulation in Linn County.

(A) The County will publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFP or RFQ but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFP or RFQ.

(B) The County will include a brief description of the following items in the advertisement:

- (i) The Project;
- (ii) A description of the Architectural, Engineering, or Land Surveying Services, or Related Services the County seeks;

(iii) How and where Consultants may obtain a copy of the RFP or RFQ; and

(iv) The deadline for submitting a Proposal or response to the RFQ.

(b) In the alternative to advertising in a newspaper as described in subsection 2(a) of this rule, the County may publish each RFP and RFQ by one or more of the electronic methods identified in the LCPR. The County will comply with subsections 2(a)(A) and 2(a)(B) of this rule when publishing advertisements by electronic methods.

(c) The County may send notice of the RFP or RFQ directly to Consultants.

(3) Request for Qualifications Procedure. The County may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom the County may issue an RFP for some or all of the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFQ.

(a) The County may include, but is not limited to, the following in each RFQ:

(A) A brief description of the Project for which the County is seeking Consultants;

(B) A description of the Architectural, Engineering, or Land Surveying Services, or Related Services the County seeks for the Project;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) The deadline for submitting a response to the RFQ;

(E) A description of required Consultant qualifications for the Architectural, Engineering, or Land Surveying Services, or Related Services Agency seeks;

(F) The RFQ evaluation criteria, including weights or points applicable to each criterion);

(G) A statement whether or not the County will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFQ

and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

(H) A Statement that Proposers responding to the RFQ do so solely at their expense, and the County is not responsible for any Proposer expenses associated with the RFQ.

(b) The County may include a request for any or all of the following in each RFQ:

(A) A statement describing Consultant's general qualifications and related performance information;

(B) A description of Consultant's specific qualifications to perform the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFQ including Consultant's available resources and recent, current and projected workloads;

(C) A list of similar Architectural, Engineering, or Land Surveying Services, or Related Services and references concerning past performance, and a copy of all records, if any, of Consultant's performance under Contracts with any other government agencies;

(D) The number of Consultant's experienced staff available to perform the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those services;

(E) Approach to Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFQ and design philosophy, if applicable;

(F) Proposer's geographic proximity to and familiarity with the physical location of the Project;

(G) Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(H) Pricing policies, proposals and other pricing information if the conditions under ORS 279C.110(2) do not exist; and

(I) Any other information the County deems reasonable necessary to evaluate Consultants' qualifications.

(c) RFQ Evaluation Committee. The County will establish an RFQ evaluation committee of at least two individuals to review, score and rank the responding Consultants according to the evaluation criteria. The County may appoint to the evaluation committee County employees or employees of other public agencies with experience in architecture, engineering, or land surveying, Related Services. The County may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. The County will designate one member of the evaluation committee as the evaluation committee chairperson.

(d) The County may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to:

(A) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;

(B) Placing a pre-determined number of the highest scoring Consultants on a short list;

(C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFP.

(e) After the evaluation committee reviews, scores and ranks the responding Consultants, the County will establish a short list of at least three qualified Consultants, provided however, that if four or fewer Consultants responded to the RFQ, then:

(A) The County may establish a short list of fewer than three qualified Consultants; or

(B) The County may cancel the RFQ and issue an RFP.

(f) No Consultant will be eligible for placement on the County's short list established under subsection (3)(d) of this rule if Consultant or any of Consultant's principals, partners or associates are members of the County's RFQ evaluation committee.

(g) Except when the RFQ is cancelled, the County shall provide a copy of the subsequent RFP to each Consultant on the short list.

(4) Formal Selection of Consultants Through Request for Proposals. The County will use the procedure described in this section when issuing an RFP for a Contract under this rule.

(a) RFP Required Contents. The County may include, but is not limited to, the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ:

(A) General background information, including a description of the Project and the specific Architectural, Engineering, or Land Surveying Services, or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering, or Land Surveying Services, or Related Services sought will be performed.

(B) The RFP evaluation process and criteria which will be used to select the most qualified Proposer, including the number of points applicable to each criterion. If the County does not indicate the applicable number of points, then each criterion is worth the same number of points. Evaluation criteria may include, but are not limited to, the following:

(i) Proposer's availability and capability to perform the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFP;

(ii) Experience of Proposer's key staff persons in providing similar Architectural, Engineering, or Land Surveying Services, or Related Services on comparable Projects;

(iii) The amount and type of resources, and number of experienced staff persons Proposer has available to perform the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFP;

(iv) The recent, current and projected workloads of the staff and resources referenced in section (4)(a)(B) (iii), above;

(v) The proportion of time Proposer estimates that the staff referenced in section (4)(a)(B) (iii), above, would spend on the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFP;

(vi) Proposer's demonstrated ability to complete successfully similar Architectural, Engineering, or Land Surveying Services, or Related Services on time and within budget;

(vii) References and recommendations from past clients;

(viii) Proposer's performance history in meeting deadlines, submitting accurate estimates, producing high quality work, and meeting financial obligations;

(ix) Status and quality of any required license or certification;

(x) Proposer's knowledge and understanding of the Project and Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFP as shown in Proposer's approach to staffing and scheduling needs for the Architectural, Engineering, or Land Surveying Services, or Related Services and proposed solutions to any perceived design and constructability issues;

(xi) Results from interviews, if conducted;

(xii) Design philosophy, if applicable, and approach to the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFP;

(xiii) Pricing policies, proposals and other pricing information if the conditions under ORS 279C.110 (2) do not exist; and

(xiv) Any other criteria that the County seems relevant to the Project and Architec-

tural, Engineering, or Land Surveying Services, or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers.

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) Whether interviews are possible and if so, the weight or points applicable to the potential interview;

(E) The date and time Proposals are due, and the delivery location for Proposals;

(F) Reservation of the right to seek clarifications of each Proposal;

(G) Reservation of the right to negotiate a final Contract that is in the best interest of the County;

(H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at anytime if doing either would be in the public interest as determined by the County;

(I) A Statement that Proposers responding to the RFP do so solely at their expense, and the County is not responsible for any Proposer expenses associated with the RFP;

(J) A statement directing Proposers to the protest procedures set forth in Division 48;

(K) Special Contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;

(L) A statement whether or not the County will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFP and if a pre-Proposal meeting will be held, the

location of the meeting and whether or not attendance is mandatory;

(M) A request for any information the County deems reasonably necessary to permit the County to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFP; and

(N) A sample form of the Contract.

(b) RFP Evaluation Committee. The County will establish a committee of at least three individuals to review, score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the County may include the same members who served on the RFQ evaluation committee. The County may appoint to the evaluation committee County employees or employees of other public agencies with experience in architecture, engineering, land surveying, Related Services. The County may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. The County will designate one of its employees who also is a member of the evaluation committee as the evaluation committee chairperson.

(A) No Proposer will be eligible for award of the Contract under the RFP if Proposer or any of Proposer's principals, partners or associates are members of the County's RFP evaluation committee for the Contract;

(B) If the RFP provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it shall award up to the number of points indicated in the RFP for the anticipated interview; and

(C) The evaluation committee shall provide to the County the results of the scoring and ranking for each Proposer.

(c) If the County does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, the County will begin

negotiating a Contract with the highest ranked Proposer. The County shall direct negotiations toward obtaining written agreement on:

(A) Consultant's performance obligations and performance schedule;

(B) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering, or Land Surveying Services, or Related Services required under the Contract that is fair and reasonable to the County as determined solely by the County, taking into account the value, scope, complexity and nature of the Architectural, Engineering, or Land Surveying Services, or Related Services; and

(C) Any other provisions the County believes to be in The County's best interest to negotiate.

(d) The County shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if the County and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The County may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with section (4)(c) of this rule, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the County may end the particular formal solicitation. Nothing in this rule precludes the County from proceeding with a new formal solicitation for the same Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFP that failed to result in a Contract.

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

### **137-048-0230 Ties Among Proposers**

(1) If the County is selecting a Consultant on the basis of qualifications alone and determines after the ranking of Proposers that two or more Proposers are equally qualified, the County may select a candidate through any process that the County believes will result in the best value for the County taking into account the scope, complexity

and nature of the Architectural, Engineering, or Land Surveying Services. The process shall instill public confidence through ethical and fair dealing, honesty and good faith on the part of the County and Proposers and shall protect the integrity of the Public Contracting process. Once a tie is broken, the County and the selected Proposer shall proceed with negotiations under LCPR 137-048-0210(3) or LCPR 137-048-0220 (4)(c), as applicable.

(2) If the County is selecting a Consultant on the basis of price alone, or on the basis of price and qualifications, and determines after the ranking of Proposers that two or more Proposers are identical in terms of price or are identical in terms of price and qualifications, then the County will follow the procedure set forth in LCPR 137-047-0300.

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

### **137-048-0240 Protest Procedures**

(1) RFP Protest and Request for Change. Consultants may submit a written protest of anything contained in an RFP and may request a change to any provision or specification contained in an RFP, no later than seven (7) calendar days prior to the date Proposals are due unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions or specifications. The County will not consider any protest or request for change that is submitted after the submission deadline.

(2) Protest of Consultant Selection. The County will provide to all Proposers a copy of the selection notice that the County sent to the highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to the County no later than seven (7) calendar days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals

of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFP. The County will not consider any protest that is submitted after the submission deadline.

(3) A duly authorized representative of the County will resolve all timely submitted protests within a reasonable time following the County's receipt of the protest and once resolved, shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, the County shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these rules.

[Adopted 2005-052 eff 3/1/05]  
Stats. Implemented: ORS 279A.065, ORS 279C.110

### **137-048-0250 RFP or RFQ Cancellation; Costs**

The County may cancel a solicitation, whether informal or formal, or reject all Proposals or responses to RFQs, or any combination of the foregoing, without liability to the County at anytime after issuing an RFP or RFQ, if the County believes it is in the public interest to do so. Consultants responding to either RFPs or RFQs are responsible for all costs they may incur in connection with submitting Proposals and responses to RFQs.

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

### **137-048-0260 Two-Tiered Selection Procedure for Local The County Public Improvement Projects**

(1) If the County requires a Consultant to perform Architectural, Engineering, or Land Surveying Services, or Related Services for a Public Improvement owned and maintained by the County, and a State Agency will serve as the lead Contracting Agency and will enter into Contracts with Consultants for Architectural, Engineering, or Land Surveying Services, or Related Services, for that Public Improvement, the State Contracting

Agency shall utilize the two-tiered selection process described in ORS 279C. 125 and OAR 137-048-0260.

[Adopted 2005-052 eff 3/1/05]  
Stats. Implemented: ORS 279C.125

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## **III. POST-SELECTION CONSIDERATIONS**

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### **137-048-0300 Prohibited Payment Methodology; Purchase Restrictions**

(1) Except as otherwise allowed by law, the County will not enter into any Contract which includes compensation provisions that expressly provide for payment of:

- (a) Consultant's costs under the Contract plus a percentage of those costs; or
- (b) A percentage of the Project construction costs or total Project costs.

(2) Except as otherwise allowed by law, the County shall not enter into any Contract in which:

- (a) The compensation paid under the Contract is solely based on or limited to the Consultant's hourly rates for the Consultant's personnel working on the Project and reimbursable expenses incurred during the performance of work on the Project (sometimes referred to as a "time and materials" Contract); and
- (b) The Contract does not include a maximum amount payable to Contractor for the Architectural, Engineering, or Land Surveying Services, or Related Services required under the Contract.

(3) Except in cases of Emergency or in the particular instances noted in the subsections below, the County shall not purchase any building materials, supplies or equipment for any building, structure or facility constructed by or for the County from any Consultant under a Contract with the County to perform Architectural, Engineering or Land Surveying Services, or Related Services, for the building, structure or facility. This prohibition does not apply if either of the following circumstances exists:

- (a) Consultant is providing Architectural, Engineering or Land Surveying Services, or Related Services under a Contract with the County

to perform Design-Build services or Energy Savings Performance Contract services (see LCPR 137-049-0670 and LCPR 137-049-0680); or

(b) That portion of the Contract relating to the acquisition of building materials, supplies or equipment was awarded to Consultant pursuant to applicable law governing the award of such contracts.

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

### **137-048-0310 Effect of Material Alteration or Delay of Project**

(1) If the County delays (or delays and then materially alters) a Project for which The County has entered a Contract, and the Contract has expired or been terminated, the County may enter a Contract with the same Consultant to perform either the same Architectural, Engineering, or Land Surveying Services, or Related Services described in the Contract or Architectural, Engineering, or Land Surveying Services, or Related Services as amended to reflect the County's material alteration of the Project if no more than one year has passed since expiration or termination of the Contract and the County makes written findings that entering a Contract with Consultant:

(a) Will promote efficient use of public funds and resources and result in substantial cost savings to the County;

(b) Will not encourage favoritism in the contracting process; and

(c) Will not substantially diminish competition for future contracts with Consultants.

[Adopted 2005-052 eff 3/1/05]  
Stats. Implemented: ORS 279A.065, ORS 279C.110

### **137-048-0320 Contract Amendments**

(1) The County may amend any Contract if the County, in its sole discretion, determines that the amendment is within the scope of services contemplated under the RFP and that the amendment would not materially impact the field of competition for the services described in the RFP. In making this determination, the County will consider potential alternative methods of procuring the services contemplated under the proposed amend-

ment. An amendment would not materially impact the field of competition for the services described in the RFP if the County reasonably believes that the number of Proposers would not significantly increase if the RFP were re-issued to include the additional services.

(2) The County may amend any Contract if the additional services are required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies, that affect performance of the original Contract.

(3) All amendments to Contracts must be in writing, must be signed by an authorized representative of the Consultant and the County and must receive all required approvals before the amendments will be binding on the County.

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

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**Statutory References and Other Authorities:**  
ORS 203; ORS 279A, 279B, 279C; OAR 137-048;

### **Legislative History of LCPR 137-048:**

1<sup>st</sup> Adopted 2005-052 eff 3/1/05; effectiveness reaffirmed 2010-033 eff 1/5/10

Amendments to 2005-052:

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