IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Amending the Yamhill County Public Contracting Rules; Adopting Findings; Setting the Effective Date	ORDINANCE 924

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on February 16, 2023, Commissioners Lindsay Berschauer, Kit Johnston, and Mary Starrett being present.

THE BOARD ADOPTS THE FOLLOWING FINDINGS:

WHEREAS, On February 28, 2005, the Board adopted Ordinance 761, which set forth certain local public contracting rules in compliance with ORS Chapters 279A, 279B, and 279C; and

WHEREAS, Because the state legislature has adopted various legislation applicable to public procurement since 2005, Ordinance 761 no longer meets all of the requirements of ORS Chapters 279A, 279B, and 279C; and

WHEREAS, On March 14, 2007, the Board adopted Board Order 07-736, which set forth the Board's policy on execution and approval of County contracts; and

WHEREAS, On January 28, 2016, the Board adopted Board Order 16-32, which set forth the Board's policy on County purchase orders and countersignatures; and

WHEREAS, It is the Board's intention to update and combine all relevant public contracting rules and policies into a single ordinance; and

WHEREAS, ORS 279A.060 states that the Board is automatically deemed to be the Local Contract Review Board, and a delegation outlining the Board's contracting authority is no longer required; and

WHEREAS, ORS 279A.065 requires the Board to specifically state that the model rules the Attorney General adopts under that statute do not apply to the County; and

WHEREAS, The Board has determined that the Yamhill County Public Contracting Rules (YCR) provided in Exhibit A better suit the needs of the County than the Oregon Attorney General's model rules for public procurements; and

WHEREAS, The Board may exempt Class Special Procurements from the local procurement rules under the authority granted to it under ORS 279B.085 if it first adopts findings that demonstrate that the exemptions:

1) Are unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and
2) Are either:
    a. Reasonably expected to result in substantial cost savings to the County or to the public; or
    b. Otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements of ORS 279A, 279B, 279C, and the Yamhill County Public Contracting Rules; and

WHEREAS, The Board previously adopted findings via Ordinance 761 to exempt certain Class Special Procurements identified in Exhibit A's YCR 047-0285; and

WHEREAS, The Board now wishes to exempt from the Yamhill County Public Contracting Rules additional Class Special Procurements as identified in Exhibit B; and now, therefore

THE BOARD ORDAINS AS FOLLOWS:

Section 1. Model Rules Not Applicable. Pursuant to ORS 279A.065(6)(a)(A), the Board hereby declares that the Attorney General's model public contracting rules do not apply to the County.

Section 2. Rescinding of Prior Board Orders and Ordinances; Adoption of Yamhill County Public Contracting Rules. Ordinance 761, Board Order 07-736, and Board Order 16-32 are hereby rescinded and replaced with the Yamhill County Public Contracting Rules identified in Exhibit A, attached hereto and incorporated herein, pursuant to the authority granted under ORS 279A.065(6)(a)(B).

Section 3. Periodic Review Required. Pursuant to ORS 279A.065(6)(b), County staff shall engage in periodic reviews of the Attorney General's model rules to determine whether the County should modify its Yamhill County Public Contracting Rules to ensure compliance with any statutory changes.

Section 4. Findings for Exempt Contracts. The Board adopts the findings provided in Exhibit B, attached hereto and incorporated herein, in support of certain class exemptions identified in Exhibit A's YCR 047-0285.

Section 5. Distribution. Each County Department shall receive a copy of the new Yamhill County Public Contracting Rules, along with training materials and explanatory documents at the discretion of the Yamhill County Administrator.

Section 6. Severability. Invalidity of a section or part of a section of this Ordinance shall not affect the validity of the remaining sections or parts of sections.

Section 7. Effective Date. The first reading of this Ordinance occurred on February 2, 2023; the second reading on February 16, 2023. The effective date of this ordinance shall be May 17, 2023.

DATED this 16th day of February 2023, at McMinnville, Oregon.

YAMHILL COUNTY BOARD OF COMMISSIONERS

ATTEST

KERI HINTON
County Clerk

Chair LINDSAY BERSCHAUER

By: _____
Deputy CAROLINA ROOK

Commissioner KIT JOHNSTON

FORM APPROVED BY:

JODI GOLLEHON
Assistant Yamhill County Counsel

Commissioner MARY STARRETT

YAMHILL COUNTY PUBLIC CONTRACTING RULES

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YCR DIVISION 046

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING

I. GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING

YCR 046-0100 Content and General Application; Federal Law Supremacy

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

(a) Division 046, which is applicable to all Public Contracting;

(b) Division 047, which describes procedures for Public Contracting for Goods, Services, and Personal Services other than Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, and Related Services;

(c) Division 048, which describes procedures for Public Contracting for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, and Related Services; and

(d) Division 049, which describes procedures for Public Contracting for Construction Services.

(2) In the event of conflict between rules in Division 046 and rules in Divisions 047, 048 and 049, the rules in Divisions 047, 048 and 049 take precedence over the rules in Division 046.

(3) Except as otherwise expressly provided in ORS 279C.800 through ORS 279C.870 (Prevailing Wage Rate), and notwithstanding ORS Chapters 279A, 279B, and ORS 279C.005 through 279C.670, applicable federal statutes and regulations govern when federal funds are involved, regardless of whether the federal statutes or regulations conflict with any provision of ORS Chapters 279A, 279B, and ORS 279C.005 through 279C.670 or the YCR or require additional conditions in Public Contracts.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.030 & ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0110 Definitions

Unless the context of a specifically applicable definition in the Public Contracting Code requires otherwise, capitalized terms used in YCR will have the meaning set forth in the division of the YCR in which they appear, and if not defined there, the meaning set forth in YCR Division 046, and if not defined in YCR Division 046, the meaning set forth in the Public Contracting Code. The following terms, when capitalized in the YCR, shall have the meaning set forth below:

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

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

(3) "**Amendment**" means a written modification to a contract or agreement, other than a Change Order or Task Order, that is reasonably related to the scope of the original Procurement and requires the mutual agreement between the County and the Contractor.

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

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

(6) "**Bidder**" means Person that submits a Bid.
(7) "**Board**" means the Yamhill County Board of Commissioners.
(8) "**Change Order**" means a Written order, signed by an authorized County representative, directed to the Contractor that requires a change in the Work within the general scope of the original Contract, adjusts the Contract Price, and/or alters the completion date of a Public Improvement Contract.
(9) "**Closing**" means the date and time announced in a Solicitation Document as the deadline for submitting Offers.
(10) "**Code**" or "**Public Contracting Code**" means ORS Chapters 279A, 279B and 279C.
(11) "**Competitive Range**" means the Proposers with whom the County intends to conduct discussions or negotiations with if the County intends to conduct discussions or negotiations in accordance with YCR 047-0267 or YCR 049-0650. The size of the Competitive Range will be stated in the Solicitation Document. The size of the Competitive Range will be decreased if the number of Proposers that submit Proposals is less than the specified number and may be increased by the County in accordance with YCR 047-0262 or 049-0650.
(12)
(13) "**Construction Services**" means the services provided under a Public Improvement Contract.
(14) "**Contract**" or "**Public Contract**" has the meaning set forth in ORS 279A.010. "Contracts" also includes Purchase Orders.
(15) "**Contract Price**" means, as the context requires, (I) the maximum monetary obligations that the County either will or may incur under a Contract, including bonuses, incentives, and contingency amounts, if the Contractor fully performs under the Contract, (ii) the maximum not-to-exceed total cost specified in the Contract, or (iii) the unit prices for Goods or Services or Personal Services as set forth in the Contract.
(16) "**Contract Review Authority**" means the Yamhill County Board of Commissioners or its delegatee as otherwise provided under law.
(17) "**Contracting agency**" has the meaning set forth in ORS 279A.010(b). For the purposes of the YCR, "contracting agency" may also mean Yamhill County.
(18) "**Contractor**" means the Person, including a Consultant as defined in YCR 048-0110(2), with whom the County enters into a Contract.
(19) "**County**" means Yamhill County.
(20) "**Cooperative Procurement**" means a Procurement conducted on behalf of more than one governmental body.
(21) "**Cooperative Procurement Group**" means a group of governmental bodies joined through an intergovernmental agreement for the purpose of facilitating cooperative procurements.
(22) "**Days**" means calendar days.
(23) "**Debar**" or "**Debarment**" means the disqualification of a Person from consideration for Award of a Public Contract.
(24) "**Descriptive Literature**" means the materials submitted in response to a Solicitation Document to provide additional information concerning an Offer or Bid.
(25) "**Disqualification**" means a disqualification, suspension, or Debarment pursuant to ORS 200.065, 200.075, 279A.110, 279B.130, 279C.440, and/or these rules.
(26) "**Electronic Advertisement**" means the County's Solicitation Document, Request for Quotes, request for information, or other document inviting participation in the County's Procurements available over the Internet via: (a) the World Wide Web or some other Internet protocol; or (b) the County's Electronic Procurement System.
(27) "**Electronic Offer**" means a response to the County's Solicitation Document or Request for Quotes submitted to the County via: (a) email; (b) the World Wide Web or some other Internet protocol; or c) through the County's Electronic Procurement System.
(28) "**Electronic Procurement**" means the use of an Electronic Procurement System to conduct a Procurement.
(29) "**Electronic Procurement System**" means an information system that Persons may access through the Internet using the World Wide Web or some other Internet protocol, or that Persons may otherwise remotely

access using a computer, that enables Persons to send Electronic Offers and the County to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to a Procurement.
(30) "**Emergency**" means circumstances that create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety, and require the prompt execution of a Contract to remedy the condition.
(31) "**Goods**" has the meaning set forth in 279A.010(I)
(32) "**Goods and Services**" or "**Goods or Services**" means any combination of Goods and/or Services.
(33) "**Intermediate Procurement**" has the meaning as set forth in either YCR 047-0257 or YCR 049-0160.
(34) "**Interstate Cooperative Procurement**" means a Permissive Cooperative Procurement in which one or more of the participating governmental bodies are located outside the state of Oregon.
(35) "**Intergovernmental Agreement**" means an agreement formed under ORS 190.010.
(36) "**Invitation to Bid**" or "**ITB**" means the Solicitation Document issued to invite Bids from prospective Contractors in accordance with either ORS 279B.055 or 279C.335.
(37) "**Joint Cooperative Procurement**" means a Cooperative Procurement in which the County is identified in the Solicitation Document as a participating governmental body, and the County's contract requirements, or estimated contract requirements, are included in the Solicitation Document.
(38) "**Model Rules**" means the Attorney General's model rules of procedure for Public Contracting as required under ORS 279A.065, which are set forth in OAR Chapter 137, Divisions 046, 047, 048 and 049.
(39) "**Nonresident Bidder**" has the meaning as set forth in ORS 279A.120(a).
(40) "**Offer**" means a Written offer submitted in response to a Solicitation Document.
(41) "**Offeror**" means a Person who submits an Offer.
(42) "**Opening**" means the date, time and pflace specified in the Solicitation Document for the public opening of Offers or Bids.
(43) "**Permissive Cooperative Procurement**" means a Cooperative Procurement in which the County was not identified in the Solicitation Document as a participating governmental body.
(44) "**Person**" means any of the following with legal capacity to enter into a Contract: individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.
(45) "**Personal Services**" means the services or type of services performed under a Personal Services Contract.
(46) "**Personal Services Contract**" or "**Contract for Personal Services**" means a contract or member of a class of contracts, other than a contract for the services of an Architect, Engineer, Land Surveyor, or Provider of Related Services (as defined in YCR 048-0110), that predominantly requires specialized skills, knowledge, and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic, or management discretion or judgment, and that the Board has designated as a Personal Services pursuant to ORS 279A.055. See YCR 047-910 for a full list of those services designated to be Personal Services.
(47) "**Procurement**" has the meaning as set forth in ORS 279A.010(1)(w).
(48) "**Product Sample**" means the exact Goods, or a representative portion of the Goods, offered in an Offer, or the Goods requested in the Solicitation Document as a sample. Unless otherwise provided in the Solicitation Document, the Product Sample shall be the exact product, or a representative portion of that product, offered by the Offeror.
(49) "**Proposal**" means a Written response to a Request for Proposals.
(50) "**Proposer**" means a Person that submits a Proposal.
(51) "**Public Contracting**" means Procurement activities described in the Public Contracting Code and the YCR relating to obtaining, modifying or administering public contracts or price agreements.
(52) "**Public Improvement**" has the meaning as set forth in YCR 049-0120(11).
(53) "**Purchase Order**" means a Written order, produced by the County Accounting system and signed by an authorized County representative, directed to a Contractor, committing the County to purchase specific Goods or Services.

(54) "**Recycled Materials**" means recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as defined in ORS 279A.010(1)(ii)).
(55) "**Request for Proposals**" or "**RFP**" means the Solicitation Document issued to invite Proposals in accordance with ORS.279B.060, 279C.110, 279C.337, or 279C.400.
(56) "**Request for Qualifications**" or "**RFQ**" means a Written document issued by the County to which Contractors respond in Writing by describing their experience with and qualifications for the Services, Personal Services, or Architectural, Engineering or Land Surveying Services, or Related Services (as defined in YCR 048-0110), described in the document.
(57) "**Request for Quotes**" means a Written or oral request for prices, rates, or other conditions under which a potential Contractor would provide Goods or perform Services, Personal Services or Public Improvements described in the request.
(58) "**Responsible Offeror**" (also, "**Responsible Bidder**" or "**Responsible Proposer**", as applicable) means a Person that has submitted an Offer and meets the standards set forth in YCR 047-0500 or YCR 049-0390(2), and that has not been debarred or disqualified by the County under YCR 047-0575 or YCR 049-0370. When used alone, "Responsible" or "Responsibility" means meeting the aforementioned standards.
(59) "**Responsive Offer**" (also, "**Responsive Bid**" or "**Responsive Proposal**", as applicable) means an Offer that substantially complies in all material respects with applicable solicitation requirements. When used alone, "Responsive" means having the characteristic of substantially complying in all material respects with applicable solicitation requirements.
(60) "**Signed**" or "**Signature**" or "**Signing**" means any mark, word or symbol attached to or logically associated with a document and executed or adopted by a Person with the intent to be bound.
(61) "**Services**" mean services, other than Personal Services as so designated under YCR 047-0910 or A&E Consultant services as defined in YCR 048-0110.
(62) "**Solicitation Document**" means a Request for Quotes, an Invitation to Bid, Request for Proposals or other document issued to invite Offers from prospective Contractors pursuant to ORS Chapter 279B or ORS Chapter 279C. The following are not Solicitation Documents unless they invite Offers from prospective Contractors: a Request for Qualifications, a prequalification of bidders, a request for information, a Sole-source Procurement notice, an approval of a Special Procurement, or a request for product prequalification. A project-specific selection document under a Price Agreement that has resulted from a previous Solicitation Document is not itself a Solicitation Document.
(63) "**Specification**" means any description of the physical or functional characteristics, or of the nature of, Goods, Services, Personal Services, or Public Improvement, including any requirement for inspecting, testing or preparing a Goods, Services, Personal Services, or Public Improvement for delivery and the quantities or qualities of materials to be furnished under a Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed.
(64) "**Task Order**" means a Written order, signed by an authorized County representative, issued to a Consultant under a Price Agreement established pursuant to YCR 048-0270 that sets forth the agreed-upon scope of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services to be provided by the Consultant, in addition to the not-to-exceed price, hourly rates, and any additional terms and conditions required for an individual project.
(65) "**Work**" means the furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item in a Contract and successful completion of all duties and obligations imposed by the Contract.
(66) "**Written**" or "**Writing**" means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intended to represent or convey particular ideas or meanings. "Writing," when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings. It also

includes electronic transmissions or facsimile documents when required by applicable law or permitted by a Solicitation Document or Contract.
(67) "**Yamhill County Public Contracting Rules**" or "**YCR**" means the rules of procedure for Contracting established for Yamhill County by the Yamhill County Board of Commissioners which are set forth herein.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0120 Policy
The County shall conduct Public Contracting to further the policies set forth in ORS 279A.015, elsewhere in the Code, and the YCR.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0130 Application of the Public Contracting Code; Exemptions
(1) Except as set forth in this section, the County shall exercise all rights, powers, and authority related to Public Contracting in accordance with the Code and the YCR.
(2) The County opts out of the Model Rules and adopts the YCR as its own rules of procedure for Public Contracting pursuant to 279A.065.
(3) Except as otherwise provided in the YCR, the Code and the YCR do not apply to Personal Services Contracts or classes of Contracts designated by the County pursuant to ORS 279A.055 and YCR 047-0910.
(4) The YCR does not apply to the contracts, or the classes of contracts, described in ORS 279A.025(2).
(5) The County may enter into Contracts under a federal program described in ORS 279A.180 without following the procedures set forth in ORS 279B.050 through ORS 279B.085 or any procedures set forth in the YCR.
(6) The County may enter into Contracts for Goods or Services with non-profit agencies providing employment opportunities for individuals with disabilities pursuant to ORS 279.835 through 279.855 without following any procedures set forth in the YCR or the source selection procedures set forth in either ORS 279A.200 through ORS 279A.225 or ORS 279B.050 through ORS 279B.085. However, the County must enter into such contracts in accordance with administrative rules promulgated by the State of Oregon, Department of Administrative Services under OAR Chapter 125, Division 55.
(7) The County may enter into Contracts with other public agencies or the federal government, or with professional associations representing public agencies or the federal government, including but not limited to the Association of Oregon Counties and the National Association of Counties, without following any procedures set forth in the YCR, pursuant to its authority granted under ORS 190.010.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.050, ORS 279A.055, ORS 279A.065, & ORS 279A.180
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0140 Delegation of Authority
(1) Pursuant to Yamhill County Ordinance No. 924, and except as otherwise provided in the YCR, the powers and duties of the Local Contract Review Board under the Public Contracting Code shall be exercised and performed by the Board.
(2) The Yamhill County Administrator is hereby delegated the following authority to:
(a) Declare Goods, Services, or Personal Services to be available from only one source;
(b) Declare the need for an Emergency Procurement;
(c) Execute Contracts in accordance with YCR 046-0520; and
(d) Execute Amendments to Board-approved Contracts so long as the Amendment does not increase the Contract Price by more than ten percent (10%).
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0150 Failed Procurements

(1) When formal Procurement procedures have failed, or when all Offers have been rejected as either non-Responsive or non-Responsible as otherwise permitted in the YCR, and further use of such procedures would likely be unsuccessful, the County may negotiate directly with a Contractor, and further advertising shall not be required.

(2) The determination to engage in a direct negotiation under this rule must:

(a) Be in writing;

(b) State the basis for the direct negotiation and for the selection of a particular Contractor; and

(c) Be approved by the County Administrator.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

II. MINORITIES, WOMEN, AND EMERGING SMALL BUSINESSES

YCR 046-0200 Affirmative Action; Limited Competition Permitted

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065 & ORS 279A.100
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0210 Disqualification Under ORS 200.065-075

(1) Generally. The County may disqualify a Person from consideration for Award of the County's Contracts under ORS 200.065(5) and shall suspend a Person's right to bid on or participate in any Contract under ORS 200.075(1), after providing the Person with notice and a reasonable opportunity to be heard in accordance with sections (2) and (3) of this rule.

(2) Notice. The County shall provide Written notice to the Person of a proposed Disqualification. The County shall deliver the Written notice by personal service or by registered or certified mail, return receipt requested. This notice shall:

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

(b) Set forth the reasons for the Disqualification;

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

(d) Include a statement of the authority under which the hearing will be held;

(e) Include a reference to the particular sections of the statutes and rules involved;

(f) State the proposed Disqualification period; and

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

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

(4) Notice of Disqualification. The County shall provide Written notice of the Disqualification to the Person. The County shall deliver the Written notice by personal service or by registered or certified mail, return receipt requested. The notice shall contain:

(a) The effective date and period of Disqualification;

(b) The grounds for Disqualification; and

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

(5) Period of Disqualification or Suspension.

(a) The County may disqualify a Person from consideration for Award of the County's Public Contracts under ORS 200.065(5) for up to a period of three years.

(b) The County shall suspend a Person's right to bid on or participate in any Contract under ORS 200.075(1) for up to a period of one year for a first violation, up to three years for a second violation, and up to five years for a third and all subsequent violations.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 200.065, ORS 200.075, ORS 279A.065, ORS 279A.100, & ORS 279A.105
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0220 Required Contract and Subcontract Conditions under ORS 279A.100

(1) If the County Awards a Contract to an Offeror under ORS 279A.100, the County must provide, as a material condition of the Contract:

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

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

(c) That the Contractor must include, in any subcontract the Contractor establishes in connection with the Contract, a provision that requires the subcontractor to maintain the subcontractor's certification under ORS 200.055 throughout the term of the subcontract and any extensions (if the Contractor used the certification as a factor in or as a basis for the award of the subcontract); and

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

(2) In the administration of Contracts that are subject to this rule, the County shall verify that the Contractor and any subcontractors are maintaining their certification under ORS 200.055 throughout the term of the Contract and any extensions, unless the Contractor or subcontractor is an emerging small business that ceases to qualify as a tier one firm or a tier two firm (as ORS 200.005 defines those terms) due to the growth in the business's number of full-time equivalent employees or in average annual gross receipts during the term of the Contract.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 200.005, ORS 200.055, & ORS 279A.100
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0230 Non-Discrimination Certification Required for all Solicitations

The County shall include in each Solicitation Document a requirement that Offerors certify in their Offers, in a form prescribed by the County, that the Offeror has not discriminated, and will not discriminate, against a subcontractor in the awarding of a subcontract because the subcontractor is certified under ORS 200.055 as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, an emerging small business, or a business that a service-disabled veteran owns. The Offeror shall certify and deliver to the County Written certification, as part of the Offer, that the Offeror has not discriminated and will not discriminate against any disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or business that a service-disabled veteran owns, in obtaining any required subcontracts. Failure to do so shall be grounds for disqualification.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065 & ORS 279A.100
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

III. CONTRACT PREFERENCES

YCR 046-0300 Preference for Oregon Goods and Services; Nonresident Bidders

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

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

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

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

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

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

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

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

(d) Offers received in response to a Request for Quotes issued as part of an Intermediate Procurement are identical if the Offers equally best serve the interests of the County.

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

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

(5) Discretionary Preference and Award. Under ORS 279A.128, the County may provide, in a Solicitation Document for Goods, Services, or Personal Services, a specified percentage preference of not more than ten

percent for Goods fabricated or processed entirely in Oregon, or Services or Personal Services performed entirely in Oregon. When the County provides for a preference under this section, and more than one Offeror qualifies for the preference, the County may give a further preference to a qualifying Offeror that resides in or is headquartered in Oregon. The County may establish a preference percentage higher than ten percent by Written order that finds good cause to establish the higher percentage, and which explains the County's reasons and evidence for finding good cause to establish a higher percentage. The County may not apply the preferences described in this section in a Procurement for emergency work, minor alterations, ordinary repairs, or maintenance of a Public Improvement, or construction that is described in ORS 297C.320.

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

STAT. AUTH.: ORS 279A.065; OL 2011 & CH 237
STATS. IMPLEMENTED: ORS 279A.065; 279A.120 & 279A.128; OL 2011 & CH 237
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0310 Reciprocal Preferences

When evaluating Bids pursuant to YCR 047-0255, 047-0257 or 049-0390 and applying the reciprocal preference provided under ORS 279A.120(2)(b) the County may rely on the list prepared and maintained by the Oregon Department of Administrative Services pursuant to ORS 279A.120(4) to determine:

(1) Whether the Nonresident Bidder's state gives preference to in-state bidders; and

(2) The amount of such preference.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065 & 279A.120
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0320 Preference for Recycled Materials

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

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

(a) The recycled product is available;

(b) The recycled product meets applicable standards;

(c) The recycled product can be substituted for a comparable non-recycled product; and

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065 & 279A.125
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0330 Federally Funded Transit Projects, Preference for Exceeding Buy America

(1) The County may, in its Solicitation Documents to award a Contract for a transit project that will be funded in whole or in part with funds from the federal government or a federal government agency, provide for the

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

(a) For example, in an ITB, the County may authorize a range of preference price percentages to account for the various degrees to which the Bidders might exceed the federal Buy America requirements. In no event, however, may the percentage preference given to a Bidder exceed ten percent (10%) of the total bid price.

(b) Similarly, under an RFP, the County may allocate and award evaluation points to reflect the degrees to which the Proposers might exceed the applicable federal Buy America requirements. In no event, however, may those percentage points exceed ten percent (10%) of the total number of points available for award under the RFP.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: 2012 OL & CH 58
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

IV. COOPERATIVE PROCUREMENT

YCR 046-0400 Authority for Cooperative Procurements

(1) The County may participate in, sponsor, conduct, or administer Joint Cooperative Procurements, Permissive Cooperative Procurements, and Interstate Cooperative Procurements in accordance with ORS 279A.200 through 279A.225.
(2) The County shall determine, in Writing, whether a solicitation and award process for a Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in ORS 279B.055, 279B.060, or 279B.085, consistent with ORS 279A.200(2).

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065 & 279A.205
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0410 Responsibilities when Administering or Participating in a Cooperative Procurement

(1) If the County is administering a Cooperative Procurement, the County may establish the conditions under which Persons may participate in the Cooperative Procurements being administered by the County. Such conditions may include, without limitation, whether each Person that participates in the Cooperative Procurement must pay administrative fees to the County, whether the participants must enter into a Written agreement with the County, and any other matters related to the administration of the Cooperative Procurement and the resulting Contract. If the County chooses to administer a Cooperative Contract, it may, but is not required to, include provisions in the Solicitation Document for a Cooperative Procurement or advertise the Solicitation Document in a manner to assist any purchasing contracting agency's compliance with the Code or this section.
(2) If the County enters into a Contract based on a Cooperative Procurement, the County shall comply with the Code and this section, including without limitation those sections of the Code and this section that govern:

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

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

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065 & 279A.205
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0420 Joint Cooperative Procurements

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065 & 279A.210
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0430 Permissive Cooperative Procurements

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065 & 279A.215
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0440 Advertisements of Permissive Cooperative Procurements

(1) If the County wishes to enter into a Contract arising out of a Permissive Cooperative Procurement, it shall publish notice of its intent to do so if the County estimates that it will spend in excess of $250,000 on Goods, Services, or Personal Services acquired under the Contract.

(2) The notice of intent required by YCR 046-0440(1) shall contain the information required by ORS 279A.215(2)(b), and the County shall advertise the notice in the same manner as provided in ORS 279B.055(4)(b) and (c). The County shall give the notice required by this section no fewer than seven (7) days before the deadline for submitting comments regarding the County's intent to establish a Contract through a Permissive Cooperative Procurement.

(3) The content and timing of such notice shall comply in all respects with ORS 279A.215(2), 279A.215(3), and the YCR.

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065 & 279A.215
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0450 Interstate Cooperative Procurements

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED:
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0460 Advertisements of Interstate Cooperative Procurements

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

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

(a) The County;

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

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

(2) If the Solicitation Document was not advertised in accordance with YCR 046-0460(1), the County shall give notice of its intent to enter into a Contract based on the terms of the Interstate Cooperative Procurement. The notice of intent shall contain the information required by ORS 279A.220 (2)(b)(B), and the County shall advertise the notice in the same manner as provided in ORS 279B.055(4)(b) and (c). The County shall give the notice required by this section no fewer than seven (7) days before the deadline for submitting comments regarding the County's intent to establish a Contract through an Interstate Cooperative Procurement.

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065 & 279A.220
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0470 Protests and Disputes in Cooperative Procurements

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

(2) The failure of the County to exercise any rights or remedies it has under a Contract entered into through a Cooperative Procurement shall not affect the rights or remedies of any other contracting agency that participates in the Cooperative Procurement, including the Administering Contracting Agency, and shall not prevent any other purchasing contracting agency from exercising any rights or seeking any remedies that may be available to it under its own Contract arising out of the Cooperative Procurement.

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065 & 279A.225
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0480 Contract Amendments of Cooperative Contracts

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

V. CONTRACT ADMINISTRATION

YCR 046-0500 Contract Administration Generally

(1) All County officers, employees, and agents are prohibited from using his or her official position for personal advancement, financial gain, or for the financial gain of family members.

(2) A County officer, employee, or agent shall not commit the County to any expenditure of funds for any purpose unless the expenditure has first been authorized in the department's or division's approved budget for the fiscal year in which the Contract is executed, unless otherwise authorized by the Board.

(3) Pursuant to the Code, a Procurement shall not be artificially divided or fragmented so as to circumvent competitive bidding requirements. The cumulative total of the original Contract Price, all subsequent Amendments, and any renewals shall not exceed the respective solicitation limit.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0510 Procurement File

(1) Procurement Files to be Maintained by County. The County shall maintain a Procurement file for each Procurement made by the County. The file must, at a minimum, include the Solicitation Document, all Proposals or Bids received, the resulting Contract and any Amendments thereto, any Task Orders and/or Change Orders, and a full documentation of communications between the County and the Contractor.

(2) Availability of Procurement Files. Unless otherwise prohibited, the County shall make completed Procurement files available for public review upon Contract Award. Any Person may obtain copies of non-

confidential material from completed Procurement files upon payment of a reasonable charge in accordance with the County's adopted Fee Schedule.

(3) Retention of Procurement Files. The County departments or divisions that are overseeing the Contract are responsible for maintaining the Procurement file and retaining it for the required retention schedule (see OAR 166-150).

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0520 Contract Signing Authority

(1) Contract Price not-to-exceed $10,000. A Contract committing the County to expend less than $10,000 may be executed by a County department head without prior Board approval if the following conditions are satisfied:

(a) Funding for the Contract is contained in the department's approved budget for the fiscal year in which the Contract is executed, and the expected expenditure is to be made;

(b) County Counsel has approved the Contract as to form, if any; and

(c) All Procurement rules and procedures required hereunder have been complied with.

(2) Contract Price between $10,000 and $100,000. A Contract committing the County to expend between $10,000 and $100,000 may be approved by the County Administrator without prior Board approval so long as County Counsel first approves the Contract as to form and all Procurement rules and procedures required hereunder have been complied with.

(3) Contract Price exceeding $100,000. A Contract committing the County to expend $100,000 or more shall be approved by the Board prior to execution. Where permitted, County Counsel shall approve the Contract as to form. All Procurement rules and procedures required hereunder have been complied with.

(4) Intergovernmental Agreements. All Intergovernmental Agreements, and any Amendments thereto, shall be approved by the Board prior to execution.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0530 Purchase Orders; Countersignatures

(1) Purchase Orders Exceeding $10,000. A countersignature is required on all Purchase Orders which exceed $10,000. This requirement does not pertain to payments for utilities, payments to the State of Oregon, payments made under an approved contract or service agreement, dollars passed-through the County for other public agencies or private non-profit organizations, or payments made under a lease purchase.

(2) Countersigners. The order of countersigners shall be: 1) County Administrator; 2) Financial Services Manager; 3) Board Chair, 4) Board Vice-Chair, 5) Commissioner.

(3) Procedures for Signatures. Purchase Orders requiring countersignatures shall be sent to the Board's Executive Office Specialists, who will arrange to have the Purchase Order signed within 24 hours when feasible. If there is an emergency need for an immediate signature, staff will attempt to arrange for an immediate countersignature, if possible. Under no circumstances shall the countersigner be contacted directly.

(4) Credit Card Purchases Exceeding $5,000. Any single purchase that exceeds $5,000 made on a County purchase card must have special authorization from the County's Accounting Department prior to the transaction.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0540 Additional Approvals Required

(1) Information Technology Procurement. The Procurement of any data processing hardware, software, and/or related services shall be authorized by the County's I.T. Manager prior to purchase. Any unauthorized hardware or software is subject to removal by the I.T. Division.

(2) Facility Improvements. The Procurement of any improvements to County-owned facilities, including, but not limited to, alterations, additions, or interior design services, shall be authorized by the County's Facilities Manager prior to purchase and/or installation.
(3) DEI Training Agreements. All Contracts for "Diversity, Equity, and Inclusion" (DEI) training require Board approval, regardless of cost.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0550 Retroactive Approvals by the Board

Before the Board may consider retroactive approval of a Contract, the County department or division seeking approval of the Contract must first submit a Written request, including a copy of the Contract, to the County Administrator for review. The Written request for consideration of a retroactive approval must also contain an explanation as to why the Contract was not submitted before performance began and a description of the steps being taken to prevent similar occurrences in the future.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0560 Contract Amendments

(1) The County may make one or more Amendments to a Contract without any additional competitive process so long as the additional scope is reasonably related to the original Solicitation Document or original Contract.
(2) Amendments may not increase the Contract beyond the limit of any solicitation threshold established in these rules or the Code.
(3) Amendments may only be executed by an authorized signatory as defined in YCR 046-0500.
(4) Amendments must be fully executed by all signatories before the Amendment will be binding on the County.
(5) The County Administrator may execute Amendments on behalf of the Board in accordance with YCR 046-0140.
(6) At the discretion of the County Administrator, routine Amendments requiring Board approval may be placed on the "Consent Agenda" in accordance with Yamhill County Ordinance 900.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 046-0570 Contract Term

The term of a Public Contract, including all amendments, shall be a maximum of ten (10) years, unless otherwise specified in the Solicitation Document or as otherwise authorized by the Board. This rule does not apply to agreements involving real property.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR DIVISION 047

PUBLIC PROCUREMENT OF GOODS OR SERVICES

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

YCR 047-0100 Application

These Division 47 rules implement ORS Chapter 279B, Public Procurements and apply to the Procurement of Goods and Services as defined in ORS 279B.005(1)(b), but specifically does not include the Procurement of Personal Services Contracts, except as provided in YCR 047-0900 to 047-0920.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.015
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0110 Definitions

(1) "**Advantageous**" means in the County's best interests, as assessed according to the judgment of the County.
(2) "**Affected Person**" or "**Affected Offeror**" means a Person whose ability to participate in a Procurement is adversely affected by a County decision.
(3) "**Class Special Procurement**" means a Special Procurement for a series or class of Contracts that has been approved by the Board in accordance with ORS YCR 047-0285.
(4) "**Emergency Procurement**" means a Procurement under YCR 047-0280.
(5) "**Failed Procurement**" means a competitive Procurement in which no Responsive Offers were received by the County.
(6) "**Good Cause**" means a reasonable explanation for not requiring Contractor to meet the highest standards and may include an explanation of circumstances that support a finding that a solicitation requirement would unreasonably limit competition or is not in the best interest of the County.
(7) "**Intermediate Procurement**" means a Procurement under YCR 047-0257.
(8) "**Small Procurement**" means a Procurement under YCR 047-0255.
(9) "**Sole-source Procurement**" means a Procurement under YCR 047-0275.
(10) "**Special Procurement**" means a Procurement under YCR 047-0285.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065, ORS 279B
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0120 Feasibility Determination; Cost Analysis

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

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

(b) Demonstrate, by means of a Written determination in accordance with ORS 279B.036, that performing the Services with the County's own personnel and resources is not feasible.

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.030
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

II. SOURCE SELECTION

YCR 047-0250 Methods of Source Selection

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED:
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0255 Small Procurements

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

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

(3) No Artificial Division. A Procurement may not be artificially divided or fragmented so as to constitute a Small Procurement under this rule.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0257 Intermediate Procurements

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

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

(3) Negotiations. The County may negotiate with a prospective Contractor who offers to provide Goods or Services in response to an Intermediate Procurement to clarify its quote or Offer or to effect modifications that will make the quote or Offer more Advantageous to the County.

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

(5) Amendments. The County may amend a Contract Awarded as an Intermediate Procurement in accordance with YCR 047-0800, but the cumulative Amendments may not increase the total Contract Price to a sum that exceeds the higher dollar amount stated in ORS 279B.070.

(6) No Artificial Division. A Procurement may not be artificially divided or fragmented so as to constitute an Intermediate Procurement under this rule.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.070
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0260 Competitive Sealed Bidding

(1) Generally. The County may procure Goods or Services by competitive sealed bidding as set forth in ORS 279B.055. An Invitation to Bid is used to initiate a competitive sealed bidding solicitation and shall contain the

information required by ORS 279B.055(2) and by section (2) of this rule. The County shall provide public notice of the competitive sealed bidding solicitation as set forth in YCR 047-0300.

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

(a) *General Information*.

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

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

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

(iii)A provision that provides that statements made by the County's representatives at the pre-Offer 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 YCR 047-0330 for required provisions of electronic Bids);

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

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

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

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

(G) How the County will notify Bidders of Addenda and how the County will make Addenda available (see YCR 047-0430); and

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

(b) *County's Need to Purchase*. The character of the Goods or Services the County is purchasing, including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection, and acceptance requirements, must be included in the Solicitation Document. As required by ORS 279B.055, the County's description of its need to purchase must:

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

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

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

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

(c) *Bidding and Evaluation Process*.

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

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

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

(d) *Statutory Preferences*. Any applicable preferences pursuant to ORS 279B.055(6)(b).

(e) *Contractual Terms and Conditions.* The County shall set forth all contractual terms and conditions the County determines are applicable to the Procurement. The Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

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

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

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

(3) Good Cause. The County shall document in the Procurement file the basis for the determination of Good Cause for specification otherwise. The County has Good Cause to specify otherwise under the following circumstances:

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

(b) Imposing express technical, standard, dimensional, or mathematical specifications will better ensure that the Goods or Services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services, or information technology, including hardware, Services, or software with which the Goods or Services will be used, integrated, or coordinated;

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

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.055
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0265 Competitive Sealed Proposals

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

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

(a) *General Information*.

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

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

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

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

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

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

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

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

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

(G) How the County shall notify Proposers of Addenda and how the County shall make Addenda available (see YCR 047-0430); and

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

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

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

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

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

(D) Unless the Contractor, under any resulting Contract, will provide Architectural, Engineering, Photogrammetric mapping, Transportation Planning, Land Surveying Services, or Related Services that are subject to ORS 279C.100 to 279C.125 and YCR Division 048, or the County, for Good Cause, specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the County is purchasing.

(c) *Proposal Evaluation Process*.

(A) The County shall set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.060(3)(e). Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, the criteria shall:

(i) Afford the County the ability to compare the Proposals and Proposers, applying the same standards of comparison to all Proposers;

(ii) Rationally reflect Proposers' abilities to perform the resulting Contract in compliance with the Contract's requirements; and

(iii)Permit the County to determine the relative pricing offered by the Proposers, and to reasonably estimate the costs to the County of entering into a Contract based on each Proposal, considering information available to the County and subject to the understanding that the actual Contract costs may vary as a result of the statement of work ultimately negotiated or the quantity of Goods or Services for which the County contracts.

(B) If the County's solicitation process calls for the County to establish a Competitive Range, the County shall generally describe, in the Solicitation Document, the criteria or parameters the County will apply to determine the Competitive Range. The County, however, subsequently may determine or adjust the number of Proposers in the Competitive Range in accordance with YCR 047-0270(6).

(e) *Contractual Terms and Conditions*. The County shall set forth all contractual terms and conditions the County determines are applicable to the Procurement. The County's determination of applicability may take into consideration, as authorized by ORS 279B.060(3), those contractual terms and conditions the County will not include in the Request for Proposal because the County either will reserve them for negotiation or will request Proposers to offer or suggest those terms or conditions where suitable.

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

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

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

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

(B) The County may include the applicable contractual terms and conditions in the form of Contract provisions, or legal concepts to be included in the resulting Contract. Further, the County may specify that

it will include or use Proposer's terms and conditions that have been pre-negotiated under YCR 047-0550(3), but the County may only include or use a Proposer's pre-negotiated terms and conditions in the resulting Contract to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The County shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under YCR 047-0720.

(4) For multiple Award Contracts, the County may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The County shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under YCR 047-0720.

(5) Good Cause. The County shall document in the Procurement file the basis for the determination of Good Cause for specification otherwise. The County has Good Cause to specify otherwise under the following circumstances:

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

(b) Imposing express technical, standard, dimensional, or mathematical specifications will better ensure that the Goods or Services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services, or information technology, including hardware, Services, or software with which the Goods or Services will be used, integrated, or coordinated;

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

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.060
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0267 Multistep Sealed Bids

(1) Generally. The 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 submittals in the initial phase combined with regular competitive sealed bidding. The County may invite Bidders to submit technical submittals in the initial phase, followed by a request for them to submit competitive sealed price Bids in the final phase. The Contract shall be Awarded to the lowest Responsible Bidder. If time is a factor, the County may require Bidders to submit a separate sealed price Bid during the initial phase, to be opened immediately following the initial evaluation.

(3) Public Notice. Whenever multistep sealed Bids are used, public notice for the first phase shall be given in accordance with YCR 047-0300. Public notice is not required for the subsequent phases. However, the County shall give notice of the second phase to all Bidders, inform Bidders of their right to protest any Addenda issued pursuant to YCR 047-0430, and inform Bidders excluded from the second phase, if any, of their right to protest their exclusion under YCR 047-0710.

(4) Procedures Generally. In addition to the procedures set forth in YCR 047-0300 through 047-0490, the County shall employ the procedures set forth in this rule for multistep bidding and in the Invitation to Bid.

(5) Procedure for Phase One of Multistep Sealed Bids.

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

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

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

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

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

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

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

(6) Procedure for Phase Two of Multistep Sealed Bidding.

(a) After the completion of phase one, if the County does not cancel the Solicitation, the County shall invite each eligible Bidder to submit a price Bid.

(b) The County shall conduct phase two as any other competitive sealed Bid Procurement except:

(A) As specifically set forth in this rule or the Invitation to Bid;

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED : ORS 279B.055
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0270 Multiple-tiered and Multistep Proposals

(1) Generally. The County may use one or more, or any combination, of the methods of Contractor selection set forth in ORS 279B.060(7), 279B.060(8), and this rule to procure Goods or Services. In addition to the procedures set forth in YCR 047-0300 through 047-0490 for methods of Contractor selection, the County may provide for a multiple-tiered or multistep selection process that permits award to the highest ranked Proposer at any tier or step, calls for the establishment of a Competitive Range, or permits either serial or competitive simultaneous discussions or negotiations with one or more Proposers.

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

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

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

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

(b) May disclose other eligible Proposers' Proposals or discussions only in accordance with ORS 279B.060(8)(b) or (c);

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

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

(A) Continue discussions with a particular eligible Proposer;

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

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

(3) Negotiations.

(a) The County may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers. The County may negotiate:

(A) The statement of work;

(B) The Contract Price as it is affected by negotiating the statement of work and other terms and conditions authorized for negotiation in the Request for Proposals or Addenda thereto; and

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

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

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

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

(c) *Continuing Serial Negotiations*. If the County is conducting serial negotiations and the County terminates negotiations with an eligible Proposer, the County may then commence negotiations with the next highest scoring eligible Proposer, and continue the sequential process until the County has either:

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

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

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

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

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

(C) Any oral modification of a Proposal resulting from negotiations must be reduced to Writing.

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

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

(A) The County may establish the number of Proposers in the Competitive Range in light of whether the County's evaluation of Proposals identifies a number of Proposers who have a reasonable chance of being determined the most Advantageous Proposer, or whether the evaluation establishes a natural break in the

scores of Proposers that indicates that a particular number of Proposers are closely competitive or have a reasonable chance of being determined the most Advantageous Proposer.

(b) *Notice Required*. The County must provide Written notice to all Proposers identifying Proposers in the Competitive Range.

(5) Multistep Sealed Proposals. The County may procure Goods or Services by using multistep competitive sealed Proposals under ORS 279B.060(8)(b)(g). Multistep sealed Proposals is a phased Procurement process that seeks necessary information or unpriced technical Proposals in the first phase and, in the second phase, invites Proposers who submitted technically qualified Proposals to submit competitive sealed price Proposals on the technical Proposals. The County must award the Contract to the Responsible Proposer submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the second phase.

(a) *Public Notice*. When the County uses multistep sealed Proposals, the County shall give public notice for the first phase in accordance with YCR 047-0300. Public notice is not required for the second phase. However, the County shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the second phase of the right, if any, to protest exclusion under YCR 047-0710.

(b) *Procedure for Phase One of Multistep Sealed Proposals*. The County may initiate a multistep sealed Proposals Procurement by issuing a Request for Proposals in the form and manner required for competitive sealed Proposals except as provided in this rule. In addition to the requirements required for competitive sealed Proposals, the multistep Request for Proposals must state:

(A) That unpriced technical Proposals are requested;

(B) That the solicitation is a multistep sealed Proposal Procurement and that, in the second phase, priced Proposals will be accepted only from those Proposers whose unpriced technical Proposals are found qualified in the first phase;

(C) The criteria for the evaluation of unpriced technical Proposals; and

(D) That the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposals.

(c) *Addenda to the Request for Proposals*. After receipt of unpriced technical Proposals, Addenda to the Request for Proposals shall be distributed only to Proposers who submitted unpriced technical Proposals.

(d) *Receipt and Handling of Unpriced Technical Proposals*. Unpriced technical Proposals need not be opened publicly.

(e) *Evaluation of Unpriced Technical Proposals*. Unpriced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for Proposals.

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

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

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

(i) *No Notice Required for Price Proposals*. No public notice need be given of the request to submit price Proposals because such notice was previously given.

(6) Best and Final Offers. If the County requires best and final Offers, the County must establish a common date and time by which eligible Proposers must submit best and final Offers. If the County is dissatisfied with the best and final Offers, 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. The County must inform all eligible Proposers that if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offers will be considered their best and final Offers. The County shall evaluate Offers as modified by the best and final Offers. The County shall conduct the evaluations as described in YCR 047-0600. The County may not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

(7) Protests.

(a) *Exclusion Protest*. The County may provide, before the notice of an intent to Award, an opportunity for a Proposer to protest exclusion from the Competitive Range or from subsequent phases of multiple-tiered or multistep sealed Proposals as set forth in YCR 047-0710.

(b) *Award Protest*. The County shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and YCR 047-0730. An Affected Offeror may protest, for any of the bases set forth in YCR 047-0710(2), its exclusion from the Competitive Range or from any phase of a multiple-tiered or multistep sealed Proposal process, or may protest an Addendum issued following initial Closing, if the County did not previously provide Proposers the opportunity to protest the exclusion or Addendum. The failure to protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the County.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED:
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0275 Sole-source Procurements

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

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

(3) Written Findings. The declaration of a Sole-source Procurement must be based on Written findings that:

(a) Show with reasonable certainty that:

(A) The efficient utilization of existing goods requires acquiring compatible Goods or Services;

(B) The goods or services required to exchange software or data with other public or private agencies are available from only one source;

(C) The goods or services are for use in a pilot or an experimental project; or

(D) Any other findings that support the conclusion that the goods or services are available from only one source.

(b) Include a description of the methodology used in determining that the good or service is only available from one source.

(4) Public Notice. If a Sole-source Procurement will result in a Contract exceeding $250,000, the County shall provide public notice of the sole-source determination in a manner similar to public notice of competitive sealed bids under 279B.055(4) and YCR 047-0300. The public notice shall describe the Goods or Services to be acquired by a Sole-source Procurement, identify the prospective Contractor, and include the date, time, and place that protests are due. The County shall give Affected Persons at least seven (7) days from the date of the notice of the determination that the Goods or Services are available from only one source to protest the sole-source determination.

(5) Protest. An Affected Person may protest the County's determination that the Goods or Services or class of Goods or Services are available from only one source in accordance with YCR 047-0700.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED : ORS 279B.075
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0280 Emergency Procurements

The County may Award a Contract as an Emergency Procurement pursuant to the requirements of ORS 279B.080. When an Emergency Procurement is authorized, the Procurement shall be made with competition that is reasonable and appropriate under the circumstances. However, for an Emergency Procurement of Construction Services, see 279B.080(2).

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.080
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0285 Special Procurements

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

(2) Authorization of a Special Procurement. Special Procurements may be authorized by the Board in the following manner:

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

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

(A) Not encourage favoritism in the awarding of Public Contracts or 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 YCR.

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

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

(5) Class Special Procurements. The Yamhill County Board of Commissioners declares the following as Class Special Procurements:

(a) *Advertisements*. The County may purchase advertising in newspapers and written publications, web-based Internet sites, and other electronic formats without using the methods of source selection described in the YCR. (Authorized by Ordinance No. 761.)

(b) *Ballots, Ballot Pages, and Ballot Cards*. The County may purchase the printing of ballots, including ballot pages and labeling of ballot cards, without using the methods of source selection described in the YCR. (Authorized by Ordinance No. 924.)

(c) *COTS Software*. The County may purchase commercially-available off-the-shelf (COTS) software without using the methods of source selection described in the YCR. The COTS software must not be in any way modified from the form in which it is sold in the commercial marketplace. (Authorized by Ordinance No. 924.)

(d) *Copyrighted Materials*. The County may purchase copyrighted materials where there is only one known supplier available for such goods without using the methods of source selection described in the YCR. (Authorized by Ordinance No. 924.)

(e) *Employee Benefit Contracts*. The County may purchase employee benefit insurance without using the methods of source selection described in the YCR. (Authorized by Ordinance No. 761.)

(f) *Equipment Maintenance, Repair, Conversion, and Overhaul*. The County may enter into a Contract for equipment maintenance, repair, conversion, or overhaul without using the methods of source selection described in the YCR, 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;

(B) Service and/or parts required are for sophisticated equipment which is only available through one source; and/or

(C) Specially trained personnel are required for the efficient utilization of the equipment, and such personnel are available from only one source. (Authorized by Ordinance No. 761.)

(g) *Financial Services*. The County may purchase services for the purpose of investment of public funds, the borrowing of funds, or banking without using the methods of source selection described in the YCR. (Authorized by Ordinance No. 761.)

(h) *Food Service Contracts*. The County may purchase food services without using the methods of source selection described in the YCR if the total contract value is less than $50,000. For the purposes of this rule, "food services" means the purchase, preparation, and service of meals and related services. (Authorized by Ordinance No. 924.)

(i) *Gasoline, Diesel Fuel, Heating Oil, Lubricants, Asphalt, and Rock*. The County may purchase gasoline, diesel fuel, heating oil, lubricants, asphalt, and rock from a vendor or supplier without using the methods of source selection described in the YCR if:

(A) The County seeks competitive quotes;

(B) Makes its purchase from the least expensive source; and

(C) Retains Written justification for the purchase made. (Authorized by Ordinance No. 761.)

(j) *Insurance Contracts*. The County may purchase Contracts for insurance directly from an insurer without using the methods of source selection described in the YCR. (Authorized by Ordinance No. 761.)

(k) *Laboratory and Medical Supplies*. The County may purchase drugs, laboratory, or medical supplies directly from a vendor without using the methods of source selection described in the YCR. (Authorized by Ordinance No. 924.)

(l) *Law Enforcement Equipment*. The County may purchase ammunition, firearms, and other weapons as needed without using the methods of source selection described in the YCR if determined in Writing to be necessary by the Yamhill County Sheriff. (Authorized by Ordinance No. 761.)

(m) *Legal Services*. The County may directly purchase, without using the methods of source selection described in the YCR, services related to the provision of legal advice to the County. This includes, but is not limited to:

(A) Litigation and litigation support services;

(B) Court reporters;

(C) Expert witnesses;

(D) Arbitrators and mediators;

(E) Trial consultants; and

(F) Investigators.

(Authorized by Ordinance No. 924.)

(n) *Membership Dues*. The County may directly purchase, without using the methods of source selection described in the YCR, dues or memberships in professional or community organizations for the benefit of the City. (Authorized by Ordinance No. 924.)

(o) *Oil or Hazardous Material Removal*. The County may directly purchase services to remove or clean up oil or hazardous waste pursuant from any vendor without using the methods of source selection described in the YCR when ordered to do so by the Department of Environmental Quality (DEQ) pursuant to its authority under ORS Chapter 466. In doing so, the following conditions apply:

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

(B) The County makes Written findings describing the circumstances requiring cleanup or a copy of the DEQ order ordering such cleanup; and

(C) The County records the measures taken under subsection (A) of this exemption to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the Contractor selected. (Authorized by Ordinance No. 761.)

(p) *Office Photocopiers*. The County may purchase or lease office photocopiers without using the methods of source selection described in the YCR if:

(A) To the extent reasonable under the circumstances, the County encourages competition by either:

(i) Attempting to make informal solicitations or to obtain informal quotes from potential suppliers of office photocopiers;

(ii) Utilizing a Cooperative Contract authorized under the Code; and

(B) The County records the measures taken under subsection (A) of this exemption to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the Contractor selected. (Authorized by Ordinance No. 924.)

(q) *Oregon Corrections Enterprise Purchases*. The County may purchase from the Oregon Corrections Enterprise without using the methods of source selection described in the YCR. (Authorized by Ordinance No. 924.)

(r) *Performing Artists*. The County may enter into a Contract for performance art, whether vocal, instrumental, or visual, required by the County for an audience without using the methods of source selection described in the YCR. (Authorized by Ordinance No. 924.)

(s) *Periodicals.* The County may directly purchase financial products, such as bond insurance, surety bonds, and liquidity facilities, such as letters of lines or credit without using the methods of source selection described in the YCR. (Authorized by Ordinance No. 761.)

(t) *Purchase of Used Personal Property or Equipment*. The County may directly purchase used personal property and equipment without using the methods of source selection described in the YCR. (Authorized by Ordinance No. 924.)

(u) *Price-Regulated Goods and Services.* The County may directly purchase Goods or Services, without using the methods of source selection described in the YCR, if the rate or price for the Goods or Services being purchased is established by federal, state, or local regulatory authority. (Authorized by Ordinance No. 761.)

(v) *Utilities and Utility Related Services*. The County may directly purchase, without using the methods of source selection described in the YCR, utility services, repair, equipment, and/or maintenance work, where the rate or price for such goods and services is established by federal, state, or local regulatory authority or when the services can be provided only by a specific utility. (Authorized by Ordinance No. 924.)

(w) *Software and Hardware Maintenance, Licenses, Subscriptions, and Upgrades*. The County may directly enter into a Contract or renew existing Contracts for information technology hardware or software maintenance, licenses, subscriptions, and upgrades without using the methods of source selection described in the YCR if the maintenance, upgrades, subscriptions, and licenses are either available from only one source or, if available from more than one provider, can be obtained from the County's current provider in a way that allows for both efficient and effective utilization of the County's hardware or software system currently in place, subject to the following condition:

(A) If the purchase exceeds $100,000, the County shall make reasonable efforts to notify all known vendors of competing or comparable products or services of the intended Contract specifications and invite such vendors to submit informal proposals within a reasonable period of time. (Authorized by Ordinance No. 924.)

(x) *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. (Authorized by Ordinance No. 924.)

(y) *Telecommunication Services*. The County may purchase, lease, or rent the use of voice and data transmission (telecommunication) facilities or services without using the methods of source selection described in the YCR if the County determines in Writing that suitable competition does not exist for the relevant services within the specific geographic area. (Authorized by Ordinance No. 924.)

(z) *US Postal Service*. The County may directly purchase, without using the methods of source selection described in the YCR, permits and postage meters, pre-stamped postcards, establish on-going postage accounts, etc. from the US Postal Service. (Authorized by Ordinance No. 924.)

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED : ORS 279B.085
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 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 YCR 046-0400 through 046-0480.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED : ORS 279A.205
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

III. PROCUREMENT PROCESS

YCR 047-0300 Public Notice of Solicitation Documents

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

(a) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the County's Procurements;

(b) Placing notice on the County's Electronic Procurement System; or

(c) Placing notice on the County's website.

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

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

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

(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 shall not be less than fourteen (14) Days, unless the County determines that a shorter interval is in the public's interest and will not substantially affect competition. However, in no event shall the interval between the first date of notice and Closing be less than seven (7) Days. The County shall document the specific reasons for the shorter public notice period in the Procurement file;

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

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

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

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

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.055 & 279B.060
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0310 Bids or Proposals are Offers

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

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

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

(2) Contingent Offers. Except to the extent the Proposer is authorized to propose certain terms and conditions pursuant to YCR 047-0261, 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 YCR 047-0261, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the County in Writing, and Offeror's agreement to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065, ORS 279B.055 & 279B.60
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0320 Facsimile Bids and Proposals

(1) County Authorization. The County may authorize Offerors to submit facsimile Offers. If the County determines that Bid or Proposal security is or will be required, the County should not authorize facsimile Offers unless the County has another method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the County shall determine that the County's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the County shall establish administrative procedures and controls:

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

(2) Provisions To Be Included in Solicitation Document. In addition to all other requirements, if the County authorizes a facsimile Offer, the County 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 data and compatibility characteristics of the County's receiving facsimile machine as follows:

(A) Telephone number; and

(B) Compatibility characteristics, e.g., make and model number, receiving speed, communications protocol; and

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

(A) Receipt of garbled or incomplete documents;

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

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

(D) Delay in transmission or receipt of documents;

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

(F) Illegibility of Offer documents; and

(G) Security and confidentiality of data.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED : ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0330 Electronic Procurement

(1) Electronic Procurement Authorized.

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

(b) The county shall open an Electronic Offer in accordance with electronic security measures in effect at the County at the time of its receipt of the Electronic Offer. Unless the County provides procedures for the secure receipt of Electronic Offers, 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 shall 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 or will be required, the County should not authorize Electronic Offers unless the County has another method for receipt of such security.

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

(3) Preliminary Matters. As a condition of participation in an Electronic Procurement, the County may require potential Contractors to register with the County before the date and time on which the County will first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms

and conditions governing the Procurement, such as procedures that the County may use to attribute, authenticate or verify the accuracy of an Electronic Offer, or the actions that constitute an electronic Signature.
(4) Offer Process. The County may specify that Persons must submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the County specifies that Persons may submit multiple Electronic Offers during a specified period of time, the County must 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 must begin to accept real time Electronic Offers on the County's Electronic Procurement System, and shall continue to accept Electronic Offers in accordance with section (5)(b) of this rule until the date and time specified by the County, after which the County will no longer accept Electronic Offers.
(5) Receipt of Electronic Offers.
(a) When the County conducts an Electronic Procurement that provides that all Electronic Offers must be submitted by a particular date and time, the County shall receive the Electronic Offers in accordance with these Division 47 rules.
(b) When the County specifies that Persons may submit multiple Electronic 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 shall post on the County's Electronic Procurement System, and update 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.
(B) 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.
(C) A Person may withdraw an Electronic Offer only in compliance with these Division 47 rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.
(6) Failure of the E-Procurement System. In the event of a failure of the County's Electronic Procurement System that interferes with the ability of Persons to submit Electronic Offers, protest, or to otherwise participate in the Procurement, the County may cancel the Procurement in accordance with YCR 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.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.055 & ORS 279B.060
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

IV. BID AND PROPOSAL PREPARATION

YCR 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 YCR 047-0330, an Offeror may submit its Offer electronically. The County shall not consider Electronic Offers unless authorized by the Solicitation Document.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0410 Offer Submission
(1) Product Samples and Descriptive Literature. The County may require Product Samples or Descriptive Literature if the County determines either is necessary or desirable to evaluate the quality, features or characteristics of an Offer. The County will dispose of Product Samples, or make them available for the Offeror, to retrieve in accordance with the Solicitation Document.
(2) Identification of Offers:
(a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the County, whichever is applicable. 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 these Division 47 rules and the instructions set forth in the Solicitation Document. The County shall not consider facsimile Offers or Electronic Offers unless authorized by the Solicitation Document.
(b) 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.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0420 Pre-Offer Conferences
(1) Purpose. The County may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information, or to conduct site inspections.
(2) Required Attendance. The County may require attendance at the pre-Offer conference as a condition for making an Offer.
(3) Scheduled Time. If the County holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.
(4) Statements Not Binding. Statements made by the County's representative at the pre-Offer conference do not change the Solicitation Document unless the County confirms such statements with a Written Addendum to the Solicitation Document.
(5) County Announcement. The County must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with YCR 047-0255(2) or 047-0260(2).
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0430 Addenda to Solicitation Document
(1) Issuance; Receipt. The County may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the County otherwise specifies in the Addenda.

(2) Notice and Distribution. The County shall notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document shall specify how the County will provide notice of Addenda and how the County will make the Addenda available before Closing, and at each subsequent step or tier of evaluation if the County will engage in a multistep competitive sealed Bid process in accordance with YCR 047-0267, or a multiple-tiered or multistep competitive sealed Proposal process in accordance with YCR 047-0270. The following is an example of how the County may specify how it will provide notice of Addenda: "County will not mail notice of Addenda but will publish notice of any Addenda on the County's website. Addenda may be downloaded off the County's website. Offerors should frequently check the County's website until Closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."

(3) Timelines; Extensions.

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

(b) Notwithstanding subsection 3(a) of this rule, an Addendum that modifies the evaluation criteria, selection process or procedure for any tier of competition under a multistep sealed Bid or a multiple-tiered or multistep sealed Proposal issued in accordance with YCR 047-0267 and YCR 047-0270 must be issued no fewer than five (5) Days before the beginning of that tier or step of competition, unless the County determines that a shorter period is sufficient to allow Offerors to prepare for that tier or step of competition. The County shall document the factors it considered in making that determination, which may include, without limitation, the scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next tier or step of competition favors or disfavors any particular Proposer or Proposers.

(4) Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in YCR 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 request for change or protest under YCR 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 YCR 047-0730, then the County may consider an Offeror's request for change or protest to the Addendum only, and the County shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this section (4) of this rule, the County is not required to provide a protest period for Addenda issued after initial Closing during a multi-tier or multistep Procurement process conducted pursuant to ORS 279B.055 or 279B.060.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.055 & ORS 279B.060
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

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

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

(a) Bid (or Proposal) Modification; and

(b) Solicitation Document Number (or other identification as specified in the Solicitation Document).

(2) Withdrawals.

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

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

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

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Document Number (or other identification as specified in the Solicitation Document).

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.055 & ORS 279B.060
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

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

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

(2) Opening and Recording. The County shall publicly open Offers including any modifications made to the Offer pursuant to YCR 047-0440(1). In the case of Invitations to Bid, to the extent practicable, the County shall 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(6). In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the County will not read Offers aloud.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.055 & ORS 279B.060
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

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

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The County shall not consider late Offers, withdrawals, or modifications except as permitted in YCR 047-0470 or 047-0270.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.055 & ORS 279B.060
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0470 Mistakes

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

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

(a) The County may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that

can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or 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 calculations (for example, a missing unit price may be determined by dividing the total price 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). Unit prices shall prevail over extended prices in the event of a discrepancy between extended prices and unit 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 (2)(b) of this rule;

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

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

(4) Identification of Mistakes after Award. The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to these Division 47 rules only to the extent permitted by applicable law.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.055 & ORS 279B.060
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0480 Time for 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.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.055 & ORS 279B.060
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 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.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.055 & ORS 279B.060
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

V. QUALIFICATION AND DUTIES

YCR 047-0500 Responsibility of Bidders and Proposers

(1) Before Awarding a Contract, the County shall determine that the Bidder submitting the lowest Bid or Proposer submitting the most Advantageous Proposal is Responsible. The County shall use the following standards to determine if a Bidder or Proposer is Responsible:

(a) To be a Responsible Offeror, the County shall determine, pursuant to ORS 279B.110, that the Offeror:

(A) Has available (or the ability to obtain) the appropriate financial, material, equipment, facility, and personnel resources, and has the expertise necessary to meet all contractual responsibilities;

(B) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous Contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the Procurement, and otherwise performed the Contract in a satisfactory manner. The County should carefully 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 should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The County may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The County shall make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement file as required by ORS 279B.110(2)(b);

(C) Has a satisfactory record of integrity. An Offeror may lack integrity if the County determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to the 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 and YCR 047-0575 may be used to determine an Offeror's integrity. The County may find an Offeror non-Responsible based on previous convictions of offenses related to obtaining or attempting to obtain a Contract or subcontract or in connection with the Offeror's performance of a Contract or subcontract. The County shall make its basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement file as required by 279B.110(2)(c);

(D) Is legally qualified to Contract with the County;

(E) Has attested in Writing that the Offeror complied with the tax laws of this state and of political subdivisions of this state;

(F) 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 shall base the determination of Responsibility on any available information or may find the Offeror non-Responsible.

(2) For the purposes of subsection (1)(a)(E) of this rule:

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

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

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

(3) 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.

(4) 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.

(5) In addition to making the responsibility determination under this rule, the County may consider (as authorized by House Bill 2094 (2019 Oregon Laws, Chapter 124)), as part of the County's evaluation of a Bid or Proposal, whether the Bidder or Proposer owes a liquidated and delinquent debt to the State of Oregon.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.110 & OL 2015 & CH 539 (SB 675)
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0525 Qualified Products Lists

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.115
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0550 Prequalification of Prospective Offerors

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

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

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.120 & 279B.125
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 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 the County. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.130
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

VI. OFFER EVALUATION AND AWARD

YCR 047-0600 Offer Evaluation and Award

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

(a) *Evaluation of Bids*.

(A) Nonresident Bidders. In determining the lowest Responsive Bid, the County will apply the reciprocal preference set forth in ORS 279A.120(2)(b) and YCR 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, the County shall Award a Contract in accordance with the procedures set forth in YCR 046-0300.

(b) *Evaluation of Proposals*.

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

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

(c) *Recycled Materials*. When procuring Goods, the County shall give preference for recycled materials as set forth in ORS 279A.125 and YCR 046-0320.

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

(3) Negotiations.

(a) *Bids*. The County shall not negotiate with any Bidder. After Award of the Contract, the County and Contractor may modify the Contract in accordance with YCR 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 YCR 047-0261. After Award of the Contract, the County and Contractor may only modify the Contract in accordance with YCR 047-0800.

(4) Award.

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

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

(c) *Multiple Awards – Bids*.

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

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

(d) *Multiple Awards – Proposals*.

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

(B) If a Request for Proposals permits the Award of multiple Contracts, the County shall specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services, which may include consideration and evaluation of the Contract terms and conditions agreed to by the Contractors.

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

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

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

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.055 & 279B.060
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0610 Notice of Intent to Award

(1) Notice of Intent to Award. The County shall provide Written notice of its intent to Award to all Bidders and Proposers pursuant to ORS 279B.135 at least seven (7) Days before the Award of a Contract, unless the County determines that circumstances justify prompt execution of the Contract, in which case the County may provide a shorter notice period. The County shall 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 YCR 047-0700 through 047-0740; or

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.135
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0620 Documentation of Award

(1) Basis of Award. After Award, the County shall make a record showing the basis for determining the successful Offeror part of the County's Procurement file.

(2) Contents of Award Record. The County's record shall include:

(a) *For Bids*:

(A) Bids;

(B) Completed Bid tabulation sheet; and

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

(b) *For Proposals*:

(A) Proposals;

(B) The completed evaluation of the Proposals;

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

(D) If the County engaged in any of the methods of Contractor selection described in ORS 279B.060(6)(b) and YCR 047-0257, Written documentation of the content of any discussions, negotiations, best and final Offers, or any other procedures the County used to select a Proposer to which the County Awarded a Contract.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.135
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0630 Availability of Award Decisions

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

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

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.055 & 279B.060
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0640 Rejection of an Offer

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

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

(a) Is contingent upon the County's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;
(b) Takes exception to terms and conditions (including Specifications) set forth in the Solicitation Document;
(c) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;
(d) Offers Goods or Services that fail to meet the Specifications of the Solicitation Document;
(e) Is late;
(f) Is not in substantial compliance with the Solicitation Document; or
(g) Is not in substantial compliance with all prescribed public Procurement procedures.

(3) The County shall reject an Offer upon the County's finding that the Offeror:
(a) Has not been prequalified under ORS 279B.120 and YCR 047-0550, and the County required mandatory prequalification;
(b) Has been Debarred as set forth in ORS 279B.130 and YCR 047-0575, or has been disqualified pursuant to YCR 046-0210 (Disqualification);
(c) Has not met the requirements of ORS 279A.105, if required by the Solicitation Document;
(d) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;
(e) Has failed to provide the certification of nondiscrimination 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 provided under YCR 047-0500.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 579B.100
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0650 Rejection of All Offers

(1) Rejection. The County may reject all Offers as set forth in ORS 279B.100. The County shall notify all Offerors of the rejection of all Offers, along with the reasons for 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 County cancels the Procurement or solicitation in accordance with YCR 047-0660; or
(f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED : ORS 279B.100
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0655 Failed Procurements; Direct Negotiation Permitted

(1) When the County experiences a Failed Procurement, the County may:
(a) Cancel and reissue the solicitation; or
(b) Subject to section (2) of this rule, directly negotiate with a Person for the goods and/or services.

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

(a) Be in Writing;
(b) Describe how the original solicitation was adequately advertised;
(c) Explain why no responsive Offers were received; and
(d) State the basis for the selection of the Person that the County will be entering into direct negotiations with.
(3) The County may conduct negotiations as appropriate as to price, delivery, and terms.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0660 Cancellation of Procurement or Solicitation

(1) Cancellation in the Public Interest. The County may cancel a Procurement or solicitation as set forth in ORS 279B.100.
(2) Notice of Cancellation Before Opening. If the County cancels a Procurement or solicitation prior to Opening, the County shall provide Written notice of cancellation in the same manner that the County initially provided notice of the solicitation. Such notice of cancellation shall:
(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 Written notice of cancellation to all Offerors who submitted Offers.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.100
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0670 Disposition of Offers if Procurement or Solicitation is Canceled

(1) Prior to Opening. If the County cancels a Procurement or solicitation prior to Opening, the County shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the County shall open the Offer to determine the source and then return it to the Offeror. For Electronic Offers, the County shall delete the Offers from the County's Electronic Procurement System.
(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(56)(c); and
(b) Shall keep Bids in the Procurement file.
(3) Rejection of All Offers. If the County rejects all Offers, the County shall keep all Proposals and Bids in the Procurement file.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED : ORS 279B.100
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

VII. LEGAL REMEDIES

YCR 047-0700 Protests and Judicial Review of Special Procurements and Sole-source Procurements

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

(1) Protesting Sole-source Procurements. For Sole-source Procurements requiring public notice under YCR 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.

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

(2) 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.

(3) Board Response. The Board or designee shall not consider an Affected Person's 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. The Board or designee shall issue a Written disposition of the protest in a timely manner. If the Board upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special Procurement or revoke the approval.

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.400
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0710 Protests and Judicial Review of Multiple-tiered or 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 applicable 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 administrative rule, 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 as described in the Solicitation Document within seven (7) Days after issuance of the notice of the Competitive Range or notice of subsequent tiers or steps.

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

(5) County's Response. The County shall not consider an Affected Offeror's multiple-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 shall issue a Written disposition of the protest in a timely manner. If the County upholds the protest, in whole or in part, the County may in its sole discretion either issue an Addendum under YCR 047-0430 reflecting its disposition or cancel the Procurement or solicitation under YCR 047-0660.

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.060
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0720 Protests and Judicial Review of Solicitations

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

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

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.405
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0730 Protests and Judicial Review of a 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 Board 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 Board within seven (7) Days after issuance of the notice of intent to Award the Contract.

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

(4) Board Response. The Board shall not consider an Offeror's Contract Award protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Board shall issue a Written disposition of the protest in a timely manner as set

forth in ORS 279B.410(4). If the Board 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 Board's decision relating to a Contract Award protest shall be in accordance with ORS 279B.415.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.410
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0740 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 and YCR 047-0525. 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 seven (7) 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's Response. The County shall not consider a prospective Offeror's qualified products list protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the County's notice to prospective Offerors of the opportunity to submit goods for inclusion on the qualified products list. The County shall issue a Written disposition of the protest in a timely manner. If the County upholds the protest, it shall 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 shall be in accordance with ORS 279B.420.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.115
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 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 279B.420.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.420
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 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.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED:
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

VIII. CONTRACT CHANGES

YCR 047-0800 Amendments to Goods and Services Contracts and Price Agreements
(1) Generally. The County may amend a Goods and Services Contract without additional competition in any of the following circumstances:

(a) The Amendment is within the scope of the Procurement as described in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the Sole-source Procurement notice or the approved Special Procurement, if any. An Amendment is not within the scope of the Procurement if the County determines that

if it had described in the Procurement the changes to be made by the Amendment, it would likely have increased competition or affected award of the Contract.

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

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

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

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

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

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

(2) Small or Intermediate Contracts. The County may amend a Contract Awarded as small or intermediate Procurement pursuant to section (1) of this rule, provided that the total increase in Contract Price does not exceed the amount set forth in YCR 047-0255 for Small Procurements and YCR 047-0257 for Intermediate Procurements.

(3) Emergency Contracts. 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.

(4) Amendments authorized by this rule shall be executed in accordance with the provisions of YCR 046-0540.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.425
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0810 Termination of Price Agreements

The County may terminate a Price Agreement as follows:

(a) As permitted by the Price Agreement;

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

(c) As permitted by applicable law.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.140
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

IX. PERSONAL SERVICES CONTRACTS

YCR 047-0900 Statutory Authority

(1) ORS 279A.070 requires the County to create procedures for the screening and selection of persons to perform Personal Services. Personal Services Contracts shall be awarded pursuant to YCR 047-0900 through 047-0920.

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.055
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0910 Scope

(1) The following are considered Personal Services:

(a) Contracts for services performed as an independent contractor in a professional capacity, including, but not limited to, the services of an accountant, attorney, financial advisor, investment banker, physician, commercial real estate broker, dentist, pilot, 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 as a consultant not otherwise provided for under YCR Division 48;

(d) Contracts for services of a specialized, creative, and research-oriented, noncommercial nature;

(e) Contracts for educational services; and

(f) Contracts for human custodial care services.

(2) The following are not considered to be Personal Services:

(a) Contracts, even though in a professional capacity, if predominately for a product (e.g., a contract to design a garden statue is for personal services, but a contract to supply all the shrubs and trees surrounding the statue is predominately for a tangible product);

(b) A contract to supply labor that is of a type that can generally be done by any competent worker (e.g., janitorial, security guard, laundry, landscape maintenance service contracts, temporary services, and delivery services); and

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED : ORS 279A.055
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 047-0920 Selection Procedures

(1) Direct Appointment Procedure. Personal Service Contracts with an estimated Contract Price less than or equal to $100,000 may be awarded by direct selection without a competitive solicitation.

(2) Informal Selection Procedure. Personal Services Contracts with an estimated Contract Price between $100,000 and $250,000 may be awarded using the following procedures:

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

(b) The County shall receive and evaluate the Proposals offered by the candidates under subsection (a) above. Such evaluation shall include the candidate's proposed method to accomplish the work required, including, where appropriate, a demonstrated capability to use innovative methods to achieve desired performance. Cost may be considered but should not be the sole criterion. The County may negotiate with one or more qualified candidates as it deems appropriate.

(3) Formal Selection Procedure. Personal Service Contracts with an estimated Contract Price greater than $250,000 shall be awarded using the procedures outlined in YCR 047-0265, Competitive Sealed Proposals.

(4) Amendments. Personal Services Contracts may be amended up to their respective thresholds outlined in this rule.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED : ORS 279A.055
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR DIVISION 048

A&E CONSULTANT SELECTION

I. GENERAL PROVISIONS RELATED TO THE SELECTION OF A&E CONSULTANTS

YCR 048-0100 Application

(1) Division 048 rules apply to the screening and selection of a Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services, and set forth the following procedures:

(a) Procedures through which the County selects Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services; and

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065, ORS 279C.100 - 279C.125
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 048-0110 Definitions

In addition to the definitions set forth in ORS 279A.010, ORS 279C.100, and YCR 046-0110, the following definitions apply to these Division 048 rules:

(1) "**Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services**" have the meanings as set forth in ORS 279C.100.

(2) "**A&E Consultant**" or "**Consultant**" means an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor, or provider of Related Services. A Consultant includes a business entity that employs Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors or providers of Related Services, or any combination of the foregoing.

(3) "**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 291.0047.

(4) "**Price Agreement**" is limited to mean, for purposes of these Division 048 rules, an agreement related to the Procurement of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services, under agreed-upon terms and conditions, including, but not limited to terms and conditions of later Task Orders for project-specific Services, and which may include Consultant compensation information, with no guarantee of a minimum or maximum purchase.

(5) "**Project**" means all components of the County's planned undertaking that gives rise to the need for a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services under a Contract.

(6) "**Related Services**" means personal services, other than Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, that are related to planning, designing, engineering, or overseeing a Public Improvement or components of a Public Improvement, including, but not

limited, to Landscape Architecture, Facilities Planning, Energy Planning, Space Planning, Hazardous Substances or Hazardous Waste or Toxic Substances Testing, Cost Estimating, Appraising, Material Testing, Mechanical System Balancing, Commissioning, Project Management, Construction Management, Owner's Representation services, or Land-use Planning.

(7) "**Transportation Planning Services**" are defined in ORS 279C.100. Transportation Planning Services include only project-specific transportation planning involved in the preparation of categorical exclusions, environmental assessments, environmental impact statements and other documents required for compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans, and other transportation plans not directly associated with an individual project that will require compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services also do not include transportation planning for projects not subject to the National Environmental Policy Act, 42 USC 4321 et. seq.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.100
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 048-0130 Applicable Selection Procedures; Pricing Information; Proposal Disclosures; Conflicts

(1) When selecting the most qualified Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, the County shall follow the applicable selection procedure under either YCR 048-0210 (Informal Selection Procedure), YCR 048-0220 (Formal Selection Procedure), or YCR 048-0200 (Direct Appointment Procedure). In following the Direct Appointment Procedure under YCR 048-0200, the County may base its selection of a Consultant on any information available to the County prior to beginning the Direct Appointment Procedure for the project involved. The County may solicit or use pricing policies and pricing Proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, in any of the County's selection procedures to select Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services pursuant to the requirements of YCR 048-280 and ORS279C.110(5).

(2) If selecting a Consultant to perform Related Services, the County shall follow one of the following selection procedures:

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

(b) When selecting a Consultant on the basis of price competition alone, the County shall follow the applicable provisions under YCR 048-0200 (Direct Appointment Procedure), the applicable provisions of 048-0210 (Informal Selection Procedure) pertaining to obtaining and evaluating price Proposals and other pricing information, or the applicable provisions of 048-0220 (Formal Selection Procedure) pertaining to obtaining and evaluating price Proposals and other pricing information; and

(c) When selecting a Consultant on the basis of price and qualifications, the County shall follow the applicable provisions under YCR 048-0200 (Direct Appointment Procedure), the applicable provisions of 048-0210 (Informal Selection Procedure) pertaining to obtaining and evaluating price and qualifications Proposals, or the applicable provisions of 048-0220 (Formal Selection Procedure) pertaining to obtaining and evaluating price and qualifications Proposals. For selections under the informal selection procedure of YCR 048-0210, the County may use abbreviated requests for Proposals that nevertheless meet the requirements of YCR 048-0210, when the County determines, in its sole discretion, that the characteristics of the project and the Related Services required by the County would be adequately addressed by a more abbreviated Request for Proposals document, generally comparable to the Intermediate Procurement procedures and related documentation under ORS 279B.070 and YCR 047-0270. The County may request and consider a Proposer's pricing policies

and pricing Proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, submitted with a Proposal.

(3) The County is not required to follow the procedures in section (1) or section (2) of this rule when the County has established Price Agreements with more than one Consultant and is selecting a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services under an individual Task Order. Provided, however, the criteria and procedures the County uses to select a single Consultant, when the County has established Price Agreements with more than one Consultant, must meet the requirements of YCR 048-0270 (Price Agreements).

(4) 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 YCR 047-0330 (Electronic Procurement).

(5) For purposes of these Division 048 rules, a "mixed" Contract is one requiring the Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services and also provide Related Services, other Services, or other related Goods under the Contract. The County's classification of a Procurement that will involve a "mixed" Contract will be determined by the predominant purpose of the Contract. The County will determine the predominant purpose of the Contract by determining which of the Services involves the majority of the total Estimated Fee to be paid under the Contract. If the majority of the total Estimated Fee to be paid under the Contract is for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, the County shall comply with the requirements of ORS 279C.110 and section (1) of this rule. If majority of the total Estimated Fee to be paid under the Contract is for Related Services, the County shall comply with the requirements of ORS 279C.120 and section (2) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for some other Services or Goods under the Public Contracting Code, the County shall comply with the applicable provisions of the Public Contracting Code and Divisions 046, 047, and 049 of the YCR that match the predominant purpose of the Contract.

(6) Consistent with the requirements of ORS 279C.107 and the remaining requirements of ORS 279C.100, 279C.105 and 279C.110 through 279C.125, the following provisions apply to Proposals received by the County for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services or Related Services:

(a) The term "competitive proposal," for the purposes of ORS 279C.107, includes Proposals under YCR 048-0200 (Direct Appointment Procedure), 048-0210 (Informal Selection Procedure), 048-0220 (Formal Selection Procedure) or 048-0130(2)(c) (selection based on price and qualifications) and any Proposals submitted in response to a selection process for a Task Order under 048-0270 (Price Agreements).

(b) For purposes of Proposals received by the County under YCR 048-0200 (Direct Appointment Procedure), a formal notice of intent to Award is not required. As a result, while the County may make Proposals under 048-0200 (Direct Appointment Procedure) open for public inspection following the County's decision to begin Contract negotiations with the selected Consultant, 048-0200 Proposals are not required to be open for public inspection until after the County has executed a Contract with the selected Consultant.

(c) In the limited circumstances permitted by ORS 279C.110, 279C.115, and 279C.120, where the County is conducting discussions or negotiations with Proposers who submit Proposals that the County has determined to be closely competitive or to have a reasonable chance of being selected for award, the County may open Proposals so as to avoid disclosure of Proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107. Otherwise, the County may open Proposals in such a way as to avoid disclosure of the contents until after the County executes a Contract with the selected Consultant. If the County determines that it is in the best interest of the County to do so, the County may make Proposals available for public inspection following the County's issuance of a notice of intent to Award a Contract to a Consultant; and

(d) Disclosure of Proposals and Proposal information is otherwise governed by ORS 279C.107.

(7) As required by ORS 279C.307, pertaining to requirements to ensure the objectivity and independence of providers of certain Personal Services which are procured under ORS chapter 279C, the County may not:

(a) Procure the Personal Services identified in ORS 279C.307 from a Contractor or an affiliate of a Contractor who is a party to the Public Contract that is subject to administration, management, monitoring, inspection, evaluation, or oversight by means of the Personal Services; or

(b) Procure the Personal Services identified in ORS 279C.307 through the Public Contract that is subject to administration, management, monitoring, inspection, evaluation, or oversight by means of the Personal Services.

(8) The requirements of ORS 279C.307 and section (7) of this rule apply in the following circumstances, except as provided in section (9) of this rule:

(a) The County requires the Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise overseeing a Public Contract or performance under a Public Contract that is subject to ORS chapter 279C. A "Public Contract that is subject to ORS chapter 279C" includes a Public Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, a Public Contract for Related Services, or a Public Contract for Construction Services under ORS chapter 279C and the YCR Division 049 rules.

(b) The Procurements of Personal Services subject to the restrictions of ORS 279C.307 include, but are not limited to, the following:

(A) Procurements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, which involve overseeing or monitoring the performance of a Construction Services Contractor under a Public Contract for Construction Services subject to ORS chapter 279C and YCR Division 049 rules;

(B) Procurements for commissioning services, which involve monitoring, inspecting, evaluating, or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services or the performance of a Construction Services Contractor under a Public Contract for Construction Services subject to ORS chapter 279C and the YCR Division 049 rules;

(C) Procurements for project management services, which involve administration, management, monitoring, inspecting, evaluating compliance with, or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, Construction Services subject to ORS chapter 279C and the YCR Division 049 rules, commissioning services, or other Related Services for a project;

(D) Procurements for special inspections and testing services, which involve inspecting, testing, or otherwise overseeing the performance of a Construction Services Contractor under a Public Contract for Construction Services subject to ORS chapter 279C and the YCR Division 29 rules; and

(E) Procurements for other Related Services or Personal Services, which involve administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise overseeing the Public Contracts described in subsection (8)(a) of this rule.

(9) The restrictions of ORS 279C.307 do not apply in the following circumstances, except as further specified below:

(a) To the County's Procurement of both design services and Construction Services through a single "Design-Build" Procurement, as that term is defined in YCR 049-0610. Such a Design-Build Procurement includes a Procurement under an Energy Savings Performance Contract, as defined in ORS 279A.010. Provided, however, the restrictions of ORS 279C.307 do apply to the County's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build Procurement; and

(b) To the County's Procurement of both pre-Construction Services and Construction Services through a single Procurement of Construction Manager/General Contractor Services, as that term is defined in ORS 279C.332(3). Provided, however, the restrictions of ORS 279C.307 do apply to the County's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise overseeing a Construction Manager/General Contractor Services Contract or performance under such a Contract resulting from a Procurement of Construction Manager/General Contractor Services.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.100 - 279C.125
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

II. SELECTION PROCEDURES

YCR 048-0200 Direct Appointments

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

(b) Small Estimated Fee. The Estimated Fee to be paid under the Contract does not exceed $100,000; or

(c) Continuation of Project. Where a project is being continued as more particularly described below, the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services to be performed under the Contract must meet the following requirements:

(A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services that have been substantially described, planned or otherwise previous studied in an earlier Contract with the same Consultant and are rendered for the same project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services rendered under the earlier Contract;

(B) The County used either a formal selection procedure under YCR 048-0220 or the formal selection procedure applicable to selection of the Consultant at the time of original selection to select the Consultant for the earlier Contract; and

(C) When the Estimated Fee exceeds $250,000, the County makes Written findings that entering into a Contract with the Consultant, whether in the form of an Amendment to an existing Contract or a separate Contract for the additional scope of services, will:

(i) Promote efficient use of public funds and resources and result in substantial cost savings to the County; and

(ii) 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.

(2) The County may select Consultants for Contracts under this rule from any Consultant(s) offering the required Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services that the County reasonably can identify under the circumstances.

(3) As part of the County's assessment of the qualifications of any Consultant being considered for award of a Contract under this rule, the County can, at any time before entering into a Contract with the Consultant, consider information pertaining to whether the Consultant owes a liquidated and delinquent debt to the State of Oregon.

(4) The County shall direct negotiations with Consultants selected under this rule toward obtaining a Written agreement on:

(a) The specific scope of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services to be provided by the Consultant;

(b) The Consultant's performance obligations and performance schedule;

(c) Payment methodology, the Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, 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, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services; and

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

STAT. AUTH.: ORS 279A.065 , OL 2011 & CH 458
STATS. IMPLEMENTED: ORS 279C110 & 279C.115
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 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 $250,000.

(2) The County using the informal selection procedure on the basis of qualifications alone or, for Related Services, on the basis of price and qualifications shall:

(a) Create a Request for Proposals ("RFP") that includes at a minimum the following:

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

(B) The 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) The date and time Proposals are due and other directions for submitting Proposals;

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

(i) The amount and type of resources and number of experienced staff the Consultant has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services described in the RFP 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, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services;

(ii) Proposed management techniques for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services described in the RFP;

(iii) A Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, 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) A Consultant's approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services described in the RFP and design philosophy, if applicable;

(v) A Consultant's geographic proximity to and familiarity with the physical location of the project;

(vi) Volume of work, if any, previously awarded to a Consultant, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;

(vii) A Consultant's ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(viii) Whether the Consultant owes a liquidated and delinquent debt to the State of Oregon; and

(ix) If the County is selecting a Consultant to provide Related Service, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead.

(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;

(G) A statement directing Proposers to the protest procedures set forth in these Division 048 rules; and

(H) A sample form of the Contract.

(b) Provide an RFP to a minimum of five (5) prospective Consultants. If fewer than five prospective Consultants are available, The County shall provide the RFP to all available prospective Consultants and shall maintain a written record of the County' efforts to locate available prospective Consultants for the RFP. The County shall draw prospective Consultants from that the County reasonably can locate that offer the desired Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services or Related Services, or any combination of the foregoing.

(c) Review and rank all Proposals received according to the criteria set forth in the RFP and select the three (3) highest ranked Proposers.

(3)) If the County does not cancel the RFP after it reviews and ranks each Proposer and, following the completion of any price evaluations completed pursuant to YCR 048-0280, the County shall begin negotiating a Contract with the highest ranked Proposer. The County shall direct negotiations toward discussing, refining, and finalizing the following:

(a) The specific scope of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services to be provided by the Consultant;

(b) The Consultant's performance obligations and performance schedule;

(c) Payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, 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, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services; and

(d) 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 YCR 048-0220 (Formal Selection Procedure).

(5) When the Estimated Fee in an informal selection procedure is expected not to exceed $150,000, the County is only required to provide the RFP under subsection (2)(b) of this rule to three (3) prospective Consultants. If fewer than three prospective Consultants are available, the County shall provide the RFP to all available prospective Consultants and shall maintain a Written record of the County's efforts to locate available prospective Consultants for the RFP.

(6) The County shall terminate the informal selection procedure and proceed with the formal selection procedure under YCR 048-220 if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed $250,000. 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.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.110
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 048-0220 Formal Selection Procedure

(1) Subject to YCR 048-0130, the County shall use the formal selection procedure described in this rule to select Consultants if the Consultants cannot be selected under either YCR 048-0200 (Direct Appointment Procedure) or under YCR 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 shall obtain Contracts through public advertisement of Requests for Proposals (RFP), or Requests for Qualifications (RFQ) followed by a Request for Proposals.

(a) Except as provided in subsection (b) of this section, the County shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in Yamhill County and in as many other issues and publications as may be necessary or desirable to achieve adequate competition.

(A) The County shall 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 shall include a brief description of the following items in the advertisement:

(i) The project;

(ii) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, 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 RFP or RFQ.

(b) In the alternative to advertising in a newspaper as described in subsection (a) of this section, the County may publish each RFP and RFQ by one or more of the electronic methods identified in the YCR. The County shall 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, Land Surveying Services, or Related Services described in the RFQ.

(a) *RFQ Required Contents*. The County shall include the following, at minimum, in each RFQ:

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

(B) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, 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 the required Consultant qualifications for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services the County 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 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 Consultants 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) *RFQ Optional Contents*. The County may include a request for any or all of the following in each RFQ:

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

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

(C) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services and references concerning past performance, including, but not limited to, price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration;

(D) A copy of all records, if any, of the Consultant's performance under contracts with any other government agencies;

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

(F) The Consultant's approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services described in the RFQ and their design philosophy, if applicable;

(G) The Consultant's geographic proximity to and familiarity with the physical location of the project;

(H) The Consultant's ownership status and employment practices regarding women, minorities and emerging small businesses, or historically underutilized businesses;

(I) Pricing policies, proposals and other pricing information pursuant to the requirements of YCR 048-280 and ORS 279C.110(5);

(J) The Consultant's ability to assist the County in complying with the energy technology requirements of ORS 279C.527 and 279C.528;

(K) Whether the Consultant owes a liquidated and delinquent debt to the State of Oregon; and

(L) Any other information the County deems reasonable and necessary to evaluate the Consultant's qualifications.

(c) *RFQ Evaluation Committee*. The County shall establish an RFQ evaluation committee of at least two (2) 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 Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, Related Services, Construction Services, or Public Contracting. The County may include on the evaluation committee private practitioners of architecture, engineering, photogrammetry, transportation planning, land surveying, or related professions. The County shall designate one member of the evaluation committee as the evaluation committee chairperson.

(d) *RFQ Short List*. After the evaluation committee reviews, scores, and ranks the responding Consultants, the County shall establish a short list of at least three qualified Consultants, if feasible; provided however, if four (4) or fewer Consultants responded to the RFQ, or if fewer than three (3) Consultants fail to meet the County's minimum requirements, then: A) the County may establish a short list of fewer than three (3) qualified Consultants; or B) the County may cancel the RFQ and issue an RFP.

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

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

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

(iii) 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 RFQ.

(B) No Consultant shall 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.

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

(4) Selection through Request for Proposals. The County shall use the procedure described in this section (4) when issuing an RFP for a Contract described in section (1) of this rule.

(a) *RFP Required Contents*. Except as otherwise provided in sections (4)(b) and (4)(c) of this rule, the County shall include at least the following in each formal selection RFP, 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, Photogrammetric Mapping, Transportation Planning, 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, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services sought will be performed;

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

(i) Proposers' availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services described in the RFP;

(ii) Experience of Proposers' key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services on comparable projects;

(iii) The amount and type of resources, and number of experienced staff persons Proposers have committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services described in the RFP;

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

(v) The proportion of time Proposers estimate that the staff referenced in subsection (4)(a)(B)(iii), above, would spend on the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services described in the RFP;

(vi) Proposers' demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services on time and within budget, including whether or not there is a record of satisfactory performance under YCR 048-0120 (List of Interested Consultants; Performance Record);

(vii) References and recommendations from past clients;

(viii) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations, price and cost data from previous projects, cost controls and contract administration;

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

(x) Proposers' knowledge and understanding of the project and Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services described in the RFP as shown in Proposers' approaches to staffing and scheduling needs for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, 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, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services Related Services described in the RFP;

(xiii) Pricing policies, proposals, and other pricing information pursuant to the requirements of YCR 048-280 and ORS 279C.110(5); and

(xiv) Any other criteria that the County deems relevant to the project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, 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 any time 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 these Division 48 rules;

(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, Photogrammetric Mapping, Transportation Planning, 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, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services described in the RFP; and

(N) A sample form of the Contract.

(b) *RFP Evaluation Committee*. The County shall establish a committee of at least three (3) 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 Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying, Related Services, Construction Services, or Public Contracting. The County may include on the evaluation committee private practitioners of architecture, engineering, photogrammetry, transportation

planning, land surveying, or related professions. The County shall designate one of its employees who also is a member of the evaluation committee as the evaluation committee chairperson.

(A) No Proposer shall 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, and following the completion of any price evaluations completed pursuant to YCR 048-280, the County shall begin negotiating a Contract with the highest-ranked Proposer. The County shall direct negotiations toward discussing, refining and finalizing the following:

(A) The specific scope of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services to be provided by the Consultant;

(B) The Consultant's performance obligations and performance schedule;

(C) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering, 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, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services; and

(D) Any other conditions or 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 subsection (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 that particular formal solicitation. Nothing in this rule precludes the County from proceeding with a new formal solicitation for the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services described in the RFP that failed to result in a Contract.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.110, ORS 279C.527, OL 2015 & CH 565 (HB 3303)
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 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, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related 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 YCR 048-0210(3) or YCR 048-0220 (4)(c), as applicable.

(2) If the County is selecting a Consultant 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 and qualifications, then the County shall follow the procedure set forth in YCR 047-0300.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.110, OL 2011 & CH 458
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 048-0240 Protest Procedures

(1) RFP Protest and Request for Change. Pursuant to ORS 279C.110(8), Consultants may submit a protest of the County's selection of a Consultant for award of a Contract as follows: 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 may not consider any protest or request for change that is submitted after the submission deadline.

(2) Protest of Consultant Selection. Pursuant to ORS 279C.110(8), Consultants may submit a protest of the County's selection of a Consultant for award of a Contract as follows:

(a) *Single Award*. The County shall 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 was issued 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, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services described in the RFP.

(b) *Multiple Awards*. In the event of an award to more than one Proposer, the County shall provide to all Proposers copies of the selection notices that the County sent to the highest-ranked Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposers may submit a Written protest of the selection to the County no later than seven (7) calendar days after the date of the selection notices were issued, unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is one of the highest-ranked proposers because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of higher-ranked Proposers failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest must claim that the Proposals of all higher ranked Proposers, or a sufficient number of higher ranked Proposers, are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services described in the RFP.

(c) *Effect of Protest Submission Deadline*. The County may not consider any protest that is submitted after the submission deadline.

(3) Resolution of Protests. A duly authorized representative of the County shall resolve all timely submitted protests within a reasonable time following the County's receipt of the protest and once resolved, shall promptly issue a 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.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065 & 279C.110
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 048-0250 Solicitation Cancelation, Delay, or Suspension; Rejection; Responsibility for Costs

The County may cancel, delay, or suspend a solicitation, RFQ, or other preliminary Procurement document, whether related to a Direct Appointment Procedure (YCR 048-0200), the Informal Selection Procedure (YCR

048-0210), and the Formal Selection Procedure (YCR 048-0220), or reject all Proposals, responses to RFQs, responses to other preliminary Procurement documents, or any combination of the foregoing, if the County believes it is in the public interest to do so. In the event of any such cancellation, delay, suspension or rejection, the County is not liable to any Proposer for any loss or expense caused by or resulting from any such cancellation, delay, suspension, or rejection. Consultants responding to either solicitations, RFQs, or other preliminary Procurement documents, are responsible for all costs they may incur in connection with submitting Proposals, responses to RFQs, or responses to other preliminary Procurement documents.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065 & 279C.110
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 048-0260 Two-tiered Selection Procedure for Public Improvement Projects Managed by the State

If the County requires a Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services for a Public Improvement that is 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, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, and/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.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.110, ORS 279C.125
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 048-0270 Price Agreements

(1) The County may establish Price Agreements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services, when the County cannot determine the precise quantities of those services which the County will require over a specified time period.

(2) When establishing Price Agreements under this rule, the County shall select no fewer than three (3) Consultants, when feasible. The selection procedures for establishing Price Agreements shall be in accordance with YCR 048-0130(1) or YCR 048-0130(2), as applicable. The County may select a single Consultant when a Price Agreement is awarded to obtain services for a specific project or a closely related group of projects.

(3) In addition to any other applicable solicitation requirements set forth in these Division 48 rules, the solicitation materials and the terms and conditions for a Price Agreement for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services must:

(a) Include a scope of services, menu of services, a specification for services, or a similar description of the nature, general scope, complexity and purpose of the Procurement that will reasonably enable a prospective bidder or Proposer to decide whether to submit a bid or proposal;

(b) Specify whether the County intends to award a Price Agreement to one Consultant or to multiple Consultants. If the County will award a Price Agreement to more than one Consultant, the Solicitation Document and Price Agreement shall describe the criteria and procedures the County will use to select a Consultant for each individual Task Order. Subject to the requirements of ORS 279C.110, the criteria and procedures to assign Task Orders that only involve or predominantly involve Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services are at the County's sole discretion. In accordance with YCR 048-0280 and ORS 279C.110, the selection criteria and procedures may be based solely on the qualifications of the Consultants or on a combination of both qualifications and pricing information. Pricing information may include the number of hours proposed for the services required, expenses, hourly rates, the number of hours, overhead and other price factors. Task Order or task order assignment procedures under Price Agreements may include direct appointments, subject to the requirements of YCR 048-0200; and

(c) Specify the maximum term for assigning Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services under the Price Agreement.

(4) When the solicitation materials and terms and conditions for a Price Agreement involve a two-tiered selection process pursuant to ORS 279C.125 and YCR 048-0260(1), the solicitation materials and terms and conditions for a Price Agreement must meet the requirements of subsection (3) of this rule, except as provided in this subsection (4). In the event of a planned multiple award of Price Agreements under a Procurement, the solicitation materials and terms and conditions for the Price Agreements must include assignment procedures for project-specific Task Orders that will allow the County to select a Consultant for a Task Order from the Consultants who have executed Price Agreements with the County.

(5) All Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services assigned under a Price Agreement require a Task Order issued by the County. Any Task Orders assigned under a Price Agreement must include, at a minimum, the following:

(a) The specific scope of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services to be provided by the Consultant;

(b) The Consultant's performance obligations and performance schedule;

(c) The payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services required under the Task Order 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, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services being provided;

(d) Language that incorporates all applicable terms and conditions of the Price Agreement into the Task Order; and

(e) Any other conditions or provisions the County believes to be in the County's best interest.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.110 &ORS 279C.120
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 048-0280 Using Pricing as Part of the Selection Process

(1) Pricing in an Informal Selection Process. When the County will be using pricing policies, proposals, or other pricing information as part of the County's screening and informal selection of prospective Consultants, pursuant to ORS 279C.110(5), the County shall:

(a) Create an RFP that meets the requirements of YCR 048-0210. In providing an estimate of the cost of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services described in the RFP, the County may provide a specific estimate of that cost, or a range of estimated costs;

(b) In the initial phase of the RFP, evaluate each prospective Consultant on the basis of each Consultant's qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services described in the RFP;

(c) At the end of the initial phase of the RFP, announce the evaluation scores of each Consultant and rank each Consultant according to the evaluation scores. The County shall identify up to three (3) of the highest ranked prospective Consultants as being qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services described in the RFP, and as being eligible to participate in the second phase of the RFP process;

(d) In the second phase of the RFP, request a pricing proposal from the highest ranked prospective Consultants identified in the initial phase of the RFP, with each pricing proposal consisting of the following information:

(A) A schedule of hourly rates that the prospective Consultant will charge for the work of each individual or each labor classification that will perform the professional services the County is requesting, in the form of an offer that is irrevocable for not less than 90 days after the date of the proposal;

(B)) A reasonable estimate of hours that the prospective Consultant will require to perform the professional services the County is requesting; and

(C) At the discretion of the County:

(i) A description of each task that the prospective Consultant understands as comprising the professional services;

(ii) A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to the individual or labor classification; and

(iii) A list of expenses, including travel expenses, that the prospective Consultant expects to incur in connection with providing the professional services.

(e) Complete the evaluation of the highest ranked prospective Consultants that have decided to provide price proposals. In the County's final evaluation of the prospective Consultants who have provided price proposals, the County cannot assign more than fifteen (15) percent of the overall weight of the evaluation criteria in the second phase of the RFP to each Consultant's price proposal;

(f) If the County does not cancel the RFP after it reviews the qualifications of all prospective Consultants, reviews the price proposals received from the highest ranked Consultants, and ranks the highest ranked Consultants from the second phase of the RFP, the County shall begin negotiating a Contract with the highest ranked prospective Consultant. The County shall direct Contract negotiations in accordance with YCR 048-0210(3)-(6).

(2) Pricing in a Formal Selection Process. When the County will be using pricing policies, proposals, or other pricing information as part of the County formal selection process of prospective Consultants, pursuant to ORS 279C.110(5), the County shall:

(a) Create an RFP that meets the requirements of YCR 048-0220(4). In providing an estimate of the cost of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services described in the RFP, the County may provide a specific estimate of that cost, or a range of estimated costs;

(b) In the initial phase of the RFP, evaluate each prospective Consultant on the basis of each Consultant's qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services described in the RFP;

(c) At the end of the initial phase of the RFP, rank each Consultant according to the evaluation scores. The County shall identify up to five (5) of the highest ranked prospective Consultants as being qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services described in the RFP, and as being eligible to participate in the second phase of the RFP process;

(d) In the second phase of the RFP, request a pricing proposal from each of the highest ranked prospective Consultants identified in the initial phase of the RFP, with each pricing proposal consisting of the following information:

(A) A schedule of hourly rates that the prospective Consultant will charge for the work of each individual or each labor classification that will perform the professional services the County is requesting, in the form of an offer that is irrevocable for not less than 90 days after the date of the proposal;

(B) A reasonable estimate of hours that the prospective Consultant will require to perform the professional services the County is requesting; and

(C) At the discretion of the County:

(i) A description of each task that the prospective Consultant understands as comprising the professional services;

(ii) A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to the individual or labor classification; and

(iii) A list of expenses, including travel expenses, that the prospective Consultant expects to incur in connection with providing the professional services.

(e) Complete the evaluation of the highest ranked prospective Consultants that have decided to provide price proposals. In the County's final evaluation of the prospective Consultants who have provided price proposals,

the County cannot assign more than fifteen (15) percent of the overall weight of the evaluation criteria in the second phase of the RFP to each Consultant's price proposal.

(f) If the County does not cancel the RFP after it reviews the qualifications of all prospective Consultants, reviews the price proposals received from the highest ranked Consultants, and ranks the highest ranked Consultants from the second phase of the RFP, the County shall begin negotiating a Contract with the highest ranked prospective Consultant. The County shall direct Contract negotiations in accordance with YCR 048-(g) 0220(4)(c)-(d).

(3) If the County will use the Request for Qualifications process, as provided in YCR 048-0220(3), and the County intends to use pricing policies, proposals, or other pricing information as part of the County's screening and selection of prospective Consultants, the County cannot request cost proposals or otherwise use pricing policies, proposals or other pricing information as part of the Request for Qualifications. The County may only request cost proposals or otherwise use pricing policies, proposals, or other pricing information during the RFP phase of the RFQ process, following the establishment of a short list of qualified Consultants through the Request for Qualifications process.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED:
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

III. POST-SELECTION CONSIDERATIONS

YCR 048-0300 Prohibited Payment Methodology; Purchase Restrictions

(1) Except as otherwise allowed by law, the County shall 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's 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, Photogrammetric Mapping, Transportation Planning, 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 Photogrammetric Mapping, Transportation Planning, 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, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services under a Contract with the County to perform Design-Build services, CM/GC Services, or Energy Savings Performance Contract services (see YCR 049-0670 through 049-0690); 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.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 048-0310 Expired or Terminated Contracts; Reinstatement

(1) If the County enters into a Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services, and that Contract subsequently expires or is terminated, the County may proceed as follows, subject to the requirements of section (2) of this rule:

(a) *Expired Contracts*. If the Contract has expired as the result of project delay caused by the County, or caused by any other occurrence outside the reasonable control of the County or the Consultant, and if no more than one year has passed since the Contract expiration date, the County may amend the Contract to extend the Contract expiration date, revise the description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services required under the Contract to reflect any material alteration of the project made as a result of the delay, and revise the applicable performance schedule. Beginning on the effective date of the Amendment, the County and the Consultant shall continue performance under the Contract as amended; or

(b) *Terminated Contracts*. If the County or both parties to the Contract have terminated the Contract for any reason, and if no more than one year has passed since the Contract termination date, then the County may enter into a new Contract with the same Consultant to perform the remaining Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services not completed under the original Contract, or to perform any remaining Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services not completed under the Contract as adjusted to reflect a material alteration of the project.

(2) The County may proceed under either subsection (1)(a) or subsection (1)(b) of this rule only after making Written findings that amending the existing Contract or entering into a new Contract with the Consultant will:

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

(b) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement process by not encouraging favoritism or substantially diminishing competition in the award of Contracts; and

(c) Result in a Contract that is still within the scope of the final form of the original Procurement document.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065 & 279C.110, OL 2011 & CH 458
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 048-0320 A&E 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 Solicitation Document and that the Amendment would not materially impact the field of competition for the for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services described in the final form of the original Procurement document. In making this determination, the County shall consider potential alternative methods of procuring the services contemplated under the proposed Amendment. An Amendment would not materially impact the field of competition for the services described in the Solicitation Document 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.

(4) Amendments authorized by this rule shall be executed in accordance with the provisions of YCR 046-0540

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065, ORS 279C.110, OL 2011 & CH 458
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR DIVISION 049

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION

I. GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES

YCR 049-0100 Application

(1) These Division 49 rules apply to Public Improvement Contracts as well as Public Contracts for ordinary Construction Services that are not Public Improvements. Rules that apply specifically to Public Improvement Contracts are so identified. These Division 49 rules also apply to Contracts for Construction Manager/General Contractor Services, whether the initial Contract between the parties includes both pre-Construction Services and Construction Services, or only contains pre-Construction Services, since the underlying procurement for Construction Manager/General Contractor Services authorizes the County to enter into Contracts for both pre-Construction Services and Construction Services.

(2) These Division 49 rules address matters covered in ORS Chapter 279C (with the exception of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, and Related Services, all of which are addressed in Division 48 of the YCR).

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0110 Policies

In addition to the general Code policies set forth in ORS 279A.015, the 279C.300 policy on competition and the 279C.305 policy on least-cost for Public Improvements apply to these Division 49 rules.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.300
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0120 Definitions

(1) "**Alternative Contracting Methods**" means innovative techniques for soliciting Public Improvement Contracts and involves utilizing processes other than the traditional methods required in the design-bid-build Construction Contracting method (with Award of a Public Improvement Contract based solely on price, in which a final design is issued with formal Bid documents, Construction Work is obtained by sealed Bid Awarded to the Responsible Bidder submitting the lowest Responsive Bid, and the project is built in accordance with those documents).

(2) "**Bid Form**" means the documented Offer submitted in response to an ITB. It may include, but is not limited to, the pricing submittal form, the first-tier disclosure form, the certifications and acknowledgment form, and the Offeror signature form.

(3) "**Certified Firm**" means a business that possesses one or more current, valid certification(s) as a Disadvantaged Business Enterprise, Minority-Owned Business, Woman-Owned Business, Business That Service-Disabled Veterans Own, or Emerging Small Business by the Oregon Certification Office for Business Inclusion and Diversity, pursuant to ORS 200.055.

(4) "**Conduct Disqualification**" means a Disqualification pursuant to ORS 279C.440.

(5) "**Construction**" means the building of County buildings and other structures, or additions thereto, and of County highways and roads.
(6) "**Cost Estimate**" means the County's most recent pre-Bid, good faith assessment of anticipated Contract costs, consisting either of an estimate of an architect, engineer, or other qualified professional, or confidential cost calculation work sheets, where available, and otherwise consisting of formal planning or budgetary documents.
(7) "**Findings**" has the meaning as set forth in ORS 279C.330.
(8) "**Foreign Contractor**" means a Contractor that is not domiciled in or registered to do business in the State of Oregon.
(9) "**Major Renovation**" means the remodeling or alteration of County buildings, structures, highways, and roads that is not a minor alteration, ordinary repair, or maintenance of the County building, structure, highway, or road.
(10) "**Notice**" means any of the alternative forms of public announcement of Procurements, as described in YCR 049-0210.
(11) "**Public Improvement**" means a project for Construction, Reconstruction, or Major Renovation on real property by or for the County. "Public Improvement" does not include: (a) projects for which no funds of the County are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or (b) emergency Work, minor alteration, ordinary repair, or maintenance necessary to preserve the real property.
(12) "**Public Works**" has the meaning as set forth in ORS 279C.800(6), and generally includes, but is not limited to, Construction, Reconstruction, Major Renovation, or painting projects where the total project cost is $50,000 or greater, and where the project directly or indirectly uses County funds. In determining the total project cost, the County shall include the collective value of all Work being performed on the project, including Work performed by each and all Contractors, subcontractors, and/or any other Persons being paid by a Contractor or subcontractor to Work on the project.
(13) "**Reconstruction**" means the resurfacing and rebuilding of County highways and roads, the restoration of existing County highways and roads, and the restoration of County buildings and other structures, none of which is considered a minor alteration, ordinary repair, or maintenance of the County highway, road, building, or structure.
(14) "**Value Engineering**" means the identification of Alternative Construction Methods, materials, or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, Specifications, or other Contract requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from life cycle costing, which may either increase or decrease absolute costs over varying time periods.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0130 Competitive Bidding Requirements

The County shall solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except as otherwise allowed or required pursuant to ORS 279C.335 on competitive bidding exceptions and exemptions, 279A.030 on federal law overrides, or 279A.100 on affirmative action. Also see YCR 049-0600 to 049-0690 regarding the use of Alternative Contracting Methods, use of Alternative Contracting Methods for projects which are excepted or exempt from the competitive bidding process, use of Alternative Contracting Methods within the competitive bidding process, and the process for obtaining an exemption from competitive bidding requirements.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.335
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0140 Contracts for Construction other than Public Improvements

(1) Procurements Under Division 47 Rules and ORS Chapter 279B. Pursuant to ORS 279C.320, Public Contracts for Construction Services that are not Public Improvement Contracts may be procured and amended as general trade Services under the provisions of Division 47 rules and ORS Chapter 279B rather than under the provisions of ORS Chapter 279C and these Division 49 rules. Emergency Contracts for Construction Services are not Public Improvement Contracts and are regulated under ORS 279B.080 and YCR 047-0280.

(2) Application of ORS Chapter 279C. Non-procurement provisions of ORS Chapter 279C and these Division 49 rules may still be applicable to the resulting Contracts described in section (1) of this rule. [See, for example, particular statutes on Disqualification (ORS 279C.440, 279C.445, and 279C.450); Legal Actions (279C.460 and 279C.465); Required Contract Conditions (279C.505, 279C.515, 279C.520, and 279C.530); Hours of Labor (279C.540 and 279C.545); Retainage (279C.550, 279C.555, 279C.560, 279C.565, and 279C.570); Subcontracts (279C.580); Action on Payment Bonds (279C.600, 279C.605, 279C.610, 279C.615, 279C.620, and 279C.625); Termination (279C.650, 279C.660, and 279C.670); and all of the Prevailing Wage Rates requirements (279C.800 through 279C.870) for Public Works Contracts.]

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.320
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0150 Contracts for Emergency Work; Bidding and Bonding Exceptions

(1) Emergency Declaration. The County may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency Construction or repair Work. The declaration shall be made at an administrative level consistent with the County's internal policies, by a Written declaration that describes the circumstances creating the Emergency and the anticipated harm from failure to enter into an Emergency Contract. The Emergency declaration shall be kept on file as a public record.

(2) Competition for Emergency Contracts. Pursuant to ORS 279C.320(1), Emergency Contracts are regulated under ORS 279B.080, which provides that, for an emergency procurement of Construction Services, the County shall ensure competition that is reasonable and appropriate under the Emergency circumstances, and may include Written requests for Offers, oral requests for Offers or direct appointments without competition in cases of extreme necessity, in whatever solicitation time periods the County considers reasonable in responding to the Emergency.

(3) Emergency Contract Scope. Although no dollar limitation applies to Emergency Contracts, the scope of the Contract must be limited to Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.

(4) Emergency Contract Modification. Emergency Contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional Work necessary and appropriate for related Emergency circumstances.

(5) Excusing Bonds. Pursuant to ORS 279C.380(4) and this rule, the Emergency declaration may also state that the County waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration those bonding requirements are excused for the procurement, but this Emergency declaration does not affect the separate Public Works bond requirement for the benefit of the Bureau of Labor and Industries (BOLI) in enforcing prevailing wage rate and overtime payment requirements. See YCR 049-0860 and BOLI rules at OAR 839-025-0015.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279B.080, ORS 279C.320 & 279C.380
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0155 Small Construction Contracts Exempted from Competitive Bids

(1) Award. The County may Award a Public Improvement Contract with a value of less than $10,000 (a "Small Public Improvement Contract") in any manner deemed practical or convenient by the County, including by direct selection, appointment, or Award.

(2) Modifications. A Small Public Improvement Contract may be modified in accordance with YCR 049-0910, but the cumulative modifications shall not increase the total Contract Price to greater than $10,000. If the Contract Price exceeds $10,000, the Work must be competitively bid or quoted as otherwise required herein.
(3) Artificial Division Prohibited. A Procurement may not be artificially divided or fragmented so as to establish a Small Public Improvement Contract under this rule.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED : ORS 279C.335
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0160 Intermediate Procurements; Competitive Quotes and Amendments
(1) Generally. Public Improvement Contracts estimated by the County not to exceed $100,000 may be Awarded in accordance with intermediate level Procurement procedures for competitive quotes established by this rule.
(2) Selection Criteria. The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility and similar factors.
(3) Request for Quotes. The County shall utilize Written Requests for Quotes whenever reasonably practicable. Written Requests for Quotes shall include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. When requesting quotations orally, prior to requesting the price quote the County shall state any additional selection criteria and, if the criteria are not of equal value, their relative value. For Public Works Contracts, oral quotations may be utilized only in the event that Written copies of the prevailing wage rates are not required by the Bureau of Labor and Industries.
(4) Number of Quotes; Record Required. The County shall seek at least three competitive quotes and keep a Written record of the sources and amounts of the quotes received. If three quotes are not reasonably available, the County shall make a Written record of the effort made to obtain those quotes.
(5) Award. If Awarded, the County shall Award the Contract to the prospective Contractor whose quote will best serve the interests of the County, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, the County shall make a Written record of the basis for Award.
(4) Modifications. An Intermediate Public Improvement Contract may be modified in accordance with YCR 049-0910. Amendments of intermediate level Public Improvement Contracts that exceed the thresholds stated in subsection (1) with the following limitations:
(a) All Amendments in the aggregate may not increase the Contract Price more than 25% over the original Contract amount;
(b) The additional scope is reasonably related to the original scope of the project; and
(c) The Board determines in Writing that such a price increase is warranted.
(5) Artificial Division Prohibited. A Procurement may not be artificially divided or fragmented so as to establish an Intermediate Public Improvement Contract under this rule.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.412
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

II. FORMAL PROCUREMENT RULES

YCR 049-0200 Solicitation Documents; Required Provisions; Assignment or Transfer
(1) Solicitation Document. Pursuant to ORS 279C.365 and this rule, the Solicitation Document shall include the following:
(a) *General Information*.
(A) Identification of the Public Improvement project, including the character of the Work, and applicable plans, Specifications, and other Contract documents;
(B) Notice of any pre-Offer conference as follows:
(i) The time, date, and location of any pre-Offer conference;
(ii) Whether attendance at the conference will be mandatory or voluntary; and

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

(C) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;

(D) The name and title of the authorized County staff designated for receipt of Offers and contact staff (if different);

(E) Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal security requirements, and any other required information or special information, e.g., whether Offers may be submitted by facsimile or Electronic means (See YCR 049-0300 regarding facsimile Bids or Proposals and YCR 049-0310 regarding Electronic Procurement);

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

(G) The time and date of Closing after which the County will not accept Offers, time shall be not less than five (5) Days after the date of the last publication of the advertisement. If the County is issuing an ITB that may result in a Public Improvement Contract with a value in excess of $100,000, the County shall designate a time of Closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370(1)(b) and YCR 049-0360. For timing issues relating to Addenda, see YCR 049-0250;

(H) The office where the Specifications for the Work may be reviewed;

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

(J) If the Contract resulting from a solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148), a statement that no Offer will be received or considered by the County unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148."

(K) A statement that the County will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board, as specified in YCR 049-0230;

(L) Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;

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

(N) How the County will notify Offerors of Addenda and how the County will make Addenda available; and

(O) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in YCR 049-0360.

(b) *Evaluation Process*.

(A) A statement that the County may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, including the requirement to demonstrate the Bidder's responsibility under ORS 279C.375(3)(b), and may reject for good cause all Offers after finding that doing so is in the public interest;

(B) The anticipated solicitation schedule, deadlines, protest process and evaluation process, if any;

(C) Evaluation criteria, including the relative value applicable to each criterion, that the County will use to determine the Responsible Bidder with the lowest Responsive Bid (where Award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive Proposal or Proposals (where use of competitive Proposals is authorized under ORS 279C.335 and YCR 049-0620), along with the process the County will use to determine acceptability of the Work;

(i) If the Solicitation Document is an Invitation to Bid, the County shall set forth any special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, and ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall be objective, reasonable estimates based upon information the County has available concerning future use;

(ii) If the Solicitation Document is a Request for Proposals, the County shall refer to the additional requirements of YCR 049-0650; and

(c) *Contract Provisions*. The County shall include all Contract terms and conditions, including warranties, insurance and bonding requirements, that the County considers appropriate for the Public Improvement project. The County must also include all applicable Contract provisions required by Oregon law as follows:

(A) Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));

(B) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));

(C) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle Construction and demolition debris, if feasible and cost-effective;

(D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2);

(E) Payment of claims by public officers (ORS 279C.515(1));

(F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;

(G) Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));

(H) Hours of labor in compliance with ORS 279C.520;

(I) Environmental and natural resources regulations (ORS 279C.525);

(J) Payment for medical care and attention to employees (ORS 279C.530(1));

(K) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS 279C.530(2));

(L) Maximum hours, holidays and overtime (ORS 279C.540);

(M) Time limitation on claims for overtime (ORS 279C.545);

(N) Prevailing wage rates, if applicable (ORS 279C.800 to 279C.870);

(O) BOLI Public Works bond, if applicable (ORS 279C.830(2));

(P) Retainage, if applicable (ORS 279C.550 to 279C.570);

(Q) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);

(R) Contractor's relations with subcontractors (ORS 279C.580);

(S) Notice of claim (ORS 279C.605);

(T) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and

(U) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., Construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

(2) Assignment or Transfer Restricted. Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, or delegate duties under the Contract, either in whole or in part, without the

County's prior Written consent. Unless otherwise agreed by the County in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the County consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the County for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the County otherwise agrees in Writing.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.110, ORS 279A.120, ORS 279C.365, ORS 279C.370, ORS 279C.390, ORS 279C.505 - 580, ORS 279C.605, ORS 305.385, ORS 468A.720, ORS 701.005 & ORS 701.055
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0210 Notice and Advertising Requirements; Posting

(1) Notice and Distribution Fee. The county shall furnish "Notice" as set forth below in subsections (a) through (c), to a number of Persons sufficient for the purpose of fostering and promoting competition. The Notice shall indicate where, when, how, and for how long the Solicitation Document may be obtained and generally describe the Public Improvement project or Work. The Notice may contain any other appropriate information. The county may charge a fee or require a deposit for the Solicitation Document. The County may furnish Notice using any method determined to foster and promote competition, including:

(a) Mailing Notice of the availability of Solicitation Documents to Persons that have expressed an interest in the county's Procurements;

(b) Placing Notice on the County's Electronic Procurement System; or

(c) Placing Notice on the County's website.

(2) Advertising. Pursuant to ORS 279C.360 and this rule, the County shall advertise every solicitation for competitive Bids or competitive Proposals for a Public Improvement Contract, unless the Board has exempted the solicitation from the advertisement requirement as part of a competitive bidding exemption under ORS 279C.335.

(a) Unless the County publishes by Electronic Advertisement as permitted under subsection 2(b), the County shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the County may determine to be necessary or desirable to foster and promote competition.

(b) The County may publish by Electronic Advertisement if the Board determines Electronic Advertisement is likely to be cost effective and, by rule or order, authorizes Electronic Advertisement.

(c) In addition to the County's publication required under subsection 2(a) or 2(b), the County shall also publish an advertisement for Offers in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of $125,000.

(d) All advertisements for Offers shall set forth:

(A) The Public Improvement project;

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

(C) The date that Persons must file applications for prequalification under ORS 279C.340, if prequalification is a requirement, and the class or classes of Work for which Persons must be prequalified;

(D) The scheduled Closing, which shall not be less than five Days after the date of the last publication of the advertisement;

(E) The name, title and address of the County staff authorized to receive Offers;

(F) The scheduled Opening; and

(G) If applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148).

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.360
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0220 Prequalification of Offerors

(1) Prequalification. Pursuant to ORS 279C.430 and this rule, two types of prequalification are authorized under Division 49:

(a) *Mandatory Prequalification*. The County may require mandatory prequalification of Offerors on a form substantially similar to the Contractor's Prequalification Form found in Appendix 1, or as otherwise prescribed by the Board. The County shall indicate in the Solicitation Document if it will require mandatory prequalification. Mandatory prequalification is when the County conditions a Person's submission of an Offer upon the Person's prequalification. The County shall not consider an Offer from a Person that is not prequalified if the County required prequalification.

(b) *Permissive Prequalification*. The County may prequalify a Person for the County's solicitation list on forms prescribed by the Board; but in a permissive prequalification, the County shall not limit distribution of a solicitation to that list.

(2) Prequalification Presumed. If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Offeror shall be rebuttably presumed qualified to perform similar Work for the County.

(3) Standards for Prequalification. A Person may prequalify by demonstrating to the County's satisfaction:

(a) That the Person's financial, material, equipment, facility and personnel resources and expertise, or ability to obtain such resources and expertise, indicate that the Person is capable of meeting all contractual responsibilities;

(b) The Person's record of performance;

(c) The Person's record of integrity;

(d) The Person is qualified to contract with the County. (See YCR 049-0390(2) regarding standards of responsibility.)

(4) Notice of Denial. If a Person fails to prequalify for a mandatory prequalification, the County shall notify the Person, specify the reasons under section (3) of this rule and inform the Person of the Person's right to a hearing under ORS 279C.445 and 279C.450.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.430 & 279C.435
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0230 Eligibility to Bid or Propose; Registration or License

(1) Construction Contracts. The County shall not consider a Person's Offer to do Work as a contractor, as defined in ORS 701.005(2), unless the Person has a current, valid certificate of registration issued by the Construction Contractors Board at the time the Offer is made.

(2) Landscape Contracts. The County shall not consider a Person's Offer to do Work as a landscape contractor as defined in ORS 671.520(2), unless the Person has a current, valid landscape contractors license issued pursuant to 671.560 by the State Landscape Contractors Board at the time the offer is made.

(3) Noncomplying Entities. The County shall deem an Offer received from a Person that fails to comply with this rule nonresponsive and shall reject the Offer as stated in ORS 279C.365(1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding agencies.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.365, ORS 671.530, & ORS 701.055
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0240 Pre-Offer Conferences

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

(2) Required Attendance. The County may require attendance at the pre-Offer conference as a condition for making an Offer. Unless otherwise specified in the Solicitation Document, a mandatory attendance requirement

is considered to have been met if, at any time during the mandatory meeting, a representative of an offering firm is present.
(3) Scheduled Time. If the County holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.
(4) Statements Not Binding. Statements made by the County's representative at the pre-Offer conference do not change the Solicitation Document unless the County confirms such statements with a Written Addendum to the Solicitation Document.
(5) County Announcement. The County must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with YCR 049-0200(1)(a)(B).
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.365 & ORS 279C.370
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0250 Addenda to Solicitation Documents

(1) Issuance; Receipt. The County may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgement of receipt of all issued Addenda with its Offer, unless the County otherwise specifies in the Addenda or in the Solicitation Document.
(2) Notice and Distribution. The County shall notify prospective Offerors of Addenda consistent with the standards of Notice set forth in YCR 049-0210. The Solicitation Document shall specify how the County will provide notice of Addenda and how the County will make the Addenda available. For example, "The County will not mail notice of Addenda, but will publish notice of any Addenda on the County's website. Addenda may be downloaded off the County's website. Offerors should frequently check the County's website 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 shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The County may extend the Closing if the County determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by public interest, the County shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.
(4) Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in YCR 049-0260, 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 request for change or protest under YCR 049-0260, whichever date is later. The County shall consider only an Offeror's request for change or protest to the Addendum; the County shall not consider a request for change or protest to matters not added or modified by the Addendum unless the Offeror submits the request for change or protest before the deadline for the County's receipt of request for change or protests as set forth in YCR 049-0260(2) through (3).
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.395 & ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0260 Request for Clarification or Change; Solicitation Protests

(1) Clarification. Prior to the deadline for submitting a Written request for change or protest, an 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.
(2) Request for Change.
(a) *Delivery*. An Offeror may request in Writing a change to the Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver the Written request for change to the County not less than ten (10) Days prior to Closing;

(b) *Content of Request for Change*.

(A) An Offeror's Written request for change shall include a statement of the requested change(s) to the Contract terms and conditions, including any Specifications, together with the reason for the requested change.

(B) An Offeror shall mark its request for change as follows:

(i) "Contract Provision Request for Change"; and

(ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(3) Protest.

(a) *Delivery*. An Offeror may protest Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest on those matters to the County not less than ten (10) Days prior to Closing;

(b) *Content of Protest*.

(A) An Offeror's Written protest shall include:

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

(ii) A description of the resulting prejudice to the Offeror; and

(iii) A statement of the desired changes to the Contract terms and conditions, including any Specifications.

(B) An Offeror shall mark its protest as follows:

(i) "Contract Provision Protest"; and

(ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(4) County Response. The County is not required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The County shall provide notice to the applicable Person if it entirely rejects a protest. If the County agrees with the Person's request or protest, in whole or in part, the County shall either issue an Addendum reflecting its determination under YCR 049-0260 or cancel the solicitation under YCR 049-0270.

(5) Extension of Closing. If the County receives a Written request for change or protest from an Offeror in accordance with this rule, the County may extend Closing if the County determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the Solicitation Document.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.345 & ORS 279C.365
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0270 Cancellation of Solicitation Document

(1) Cancellation in the Public Interest. The County may cancel a solicitation for good cause if it finds that cancellation is in the public interest. The reasons for cancellation shall be made part of the Procurement file.

(2) Notice of Cancellation. If the County cancels a solicitation prior to Opening, the County shall provide Notice of cancellation in accordance with YCR 049-0210. Such notice of cancellation shall:

(a) Identify the solicitation;

(b) Briefly explain the reason for cancellation; and

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

(3) Disposition of Offers.

(a) *Prior to Offer Opening*. If the County cancels a solicitation prior to Offer Opening, the County shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the County shall open the Offer to determine the source and then return it to the Offeror.

(b) *After Offer Opening*. If the County rejects all Offers, the County shall retain all such Offers as part of the County's Procurement file.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.395
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0280 Offer Submissions

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

(a) In competitive bidding and competitive Proposals, the Offer is always a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the County's acceptance for the period specified in YCR 049-0410. The County may elect to accept the Offer at any time during the specified period, and the County's Award of the Contract to a Bidder constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a competitive Proposal is a "Firm Offer" for the period specified in YCR 049-0410, the County may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document, with the Proposer. See YCR 049-0650 on Requests for Proposals and YCR 049-0290 on Bid or Proposal Security. Where negotiation is permitted by the rules or the Solicitation Document, Proposers are bound to an obligation to negotiate in good faith and only on those terms that the rules or the Solicitation Document has reserved for negotiation.

(2) Responsive Offer. The County may Award a Contract only to a Responsible Offeror with a Responsive Offer.

(3) Contingent Offers. Except to the extent that an Offeror is authorized to propose certain terms and conditions pursuant to YCR 049-0650, an Offeror shall not make an Offer contingent upon the County's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(4) Offeror's Acknowledgement. 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 YCR 049-0650, 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.

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

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

(7) Documents. An Offeror shall provide the County with all documents and Descriptive Literature required under the Solicitation Document.

(8) Facsimile or Electronic Submissions. If the County permits facsimile or Electronic Offers in the Solicitation Document, the Offeror may submit facsimile or Electronic Offers in accordance with the Solicitation Document. The County shall not consider facsimile or Electronic Offers unless authorized by the Solicitation Document.

(9) Product Samples and Descriptive Literature. The County may require Product Samples or Descriptive Literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The County will dispose of Product Samples or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.

(10) Identification of Offers.

(a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the County, whichever is applicable.

(b) 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.

(11) Receipt of Offers. The Offeror is responsible for ensuring that 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.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.365 & ORS 279C.375
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0290 Bid or Proposal Security

(1) Generally. The County shall not use Bid or Proposal security to discourage competition. The County shall clearly state any Bid or Proposal security requirements in its Solicitation Document. The Offeror shall forfeit Bid or Proposal security after Award if the Offeror fails to execute the Contract and promptly return it with any required performance bond, payment bond, and any required proof of insurance.

(2) Requirement for Bid Security (Optional for Proposals). Unless the County has otherwise exempted a solicitation or class of solicitations from Bid security pursuant to section (3) of this rule, the County shall require Bid security for its solicitation of Bids for Public Improvements. The County may require Proposal security in RFPs at its discretion.

(3) Exempted Solicitations. The following types of solicitations are exempted from Bid or Proposal security:

(a) Public Improvement Contracts with a value, estimated by the County, of less than $100,000; and

(b) Contracts for highways, bridges, and other transportation projects with a value, estimated by the County, of less than $50,000.

(4) Security Amount. If the County requires Bid or Proposal security, it shall be not more than 10% of the Offeror's Bid or Proposal, consisting of the base Bid or Proposal together with all additive alternates.

(5) Form of Bid or Proposal Security. The County may accept only the following forms of Bid or Proposal security:

(a) A surety bond from a surety company authorized to do business in the State of Oregon;

(b) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or

(c) A cashier's check or Offeror's certified check.

(6) Return of Security. The County shall return or release the Bid or Proposal security of all unsuccessful Offerors after a Contract has been fully executed and all required bonds and insurance have been provided, or after all Offers have been rejected. The County may return the Bid or Proposal security of unsuccessful Offerors prior to Award if the return does not prejudice Contract Award and the security of at least the Bidders with the three lowest Bids, or the Proposers with the three highest scoring Proposals, is retained pending execution of a Contract.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.365, ORS 279C.385, & ORS 279C.390
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0300 Facsimile Bids and Proposals

(1) County Authorization. The County may authorize Offerors to submit facsimile Offers. If the County determines that Bid or Proposal security is or will be required, the County shall not authorize facsimile Offers unless the County has established a method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the County shall determine that the County's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the County shall establish administrative procedures and controls:

(a) To receive, identify, record and safeguard facsimile Offers;

(b) To ensure timely delivery of Offers to the location of Opening; and

(c) To preserve the Offers as sealed.

(2) Provisions To Be Included in Solicitation Document. In addition to all other requirements, if the County authorizes a facsimile Offer for Bids or Proposals, the County shall include in the Solicitation Document (other than in a Request for Quotes) 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 the facsimile Offer. However, upon the County's request the apparent successful Offeror shall promptly submit its complete original Signed Offer.";

(e) The data and compatibility characteristics of the County's receiving facsimile machine as follows:

(A) Telephone number; and

(B) Compatibility characteristics, e.g., make and model number, receiving speed, communications protocol; and

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

(A) Receipt of garbled or incomplete documents;

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

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

(D) Delay in transmission or receipt of documents;

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

(F) Illegibility of Offer documents; and

(G) Security and confidentiality of data.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.365
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0310 Electronic Procurement

(1) General. The County may utilize Electronic Advertisement of Public Improvement Contracts in accordance with ORS 279C.360(1), provided that advertisement of such Contracts with an estimated Contract Price in excess of $125,000 must also be published in a trade newspaper of general statewide circulation and may post notices of intent to Award electronically as provided by ORS 279C.410(7).

(2) Alternative Procedures. In the event that the County desires to direct or permit the submission and receipt of Offers for a Public Improvement Contract by electronic means, as allowed under ORS 279C.365(1)(d), it shall first promulgate supporting procedures substantially in conformance with YCR 047-0330 (Electronic Procurement under ORS Chapter 279B), taking into account ORS Chapter 279C requirements for Written bids, opening bids publicly, bid security, first-tier subcontractor disclosure and inclusion of prevailing wage rates.

(3) Interpretation. Nothing in this rule shall be construed as prohibiting the County from making procurement documents for Public Improvement Contracts available in electronic format as well as in hard copy when Bids are to be submitted only in hard copy.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.365
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0320 Pre-Closing Modification or Withdrawal of Offers

(1) Modifications. An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the County in accordance with YCR 049-0280, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

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

(2) Withdrawals.

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

(b) The County may release an unopened Offer withdrawn under subsection 2(a) to the Offeror, or its authorized representative, after voiding any date and time stamp mark.
(c) The Offeror shall mark the Written request to withdraw an Offer as follows:
(A) Bid (or Proposal) Withdrawal; and
(B) Solicitation Number (or Other Identification as specified in the Solicitation Document).
(3) Documentation. The County shall include all documents relating to the modification or withdrawal of Offers in the Procurement file.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.360, ORS 279C.365, ORS 279C.375, & ORS 279C.395
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0330 Receipt, Opening, and Recording of Offers; Confidentiality

(1) Receipt. The County shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The County shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the County inadvertently opens an Offer or a modification prior to the Opening, the County shall return the Offer or modification to its secure and confidential state until Opening. The County shall document the resealing for the Procurement file (e.g., "County inadvertently opened the Offer due to improper identification of the Offer").
(2) Opening and Recording. The County shall publicly open Offers including any modifications made to the Offer pursuant to YCR 049-0320. In the case of Invitations to Bid, to the extent practicable, the County shall read aloud the name of each Bidder, the Bid price(s), and such other information as the County considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the County will not read Offers aloud.
(3) Availability. After Opening, the County shall make Bids available for public inspection, but pursuant to ORS 279C.410, Proposals are not required to be available for public inspection until after notice of intent to award is issued. In any event, the County may withhold from disclosure those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. To the extent the County determines such designation is not in accordance with applicable law, the County shall make those portions available for public inspection. The Offeror shall separate information designated as confidential from other nonconfidential information at the time of submitting its Offer. Prices, makes, model, or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential and shall be publicly available regardless of an Offeror's designation to the contrary.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.365, ORS 279C.375 & ORS 279C.395
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0340 Late Bids, Late Withdrawals, and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The County shall not consider late Offers, withdrawals, or modifications except as permitted in YCR 049-0350 or 049-0390.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.365, ORS 279C.375, & ORS 279C.395
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0350 Mistakes

(1) Generally. To protect the integrity of the competitive Procurement process, and to assure fair treatment of Offerors, the County shall carefully consider whether to permit waiver, correction, or withdrawal of Offers for certain mistakes.
(2) County Treatment of Mistakes. The County shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the County discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the County may take the following action:

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

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

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

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

(b) The County may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the County's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Unit prices shall prevail over extended prices in the event of a discrepancy between extended prices and unit 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 (2)(b) of this rule;

(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 the County will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the County based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the County, whether by Award to the next lowest Responsive and Responsible Bidder or the best 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 these Division 49 rules only to the extent permitted by applicable law.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.375 & 279C.395
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0360 First-Tier Subcontractors; Disclosure and Substitution

(1) Required Disclosure. Within two working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price anticipated by the County to exceed $100,000, all Bidders shall submit to the County a disclosure form as described by ORS 279C.370(2), identifying any first-tier subcontractors (those entities that

would be contracting directly with the prime contractor) that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:

(a) Five percent of the total Contract Price, but at least $15,000; or

(b) $350,000, regardless of the percentage of the total Contract Price.

(2) Bid Closing, Disclosure Deadline and Bid Opening. For each ITB to which this rule applies, the County shall:

(a) Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or Construction of highways, bridges or other transportation facilities, and provided that the two-hour disclosure deadline described by this rule would not then fall on a legal holiday;

(b) Open Bids publicly immediately after the Bid Closing; and

(c) Consider for Contract Award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the County.

(3) Bidder Instructions and Disclosure Form. For the purposes of this rule, the County in its solicitation shall:

(a) Prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279C.370(2); and

(b) Provide instructions in a notice substantially similar to the following:

"Instructions for First-Tier Subcontractor Disclosure: Bidders are required to disclose information about certain first-tier subcontractors (see ORS 279C.370). Specifically, when the contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to: (i) 5% of the project Bid, but at least $15,000; or (ii) $350,000 regardless of the percentage, the Bidder must disclose the following information about that subcontract either in its Bid submission, or within two hours after Bid Closing:

(A) The subcontractor's name;

(B) The category of Work that the subcontractor would be performing, and

(C) The dollar value of the subcontract. If the Bidder will not be using any subcontractors that are subject to the above disclosure requirements, the Bidder is required to indicate 'NONE' on the accompanying form.

THE COUNTY MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE (see YCR 049-0360)."

(4) Submission. A Bidder shall submit the disclosure form required by this rule either in its Bid submission or within two working hours after Bid Closing in the manner specified by the ITB.

(5) Responsiveness. Compliance with the disclosure and submittal requirements of ORS 279C.370 and this rule is a matter of Responsiveness. Bids that are submitted by Bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and shall not be considered for Contract Award.

(6) County Role. The County shall obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this rule. The County shall also provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279C.835. The County is not required to determine the accuracy or completeness of the information provided on disclosure forms.

(7) Substitution. Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585. The County shall accept Written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, The County does not have a statutory role or duty to review, approve or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the Construction Contractors Board on improper substitution.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.370, ORS 279C.585, ORS 279C.590 & 279C.835
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0370 Disqualification of Persons

(1) Authority. The County may disqualify a Person from consideration of Award of the County's Contracts after providing the Person with notice and a reasonable opportunity to be heard in accordance with sections (2) and (4) of this rule.

(a) *Standards for Conduct Disqualification*. As provided in ORS 279C.440, the County may disqualify a Person for:

(A) Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(B) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously, and directly affects the Person's responsibility as a contractor;

(C) Conviction under state or federal antitrust statutes; or

(D) Violation of a contract provision that is regarded by the County to be so serious as to justify Conduct Disqualification. A violation under this subsection (1)(a)(D) may include, but is not limited to, material failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for Disqualification.

(b) *Standards for Disqualification*. As provided in ORS 200.065, ORS 200.075 or ORS 279A.110, the County may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g., subcontractors) as follows:

(A) For a Disqualification under ORS 200.065, the County may disqualify a Person upon finding that:

(i) The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a service-disabled veteran owns;

(ii) The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract, subcontract, or other benefit; or

(iii) The Person has been disqualified by another county under ORS 200.065.

(B) For a Disqualification under ORS 200.075, the County may disqualify a Person upon finding that:

(i) The Person has entered into an agreement representing that a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a service-disabled veteran owns, certified under ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise;

(ii) The Person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise;

(iii) The Person uses a Certified Enterprise to perform Work under a Public Improvement Contract to meet an established Certified Enterprise goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the Contract; or

(iv) If a Person is Disqualified for a Disqualification under ORS 200.075, the County shall not permit that Person to participate in any of the County's Contracts.

(C) For a Disqualification under ORS 279A.110, the County may disqualify a Person if the County finds that the Person discriminated against a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a service-disabled veteran owns in awarding a subcontract under a Contract with that County.

(2) Notice of Intent to Disqualify. The County shall notify the Person in Writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice shall:

(a) State that the County intends to disqualify the Person;
(b) Set forth the reasons for the Disqualification;
(c) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice;
(d) State that if the County does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived its right to a hearing;
(e) Include a statement of the authority under which the hearing will be held;
(f) Include a reference to the particular sections of the statutes and rules involved;
(g) State the proposed Disqualification period; and
(h) State that the Person may be represented by legal counsel.

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

(4) Notice of Disqualification. The County will notify the Person in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice shall contain:
(a) The effective date and period of Disqualification;
(b) The grounds for Disqualification; and
(c) A statement of the Person's appeal rights and applicable appeal deadlines. For a Conduct Disqualification or a Disqualification under ORS 279A.110, the disqualified person must notify the County in Writing within three (3) business Days after receipt of the County's notice of Disqualification if the Person intends to appeal the County's decision.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 200.065, 200.075, ORS 279A.110, ORS 279C.440, ORS 279C.445, & ORS 279C.450
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0380 Bid or Proposal Evaluation Criteria

(1) General. A Public Improvement Contract, if Awarded, must be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal.

(2) Bid Evaluation Criteria. Invitations to Bid may solicit lump-sum Offers, unit-price Offers, or a combination of the two.
(a) *Lump Sum*. If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if the County elects not to award additive or deductive alternates, Bids must be compared on the basis of lump-sum prices, or lump-sum base Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price must be calculated by adding to or deducting from the base Bid those alternates selected by the County, for the purpose of comparing Bids.
(b) *Unit Price*. If the Bid includes unit pricing for estimated quantities, the total Bid price must be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder and adjusting for any additive or deductive alternates selected by the County, for the purpose of comparing Bids. The County shall specify within the Solicitation Document the estimated quantity of the procurement to be used for determination of the low Bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price governs.

(3) Proposal Evaluation Criteria. If the Board has exempted the Procurement of a Public Improvement from the competitive bidding requirements of ORS 279C.335(1), and has directed the County to use an Alternative Contracting Method under 279C.335(4), the County shall set forth the evaluation criteria in the Solicitation Documents.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.335
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0390 Offer Evaluation and Award; Determination of Responsibility

(1) General. If Awarded, the County shall Award the Contract to the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract or is otherwise ineligible for Award. 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. Where Award is based on competitive Bids, multiple Awards are permitted when specified in the ITB.

(2) Determination of Responsibility. 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 standards of responsibility set forth in ORS 279C.375(3)(b) and this rule. To be a Responsible Offeror, the County must determine that the Offeror:

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

(b) Holds current licenses that businesses or service professionals operating in Oregon must hold in order to undertake or perform the work specified in the Contract;

(c) Is covered by liability insurance and other insurance in amounts the County requires in the Solicitation Documents;

(d) Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128;

(e) Has made the first-tier disclosure required under YCR 049-0360;

(f) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that, to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. The County should carefully 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 should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The County may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The County shall make its basis for determining an Offeror not Responsible under this paragraph part of the Procurement file;

(g) Has a satisfactory record of integrity. An Offeror may lack integrity if the County determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to the County. The County may find an Offeror not 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 Conduct Disqualification under YCR 049-0370 may be used to determine an Offeror's integrity. The County may find an Offeror non-Responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The County shall make its basis for determining that an Offeror is not Responsible under this paragraph part of the Procurement file;

(h) Is legally qualified to contract with the County;

(i) Has agreed in the bid or proposal to be bound by the terms and conditions of the Contract; and

(j) 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 shall base the determination of Responsibility on any available information or may find the Offeror not Responsible.

(3) Documenting Agency Determinations. The County shall document their compliance with this rule on a Responsibility Determination Form substantially as set forth in ORS 279.375(3)(c) and file that form with the Construction Contractors Board within 30 days after Contract Award.
(4) County Evaluation. The County shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The County shall not evaluate an Offer using any other requirement or criterion.
(5) Offeror Submissions.

(a) The County may require an Offeror to submit Product Samples, Descriptive Literature, technical data, or other material and may also require any of the following prior to Award:

(A) Demonstration, inspection, or testing of a product prior to Award for characteristics such as compatibility, quality, or workmanship;

(B) Examination of such elements as appearance or finish; or

(C) Other examinations to determine whether the product conforms to Specifications.

(b) The County shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The County shall reject an Offer providing any product that does not meet the Solicitation Document requirements. The County's rejection of an Offer because it offers nonconforming Work or materials is not Disqualification and is not appealable under ORS 279C.445.

(6) Evaluation of Bids. The County shall use only objective criteria to evaluate Bids as set forth in the ITB. The County shall evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid.

(a) *Nonresident Bidders*. In determining the lowest Responsive Bid, the County shall, in accordance with YCR 046-0310, add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.

(b) *Clarifications*. In evaluating Bids, the County may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification shall not vary, contradict, or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications shall become part of the Bidder's Bid.

(c) *Negotiation Prohibited*. The County shall not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to Award.

(7) Evaluation of Proposals. See YCR 049-0650 regarding rules applicable to Requests for Proposals.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.335, ORS 279C.365, ORS 279C.375, & ORS 279C.395
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0395 Notice of Intent to Award

(1) Notice. At least seven (7) days before the Award of a Public Improvement Contract, the County shall issue to each Bidder and each Proposer, or post electronically or otherwise, a notice of the County's intent to Award the Contract. This requirement does not apply to Award of a Small or Intermediate Procurement awarded under YCR 049-0155 or YCR 049-0160, respectively.
(2) Form and Manner of Posting. The form and manner of posting notice shall conform to customary practices within the County's Procurement process and may be done electronically.
(3) Finalizing Award. The County's Award shall not be final until the later of the following:

(a) Seven (7) Days after the date of the notice, unless the Solicitation Document provided a different period for protest; or

(b) The County provides a Written response to all timely-filed protests that denies the protest and affirms the Award.

(4) Prior Notice Impractical. Posting of notice of intent to award shall not be required when the County determines that it is impractical due to unusual time constraints for its immediate Procurement needs, documents the reasons for that determination in the Procurement file, and posts notice of that action as soon as reasonably practical.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.375
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0400 Documentation of Award; Availability of Award Decisions

(1) Basis of Award. After Award, the County shall make a record showing the basis for determining the successful Offeror part of the County's Procurement file.

(2) Contents of Award Record for Bids. The County's record shall include:

(a) All submitted Bids;

(b) Completed Bid tabulation sheet; and

(c) Written justification for any rejection of lower Bids.

(3) Contents of Award Record for Proposals. Where the use of Requests for Proposals is authorized as set forth in YCR 049-0650, the County's record shall include:

(a) All submitted Proposals;

(b) The completed evaluation of the Proposals;

(c) Written justification for any rejection of higher scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and

(d) If the County permitted negotiations in accordance with YCR 049-0650, the County's completed evaluation of the initial Proposals and the County's completed evaluation of final Proposals.

(4) Contract Document. The County shall deliver a fully executed copy of the final Contract to the successful Offeror.

(5) Bid Tabulations and Award Summaries. Upon request of any Person, the County shall provide tabulations of Awarded Bids, or evaluation summaries of Proposals, for a nominal charge which may be payable in advance. Requests must contain the Solicitation Document number and, if requested, be accompanied by a self-addressed, stamped envelope. County may also provide tabulations of Bids and Proposals Awarded on designated websites or on the County's Electronic Procurement System.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.365 & ORS 279C.375
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0410 Time for County Acceptance; Extension

(1) Time for Offer Acceptance. An Offeror's Bid, or Proposal submitted as a Firm Offer, is irrevocable, valid, and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document.

(2) Extension of Acceptance Time. The County may request, orally or in Writing, that Offerors extend, in Writing, the time during which the County may consider and accept 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.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.375
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0420 Negotiation with Bidders Prohibited

(1) Bids. Except as permitted by ORS 279C.340 and YCR 049-0430 (i.e., when all Bids exceed the Cost Estimate), the County shall not negotiate with any Bidder prior to Contract Award. After Award of the Contract, the County and the Contractor may modify the resulting Contract only by change order or amendment to the Contract in accordance with YCR 049-0910.

(2) Requests for Proposals. The County may conduct discussions or negotiations with Proposers only in accordance with the requirements of YCR 049-0650.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.340 & 279C.410
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0430 Negotiation when Bids Exceed Cost Estimate

(1) Generally. In accordance with ORS 279C.340, if all Responsive Bids from Responsible Bidders on a competitively Bid project exceed the County's Cost Estimate, prior to Contract Award, the County may negotiate Value Engineering and other options with the Responsible Bidder submitting the lowest, Responsive Bid in an attempt to bring the project within the County's Cost Estimate. The subcontractor disclosure and substitution requirements of YCR 049-0360 do not apply to negotiations under this rule.

(a) For the purposes of this rule, the term "other options" refers to those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance as specified in YCR 049-0650, but excluding any material requirements previously announced in the solicitation process that would likely affect the field of competition.

(2) Rejection of Bids. In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the County, shall be excluded from consideration.

(3) Scope of Negotiations. The County shall not proceed with Contract Award if the scope of the project is significantly changed from the original Bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Bidders would have been expected by the County to have participated in the bidding process had the change been made during the solicitation process rather than during negotiation. This rule shall not be construed to prohibit re-solicitation of trade subcontracts.

(4) Discontinuing Negotiations. The County may discontinue negotiations at any time and shall do so if it appears to the County that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the project, or to obtain subcontractor pricing information upon request, shall be considered a lack of good faith.

(5) Limitation. Negotiations may be undertaken only with the lowest Responsive, Responsible Bidder pursuant to ORS 279C.340. The County may only negotiate with Bidders next in line for Contract Award where expressly permitted in law or these Division 49 rules.

(6) Public Records. To the extent that a Bidder's records used in Contract negotiations are public records, they are exempt from disclosure until after the negotiated Contract has been awarded or the negotiation process has been terminated, at which time they shall be subject to disclosure pursuant to the provisions of the Oregon Public Records Law, ORS 192.311 to 192.478.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.340
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0440 Rejection of Offers

(1) Rejection of an Offer.

(a) The County may reject any Offer upon finding that to accept the Offer may impair the integrity of the Procurement process or that rejecting the Offer is in the public interest.

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

(A) Is contingent on 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);

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

(D) Offers Work that fails to meet the Specifications of the Solicitation Document;

(E) Is late;

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

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

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

(A) Has not been prequalified under YCR 049-0220, and the County required mandatory prequalification;
(B) Has been Disqualified;
(C) Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries;
(D) Is listed as not qualified by the Construction Contractors Board;
(E) Has not met the requirements of ORS 279A.105 if required by the Solicitation Document;
(F) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;
(G) Has failed to provide the certification required under YCR 046-0230; or
(H) Is not Responsible.

(2) Form of Business. 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 Disqualification provisions of ORS 279C.440 to 279C.450 and YCR 049-0370.

(3) Rejection of All Offers Permitted. The County may reject all Offers for good cause upon the County's Written finding it is in the public interest to do so. The County shall notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.

(4) Criteria for Rejection of All Offers. The County may reject all Offers upon a Written finding that:

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

(b) The price, quality, or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the 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 Procurement process. These causes include, but are not limited to, 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 County cancels the solicitation in accordance with YCR 049-0270; or

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED : ORS 279C.375, ORS 279C.380, & ORS 279C.395
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0450 Protest of Contractor Selection, Contract Award

(1) Purpose. An adversely affected or aggrieved Offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the County's Contractor selection or Contract Award decision.

(2) Notice of Competitive Range. Unless otherwise provided in the RFP, when the competitive Proposal process is authorized under YCR 049-0650, the County shall provide Written notice to all Proposers of the County's determination of the Proposers included in the Competitive Range. The County's notice of the Proposers included in the Competitive Range shall not be final until the later of the following:

(a) Seven (7) Days after the date of the notice, unless otherwise provided therein; or

(b) Until the County provides a Written response to all timely-filed protests that denies the protest and affirms the notice of the Proposers included in the Competitive Range.

(3) Notice of Intent to Award. The County shall provide Written notice to all Offerors of the County's intent to Award the Contract, as provided by YCR 049-0395.

(4) Right to Protest Award.

(a) An adversely affected or aggrieved Offeror may submit to the County a Written protest of the County's intent to Award within seven (7) Days after issuance of the notice of intent to Award the Contract, unless a different protest period is provided under the Solicitation Document.

(b) The Offeror's protest must be in Writing and must specify the grounds upon which the protest is based.

(c) An Offeror is adversely affected or aggrieved only if the Offeror is eligible for Award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the best Responsive Proposal and is next in line for Award, i.e., the protesting Offeror must claim that all lower Bidders or higher-scored Proposers are ineligible for Award because:

(A) Their Offers were nonresponsive; or

(B) The County committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been the Responsible Bidder offering the lowest Bid or the Responsible Proposer offering the highest-ranked Proposal.

(d) The County shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest the County's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(5) Right to Protest Competitive Range.

(a) An adversely affected or aggrieved Proposer may submit to the County a Written protest of the County's decision to exclude the Proposer from the Competitive Range within seven (7) Days after issuance of the notice of the Competitive Range, unless a different protest period is provided under the Solicitation Document.

(b) The Proposer's protest shall be in Writing and must specify the grounds upon which the protest is based.

(c) A Proposer is adversely affected only if the Proposer is Responsible and submitted a Responsive Proposal and is eligible for inclusion in the Competitive Range, i.e., the protesting Proposer must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Proposers are removed from consideration, and that those ineligible Proposers are ineligible for inclusion in the Competitive Range because:

(A) Their Proposals were not responsive; or

(B) The County committed a substantial violation of a provision in the RFP or of an applicable Procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.

(d) The County shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest the County's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(6) Authority to Resolve Protests. The County Administrative Officer, or designee, may settle or resolve a Written protest submitted in accordance with the requirements of this rule.

(7) Decision. If a protest is not settled, the County Administrative Officer, or designee, shall promptly issue a Written decision on the protest. Judicial review of this decision will be available if provided by statute.

(8) Award. The successful Offeror shall promptly execute the Contract after the Award is final and all protest periods have ended. The County shall execute the Contract only after it has obtained all applicable required documents and approvals.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.375, ORS 279C.380, ORS 279C.385, & ORS 279C.460
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0460 Performance and Payment Security; Waiver

(1) Performance and Payment Bonds. Unless the required performance bond is waived under ORS 279C.380(1)(a), excused in cases of emergency under 279C.380(4), or unless the Board exempts a Contract or

classes of contracts from the required performance bond and payment bond pursuant to 279C.390, the Contractor shall execute and deliver to the County a performance bond and a payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts.

(a) This requirement applies only to Public Improvement Contracts with a value estimated by the County of more than $100,000, or in the case of Contracts for highways, bridges, and other transportation projects, more than $50,000.

(2) Requirement for Surety Bond. The County shall accept only a performance bond furnished by a surety company authorized to do business in Oregon unless otherwise specified in the Solicitation Document (i.e., the County may accept a cashier's check or certified check in lieu or all or a portion of the required performance bond if specified in the Solicitation Document). The payment bond must be furnished by a surety company authorized to do business in Oregon, and in an amount equal to the full Contract Price.

(3) Time for Submission. The apparent successful Offeror must promptly furnish the required performance security upon the County's request. If the Offeror fails to furnish the performance security as requested, the County may reject the Offer and Award the Contract to the Responsible Bidder with the next lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at the County's discretion, the Offeror shall forfeit its Bid or Proposal security.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED:
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0470 Substitute Contractor

If the Contractor provided a performance bond, the County may afford the Contractor's surety the opportunity to provide a substitute contractor to complete performance of the Contract. A substitute contractor shall perform all remaining Contract Work and comply with all terms and conditions of the Contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not involve the Award of a new Contract and shall not be subject to the competitive Procurement provisions of ORS Chapter 279C and these Division 49 rules.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.365, ORS 279C.370, ORS 279C.375, ORS 279C.380, & ORS 279C.390
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0490 Foreign Contractor

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

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.120
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

III. ALTERNATIVE CONTRACTING METHODS

YCR 049-0600 Purpose

YCR 049-0600 to 049-0690 are intended to provide guidance to the County regarding the use of Alternative Contracting Methods for Public Improvement Contracts, as may be directed by Board under ORS 279C.335. These Alternative Contracting Methods include, but are not limited to, the following forms of Contracting: Design-Build, Energy Savings Performance Contract, and the Construction Manager/General Contractor Method.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED : ORS 279C.335
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0610 Definitions for Alternative Contracting Methods

The following definitions shall apply to these YCR 049-0600 to 049-0690 rules, unless the context requires otherwise:

(1) "**Affiliate**" has the meaning set forth in ORS 279C.332(1).

(2) "**Construction Manager/General Contractor**" ("CM/GC") has the meaning set forth in ORS 279C.332(2).

(3) "**Construction Manager/General Contractor Method**" ("CM/GC Method") means the Alternative Contracting Method which involves the County's selection of a CM/GC to perform CM/GC Services for a project or projects.

(4) "**Construction Manager/General Contractor Services**" ("CM/GC Services") has the meaning set forth in ORS 279C.332(3).

(5) "**Design-Build**" means a form of Procurement that results in a Public Improvement Contract in which the Construction Services Contractor also provides or obtains specified design services, participates on the project team with the County, and manages both design and construction. In this form of Contract, a single Person provides the County with all of the A&E Consulting services and Construction Services necessary to both design and construct the project.

(6) "**Early Work**" means Construction Services, pre-Construction-Services, construction materials, and other Work authorized by the County to be performed by the CM/GC under the CM/GC Contract in advance of the establishment of the GMP, fixed price, or other maximum, not-to-exceed price for the project.

(7) "**Energy Conservation Measures**" ("ECMs") (also known as "energy efficiency measures") means, as used in ESPC Procurement, any equipment, fixture, or furnishing to be added to or used in an existing building or structure, and any repair, alteration, or improvement to an existing building or structure that is designed to reduce energy consumption and related costs, including those costs related to electrical energy, thermal energy, water consumption, waste disposal, and future contract-labor costs and materials costs associated with maintenance of the building or structure. For purposes of these YCR 049-0600 to 049-0690 rules, use of either or both of the terms "building" or "structure" shall be deemed to include existing energy, water, and waste disposal systems connected or related to or otherwise used for the building or structure when such system(s) are included in the project, either as part of the project together with the building or structure, or when such system(s) are the focus of the project. Maintenance services are not considered Energy Conservation Measures under these YCR 049-0600 to 049-0690 rules.

(8) "**Energy Savings Guarantee**" means the energy savings and performance guarantee provided by the ESCO under an ESPC Procurement, which guarantees to the County that certain energy savings and performance will be achieved for the project covered by the RFP, through the installation and implementation of the agreed-upon ECMs for the project. The Energy Savings Guarantee shall include, but shall not be limited to, the specific energy savings and performance levels and amounts that will be guaranteed, provisions related to the financial remedies available to the County in the event the guaranteed savings and performance are not achieved, the specific conditions under which the ESCO will guarantee energy savings and performance (including the specific responsibilities of the County after final completion of the design and construction phase), and the term of the energy savings and performance guarantee.

(9) "**Energy Savings Performance Contract**" ("ESPC") means a Public Improvement Contract between the County and a Qualified Energy Service Company for the identification, evaluation, recommendation, design, and construction of Energy Conservation Measures, including a Design-Build Contract, that guarantee energy savings or performance.

(10) "**General Conditions Work**" ("GC Work") means a general grouping of project Work required to support construction operations on the project that is not included within the Contractor's overhead or fee.

(11) "**Guaranteed Maximum Price**" ("GMP") has the meaning set forth in ORS 279C.332(4), pertaining to procurements for CM/GC Services. For Alternative Contracting Methods other than the CM/GC Method, "Guaranteed Maximum Price" or "GMP" means the total maximum price provided to the County by the

Contractor and accepted by the County that includes all reimbursable costs and fees for completion of the Contract Work and any particularly identified contingency amounts, as defined by the Public Improvement Contract.
(12) "**Measurement and Verification**" ("M & V") means, as used in ESPC Procurement, the examination of installed ECMs using the International Performance Measurement and Verification Protocol ("IPMVP"), or any other comparable protocol or process, to monitor and verify the operation of energy-using systems pre-installation and post-installation.
(13) "**Project Development Plan**" means a secondary phase of Personal Services and Work performed by an ESCO in an ESPC Procurement when the ESCO performs more extensive design of the agreed-upon ECMs for the project, provides the detailed provisions of the ESCO's Energy Savings Guarantee that the fully installed and commissioned ECMs will achieve a particular energy savings level for the building or structure, and prepares an overall report or plan summarizing the ESCO's Work during this secondary phase of the Work and otherwise explaining how the agreed-upon ECMs will be implemented during the design and construction phase of the Work; The term "Project Development Plan" can also refer to the report or plan provided by the ESCO at the conclusion of this phase of the Work.
(14) "**Qualified Energy Service Company**" ("ESCO") means, as used in ESPC Procurement, a company, firm, or other legal Person with the following characteristics: demonstrated technical, operational, financial and managerial capabilities to design, install, construct, commission, manage, measure and verify, and otherwise implement Energy Conservation Measures and other Work on building systems or building components that are directly related to the ECMs in existing buildings and structures; a prior record of successfully performing ESPCs on projects involving existing buildings and structures that are comparable to the project under consideration by the County; and the financial strength to effectively guarantee energy savings and performance under the ESPC for the project in question, or the ability to secure necessary financial measures to effectively guarantee energy savings under an ESPC for that project.
(15) "**Savings**" has the meaning set forth in ORS 279C.337(4) when pertaining to CM/GC Services Procurements. For other Alternative Contracting Methods, "Savings" means a positive difference between a Guaranteed Maximum Price or other maximum not-to-exceed price set forth in a Public Improvement Contract and the actual cost of the Contractor's performance of the Contract Work payable by the County under the terms of the Contract, including costs for which the County reimburses a Contractor and fees, profits, or other payments the Contractor earns.
(16) "**Technical Energy Audit**" means, as used in ESPC Procurement, the initial phase of pre-Construction Services to be performed by an ESCO that includes a detailed evaluation of an existing building or structure, an evaluation of the potential ECMs that could be effectively utilized at the facility, and preparation of a report to the County of the ESCO's Findings during this initial phase of the Work; the term "Technical Energy Audit" can also refer to the report provided by the ESCO at the conclusion of this phase of the Work.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.332, ORS 279C.335, & ORS 279A.065
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0620 Use of Alternative Contracting Methods
(1) Competitive Bidding Exemptions. ORS Chapter 279C requires a competitive bidding process for Public Improvement Contracts unless a statutory exception applies, a class of Contracts has been exempted, or an individual Contract has been exempted, in accordance with ORS 279C.335 and the YCR. Use of Alternative Contracting Methods may be directed by the Board, however, when use of the Alternative Contracting Method requires an exemption to the prescribed competitive bidding requirement of 279C.335. In any of these circumstances, use of Alternative Contracting Methods must be justified in accordance with the Code and YCR 049-0600 to 049-0690. See YCR 049-0630 regarding required Findings and restrictions on exemptions from the competitive bidding requirement under ORS 279C.335.
(2) Energy Savings Performance Contracts. ESPCs may be exempted from the competitive bidding process for Public Improvement Contracts pursuant to ORS 279C.335(1)(f), if the County complies with YCR 049-0600 to

049-0690 related to the Solicitation, negotiation, and Contracting for ESPC Work. If those procedures are not followed, an ESPC Procurement may still be exempted from competitive bidding requirements by following the general exemption procedures within 279C.335.

(3) Post-Project Evaluation. ORS 279C.355 requires that the County prepare a formal post-project evaluation of Public Improvement projects in excess of $100,000 for which the competitive bidding process was not used. The purpose of this evaluation is to determine whether it was actually in the County's best interest to use an Alternative Contracting Method outside the competitive bidding process. The evaluation must be delivered to the Board within 30 Days of the date the County "accepts" the Public Improvement project, which event is typically defined in the Contract. In the absence of such definition, acceptance of the Public Improvement project occurs on the later of the date of final payment or the date of final completion of the Work. In the absence of such definition, acceptance of the Public Improvement project occurs on the later of the date of final payment or the date of final completion of the Contract Work. ORS 279C.355 describes the timing and content of this evaluation, with three required elements:

(a) Financial information, consisting of cost estimates, any Guaranteed Maximum Price, changes and actual costs;

(b) A narrative description of successes and failures during design, engineering, and construction; and

(c) An objective assessment of the use of the Alternative Contracting Method as compared to the exemption Findings.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.335, ORS 279C.355
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0630 Findings, Notice, and Hearing

(1) Cost Savings Factors and Other Substantial Benefits Factors. When Findings are required under ORS 279C.335 to exempt a Contract or class of Contracts from competitive bidding requirements, the "substantial cost savings" criterion at ORS 279C.335(2)(b) requires consideration of the type, cost, and amount of the Contract, and to the extent applicable, the other factors set forth in 279C.335(2)(b). If a particular factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts, the Board does not need to consider that factor, and the County is not required to address the factor, other than to explain why the factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts.

(2) Required Information. The statutory definition of "Findings" at ORS 279C.330(2), which applies to exemptions from competitive bidding under ORS 279C.335, means the justification for a County conclusion regarding the factors listed in both ORS 279C.335(2)(a) and 279C.335(2)(b) or, in the alternative, both 279C.335(2)(a) and 279C.335(2)(c).

(3) Addressing Cost Savings. Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the "substantial cost savings and other substantial benefits" requirement may be addressed by a combination of:

(a) Specified Findings that address the factors and other information specifically identified by statute, including, but not limited to, an analysis or reasonable forecast of future cost savings as well as present cost savings and other substantial benefits; and

(b) Additional Findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355, and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such Findings shall relate back to the specific characteristics of the Public Improvement project or projects at issue in the exemption request.

(4) Favoritism and Competition. The criteria at ORS 279C.335(2)(a) that the exemption is "unlikely to encourage favoritism" or "substantially diminish competition" may be addressed in contemplating the use of Alternative Contracting Methods by specifying the manner in which an RFP process will be utilized, that the Procurement

will be formally advertised with public notice and disclosure of the planned Alternative Contracting Method, that competition will be encouraged, that Award will be made based upon identified selection criteria, and that there will be an opportunity to protest that Award.

(5) Class Exemptions. In making the Findings supporting a class exemption, the County shall clearly identify the class with respect to its defining characteristics. The class must meet the following requirements:

(a) The class cannot be based on a single characteristic or factor, so that the County directly or indirectly creates a class whereby the County uses, for example, the CM/GC Method for all County Public Improvement projects or all County Public Improvement projects over a particular dollar amount, unidentified future County Public Improvement projects of a particular Work category, or all County Public Improvement projects from a particular funding source such as the sale of bonds; and

(b) The class must include a combination of factors, must be defined by the County through characteristics that reasonably relate to the exemption criteria set forth in ORS 279C.335(2), and must reflect a detailed evaluation of those characteristics so that the class is defined in a limited way that effectively meets the County's objectives while allowing for impartial and open competition, and protecting the integrity of the exemption process. An example of a class that might be permitted under the statute is a series of Public Improvement projects, such as a specific group of building renovation projects, that:

(A) Involve renovations for a common purpose;

(B) Require completion on a related schedule in order to avoid unnecessary disruption of County operations;

(C) Share common characteristics, such as historic building considerations, the presence of asbestos or other hazardous substances, or the presence of County staff during construction;

(D) Otherwise possess characteristics that meet the requirements of ORS 279C.335(2); and

(E) Otherwise meet the requirements of the Board, as applicable.

(6) Public Hearing. Before final adoption of Findings exempting a Public Improvement Contract from the requirement of competitive bidding, the County shall give notice and hold a public hearing as required by ORS 279C.335(4). The hearing shall be for the purpose of receiving public comment on the County's draft Findings.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.335
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0640 Competitive Proposals; Procedure

(1) Generally. The County may utilize an RFP process for Public Improvement Contracts, allowing flexibility in both Proposal evaluation and Contract negotiation, only in accordance with ORS 279C.400 to 279C.410 and YCR 049-0600 to 049-690, unless other applicable statutes control the County's use of competitive Proposals for Public Improvement Contracts.

(2) Proposal Evaluation. Factors in addition to price may be considered in the selection process of a Public Improvement Contract under this rule, but only as set forth in the RFP. Proposal evaluations shall be as objective as possible. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible, such evaluation factors shall:

(a) Be reasonable estimates based on information available to the County;

(b) Treat all Proposals equitably; and

(c) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the County. For ESPC Proposal evaluations, the County may provide in the RFP that qualifications-based evaluation factors will outweigh the County's consideration of price-related factors, due to the fact that prices for the major components of the Work to be performed during the ESPC process contemplated by the RFP will likely not be determinable at the time of Proposal evaluation. For CM/GC Services Proposal evaluations, the County shall comply with the requirements set forth in ORS 279C.337.

(3) Evaluation Factors:

(a) For basic negotiated Public Improvement Contracts where the main justification for utilizing an RFP process is to consider factors other than price, evaluation factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, and related matters that affect the cost or quality of the Work.

(b) For CM/GC Contracting, in addition to the factors set forth in subsection (a), evaluation factors may also include the ability to respond to the technical complexity or unique character of the Public Improvement project, the capacity to analyze and propose solutions or approaches to complex project problems, the coordination of multiple disciplines, the time required to commence and complete the Public Improvement, and related matters that affect the cost or quality of the Work.

(c) For Design-Build Contracting, in addition to the factors set forth in subsections (a) and (b), evaluation factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience, and related matters that affect the cost or quality of the Work.

(d) For ESPC Contracting, in addition to the factors set forth in subsections (a), (b) and (c), evaluation factors may also include sample Technical Energy Audits from similar projects, sample M & V reports, financial statements and related information of the ESCO for a time period established in the RFP, financial statements and related information of joint venturers comprising the ESCO, the ESCO's capabilities and experience in performing energy baseline studies for facilities (independently or in cooperation with an independent third-party energy baseline consultant), past performance of the ESCO in meeting energy guarantee Contract levels, the specific Person that will provide the Energy Savings Guarantee to be offered by the ESCO, the ESCO's management plan for the Public Improvement project, information on the specific methods, techniques and equipment that the ESCO will use in the performance of the Work under the ESPC, the ESCO's team members and consultants to be assigned to the Public Improvement project, the ESCO's experience in the Energy Savings Performance Contracting field, the ESCO's experience acting as the prime contractor on previous ESPC projects (as opposed to a subcontractor or consultant to a prime ESCO), the ESCO's vendor and product neutrality related to the development of ECMs, the ESCO's project history related to removal from an ESPC project or the inability or unwillingness of the ESCO to complete an ESPC project, the ESCO's M & V capabilities and experience (independently or in cooperation with an independent third-party M & V consultant), the ESCO's ability to explain the unique risks associated with ESPC projects and the assignment of risk in the particular Public Improvement project between the County and the ESCO, the ESCO's equipment performance guarantee policies and procedures, the ESCO's energy savings and cost savings guarantee policies and procedures, the ESCO's project cost guarantee policies and procedures, the ESCO's pricing methodologies, the price that the ESCO will charge for the Technical Energy Audit phase of the Work and the ESCO's fee structure for all phases of the ESPC.

(4) Contract Negotiations. Contract terms may be negotiated to the extent allowed by the RFP and YCR 049-0600 to 049-0690, provided that the general Work scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Document. Terms that may be negotiated consist of details of Contract performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that affect the cost or quality of the Work. For the CM/GC Method, terms that may be negotiated also include the specific scope of pre-construction services, the GC Work, any early Work and other construction Work to be performed by the CM/GC, and any other terms that the County has identified as being subject to negotiation, consistent with the requirements of YCR 049-0680. For ESPC Contracting, terms that may be negotiated also include the scope of preliminary design of ECMs to be evaluated by the parties during the Technical Energy Audit phase of the Work, the scope of services to be performed by the ESCO during the Project Development Plan phase of the Work, the detailed provisions of the Energy Savings Guarantee to be

provided by the ESCO and scope of Work, methodologies and compensation terms and conditions during the design and construction phase and M & V phase of the Work, consistent with the requirements of YCR 049-0690.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.335
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0645 Request for Qualifications (RFQ)

As provided by ORS 279C.405(1), the County may utilize Requests for Qualifications (RFQs) to obtain information useful in the preparation or distribution of a RFPs. When using RFQs as the first step in a two-step Procurement, in which distribution of the RFPs will be limited to the firms identified as most qualified through their submitted statements of qualification, the County shall first advertise and provide notice of the RFQ in the same manner in which RFPs are advertised, specifically stating that RFPs will be distributed only to the firms selected in the RFQ process. In such cases the County shall also provide within the RFQ a protest provision substantially in the form of YCR 049-0450(5) regarding protests of the Competitive Range. Thereafter, the County may distribute RFPs to the selected firms without further advertisement of the solicitation.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.405
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0650 Request for Proposals (RFP)

(1) Generally. The use of competitive Proposals must be specially authorized for a Public Improvement Contract under the competitive bidding requirement of ORS 279C.335, YCR 049-0130, and YCR 049-0600 to 049-0690.

(2) Solicitation Documents. In addition to the Solicitation Document requirements of YCR 049-0200, this rule applies to the requirements for Requests for Proposals. RFP Solicitation Documents shall conform to the following standards:

(a) The County shall set forth selection criteria in the Solicitation Document. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references, and warranty provisions. See YCR 049-0640 regarding Proposal evaluation and evaluation factors. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates based on information available to the County. Subject to ORS 279C.410(4), the Solicitation Document may provide for discussions with Proposers to be conducted for the purpose of Proposal evaluation prior to award or prior to establishing any Competitive Range;

(b) When the County is willing to negotiate terms and conditions of the Contract or allow submission of revised Proposals following discussions, the County shall identify the specific terms and conditions in or provisions of the Solicitation Document that are subject to negotiation or discussion and authorize Offerors to propose certain alternative terms and conditions in lieu of the terms and conditions the County has identified as authorized for negotiation. The County shall describe the evaluation and discussion or negotiation process, including how the County will establish the Competitive Range, if any;

(c) When the County intends to Award Contracts to more than one Proposer, the County shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. The County shall also include the criteria it will use to determine how the County will endeavor to achieve optimal value, utility, and substantial fairness when selecting a particular Contractor to provide Construction Services from those Contractors Awarded Contracts.

(3) Evaluation. The County shall evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The County shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.

(a) *Clarifications*. In evaluating Proposals, the County may seek information from a Proposer to clarify the Proposer's Proposal. A Proposer must submit Written and Signed clarifications and such clarifications shall become part of the Proposer's Proposal.

(b) *Limited Negotiation*. If the County did not permit negotiation in its Request for Proposals, the County may, nonetheless, negotiate with the highest-ranked Proposer, but may then only negotiate the:

(A) Statement of Work; and

(B) Contract Price as it is affected by negotiating the statement of Work. The process for discussions or negotiations that is outlined and explained in subsections (5)(b) and (6) of this rule does not apply to this limited negotiation.

(4) Discussions; Pre-Award Negotiations. If the County permitted discussions or negotiations in the Request for Proposals, the County shall evaluate Proposals and establish the Competitive Range and may then conduct discussions and negotiations in accordance with this rule.

(a) If the Solicitation Document provided that discussions or negotiations may occur at County's discretion, the County may forego discussions and negotiations and evaluate all Proposals in accordance with this rule.

(b) If the County proceeds with discussions or negotiations, the County shall establish a negotiation team tailored for the acquisition. The County's team may include legal, technical, and negotiating personnel.

(5) Cancellation. Nothing in this rule shall restrict or prohibit the County from canceling the Solicitation at any time.

(6) Competitive Range; Protest; Award.

(a) *Determining Competitive Range*.

(A) If the County does not cancel the Solicitation after the Opening, the County shall evaluate all Proposals in accordance with the evaluation criteria set forth in the RFP. After evaluation of all Proposals in accordance with the criteria set forth in the RFP, the County shall determine and rank the Proposers based on the County's scoring and determine in Competitive Range.

(B) The County may increase the number of Proposers in the Competitive Range if the County's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely competitive or have a reasonable chance of being determined the best Proposer after the County's evaluation of revised Proposals submitted in accordance with the process described in this rule.

(b) *Protesting Competitive Range*. The County shall provide notice to all Proposers identifying Proposers in the Competitive Range. A Proposer that is not within the Competitive Range may protest the County's evaluation and determination of the Competitive Range in accordance with YCR 049-0450.

(c) *Intent to Award; Discuss or Negotiate*. After the protest period provided in accordance with these rules 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.

(i) An unsuccessful Proposer may protest the County's intent to Award in accordance with YCR 049-0450.

(ii) After the protest period provided in accordance with YCR 049-0450 expires, or after the County has provided a final response to any protest, whichever date is later, the County shall commence final Contract negotiations with the highest-ranked Proposer in the Competitive Range; or

(B) Engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them, and, following such discussions and receipt and evaluation of revised Proposals, conduct negotiations with the Proposers in the Competitive Range.

(7) Discussions; Revised Proposals. If the County chooses to enter into discussions with and receive revised Proposals from the Proposers in the Competitive Range, the County shall proceed as follows:

(a) *Initiating Discussions*. The County shall initiate oral or Written discussions with all of the Proposers in the Competitive Range 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 Proposers of deficiencies in their initial Proposals;

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

(C) Otherwise allowing 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 Proposer in the Competitive Range as necessary to meet the intent of this section (5), but it need not conduct the same amount of discussions with each Proposer. The County may terminate discussions with any Proposer in the Competitive Range at any time. However, the County shall offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with the County before the County notifies Proposers, pursuant to subsection (7)(c) of this rule, of the date and time that revised Proposals will be due.

(A) In conducting discussions, the County shall:

(i) Treat all Proposers fairly and shall not favor any Proposer over another;

(ii) Not discuss other Proposers' Proposals;

(iii) Not suggest specific revisions that a Proposer should make to its Proposal and shall not otherwise direct the Proposer to make any specific revisions to its Proposal.

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

(i) Continue discussions with a particular Proposer;

(ii) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the Competitive Range; or

(iii) Conclude discussions with all remaining Proposers in the Competitive Range and provide notice to the Proposers in the Competitive Range to submit revised Proposals.

(c) *Revised Proposals*. If the County does not cancel the solicitation at the conclusion of the County's discussions with all remaining Proposers in the Competitive Range, the County shall give all remaining Proposers in the Competitive Range notice of the date and time by which they must submit revised Proposals. This notice constitutes the County's termination of discussions, and Proposers must submit revised Proposals by the date and time set forth in the County's notice.

(A) Upon receipt of the revised Proposals, the County shall score the revised Proposals based upon the evaluation criteria set forth in the Request for Proposals and rank the revised Proposals based on the County's scoring.

(B) The County may conduct discussions with and accept only one revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the Request for Proposals.

(8) Intent to Award; Protest. The County shall provide notice to all Proposers in the Competitive Range of the County's intent to Award the Contract. An unsuccessful Proposer may protest the County's intent to Award in accordance with YCR 049-0450. After the protest period provided in accordance with that rule expires, or after the County has provided a final response to any protest, whichever date is later, the County shall commence final Contract negotiations.

(9) Contract Negotiations.

(a) *Initiating Negotiations*. The County may commence negotiations with the highest ranked Proposer in the Competitive Range following the:

(A) Initial determination of the Competitive Range; or

(B) Conclusion of discussions with all Proposers in the Competitive Range and evaluation of revised Proposals.

(b) *Conducting Negotiations; Scope*. The County may negotiate:

(A) The statement of Work;

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

(C) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the RFP. Accordingly, Proposers shall not submit, and County shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the RFP.

(c) *Continuing Negotiations*. If the County terminates negotiations with a Proposer, the County may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this rule until the County has:

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

(B) Completed one round of negotiations with all Proposers in the Competitive Range, unless the County provided for more than one round of discussions or negotiations in the RFP, in which case the County may proceed with any authorized further rounds of discussions or negotiations.

(d) *Terminating Discussions or Negotiations*. At any time during discussions or negotiations that the County conducts in accordance with 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:

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

(B) 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.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.400, ORS 279C.405, & ORS 279C.410
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0660 RFP Pricing Mechanisms

(1) An RFP may result in a Contract with a lump-sum Contract Price or a fixed Contract Price, as in the case of competitive bidding. Alternatively, an RFP may result in a cost reimbursement Contract with a GMP or some other maximum price specified in the Contract.

(2) Economic incentives or disincentives may be included to reflect stated County purposes related to time of completion, safety, or other Public Contracting objectives, including but not limited to total least cost mechanisms such as life cycle costing.

(3) A Guaranteed Maximum Price may be used as the pricing mechanism for CM/GC Services Contracts where a total Contract Price is provided in the design phase in order to assist the County in determining whether the project scope is within the County's budget and allowing for design changes during preliminary design rather than after final design services have been completed.

(a) If the collaborative process described above in this rule's section (3) is successful, the Contractor shall propose a final GMP, which may be accepted by the County and included within the Contract.

(b) If the collaborative process described above in this rule's section (3) is not successful, and no mutually agreeable resolution on the GMP for the project construction Work can be achieved with the Contractor, then the County shall terminate the Contract. The County may then proceed to negotiate a new Contract (and GMP) with the firm that was next ranked in the original selection process or employ other means for continuing the project under ORS Chapter 279C.

(4) When cost reimbursement Contracts are utilized, regardless of whether a GMP is included, the County shall provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.335
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0670 Design Build Contracts

(1) General. The Design-Build form of Contracting, as defined at YCR 049-0610(5), has technical complexities that are not readily apparent. The County shall use this Contracting method only with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to use the Design-Build process, the County must be able to reasonably anticipate the following types of benefits:

(a) Obtaining, through a Design-Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control, and required documentation as a fully integrated function with a single point of responsibility;

(b) Integrating value engineering suggestions into the design phase, as the construction Contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing Contract changes;

(c) Reducing the risk of design flaws, misunderstandings, and conflicts inherent in construction Contractors building from designs in which they have had no opportunity for input, with the potential of reducing Contract claims;

(d) Shortening project time as construction activity (early submittals, mobilization, subcontracting and advance Work) commences prior to completion of a "Biddable" design, or where a design solution is still required (as in complex or phased projects); or

(e) Obtaining innovative design solutions through the collaboration of the Contractor and design team, which would not otherwise be possible if the Contractor had not yet been selected.

(2) Authority. The County shall utilize the Design-Build form of Contracting only in accordance with the requirements of these YCR 049-0600 to 049-0690 rules.

(3) Selection. Design-Build selection criteria may include those respective factors set forth in YCR 049-0640(3).

(4) QBS Inapplicable. Because the value of construction Work predominates the Design-Build form of Contracting, the qualifications-based selection (QBS) process mandated by YCR 048-0130 is not applicable.

(5) Licensing. If a Design-Build Contractor is not an Oregon licensed design professional, the County shall require that the Design-Build Contractor disclose in its Written Offer that it is not an Oregon licensed design professional and identify the Oregon licensed design professional(s) who will provide design services.

(6) Performance Security. ORS 279C.380(1)(a) provides that for Design-Build Contracts the surety's obligation on performance bonds, or the Bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related Personal Services specified in the Contract. This additional obligation, beyond performance of construction Work, extends only to the provision of design revisions and corrective Work and their associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance and does not include errors and omissions or latent defects coverage.

(7) Contract Requirements. The County shall conform their Design-Build Contracting practices to the following requirements:

(a) *Design Services*. The level or type of design services required must be clearly defined within the Procurement documents and Contract, along with a description of the level or type of design services previously performed for the project. The design services and Work to be performed shall be clearly delineated as either design Specifications or performance standards, and performance measurements must be identified.

(b) *Professional Liability*. The Contract shall clearly identify the liability of design professionals with respect to the Design-Build Contractor and the County, as well as requirements for professional liability insurance.

(c) *Risk Allocation*. The Contract shall clearly identify the extent to which the County requires an express indemnification from the Design-Build Contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty Work claims.

(d) *Warranties*. The Contract shall clearly identify any express warranties made to the County regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of

improper design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.

(e) *Incentives*. The Contract shall clearly identify any economic incentives and disincentives, the specific criteria that apply and their relationship to other financial elements of the Contract.

(f) *Honoraria*. If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the solicitation process on the basis that the County is benefited from such deliverables.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.335 & 279C.110
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0680 Construction Manager/General Contractor (CM/GC) Services

(1) General. The CM/GC Method, as defined at YCR 049-0610(4), is a technically complex project delivery system. The County shall use this Contracting method only with the assistance of legal counsel with substantial experience and necessary expertise in using the CM/GC Method, as well as knowledgeable staff, consultants, or both staff and consultants who have a demonstrated capability of managing the CM/GC process in the necessary disciplines of engineering, construction scheduling and cost control, accounting, legal, Public Contracting and project management. Unlike the Design-Build form of Contracting, the CM/GC Method does not contemplate a "single point of responsibility" under which the CM/GC is responsible for successful completion of all Work related to a performance Specification. The CM/GC has defined Contract obligations, including responsibilities as part of the project team along with the County and design professional, although with the CM/GC Method there is a separate Contract between the County and design professional. In order to utilize the CM/GC Method, the County must be able to reasonably anticipate the following types of benefits:

(a) *Time Savings*. With the CM/GC Method, the Public Improvement has significant schedule ramifications, such that concurrent design and construction are necessary in order to meet critical deadlines and shorten the overall duration of construction. The County may consider operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods;

(b) *Cost Savings*. With the CM/GC Method, early CM/GC input during the design process is expected to contribute to significant cost savings. The County may consider value engineering, building systems analysis, life cycle costing analysis, and construction planning that lead to cost savings. The County shall specify any special factors influencing this analysis, including high rates of inflation, market uncertainty due to material and labor fluctuations or scarcities, and the need for specialized construction expertise due to technical challenges; or

(c) *Technical Complexity*. With the CM/GC Method, the Public Improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the County, design professionals, any County project management or technical consultants, and the CM/GC, in which the CM/GC will assist in addressing specific project challenges through pre-construction design services. The County may consider the need for CM/GC input on issues such as operations of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling projects, and projects requiring complex phasing or highly coordinated scheduling.

(2) Authority. The County shall use the CM/GC form of contracting only in accordance with the requirements of these Division 49 rules and ORS 279C.337 when a competitive bidding exemption is approved.

(3) Selection. CM/GC selection criteria may include those respective factors set forth in YCR 049-0640(3).

(4) Basis for Payment. The CM/GC process adds specified construction manager design services to traditional design-bid-build general contractor Work, requiring full Contract performance within a negotiated GMP, fixed Contract Price, or other maximum Contract Price. For a GMP pricing method, the basis for payment is reimbursable direct costs as defined under the Contract, plus a fee constituting full payment for construction Work and design services rendered, which together shall not exceed the GMP.

(5) Contract Requirements. The County shall conform their CM/GC contracting practices to the following requirements:

(a) *Nature of the Initial CM/GC Services Contract Document*. A solicitation for CM/GC Services is a Procurement for a Public Improvement, since the scope of the Procurement includes not only pre-construction design services to be performed by the CM/GC, but also construction Work that is expected to result in a completed Public Improvement. In the traditional CM/GC Services Contracting approach, the text of the resulting CM/GC Services Contract will include comprehensive contract provisions that will not only fully govern the relationship between the County and the CM/GC for the pre-construction design services, but will also include the general contract provisions that will control the CM/GC's providing of the construction Work necessary to complete the project (with any remaining necessary construction-related contract provisions being added through Early Work amendments to the Contract, the GMP amendment to the Contract or, if necessary, a conventional amendment to the Contract). The traditional CM/GC Services Contracting approach, however, also contemplates that the County will only authorize the CM/GC to perform the pre-construction design services when the Contract is first executed unless construction Work is specifically included in the initial CM/GC Contract. Under this approach, the construction phase or phases of the CM/GC Services project are not yet authorized and the Contract only becomes a Public Improvement Contract once the parties amend the Contract, through an Early Work or a GMP amendment, to authorize the construction of a portion of the project or the entire project. See also OAR 839-025-0020, regarding the Bureau of Labor and Industries' determination of when a Contract for CM/GC Services becomes a "Public Works" Contract for purposes of paying prevailing wage rates for construction Work under the CM/GC Contract.

(b) *Setting the GMP, Fixed Contract Price or Other Maximum Contract Price*. The GMP, fixed Contract Price or other maximum Contract Price shall be set at an identified time consistent with industry practice and project conditions and after supporting information reasonably considered necessary to its use has been developed, which will normally take place by the end of the design development phase of the project. The supporting information for the GMP must define with particularity both what design services and construction Work are included and excluded from the GMP, fixed Contract Price, or other maximum Contract Price. A set of project drawings and Specifications shall be produced establishing the scope of construction Work contemplated by the GMP, fixed Contract Price, or other maximum Contract Price.

(c) *Adjustments to the GMP, Fixed Contract Price, or Other Maximum Contract Price*. The Contract shall clearly identify the standards or factors under which changes or additional construction Work will be considered outside of the Work scope that warrants an increase in the GMP, fixed Contract Price, or other maximum Contract Price, as well as criteria for decreasing the GMP, fixed Contract Price, or other maximum Contract Price. The GMP, fixed Contract Price, or other maximum Contract Price shall not be increased without a simultaneous increase to the scope of the Work defined at the establishment of the GMP, fixed Contract Price, or other maximum Contract Price, or most recent amendment to the GMP, fixed Contract Price, or other maximum Contract Price. An increase to the scope of the Work may take the form of conventional additions to the project scope, as well as corrections to the Contract terms and conditions, additions to insurance coverage required by the County, and other changes to the Work.

(d) *Cost Savings*. The Contract shall clearly identify the disposition of any Cost Savings resulting from completion of the Work below the GMP, fixed Contract Price or other maximum Contract Price; that is, under what circumstances, if any, the CM/GC might share in those Cost Savings, or whether the Cost Savings accrue only to the County's benefit. Unless there is a clearly articulated reason for sharing the Cost Savings set forth in the Contract, the Cost Savings must accrue to the County.

(e) *Cost Reimbursement*. The Contract shall clearly identify what items or categories of items are eligible for cost reimbursement within the GMP, fixed Contract Price, or other maximum Contract Price, including any category of GC Work costs, and may also incorporate a mutually agreeable cost-reimbursement standard.

(f) *Audit*. Cost reimbursements shall be made subject to final audit adjustment, and the Contract shall establish an audit process to ensure that Contract costs are allowable, properly allocated, and reasonable.

(g) *Fee*. Compensation for the CM/GC's design services and construction Work, where the Contract uses a GMP, shall include a fee that is inclusive of profit, overhead, and all other indirect or non-reimbursable costs. Costs determined to be included within the fee shall be expressly defined in the Contract terms and conditions at the time the County selects the CM/GC. The fee, which may be expressed as either a fixed dollar amount or as a proposed percentage of all reimbursable costs, shall be identified during and become an element of the selection process. It shall subsequently be expressed as a fixed amount for particular construction Work authorized to be performed, when Early Work is added to the Contract through an amendment, and when the GMP is established. The CM/GC fee does not include any fee paid to the CM/GC for performing pre-construction services during a separate pre-construction phase.

(h) *Incentives*. The Contract shall clearly identify any economic incentives, the specific criteria that apply, and their relationship to other financial elements of the Contract (including the GMP, fixed Contract Price, or other maximum Contract Price).

(i) *Controlled Insurance Programs*. For projects where a County-controlled or Contractor-controlled insurance program is permitted under ORS 737.602, the Contract shall clearly identify whether a County-controlled or Contractor-controlled insurance program is anticipated or allowable. If so, the Contract shall clearly identify: (1) anticipated cost savings from reduced premiums, claims reductions, and other factors; (2) the allocation of cost savings; and (3) safety responsibilities, incentives, or both safety responsibilities and incentives.

(j) *Early Work*. The RFP shall clearly identify, whenever feasible, the circumstances under which any Early Work may be authorized and undertaken for compensation prior to establishing the GMP, fixed Contract Price, or other maximum Contract Price.

(k) *Subcontractor Selection*. Subcontracts under the Contract are not Public Contracts within the meaning of the Code. However, the Contract must include provisions that clearly meet the requirements of ORS 279C.337(3) and other County requirements. Within the scope of ORS 279C.337(3), the CM/GC's subcontractor selection process must meet the following parameters:

(A) Absent a written justification prepared by the CM/GC and approved by the County as more particularly provided for in this section, the CM/GC's Subcontractor selection process must be "competitive", meaning that the process should include publicly-advertised subcontractor solicitations and be based on a low-bid competitive method, a low-quote competitive method for contracts in a specified dollar range agreeable to the County, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment, consistent with the RFP and Contract requirements;

(B) When the Subcontractor selection process for a particular Work package will not be "competitive" as provided for in this section, the process must meet the following requirements:

(i) The CM/GC must prepare and submit a written justification to the County, explaining the project circumstances that support a non-competitive Subcontractor selection process for a particular Work package, including, but not limited to, Emergency circumstances, the CM/GC's need to utilize a key Subcontractor member of the CM/GC's project team consistent with the CM/GC's project Proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing Subcontractor agreement that was awarded through a "competitive process" along with facts supporting the continuation or expansion of the Subcontractor agreement, or a "sole source" justification;

(ii) For a "sole source" selection of a subcontractor to proceed, the County must evaluate the written justification provided by the CM/GC and must find that: (1) critical project efficiencies require utilization of labor, services, or materials from one subcontractor; (2) that technical compatibility issues on the project require labor, services, or materials from one subcontractor; (3) that particular labor, services, or materials are needed as part of an experimental or pilot project or as part of an

experimental or pilot aspect of the project; or (4) that other project circumstances exist to support the conclusion that the labor, services, or materials are available from only one subcontractor;

(iii) The CM/GC must provide an independent cost estimate for the Work package that will be subject to the non-competitive process, if required by the County;

(iv) The CM/GC must fully respond to any questions or comments submitted to the CM/GC by the County; and

(v) The County must approve the CM/GC's use of the non-competitive Subcontractor selection process prior to the CM/GC's pursuit of the non-competitive process.

(C) A competitive selection process may be preceded by a publicly advertised subcontractor pre-qualification process, with only those subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the CM/GC will select the subcontractor to perform the construction Work described in the selection process; and

(D) If the CM/GC, or an Affiliate or subsidiary of the CM/GC, will be included in the subcontractor selection process to perform particular construction Work on the project, the CM/GC must disclose that fact in the selection process documents and announcements. The Contract must also identify the conditions, processes, and procedures the CM/GC will utilize in that competitive process in order to make the process impartial, competitive and fair, including but not limited to objective, independent review and opening of Bids or Proposals for the elements of Work involved, by a representative of the County or another independent third party.

(l) *Subcontractor Approvals and Protests*. The Contract shall clearly establish whether the County must approve subcontract awards, and to what extent, if any, the County will resolve or be involved in the resolution of protests of the CM/GC's selection of subcontractors and suppliers. The procedures and reporting mechanisms related to the resolution of sub-contractor and supplier protests shall be established in the Contract with certainty, including the CM/GC's roles and responsibilities in this process and whether the CM/GC's subcontracting records are considered to be public records. In any event, the County must retain the right to monitor the subcontracting process in order to protect the County's interests and to confirm the CM/GC's compliance with the Contract and with applicable statutes, administrative rules, and other legal requirements.

(m) *CM/GC Self-Performance or Performance by CM/GC Affiliates or Subsidiaries Without Competition*. Consistent with the requirements of ORS 279C.337(3)(c), the Contract must establish the conditions under which the CM/GC, or an Affiliate or subsidiary of the CM/GC, may perform elements of the construction Work without competition from subcontractors, including, for example, job-site construction Work. Other than for job-site construction Work, in order for the CM/GC, or an Affiliate or subsidiary of the CM/GC, to perform elements of the construction Work without competition from subcontractors, the CM/GC must provide, or must have included in the CM/GC's RFP Proposal to perform CM/GC Services for the project, a detailed proposal for performance of the Work by the CM/GC, or an Affiliate or subsidiary of the CM/GC. If required by the County, the CM/GC's proposal to perform the construction Work must be supported by at least one independent cost estimate prior to the Work being included in the Contract.

(n) *Unsuccessful Subcontractor Briefing*. ORS 279C.337(3)(e) is designed to allow a subcontractor who was not selected by the CM/GC to perform a particular element of the construction Work to obtain specific information from the CM/GC, and meet with the CM/GC to discuss the subcontractor qualification and selection process involved and the CM/GC's subcontractor selection decisions, in order to better understand why the subcontractor was not successful in being selected to perform the particular element of the Work and to improve the subcontractor's substantive qualifications or the subcontractor's methods in competing for elements of the Work for the particular project involved or future projects. The briefing meetings may be held with individual subcontractors or, if the subcontractors agree, in groups of subcontractors, with those groups established by Bid package or other designation agreed to by the County and the CM/GC. Nevertheless, the CM/GC is not obligated to provide this briefing opportunity unless the CM/GC receives a written request

from a subcontractor to discuss the subcontractor qualification and selection process involved. Unless the County and the CM/GC agree on a different schedule, the CM/GC Contract should include provisions:

(A) Allowing a subcontractor 60 days from the CM/GC's notice of award of a subcontract for a particular Work package to request, in writing, a post-selection meeting with the CM/GC under this section; and

(B) Requiring the CM/GC to set a meeting with the subcontractor under this section within 45 days of the subcontractor's written request.

(o) *Performance and Payment Bonds*. Provided no construction Work is included with the pre-construction services to be performed under the initial form of the CM/GC Contract, no performance bond or payment bond is required to be provided by the CM/GC at the time of Contract signing, consistent with ORS 279C.380. Once construction Work is included in the Contract and authorized by the County to be performed by the CM/GC, however, the CM/GC must provide a performance bond and payment bond each in the full amount of any Early Work to be performed by the CM/GC, or the full amount of the GMP, fixed Contract Price, or other maximum Contract Price, as applicable. Furthermore, in the event additional Early Work is added to the CM/GC Contract after the initial Early Work or in the event an amendment to the CM/GC Contract is made so that the GMP, fixed Contract Price, or other maximum Contract Price must be increased, the performance bond and the payment bond must each be increased in an amount equal to the additional Early Work or the increased GMP, fixed Contract Price, or other maximum Contract Price.

(p) *Independent Review of CM/GC Performance; Conflicts of Interest*. If the County requires independent review, monitoring, inspection, or other oversight of a CM/GC's performance of pre-construction design services, construction Work, or both pre-construction design services and construction Work, the County must obtain those independent review services from a Contractor independent of the CM/GC, the CM/GC's Affiliates and the CM/GC's Subcontractors, pursuant to the requirements of ORS 279C.307. However, ORS 279C.307 does not prohibit the following:

(A) The CM/GC's performance of both pre-construction design services and construction Work that are included within the definition of CM/GC Services, consistent with ORS 279C.307(2); or

(B) The CM/GC's performance of internal quality control services, quality assurance services, or other internal peer review of CM/GC work product that is intended to confirm the CM/GC's performance of the CM/GC Contract according to its terms.

(q) *Socio-Economic Programs*. The Contract shall clearly identify conditions relating to any required socio-economic programs (such as Affirmative Action or Prison Inmate Labor Programs), including the manner in which such programs affect the CM/GC's subcontracting requirements, the enforcement mechanisms available, and the respective responsibilities of the CM/GC and the County.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.335, ORS 279C.337, & ORS 279C.380(2)
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0690 Energy Savings Performance Contracts (ESPC)

(1) Generally. These YCR 049-0600 to 049-0690 rules include a limited, efficient method for the County to enter into ESPCs outside the competitive bidding requirements of ORS 279C.335 for existing buildings or structures, but not for new construction. See ORS 279C.335(1)(f). If the County chooses not to utilize the ESPC Procurement method provided for by these rules, the County may still enter into an ESPC by complying with the competitive bidding exemption process set forth in ORS 279C.335, or by otherwise complying with the Procurement requirements described in these Division 49 rules.

(2) ESPC Contracting Method. The ESPC form of Contracting, as defined at YCR 049-0610(9), has unique technical complexities associated with the determination of what ECMs are feasible for the County, as well as the additional technical complexities associated with a Design-Build Contract. The County shall only utilize the ESPC contracting method with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to utilize the ESPC contracting process, the County must be able to reasonably anticipate one or more of the following types of benefits:

(a) Obtaining, through an ESCO, the following types of integrated design services and Work: facility profiling, energy baseline studies, ECMs, Technical Energy Audits, project development planning, engineering design, plan preparation, cost estimating, life cycle costing, construction administration, project management, construction, quality control, operations and maintenance staff training, commissioning services, M & V services, and required documentation as a fully integrated function with a single point of responsibility;
(b) Obtaining, through an ESCO, an Energy Savings Guarantee;
(c) Integrating the Technical Energy Audit phase and the Project Development Plan phase into the design and construction phase of Work on the project;
(d) Reducing the risk of design flaws, misunderstandings, and conflicts inherent in the construction process through the integration of ESPC design services and Work;
(e) Obtaining innovative design solutions through the collaboration of the members of the ESCO integrated ESPC team;
(f) Integrating cost-effective ECMs into an existing building or structure so that the ECMs pay for themselves through savings realized over the useful life of the ECMs;
(g) Preliminary design, development, implementation, and an Energy Savings Guarantee of ECMs into an existing building or structure through an ESPC as a distinct part of a major remodel of that building or structure that is being performed under a separate remodeling Contract; and
(h) Satisfying local energy efficiency design criteria or requirements.

(3) Authority. The County desiring to pursue an exemption from the competitive bidding requirements of ORS 279C.335 shall utilize the ESPC form of Contracting only in accordance with the requirements of these YCR 049-0600 to 049-0690 rules.

(4) No Findings Required. The County is only required to comply with the ESPC Contracting procedures set forth in these YCR 049-0600 to 049-0690 rules in order for the ESPC to be exempt from the competitive bidding processes of ORS 279C.335. No Findings are required for an ESPC to be exempt from the competitive bidding process for Public Improvement Contracts pursuant to ORS 279C.335, unless the County is subject to the requirements of ORS 279C.335 and chooses not to comply with the ESPC Contracting procedures set forth in YCR 049-0600 to 049-0690.

(5) Selection. ESPC selection criteria may include those respective factors set forth in YCR 049-0640(3). Since the Energy Savings Guarantee is such a fundamental component in the ESPC Contracting process, Proposers must disclose in their Proposals the identity of any Person providing (directly or indirectly) any Energy Savings Guarantee that may be offered by the successful ESCO during the course of the performance of the ESPC, along with any financial statements and related information pertaining to any such Person.

(6) QBS Inapplicable. Because the value of construction Work predominates in the ESPC method of Contracting, the qualifications-based selection (QBS) process mandated by YCR 048-0130 is not applicable.

(7) Licensing. If the ESCO is not an Oregon licensed design professional, the County shall require that the ESCO disclose in the ESPC that it is not an Oregon licensed design professional and identify the Oregon licensed design professional(s) who will provide design services.

(8) Performance Security. At the point in the ESPC when the parties enter into a binding Contract that constitutes an ESPC Contract, the ESCO must provide a performance bond and a payment bond, each for 100% of the full Contract Price, including the construction Work and design and related design services specified in the ESPC Contract, pursuant to ORS 279C.380(1)(a). For ESPC Contracts, these "design and related services" include conventional design services, commissioning services, training services for the County's operations and maintenance staff, and any similar design services provided by the ESCO under the ESPC Contract prior to final completion of construction. M & V services, and any design services or Work associated with the ESCO's Energy Savings Guarantee are not included in these ORS 279C.380(1)(a) "design and related services." Nevertheless, the County may require that the ESCO provide performance security for M & V services and any design services or Work associated with the ESCO's Energy Savings Guarantee, if the County so provides in the RFP.

(9) Contracting Requirements. The County shall conform their ESPC Contracting practices to the following requirements:

(a) *General ESPC Contracting Practices*. An ESPC involves a multi-phase project, which includes the following contractual elements:

(A) A contractual structure which includes general Contract terms describing the relationship of the parties, the various phases of the Work, the contractual terms governing the Technical Energy Audit for the project, the contractual terms governing the Project Development Plan for the project, the contractual terms governing the final design and construction of the project, the contractual terms governing the performance of the M & V services for the project, and the detailed provisions of the ESCO's Energy Savings Guarantee for the project.

(B) The various phases of the ESCO's Work will include the following:

(i) The Technical Energy Audit phase of the Work;

(ii) The Project Development Plan phase of the Work;

(iii) A third phase of the Work that constitutes a Design-Build Contract, during which the ESCO completes any plans and Specifications required to implement the ECMs that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration, and related design services or Work necessary to construct the project; and

(iv) A final phase of the Work, whereby the ESCO, independently or in cooperation with an independent consultant hired by the County, performs M & V services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the Work and agreed to by the parties has actually been achieved.

(b) *Design-Build Contracting Requirements in ESPCs*. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the County shall conform its Design-Build Contracting practices to the Design-Build Contracting requirements set forth in YCR 049-0670(7).

(c) *Pricing Alternatives*. The County may utilize one of the following pricing alternatives in an ESPC:

(A) A fixed price for each phase of the design services and Work to be provided by the ESCO;

(B) A cost reimbursement pricing mechanism, with a maximum not-to-exceed price or a GMP; or

(C) A combination of a fixed fee for certain components of the design services to be performed, a cost reimbursement pricing mechanism for the construction Work to be performed with a GMP, a single or annual fixed fee for M & V services to be performed for an identified time period after final completion of the construction Work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction Work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the project (in the event an annual M & V services fee and annual Energy Savings Guarantee fee is utilized by the parties, the parties may provide in the Design-Build Contract that, at the sole option of the County, the ESCO's M & V services may be terminated prior to the completion of the M & V/Energy Savings Guarantee period and the County's future obligation to pay the M & V services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).

(d) *Permitted ESPC Scope of Work*. The scope of Work under the ESPC is restricted to implementation and installation of ECMs, as well as other Work on building systems or building components that are directly related to the ECMs, and that, as an integrated unit, will pay for themselves over the useful life of the ECMs installed. The permitted scope of Work for ESPCs resulting from a solicitation under these YCR 049-0600 to 049-0690 rules does not include maintenance services for the project facility.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.335 & ORS 279C.110
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

IV. CONTRACT PROVISIONS

YCR 049-0800 Required Contract Clauses

The County shall include in all Public Improvement Contracts the following required Contractual conditions:

(a) The Contractor shall make payment promptly, as due, to all persons supplying to the Contractor labor or material for the performance of the work provided for in the Contract (see ORS 279C.505(1)(a)).

(b) The Contractor shall pay all contributions or amounts due the Industrial Accident Fund from the Contractor or subcontractor incurred in the performance of the Contract. See ORS 279C.505(1)(b).

(c) The Contractor shall not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished (see ORS 279C.505(1)(c)).

(d) The Contractor shall pay to the Department of Revenue all sums withheld from employees under ORS 316.167 (see ORS 279C.505(1)(d)).

(e) The Contractor shall demonstrate that an employee drug testing program is in place (see ORS 279C.505(2)).

(f) The Contractor shall salvage or recycle construction and demolition debris if feasible and cost-effective. If the Contract includes lawn and landscape maintenance, the Contractor shall compost or mulch yard waste material at an approved site if feasible and cost-effective (see ORS 279C.510(1)).

(g) The Contractor and any subcontractor shall promptly pay, as due, all persons supplying labor and services furnished to the Contractor or first-tier subcontractor by any person in connection with this Contract as the claim becomes due. If the Contractor or subcontractor fails to pay any such claim, the County may pay the claim and charge the payment against the funds due or to become due the Contractor by reason of the Contract (see ORS 279C.515(1)).

(h) The Contractor and/or any first-tier subcontractor shall make payment to any person furnishing labor or materials in connection with a Public Improvement Contract within 30 days after receipt of payment from the County or the Contractor. If the Contractor or a first-tier subcontractor fails, neglects, or refuses to pay a person within 30 days after receiving payment, the Contractor or first-tier subcontractor shall owe the person the amount due plus interest charges that shall begin at the end of the 10-day period within which payment is due under ORS 279C.580(4) and shall end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is 9 percent per annum. The amount of interest may not be waived (see ORS 279C.515(2)).

(i) If the Contractor or a subcontractor fails, neglects, or refuses to pay a person that provides labor or materials in connection with a Public Improvement Contract, that person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580 (see ORS 279C.515(3)).

(j) The Contractor may not employ an employee for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires otherwise, and in such cases, the Contractor shall pay the employee at least time and a half pay for:

(A) All overtime in excess of:

(i) Eight hours in any one day or 40 hours in any one week if the work week is five consecutive days, Monday through Friday; or

(ii) Ten hours in any one day or 40 hours in any one week if the work week is four consecutive days, Monday through Friday; and

(B) All work the employee performs on Saturday and on any legal holiday specified in ORS 279C.540 (see ORS 279C.520(1)(a)).

(k) The Contractor shall comply with the prohibition set forth in ORS 652.220, that compliance is a material element of the Contract, and that a failure to comply is a breach that entitles the County to terminate the Contract for cause (see ORS 279C.520(1)(b)).

(l) The Contractor may not prohibit any of the Contractor's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person (see ORS 279C.520(1)(c)).

(m) The Contractor shall give notice in writing to all its employees providing labor or services under a Public Improvement Contract, either at the time of hire or before work begins on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the Contractor may require the employees to work (see ORS 279C.520(2)).

(n) The Contractor and any subcontractor shall comply with all applicable provisions of federal, state, or local statutes, ordinances, and regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the Work under a Public Improvement Contract (see ORS 279C.525).

(o) The Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services, or the needed care and attention incident to sickness or injury, to the employees of the Contract, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for the services (see ORS 279C.530(1)).

(p) If the Contractor is a subject employer, the Contractor shall comply with ORS 656.017 (see ORS 279C.530(2)).

(q) The Contractor shall comply with ORS 279C.550 to 279C.570 regarding withholding of retainage. The withholding of retainage by the Contractor shall be done only in accordance with ORS 701.420 and 701.430.

(r) The Contractor shall certify that all subcontractors performing work described in ORS 701.005(2) have registered with the Construction Contractors Board or are otherwise licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the Contract.

(s) The Contractor shall not discriminate against a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns, or an emerging small business, in the awarding of subcontracts (see ORS 279A.110).

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 297C.505 - 279C.570
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0810 Waiver of Delay Damages Against Public Policy

The County shall not place any provision in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from the County's unreasonable delay in performing the Contract. However, Contract provisions requiring notice of delay, providing for alternative dispute resolution such as arbitration (where allowable) or mediation, providing other procedures for settling contract disputes, or providing for reasonable liquidated damages, are permissible.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.315
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0815 Green Energy Technology

If the County intends to enter into a Public Improvement Contract where either: i) the total Contract Price is $5 million or more for Constructing a public building, or (ii) the cost of the Reconstruction or Major Renovation exceeds 50 percent of the value of the public building, the County shall first make a determination as to whether green energy technology is appropriate for the public building in accordance with ORS 279C.527.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.527
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0820 Retainage

(1) Withholding of Retainage. The County shall not retain an amount in excess of five percent of the Contract Price for Work completed. If the Contractor has performed at least 50 percent of the Contract Work and is progressing satisfactorily, upon the Contractor's submission of Written application containing the surety's Written approval, the County may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The County shall respond in Writing to all such applications within a reasonable time. When the Contract Work is 97-1/2 percent completed, the County may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the remaining unperformed Contract Work. The County may at any time reinstate retainage. Retainage shall be included in the final payment of the Contract Price.

(2) Cash Retainage - Contract Price $500,000 or Less. When the Contract Price for a Public Improvement Contract is $500,000 or less, the County may reserve as retainage from any progress payment an amount not to exceed five percent. The County shall hold all retained moneys in a County fund or account, and interest is not required to accrue on the retained moneys.

(3) Cash Retainage - Contract Price in Excess of $500,000. When the Contract Price for a Public Improvement Contract exceeds $500,000, the County shall, in the ordinary course, deposit cash retainage in an amount not to exceed five percent from any progress payment due under the Public Improvement Contract into an interest-bearing escrow account pursuant to the requirements of ORS 279C.570. The Contractor under the Public Improvement Contract is entitled to receive interest on the retained moneys from the date the Contractor's related payment request is fully approved by the County until the date the retained moneys are paid by the County to the Contractor. For purposes of this section, a payment of retainage is deemed to be "paid" by the County when the payment is transmitted to the Contractor, or otherwise applied against an obligation of the Contractor under the Public Improvement Contract.

(4) Alternatives In Lieu of Cash Retainage. Unless the County that reserves an amount as retainage finds in writing that accepting bonds, securities, or other instruments as described in subsection (a) below, or a surety bond as described in subsection (b), poses an extraordinary risk that is not typically associated with the bonds, securities, other instruments, or surety bond, as applicable, the County, in lieu of withholding moneys from payment, shall accept from the Contractor:

(a) Bonds, securities, or other instruments that are deposited and accepted as provided in subsection (6)(a) of this rule; or

(b) A surety bond deposited as provided in subsection (6)(b) of this rule.

(5) Deposit in interest-bearing accounts. Upon election of the Contractor and when the Contract Price in the Public Improvement Contract is $500,000 or less, the County shall deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the County. Earnings on such an account shall accrue on the cash retainage from the date the Contractor's related payment request is fully approved by the County until the date the retained moneys are paid by the County to the Contractor. For purposes of this section, a payment of retainage is deemed to be "paid" by the County when the payment is transmitted to the Contractor, or otherwise applied against an obligation of the Contractor under the Public Improvement Contract. When the contractor makes an election for deposit of retainage into an interest-bearing account and the Contract Price in the Public Improvement Contract exceeds $500,000, the Contractor's election shall be satisfied by the County's establishment of an interest-bearing escrow account.

(6) Alternatives In Lieu of Cash Retainage - Requirements. In lieu of cash retainage to be held by the County, the Contractor may substitute one of the following:

(a) *Deposit of bonds, securities, or other instruments*:

(A) The Contractor may deposit bonds, securities, or other instruments with the County or in any bank or trust company to be held for the benefit of the County. If the County accepts the deposit, the County shall

reduce the cash retainage by an amount equal to the value of the bonds and securities and reimburse the excess to the Contractor.

(B) Bonds, securities, or other instruments deposited or acquired in lieu of cash retainage must be of a character approved by the Oregon Department of Administrative Services, which may include, without limitation:

(i) Bills, certificates, notes, or bonds of the United States;

(ii) Other obligations of the United States or agencies of the United States;

(iii) Obligations of a corporation wholly owned by the Federal Government;

(iv) Indebtedness of the Federal National Mortgage Association;

(v) General obligation bonds of the State of Oregon or a political subdivision thereof; or

(vi) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

(C) Upon the County's determination that all requirements for the protection of the County's interests have been fulfilled, it shall release to the Contractor all bonds and securities deposited in lieu of retainage.

(b) *Deposit of surety bond*. The County may, at its discretion, allow the Contractor to deposit a surety bond in a form acceptable to the County in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond shall accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage shall be reduced by an amount equal to the value of the bond, and the excess shall be reimbursed.

(7) Recovery of Additional Costs. The County may recover from the Contractor all additional costs incurred in the proper handling of retainage alternatives requested by the Contractor, whether a request for the deposit of bonds, securities, or other instruments in lieu of cash retainage, a request for a surety bond in lieu of cash retainage, or an election for an interest-bearing account. If the County incurs costs associated with establishing a fund or account under section (2) of this rule, or with establishing an interest-bearing escrow account under section (3) of this rule, the County is not permitted to recover such costs from the Contractor.

(8) Additional Retainage When Certified Payroll Statements Not Filed. If a Contractor is required to file certified payroll statements and fails to do so, the County shall retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the County. The County shall pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements (but also see ORS 279C.845(1) regarding the requirement for both contractors and subcontractors to file certified statements with the County). See BOLI rule at OAR 839-025-0010.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.560, ORS 279C.570, & ORS 701.420
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0830 Contractor Progress Payments

(1) Request for Progress Payments. Each month, the Contractor shall submit to the County its Written request for a progress payment based upon an estimated percentage of Contract completion. At the County's discretion, this request may also include the value of material to be incorporated in the completed Work that has been delivered to the premises and appropriately stored. The sum of these estimates is referred to as the "value of completed Work." With these estimates as a base, the County will make a progress payment to the Contractor, which shall be equal to:

(a) The value of completed Work;

(b) Less those amounts that have been previously paid;

(c) Less other amounts that may be deductible or owing and due to the County for any cause; and

(d) Less the appropriate amount of retainage.

(2) Progress Payments Do Not Mean Acceptance of Work. Progress payments shall not be construed as an acceptance or approval of any part of the Work and shall not relieve the Contractor of responsibility for defective workmanship or material.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.570
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0840 Interest

(1) Prompt Payment Policy. The County shall pay promptly all payments due and owing to the Contractor on Contracts for Public Improvements.

(2) Interest on Progress Payments. Late payment interest shall begin to accrue on payments due and owing on the earlier of 30 Days after receipt of invoice or 15 Days after County approval of payment (the "Progress Payment Due Date"). The interest rate shall equal three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve district that includes Oregon, up to a maximum rate of 30 percent.

(3) Interest on Final Payment. Final payment on the Contract Price, including retainage, shall be due and owing no later than 30 Days after Contract completion and acceptance of the Work. Late-payment interest on such final payment shall thereafter accrue at the rate of one and one-half percent per month until paid.

(4) Settlement or Judgment Interest. In the event of a dispute as to compensation due a Contractor for Work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment shall be added to, and not made part of, the settlement or judgment. Such interest, at the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, shall accrue from the later of the Progress Payment Due Date, or thirty Days after the Contractor submitted a claim for payment to the County in Writing or otherwise in accordance with the Contract requirements.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.570
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0850 Final Inspection

(1) Notification of Completion; Inspection. The Contractor shall notify the County in Writing when the Contractor considers the Contract Work completed. Within 15 Days of receiving Contractor's notice, the County will inspect the project and project records and will either accept the Work or notify the Contractor of remaining Work to be performed.

(2) Acknowledgment of Acceptance. When the County finds that all Work required under the Contract has been completed satisfactorily, the County shall acknowledge acceptance of the Work in Writing.

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.570
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0860 Public Works Contracts

(1) Generally. ORS 279C.800 through 279C.870 regulates Public Works Contracts, as defined in 279C.800(6), and requirements for payment of prevailing wage rates. Also see administrative rules of the Bureau of Labor and Industries (BOLI) at OAR chapter 839.

(2) Public Works Bond Required. Pursuant to ORS 279C.830(2), the Specifications for every Public Works Contract shall contain a provision stating that the Contractor and every subcontractor must have a Public Works bond filed with the Construction Contractors Board before starting Work on the Public Improvement project, unless otherwise exempt. This bond is in addition to performance bond and payment bond requirements. See BOLI rule at OAR 839-025-0015.

(3) Requirements for Specifications. The Specifications for every Public Works Contract, consisting of the Procurement package (such as the project manual, Bid or Proposal booklets, request for quotes or similar Specifications), must contain the following provisions:

(a) The state prevailing rate of wage, and, if applicable, the federal prevailing rate of wage, as required by ORS 279C.830(1)(a) shall be:

(A) Physically contained within or attached to hard copies of the Specifications;

(B) Included via statement incorporating the applicable wage rate publication into the Specifications by reference, in compliance with OAR 839-025-0020; or

(C) When the rates are available electronically or by Internet access, incorporated into the Specifications by referring to the rates and providing adequate information on how to access them in compliance with OAR 839-025-0020.

(b) If both state and federal prevailing rates of wage apply, a requirement that the Contractor shall pay the higher of the applicable state or federal prevailing rate of wage to all workers. See BOLI rules at OAR 839-025-0020 and 0035.

(c) A requirement for filing a Public Works bond by the Contractor and every subcontractor, as set forth in ORS 279C.830(2).

(4) Required Contract Conditions. In addition to the conditions required under YCR 049-0200, every Public Works Contract must contain the following provisions:

(a) A requirement Workers employed under this Contract shall be paid not less than the applicable state prevailing rate of wage. If both state and federal prevailing rates of wage apply, the Contract and every subcontract must provide that all workers must be paid the higher of the applicable state or federal prevailing rate of wage (see ORS 279C.830(1)(c); OAR 839-025-0020(3)(a));

(b) A requirement for filing a Public Works bond by the Contractor and every subcontractor (see ORS 279C.830(2); OAR 839-025-0020(e)); and

(c) A requirement for providing the County with a copy of the certified payroll weekly for recording purposes (see ORS 279C.845; OAR 839-025-0010).

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.540, & ORS 279C.800 - 279C.870
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0870 Specifications; Brand Name Products

(1) Generally. The County's Solicitation Document shall not expressly or implicitly require any product by brand name or mark, nor shall it require the product of any particular manufacturer or seller, except pursuant to an exemption granted under ORS 279C.345(2).

(2) Equivalents. The County may identify products by brand names as long as the following language: "approved equal"; "or equal"; "approved equivalent"; "or equivalent"; or similar language is included in the Solicitation Document. The County shall determine, in its sole discretion, whether an Offeror's alternate product is "equal" or "equivalent."

STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.345
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0880 Records Maintenance; Right to Audit Records

(1) Records Maintenance; Access. Contractors and subcontractors shall maintain all fiscal records relating to Contracts in accordance with generally accepted accounting principles ("GAAP"). In addition, Contractors and subcontractors shall maintain all other records necessary to clearly document: (i) their performance; and (ii) any claims arising from or relating to their performance under a Public Contract. Contractors and subcontractors shall make all records pertaining to their performance and any claims under a Contract (the books, fiscal records, and all other records, hereafter referred to as "Records") accessible to the County at reasonable times and places, whether or not litigation has been filed as to such claims.

(2) Inspection and Audit. The County may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the records of any Person that has submitted cost or pricing data according to the terms of a Contract to the extent that the records relate to such cost or pricing data. If the Person must provide cost or pricing data under a Contract, the Person shall maintain such records that relate to the cost or pricing data for 3 years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in Writing.
(3) Records Inspection; Contract Audit. The County, and its authorized representatives, shall be entitled to inspect, examine, copy, and audit any Contractor's or subcontractor's records, as provided in section (1) of this rule. The Contractor and subcontractor shall maintain the records and keep the records accessible and available at reasonable times and places for a minimum period of ten (10) years from the date of final payment under the Contract or subcontract, as applicable, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later, unless a shorter period is otherwise authorized in law.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279A.030, ORS 279C.375, ORS 279C.380, & ORS 279C.440
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0890 County's Payment for Unpaid Labor or Supplies

(1) Contract Incomplete. If the Contract is still in force, the County may, in accordance with ORS 279C.515(1), pay a valid claim to the Person furnishing the labor or services and charge the amount against payments due or to become due to the Contractor under the Contract. If the County chooses to make such a payment as provided in ORS 279C.515(1), the Contractor and the Contractor's surety shall not be relieved from liability for unpaid claims.
(2) Contract Completed. If the Contract has been completed and all funds disbursed to the prime Contractor, all claims shall be referred to the Contractor's surety for resolution. The County shall not make payments to subcontractors or suppliers for Work already paid for by the County.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.515
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

V. CONTRACT CHANGES

YCR 049-0900 Contract Suspension; Termination Procedures

(1) Suspension of Work. In the event that the County suspends performance of Work for any reason considered by the County to be in the public interest other than a labor dispute, the Contractor shall be entitled to a reasonable extension of Contract time and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.
(2) Termination of Contract by Mutual Agreement for Reasons other than Default.
(a) *Reasons for termination*. The parties may agree to terminate the Contract or a divisible portion thereof if:
(A) The County suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the Work filed to resolve a labor dispute); and
(B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work.
(b) *Payment*. When a Contract, or any divisible portion thereof, is terminated pursuant to this section (2), the County shall pay the Contractor a reasonable amount of compensation for preparatory Work completed, and for costs and expenses arising out of termination. The County shall also pay for all Work completed, based on the Contract Price. Unless the Work completed is subject to unit or itemized pricing under the Contract, payment shall be calculated based on percent of Contract completed. No claim for loss of anticipated profits will be allowed.

(3) Public Interest Termination by the County. The County may include in its Contracts terms detailing the circumstances under which the Contractor shall be entitled to compensation as a matter of right in the event the County unilaterally terminates the Contract for any reason considered by the County to be in the public interest.
(4) Responsibility for Completed Work. Termination of the Contract or a divisible portion thereof pursuant to this rule shall not relieve either the Contractor or its surety of liability for claims arising out of the Work performed.
(5) Remedies Cumulative. The County may, at its discretion, avail itself of any or all rights or remedies set forth in these rules, in the Contract, or available at law or in equity.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.650, ORS 279C.655, ORS 279C.660, ORS 279C.665, & ORS 279C.670
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YCR 049-0910 Contract Changes Orders and Amendments

(1) Changes Provisions. Changes to the Work are anticipated in Public Improvement Contracts, and, accordingly, the County shall include changes provisions in all Public Improvement Contracts that detail the scope of the changes clause, provide pricing mechanisms, authorize the County or its authorized representatives to issue Change Orders, and provide a procedure for addressing Contractor claims for additional time or compensation. When Amendments or Change Orders are agreed to or issued consistent with the Contract's changes provisions, they are not considered to be new Procurements and an exemption from competitive bidding is not required in order to add components or phases of Work specified in or reasonably implied from the Solicitation Document.
(2) Change Order Authority. The County may establish internal limitations and delegations for authorizing Change Orders, including dollar limitations. Dollar limitations on Change Orders are not set by these rules, but such changes are limited by the above definition of that term.
(3) Contract Amendments. Contract Amendments to a Public Improvement Contract may be made only when:
(a) They are within the general scope of the original Procurement;
(b) The field of competition and Contractor selection would not likely have been affected by the Contract modification. Factors to be considered in making that determination include similarities in Work, project site, relative dollar values, differences in risk allocation and whether the original Procurement was accomplished through competitive bidding, competitive Proposals, competitive quotes, sole source, or Emergency contract;
(c) In the case of a Contract obtained under an Alternative Contracting Method, any additional Work was specified or reasonably implied within the findings supporting the competitive bidding exemption; and
(d) The Amendment is made consistent with this rule, YCR 046-0540, and any other applicable legal requirement.
STAT. AUTH.: ORS 279A.065
STATS. IMPLEMENTED: ORS 279C.335 & ORS 279C.400
[ADOPTED BY ORDINANCE NO. 924, ENACTED 5/17/23]

YAMHILL COUNTY PUBLIC CONTRACTING CODE
LEGISLATIVE HISTORY

- Yamhill County Ordinance No. 411 on 06/19/1985; eff. 06/19/1985
    - Repealed by Ordinance No. 646 on 06/11/1998; eff. 07/11/1998

- Yamhill County Ordinance No. 646 on 06/11/1998; eff. 07/11/1998
    - Amended by Ordinance No. 744 on 08/19/2004; eff. 08/19/2004
    - Repealed by Ordinance No. 761 on 02/28/2005; eff. 03/01/2005

- Yamhill County Ordinance No. 761 on 02/28/2005; eff. 03/01/2005
    - Repealed by ORDINANCE NO. 924 on 02/16/2023; eff. 05/17/2023

- Yamhill County ORDINANCE NO. 924 on 02/16/2023; eff. 05/17/2023

APPENDIX 1

For County Use Only	
Date Received	Deemed Prequalified? ☐ Yes ☐ No

YAMHILL COUNTY CONTRACTOR PREQUALIFICATION FORM

Date of Application: _____

Legal Name of Company: _____

DBA: _____

Company Contact: _____

Address: _____

Phone: _____ Fax: _____

Email: _____ Website: _____

Project applying for: _____

Date of Bid Opening: _____

Remit completed application to:
[INSERT AGENCY CONTACT]
[ADDRESS]
[CITY, STATE ZIP]
Phone:
Fax:
Email:

TERMS AND CONDITIONS

1. INTRODUCTORY STATEMENT

   In accordance with the statutes of the State of Oregon, and Yamhill County Public Contracting Rules, Yamhill County (the "County') may require any prospective bidder on a public improvement contract (herein referred to as the "applicant") to submit a full and complete statement concerning their equipment and experience in constructing public improvements. This Contractor Prequalification Form complies with the requirements of public contracting rules and must be used in determining the qualifications of applicants and in assigning limits as to the size and kinds of projects for which the applicant may submit bids.

   The applicant should use care and integrity in preparing this information. The County may make independent inquiries concerning the contractor's past performance and/or capabilities.

2. COMPLETING THE APPLICATION

   This application shall include equipment and experience information for only the specific single business organization or entity that is applying for prequalification and that would be the signatory on a contract with the County. All responses and other entries on the forms, except signatures, should be filled in electronically or printed. It shall be the responsibility of the applicant to provide all requested information. All answers and entries shall be specific and complete in detail.

   Failure to respond completely may result in rejection of the application at the sole discretion of the County.

   This application shall be signed by the applicant and sworn to as the form indicates. The signatory of the statement guarantees the truth and accuracy of all responses contained in this application.

3. USE OF ATTACHMENTS

   Schedules, reports, and other forms of prequalification statement may be used as attachments to the prescribed form, provided that the information contained therein specifically includes the information required by this form.

4. SUBMISSION

   Name:
   Mail:
   [ADDRESS]
   Phone:
   Fax:
   Email:

5. TIME OF SUBMISSION

   A prequalification must be received by the County (or postmarked) not less than ten (10) days prior to the date of the solicitation's closing date unless otherwise provided in the solicitation document. The solicitation document shall indicate if a prequalification application is mandatory. Only Offers from prequalified applicants will be considered if the solicitation document requires mandatory prequalification.

6. APPEAL

   Applicant shall have the right to appeal the County's decision in accordance with ORS 279C.445-450 and YCR 049-0220.

7. NOTIFICATION OF ACTION TAKEN BY THE COUNTY

   The applicant will be notified, in writing, of the action of the County on their application. Applicant will then be allowed to bid on such projects as are within the limits of size and kind of work for which applicant has been **declared qualified.**

8. TYPES OF WORK

   a. Facilities-Related Projects. Applicants requesting prequalification for facilities-related projects must respond to Section 6, PART A and PART C of the application.

   b. Transportation Projects. Applicants requesting prequalification for Transportation projects must respond to Section 6, PART B and PART C of the application.

   c. Other Projects. Applicants requesting prequalification for projects other than facilities or transportation must respond to all portions of Section 6 of the application as prescribed in the solicitation documents.

[FORM CONTINUES ON FOLLOWING PAGE]

APPLICATION

1. Are you prequalified with ODOT? ☐ No ☐ Yes (If Yes, skip Section 6 and attach the approval letter received from ODOT.)

   ODOT Prequalification expires on: _____

2. LICENSING. State which of the following licenses and registrations are held by the applicant and provide the requested information:

   a. Oregon Secretary of State Business Registry No. _____

   b. Construction Contractors Board No. _____

   c. Landscape Contractors License No. _____

   d. Electrical License No. _____

   e. Plumbing License No. _____

   f. Other License No. [Describe] _____

3. BONDING CAPACITY. State the total amount of work, in dollars, which the applicant can be bonded at one time: $_____

4. BID AND PERFORMANCE SURETY BONDS. If the contract for this prequalification requires bid and performance bonds, the applicant shall state the name of the agent and name, address, and telephone number of the surety company that the applicant expects to provide the bonds.

   Agent's Name: _____

   Agent's Address: _____

   Agent's Telephone No.: _____

5. PRIOR ACTIONS.

   a. Has the applicant ever been denied prequalification by any federal, state, or local agency in Oregon or any other state? ☐ No ☐ Yes
   If yes, explain: _____
   _____

   b. Has the applicant ever been debarred from bidding on contracts by any federal, state, or local agency in Oregon or any other state? ☐ No ☐ Yes
   If Yes, explain: _____
   _____

   c. Has the applicant ever failed to complete a federal, state, or local public improvement (public works) contract in Oregon or any other state? ☐ No ☐ Yes
   If Yes, explain: _____
   _____

6. CLASSES OF WORK. Fill in the classes of work you wish to provide services. Classes of work include, but are not limited to, work listed in parentheses.

PART A: FACILITIES-RELATED PROJECTS

For Each Class of Work:

A. Enter the maximum dollar amount of work you can perform;
B. Enter the maximum dollar amount of work you are qualified to undertake in Oregon; and
C. Enter the number of years of experience in this class of work.

CLASS	A. MAX DOLLAR AMOUNT	B. QUALIFIED DOLLAR AMOUNT	C. YEARS EXPERIENCE
HVAC			
Boilers			
Building Alteration and Repair			
Building Construction			
Carpentry			
Chillers			
Demolition & Related Excavation & Clearing			
Electrical Wiring			
Painting, Commercial			
Plumbing			
Roofing			
Sewer Construction			
Sheet Metal Work (HVAC)			
Sheet Metal Work (Architectural)			
Finish Carpentry			
Carpet and Flooring, Commercial			
Other (List specific class:_____)			

PART B: TRANSPORTATION-RELATED PROJECTS

For Each Class of Work:

A. Enter the maximum dollar amount of work you can perform;
B. Enter the maximum dollar amount of work for which you have been prequalified in other states;
C. Enter the state(s) in which you have qualified for the amount(s) shown in column "B"; and
D. Enter the number of years of experience in this class of work.

CLASS	A. MAX DOLLAR AMOUNT	B. QUALIFIED DOLLAR AMOUNT	C. STATE(S) QUALIFIED	D. YEARS EXPERIENCE
Earthwork and Drainage				
Bridges and Structures				
Painting				
Rock Production				
Aggregate Bases				
Asphalt, Concrete, Paving and Oiling				
Portland Cement Concrete Paving				
Pavement Markings				
Signing				
Electrical				
Landscaping				
Misc. Highway Appurtenances				
Temporary Traffic Control				
Storm Drainage Construction				
Wastewater Construction				
Water Line				
Construction				
Water or Wastewater Pumping Station(s)				
Water Reservoirs				
Water Tanks (steel, concrete)				
Other (List specific class:_____)				

PART C: ADDITIONAL INFORMATION

A. APPLICANT'S EQUIPMENT. List equipment and tools owned by the applicant. List only major items and lump together small equipment and tools.

Quantity, Description and Capacity of Items	Age in Years	Condition of Equipment

If the applicant intends to rent equipment for a specific project, generally describe equipment and terms of lease:

_____

_____

B. APPLICANT'S EXPERIENCE. List major projects the applicant has undertaken in the last five years; list most recent projects first [attach additional sheets as needed].

Project Name	
Project Owner's Name	
Project Owner's Address	
Manager Name	
Manager Phone No.	
Class(es) of Work	
Contract Amount	
Date of Completion (if completed)	
Name of Architect & Engineering Firm	
A&E Phone Number	

Project Name	
Project Owner's Name	
Project Owner's Address	
Manager Name	
Manager Phone No.	
Class(es) of Work	
Contract Amount	
Date of Completion (if completed)	
Name of Architect & Engineering Firm	
A&E Phone Number	

Project Name	
Project Owner's Name	
Project Owner's Address	
Manager Name	
Manager Phone No.	
Class(es) of Work	
Contract Amount	
Date of Completion (if completed)	
Name of Architect & Engineering Firm	
A&E Phone Number	

7. AFFIDAVIT.

STATE OF_____)
) SS.
County of _____)

I, _____, being duly sworn, state that I am

_____ of the applicant herein, and that the
[Title]

statements made in this application are true and I acknowledge that any false, deceptive or fraudulent statements on the application or at a hearing will result in the denial of the prequalification and may subject me to charges of false swearing or perjury; should there be any subsequent material reduction in applicant's ability to carry out any project for which applicant desires to submit a bid, the applicant shall give written notice of such change to the designated officer to whom this application is submitted at least ten days prior to the bid opening, and that it is understood that such notice may change the eligibility of applicant to submit the bid.

_____
Signature

Signed and sworn to before me on this _____ day of _____ year _____.

Notary seal or stamp

_____
Notary Signature

Notary Public for the State of _____

My Commission Expires: _____

EXHIBIT B

Findings in Support of New Special Procurement Exemptions

1. Ballots, Ballot Pages, and Ballot Cards.

- *Cost Savings and Other Benefits.* Frequency and amount of purchases do not justify the cost of solicitation. Period of time from recognition of need through contract award too long for needed purchases of exempt fungible goods.

- *Effect on Competition.* Generally, there is insufficient competition among vendors in the area of ballot production for the County to secure competitive quotes.

- *Favoritism.* Minimal effect on favoritism as this class of special procurements responds to unique opportunities.

2. COTS Software.

- *Cost Savings and Other Benefits.* Rapid changes in technology and technology pricing make it necessary for the County to able to purchase needed commercial off-the-shelf software quickly. It is important that County be able to take advantage of price competition in the marketplace.

- *Effect on Competition.* Minimal, as the software is generally available at a set price within a small and select pool of competitors that would otherwise be qualified to respond to a solicitation.

- *Favoritism.* Minimal, as the software is generally available at a set price within a small and select pool of competitors that would otherwise be qualified to respond to a solicitation.

3. Copyrighted Materials.

- *Cost Savings and Other Benefits.* Necessary to allow the County to acquire special needs products that are unique.

- *Effect on Competition.* None. There is no competitive market for a unique product. Copyrighted materials are generally acquired from a sole-source copyright holder, as used property, or by donation.

- *Favoritism.* Not applicable due to the lack of competitors and specialized contracting needs.

4. Food Service Contracts.

- *Cost Savings and Other Benefits.* Frequency and amount of purchases do not justify the cost of solicitation. Period of time from recognition of need through contract award too long for needed purchases of goods and services.

- *Effect on Competition.* Minimal given that the exemption will only apply to purchases under $50,000. Additionally, only allowed on a contract-by-contract basis and shall not result in an ongoing price agreement, further fostering competition.

- *Favoritism.* Minimal given that the exemption will only apply to purchases under $50,000. Additionally, only allowed on a contract-by-contract basis and shall not result in an ongoing price agreement, further fostering competition.

5. Laboratory and Medical Supplies.

- *Cost Savings and Other Benefits.* Frequency and amount of purchases do not justify the cost of solicitation. Period of time from recognition of need through contract award too long for needed purchases of exempt fungible goods.

- *Effect on Competition.* Generally, there is insufficient competition among vendors in the area of laboratory and medical supplies for the County to secure competitive quotes.

- *Favoritism.* Minimal, as this special procurement responds to unique opportunities.

- *Additional Factors.* Allows the County to address emergency circumstances.

6. Legal Services.

- *Cost Savings and Other Benefits.* Frequency and amount of purchases do not justify the cost of solicitation. Period of time from recognition of need until service required too short to issue solicitation.

- *Effect on Competition.* No impact on competition as this class special procurement allows the County to respond to unique opportunities that become available sporadically and without notice.

- *Favoritism.* Minimal, as this special procurement responds to unique opportunities.

7. Membership Dues.

- *Cost Savings and Other Benefits.* Necessary to allow the County to acquire membership in various organizations required for certain County positions.

- *Effect on Competition.* None, as each membership is unique in what it provides.

- *Favoritism.* None, as each membership is unique in what it provides.

8. Office Photocopiers.

- *Cost Savings and Other Benefits.* Size and frequency of procurements does not justify the cost of solicitation. Period of time from recognition of need until good or service required too short to issue solicitation.

- *Effect on Competition.* Minimal, due to informal requirements or the underlying competitive process required of a cooperative contract.

- *Favoritism.* Minimal, due to informal requirements or the underlying competitive process required of a cooperative contract.

- *Additional Factors.* Allows the County to address emergency circumstances. Cannot anticipate when immediate replacement or repairs will be needed to ensure normal operations.

9. Oregon Corrections Enterprise Purchases.

- *Cost Savings and Other Benefits.* Frequency and amount of purchases do not justify the cost of solicitation. Purchasing from the OCE also fosters workforce training in the state's prison system, allowing individuals the opportunity to better their chances of success upon release.

- *Effect on Competition.* Minimal, as this special procurement responds to unique opportunities.

- *Favoritism.* Minimal, as this special procurement responds to unique opportunities.

10. Performing Artists.

- *Cost Savings and Other Benefits.* Frequency and amount of purchases do not justify the cost of solicitation. Period of time from recognition of need until service required too short to issue solicitation.

- *Effect on Competition.* The potential market is limited because not all performing artists work in all markets. Choice of performing artist is somewhat price sensitive but is primarily driven by availability and ability to perform to the County's target audience.

- *Favoritism.* Minimal, as this special procurement responds to unique opportunities.

11. <u>Purchase of Used Personal Property or Equipment</u>.

- *Cost Savings and Other Benefits.* The County is responsible to manage expenditures in the best interests of the public. Cost savings can be achieved through the purchase of used property and equipment in certain instances. The County purchases used property and equipment when it meets County needs and is cost-effective. Considerations include type, quantity, and estimated useful life of the used item.

- *Effect on Competition.* No impact on competition as this class special procurement allows the County to respond to unique opportunities that become available sporadically and without notice. Used equipment and property is usually sold on a first-come, first-served basis. When used equipment or property does become available, the County must be able to respond immediately in order to obtain the property or equipment.

- *Favoritism.* Minimal impact on favoritism since the County is responding to unique opportunities. When a used item is available, there is often little competition available and sources for used items of the type, quality, and quantity required by the County.

12. <u>Utilities and Utility Related Services</u>.

- *Cost Savings and Other Benefits.* Necessary to allow the County to acquire specialty services are unique and essential.

- *Effect on Competition.* Minimal, as there is insufficient competition among vendors in the area of telecommunication services for the County to secure competitive quotes.

- *Favoritism.* Minimal effect on favoritism as there is a general lack of sufficient competition among vendors in the area of utility services.

13. Software and Hardware Maintenance, Licenses, Subscriptions, and Upgrades.

- *Cost Savings and Other Benefits.* The need for software and hardware maintenance services cannot be planned for and often must be handled on an expedited basis to avoid additional expense and adverse impact on the public's ability to utilize City's services. Experience with a single contractor can help improve reliability and efficiency of legacy systems that were previously competitively bid.

- *Effect on Competition.* Minimal, as the services required are generally only going to be available from a small pool of qualified competitors.

- *Favoritism.* Minimal, as the services required are generally only going to be available from a small pool of qualified competitors.

14. Sponsorship Agreements.

- *Cost Savings and Other Benefits.* This special procurement allows the County to respond to unsolicited proposals for revenue or marketing opportunities that would otherwise be unknown or unavailable.

- *Effect on Competition.* Mandatory open competition would likely discourage creative proposals from sponsors or County participation. Sponsorship often results from the match between a unique attribute of an event or asset and unique characteristics of the sponsor for which no competitive market exists.

- *Favoritism.* Minimal effect on favoritism as this class of special procurements responds to unique opportunities.

15. Telecommunication Services.

- *Cost Savings and Other Benefits.* Rapid changes in technology and technology pricing make it necessary for the County to be able to purchase needed telecommunication services quickly. It is frequently possible to take advantage of lower pricing due to the frequent price changes in the marketplace.

- *Effect on Competition.* Minimal, as there is insufficient competition among vendors in the area of telecommunication services for the County to secure competitive quotes. The County is required to document the lack of competition in writing.

- *Favoritism.* Minimal effect on favoritism as there is a general lack of sufficient competition among vendors in the area of telecommunication services. The County is required to document the lack of competition in writing.

16. <u>US Postal Service</u>.

- *Cost Savings and Other Benefits.* Size and frequency of procurements does not justify the cost of solicitation. Period of time from recognition of need until good or service required too short to issue solicitation.

- *Effect on Competition.* Minimal effect on competition due to the lack of competitors and specialized purchasing needs.

- *Favoritism.* Minimal effect on favoritism due to the lack of competitors and specialized contracting needs.