

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; Declaring
an Emergency and Setting the Effective Date

ORDINANCE NO. 935

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on May 2, 2024, Commissioners Lindsay Berschauer, Kit Johnston, and Mary Starrett being present.

THE BOARD ADOPTS THE FOLLOWING FINDINGS:

- A. WHEREAS, On February 16, 2023, the Board adopted Ordinance 924, which set forth the Yamhill County Public Contracting Rules (YCR) in compliance with ORS Chapters 279A, 279B, and 279C; and
- B. WHEREAS, The YCR was subsequently codified as Yamhill County Code (YCC) 3.20; and
- C. WHEREAS, The County, having enacted its own contracting rules under the authority granted under ORS 279A.065, is thereby required to regularly review and update its rules to ensure ongoing compliance with ORS 279A, 279B, and 279C; and
- D. WHEREAS, In 2021, the Oregon Legislature clarified when the County can contract with its contractor for certain construction and preconstruction personal services via HB 3055; and
- E. WHEREAS, In addition, 2021's HB 3055 removed the mandate for a public hearing, unless otherwise requested by the public, for exemptions from competitive bidding process for construction contracts; and
- F. WHEREAS, In 2023, the Oregon Legislature increased the Small Procurement and Intermediate Procurement thresholds for goods and services contracts, and increased the Small Procurement threshold for construction contracts, via SB 1047; and
- G. WHEREAS, In 2023, the Oregon Legislature authorized local contracting agencies to grant procurement preferences to corporations with "benefit company status", as that term is defined under ORS 60, via HB 3572; and
- H. WHEREAS, In 2023, the Oregon Legislature changed the procurement preference for "service-disabled veteran businesses" to a preference for "veteran-owned businesses" via HB 2295; and now, therefore

THE BOARD ORDAINS AS FOLLOWS:

Section 1. Amendment of Yamhill County Public Contracting Rules. The Yamhill County Public Contracting Rules (YCC 3.20) are hereby amended as provided in the attached Exhibit A, incorporated herein. Except as expressly amended therein, all other YCC 3.20 provisions remain unchanged and in full force and effect.

Section 2. Severability. Invalidation 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 3. Emergency Clause; Effective Date. Pursuant to the provisions of ORS 203.045(4)-(9), an emergency has been declared to exist. This Ordinance shall therefore become effective immediately upon passage.

DATED this 2nd day of May, 2024, at McMinnville, Oregon.

ATTEST
KERI HINTON
County Clerk



By: Carolina Rook
Deputy CAROLINA ROOK

FORM APPROVED BY:
Jodi Gollehon
JODI GOLLEHON
Assistant Yamhill County Counsel

YAMHILL COUNTY BOARD OF COMMISSIONERS

Lindsay Berschauer
Chair LINDSAY BERSCHAUER

AYE NAY
X _____

Kit Johnston
Commissioner KIT JOHNSTON

X _____

Mary Starrett
Commissioner MARY STARRETT

X _____

Accepted by Yamhill County
Board of Commissioners on
05/02/24 by Board Order
24-125

EXHIBIT A
**AMENDMENTS TO YAMHILL COUNTY PUBLIC
CONTRACTING RULES, YCC 3.20**

The Yamhill County Public Contracting Rules are hereby amended as follows (new language is indicated by underlined font and deleted language is indicated by strike-out font).

DIVISION 046: GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING

3.20.046.0110 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:

- a) **“Addendum”** or **“Addenda”** means an addition to, deletion from, a material change in, or general interest explanation of a Solicitation Document.
- b) **“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.
- c) **“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.
- d) **“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.
- e) **“Bid”** means a Written Offer to an Invitation to Bid.
- f) **“Bidder”** means Person that submits a Bid.
- g) **“Board”** means the Yamhill County Board of Commissioners.
- h) **“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.
- i) **“Closing”** means the date and time announced in a Solicitation Document as the deadline for submitting Offers.
- j) **“Code”** or **“Public Contracting Code”** means ORS Chapters 279A, 279B and 279C.

- k) **“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 3.20.047.0267 or 3.20.049.0650. 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 3.20.047.0262 or 3.20.049.0650.
- l) **“Construction Services”** means the services provided under a Public Improvement Contract.
- m) **“Contract”** or **“Public Contract”** has the meaning set forth in ORS 279A.010. **“Contracts”** also includes Purchase Orders.
- n) **“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.
- o) **“Contract Review Authority”** means the Yamhill County Board of Commissioners or its delegatee as otherwise provided under law.
- p) **“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.
- q) **“Contractor”** means the Person, including a Consultant as defined in YCR 3.20.048.0110(b), with whom the County enters into a Contract.
- r) **“County”** means Yamhill County.
- s) **“Cooperative Procurement”** means a Procurement conducted on behalf of more than one governmental body.
- t) **“Cooperative Procurement Group”** means a group of governmental bodies joined through an intergovernmental agreement for the purpose of facilitating cooperative procurements.
- u) **“Days”** means calendar days.
- v) **“Debar”** or **“Debarment”** means the disqualification of a Person from consideration for Award of a Public Contract.
- w) **“Descriptive Literature”** means the materials submitted in response to a Solicitation Document to provide additional information concerning an Offer or Bid.
- x) **“Disqualification”** means a disqualification, suspension, or Debarment pursuant to ORS 200.065, 200.075, 279A.110, 279B.130, 279C.440, and/or these rules.
- y) **“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.
- z) **“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.
- aa) **“Electronic Procurement”** means the use of an Electronic Procurement System to conduct a Procurement.
- bb) **“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.

- cc) **“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.
- dd) **“Goods”** has the meaning set forth in 279A.010(I)
- ee) **“Goods and Services”** or **“Goods or Services”** means any combination of Goods and/or Services.
- ff) **“Intermediate Procurement”** has the meaning as set forth in either 3.20.047.0257 or 3.20.049.0160.
- gg) **“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.
- hh) **“Intergovernmental Agreement”** means an agreement formed under ORS 190.010.
- ii) **“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.
- jj) **“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.
- kk) **“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.
- ll) **“Nonresident Bidder”** has the meaning as set forth in ORS 279A.120(a).
- mm) **“Offer”** means a Written offer submitted in response to a Solicitation Document.
- nn) **“Offeror”** means a Person who submits an Offer.
- oo) **“Opening”** means the date, time and place specified in the Solicitation Document for the public opening of Offers or Bids.
- pp) **“Permissive Cooperative Procurement”** means a Cooperative Procurement in which the County was not identified in the Solicitation Document as a participating governmental body.
- qq) **“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.
- rr) **“Personal Services”** means the services or type of services performed under a Personal Services Contract.
- ss) **“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 3.20.048.0110), 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 3.20.047.910 for a full list of those services designated to be Personal Services.

- tt) **“Procurement”** has the meaning as set forth in ORS 279A.010(1)(w).
- uu) **“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.
- vv) **“Proposal”** means a Written response to a Request for Proposals.
- ww) **“Proposer”** means a Person that submits a Proposal.
- xx) **“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.
- yy) **“Public Improvement”** has the meaning as set forth in YCR 3.20.049.0120(k).
- zz) **“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.
- aaa) **“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)).
- bbb) **“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.
- ccc) **“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 3.20.048.0110), described in the document.
- ddd) **“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.
- eee) **“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 3.20.047.0500 or 3.20.049.0390(b), and that has not been debarred or disqualified by the County under YCR 3.20.047.0575 or 3.20.049.0370. When used alone, **“Responsible”** or **“Responsibility”** means meeting the aforementioned standards.
- fff) **“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.
- ggg) **“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.
- hhh) **“Services”** mean services, other than Personal Services as so designated under YCR 3.20.047.0910 or A&E Consultant services as defined in YCR 3.20.048.0110.

- iii) **“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.
- jjj) **“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.
- kkk) **“Student Affiliation Agreement”** means an agreement between the County and an educational institution for the purpose of providing an opportunity for students to gain experience in a clinical setting or an internship program as provided by the County.
- lll) **“Task Order”** means a Written order, signed by an authorized County representative, issued to a Consultant under a Price Agreement established pursuant to YCR 3.20.048.0270 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.
- mmm) **“Veteran”** has the meaning set forth in ORS 200.005.
- nnn) **“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.
- ooo) **“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.
- ppp) **“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 VIA ORDINANCE NO. 924 eff 05/17/23; AMENDED VIA ORDINANCE NO. 927 eff 06/22/23; AMENDED VIA ORDINANCE XXX eff XX/XX/XX]

3.20.046.0210 Contracting with Emerging Small Businesses; Disqualification Under ORS 200.065-075.

a) Contracting with Emerging Small Businesses. For purposes of ORS 279A.105, a subcontractor certified under 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:

- (i) Its principal place of business is located in an area designated as economically distressed under administrative rules adopted by the Oregon Business Development Department; or
- (ii) The Contractor certifies in a Signed Writing to the County that a substantial number of the subcontractor's employees or subcontractors that will manufacture or provide the Goods or perform the Services or Personal Services under the Contract reside in an area designated as economically distressed under administrative rules adopted by the Oregon Business Development Department. For the purposes of making the foregoing determination, the County shall determine in each particular instance what proportion of a Contractor's subcontractor's employees or subcontractors constitutes a substantial number.

b) Disqualification.

- (i) *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 (b) and (c) of this rule.
- (ii) *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:
 - (1) State that the County intends to disqualify or suspend the Person;
 - (2) Set forth the reasons for the Disqualification;
 - (3) 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;
 - (4) Include a statement of the authority under which the hearing will be held;
 - (5) Include a reference to the particular sections of the statutes and rules involved;
 - (6) State the proposed Disqualification period; and
 - (7) State that the Person may be represented by legal counsel.
- (iii) *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.
- (iv) *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:

- (1) The effective date and period of Disqualification;
 - (2) The grounds for Disqualification; and
 - (3) A statement of the Person's appeal rights and applicable appeal deadlines.
- (v) *Period of Disqualification or Suspension.*
- (1) 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.
 - (2) 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 VIA ORDINANCE NO. 924 eff 05/17/23; AMENDED VIA ORDINANCE XXX eff XX/XX/XX]

3.20.046.0230 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 Veteran-owned 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 Veteran-owned 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 VIA ORDINANCE NO. 924 eff 05/17/23; AMENDED VIA ORDINANCE XXX eff XX/XX/XX]

3.20.046.0300 Preference for Oregon Goods and Services; Nonresident Bidders.

- a) 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:
- (i) 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.
 - (ii) 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.

- (iii) 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.
- b) Determining if Offers are Identical. The County shall consider Offers identical in price, fitness, availability, and quality as follows:
 - (i) 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.
 - (ii) 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.
 - (iii) 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.
 - (iv) 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.
- c) Determining if Goods or Services or Personal Services are Manufactured or Produced in Oregon. For the purposes of complying with section (a) 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.
- d) 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.
- e) 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 (i) Goods fabricated or processed entirely in Oregon, or Services or Personal Services performed entirely in Oregon, or (ii) for goods or

services provided by a benefit company that is incorporated, organized, formed or created under ORS 60.754 and has the majority of the benefit company's regular, full-time workforce located in this state, if the goods or services cost not more than five percent more than the goods or services available from a Contractor that is not a benefit company. 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.

- f) 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 VIA ORDINANCE NO. 924 eff 05/17/23; AMENDED VIA ORDINANCE XXX eff XX/XX/XX]

DIVISION 047: PUBLIC PROCUREMENT OF GOODS OR SERVICES

No amendments proposed.

DIVISION 048: A&E CONSULTANT SELECTION

3.20.048.0130 Applicable Selection Procedures; Pricing Information; Proposal Disclosures; Conflicts.

- a) 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 3.20.048.0210 (Informal Selection Procedure), 3.20.048.0220 (Formal Selection Procedure), or 3.20.048.0200 (Direct Appointment Procedure). In following the Direct Appointment Procedure under YCR 3.20.048.0200, 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 3.20.048.280 and ORS279C.110(5).
- b) If selecting a Consultant to perform Related Services, the County shall follow one of the following selection procedures:
- (i) When selecting a Consultant on the basis of qualifications alone, the County shall follow the applicable selection procedure under YCR 3.20.048.0200 (Direct Appointment Procedure), 3.20.048.0210 (Informal Selection Procedure), or 3.20.048.0220 (Formal Selection Procedure);
 - (ii) When selecting a Consultant on the basis of price competition alone, the County shall follow the applicable provisions under YCR 3.20.048.0200 (Direct Appointment Procedure), the applicable provisions of 3.20.048.0210 (Informal Selection Procedure) pertaining to obtaining and evaluating price Proposals and other pricing information, or the applicable provisions of 3.20.048.0220 (Formal Selection Procedure) pertaining to obtaining and evaluating price Proposals and other pricing information; and
 - (iii) When selecting a Consultant on the basis of price and qualifications, the County shall follow the applicable provisions under YCR 3.20.048.0200 (Direct Appointment Procedure), the applicable provisions of 3.20.048.0210 (Informal Selection Procedure) pertaining to obtaining and evaluating price and qualifications Proposals, or the applicable provisions of 3.20.048.0220 (Formal Selection Procedure) pertaining to obtaining and evaluating price and qualifications Proposals. For selections under the informal selection procedure of YCR 3.20.048.0210, the County may use abbreviated requests for Proposals that nevertheless meet the requirements of YCR 3.20.048.0210, 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 3.20.047.0270. 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.

- c) The County is not required to follow the procedures in section (a) or section (b) 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 3.20.048.0270 (Price Agreements).
- d) The County may use electronic methods to screen and select a Consultant in accordance with the procedures described in sections (a) and (b) 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 3.20.047.0330 (Electronic Procurement).
- e) 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 (a) 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 (b) 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.
- f) 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:
 - (i) The term "competitive proposal," for the purposes of ORS 279C.107, includes Proposals under YCR 3.20.048.0200 (Direct Appointment Procedure), YCR 3.20.048.0210 (Informal Selection Procedure), YCR 3.20.048.0220 (Formal Selection Procedure) or YCR 3.20.048.0130(b)(iii) (selection based on price and qualifications) and any Proposals submitted in response to a selection process for a Task Order under YCR 3.20.048.0270 (Price Agreements).

- (ii) For purposes of Proposals received by the County under YCR 3.20.048.0200 (Direct Appointment Procedure), a formal notice of intent to Award is not required. As a result, while the County may make Proposals under YCR 3.20.048.0200 (Direct Appointment Procedure) open for public inspection following the County's decision to begin Contract negotiations with the selected Consultant, YCR 3.20.048.0200 Proposals are not required to be open for public inspection until after the County has executed a Contract with the selected Consultant.
 - (iii) 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
 - (iv) Disclosure of Proposals and Proposal information is otherwise governed by ORS 279C.107.
- g) 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:
- (i) 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
 - (ii) 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.
- h) The requirements of ORS 279C.307 and section (g) of this rule apply in the following circumstances, except as provided in section (i) of this rule:
- (i) 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.
 - (ii) The Procurements of Personal Services subject to the restrictions of ORS 279C.307 include, but are not limited to, the following:

1. 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;
 2. 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;
 3. 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;
 4. 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
 5. 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 (h)(i) of this rule.
- i) The restrictions of ORS 279C.307 do not apply in the following circumstances, except as further specified below:
- (i) 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 3.20.049.0610. 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
 - (ii) 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.

j) As permitted by ORS 279C.307(3), the County may apply for an exception to the requirements of ORS 279C.307(1) in the situation when the County anticipates that it must procure 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, and the County desires to accept a Bid or other Proposal from a Contractor or Consultant that would otherwise be prohibited from bidding or proposing to provide the required Personal Services. In order for the County to obtain such an exception to the requirements of ORS 279C.307(1), the County must apply for and obtain an approved exception from the Appropriate Authority for the County before awarding a contract to the Contractor or Consultant under a Procurement for the required Personal Services, or before entering into an amendment of an existing Public Contract with the Contractor or Consultant to obtain the Personal Services.

(i) Application Requirements. The Contracting Agency's application to the Appropriate Authority for an exception under ORS 279C.307(3) must include the following Findings and Justifications: _____

1. The Contracting Agency requires the Personal Services described in ORS 279C.307(1);
2. Accepting a Bid or Proposal from a Contractor or Consultant that would be subject to the prohibition described in ORS 279C.307(1) is in the best interest of the Contracting Agency;
3. Approving the exception is unlikely to encourage favoritism in awarding Public Contracts or to substantially diminish competition for Public Contracts; and
4. Approving the exception:
 - A. Is reasonably expected to result in substantial cost savings to the Contracting Agency or the public; or
 - B. Otherwise will substantially promote the public interest in a manner that could not be practicably realized by complying with the prohibition described in ORS 279C.307(1).

(ii) Consultation with Legal Counsel. A Contracting Agency shall consult with the Contracting Agency's legal counsel during the exception process provided for in ORS 279C.307(3) as follows:

1. During the process of preparing an application for the exception to ensure compliance with the requirements of ORS 279C.307 and with the other applicable provisions of ORS Chapter 279C;
2. Pursuant to the requirements of an ORS 279C.307(3) exception approved by the Contracting Agency's Appropriate Authority; and
3. The Contracting Agency's consultation with its legal counsel should include discussion and evaluation of mitigation measures that the Contracting Agency can include in the Procurement and in any resulting Public Contract for the Personal Services, in order to reduce any competitive advantage that the

Contractor or Consultant may have or may be perceived to have, and to increase the objectivity and independence of the Contractor or Consultant during its performance of the Personal Services.

(iii) Definitions. The following definitions apply to section (j) of this rule:

1. “Appropriate Authority” means the Yamhill County Board of Commissioners; and
2. “Findings and Justifications” means the determinations, findings and justifications for a conclusion that the County, in seeking an exception from the objectivity and independence requirements of ORS 279C.307(1), reaches based on the considerations set forth in ORS 279C.307(3)(d) and based on sufficient supporting facts.

STAT. AUTH.: ORS 279A.065

STATS. IMPLEMENTED: ORS 279C.100 - 279C.125

[ADOPTED VIA ORDINANCE NO. 924 eff 05/17/23; AMENDED VIA ORDINANCE XXX eff XX/XX/XX]

**DIVISION 049: GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR
CONSTRUCTION**

3.20.049.0120 Definitions.

- a) “**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).
- b) “**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.
- c) “**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, Veteran-owned 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.
- d) “**Conduct Disqualification**” means a Disqualification pursuant to ORS 279C.440.
- e) “**Construction**” means the building of County buildings and other structures, or additions thereto, and of County highways and roads.
- f) “**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.
- g) “**Findings**” has the meaning as set forth in ORS 279C.330.
- h) “**Foreign Contractor**” means a Contractor that is not domiciled in or registered to do business in the State of Oregon.
- i) “**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.
- j) “**Notice**” means any of the alternative forms of public announcement of Procurements, as described in YCR 3.20.049.0210.
- k) “**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.
- l) “**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.

- m) **“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.
- n) **“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 VIA ORDINANCE NO. 924 eff 05/17/23; AMENDED VIA ORDINANCE XXX eff XX/XX/XX]

3.20.049.0155 Small Construction Contracts Exempted from Competitive Bids.

- a) Award. The County may Award a Public Improvement Contract with a value of less than \$10,000 or equal to the applicable dollar amount stated in ORS 279C.335(1)(c) (a “Small Public Improvement Contract”) in any manner deemed practical or convenient by the County, including by direct selection, appointment, or Award.
- b) Modifications. A Small Public Improvement Contract may be modified in accordance with YCR 3.20.049.0910, but the cumulative modifications shall not increase the total Contract Price to greater than \$10,000 the applicable dollar amount stated in ORS 279C.335(1)(c). If the Contract Price exceeds \$10,000 the applicable dollar amount stated in ORS 279C.335(1)(c), the Work must be competitively bid or quoted as otherwise required in these rules herein.
- c) 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 VIA ORDINANCE NO. 924 eff 05/17/23; AMENDED VIA ORDINANCE XXX eff XX/XX/XX]

3.20.049.0160 Intermediate Procurements; Competitive Quotes and Amendments.

- a) 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. For Procurements of Construction Services estimated by the County to be greater than the dollar amount stated in ORS 279C.412, but less than or equal to the applicable dollar amount stated in ORS 279C.335(1)(c), the County may Award a Contract as an Intermediate Procurement pursuant to this rule and ORS 279C.412.~~

- b) 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.
- c) 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.
- d) 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.
- e) 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.
- f) Modifications. An Intermediate Public Improvement Contract may be modified in accordance with YCR 3.20.049.0910. Amendments of intermediate level Public Improvement Contracts that exceed the thresholds stated in subsection (a) with the following limitations:
 - (i) All Amendments in the aggregate may not increase the Contract Price more than 25% over the original Contract amount;
 - (ii) The additional scope is reasonably related to the original scope of the project; and
 - (iii) The Board determines in Writing that such a price increase is warranted.
- g) 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 VIA ORDINANCE NO. 924 eff 05/17/23; AMENDED VIA ORDINANCE XXX eff XX/XX/XX]

3.20.049.0370 Disqualification of Persons.

- a) 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 (b) and (c) of this rule.
 - (i) *Standards for Conduct Disqualification*. As provided in ORS 279C.440, the County may disqualify a Person for:
 1. 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;
 2. 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;

3. Conviction under state or federal antitrust statutes; or
4. 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 (a)(1)(i)(4) 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.

(ii) *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:

1. For a Disqualification under ORS 200.065, the County may disqualify a Person upon finding that:
 - A. 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 Veteran-owned business ~~that a service-disabled veteran owns~~;
 - B. 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
 - C. The Person has been disqualified by another county under ORS 200.065.
2. For a Disqualification under ORS 200.075, the County may disqualify a Person upon finding that:
 - A. The Person has entered into an agreement representing that a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a Veteran-owned 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;
 - B. The Person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise;
 - C. 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
 - D. 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.

3. 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 Veteran-owned business ~~that a service disabled veteran owns~~ in awarding a subcontract under a Contract with that County.
- b) 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:
- (i) State that the County intends to disqualify the Person;
 - (ii) Set forth the reasons for the Disqualification;
 - (iii) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice;
 - (iv) 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;
 - (v) Include a statement of the authority under which the hearing will be held;
 - (vi) Include a reference to the particular sections of the statutes and rules involved;
 - (vii) State the proposed Disqualification period; and
 - (viii) State that the Person may be represented by legal counsel.
- c) 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.
- d) 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:
- (i) The effective date and period of Disqualification;
 - (ii) The grounds for Disqualification; and
 - (iii) 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 VIA ORDINANCE NO. 924 eff 05/17/23; AMENDED VIA ORDINANCE XXX eff XX/XX/XX]

3.20.049.0630 Findings, Notice, and Hearing.

- a) 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.

- b) 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).
- c) 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:
 - (i) 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
 - (ii) 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.
- d) 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.
- e) 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:
 - (i) 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
 - (ii) 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:

1. Involve renovations for a common purpose;
2. Require completion on a related schedule in order to avoid unnecessary disruption of County operations;
3. Share common characteristics, such as historic building considerations, the presence of asbestos or other hazardous substances, or the presence of County staff during construction;
4. Otherwise possess characteristics that meet the requirements of ORS 279C.335(2); and
5. Otherwise meet the requirements of the Board, as applicable.

- f) **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(54). The notice shall state that, in response to a written request, the County will hold a public hearing for the purpose of taking comments on the draft Findings for an exemption from the competitive bidding requirement. The notice may include specific information about the date, time, and location of the public hearing that may be held, or the County may issue a secondary public notice with the date, time, and location of the public hearing after a written request for a public hearing is made. Any written request for a public hearing must be submitted to the County within seven (7) calendar days of the publication date of the original public notice. If the County does not receive a written request from an interested party to hold a public hearing, the County may hold a public hearing, but is not required to hold a public hearing. The public hearing, if held, 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 VIA ORDINANCE NO. 924 eff 05/17/23; AMENDED VIA ORDINANCE XXX eff XX/XX/XX]

3.20.049.0800 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:
 - (i) All overtime in excess of:
 1. 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
 2. 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
 - (ii) 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 Veteran-owned 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 VIA ORDINANCE NO. 924 eff 05/17/23; AMENDED VIA ORDINANCE XXX eff XX/XX/XX]