

11/25/2020

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BEFORE THE LOCAL CONTRACT REVIEW BOARD OF DOUGLAS COUNTY

RESOLUTION TO ADOPT LOCAL
CONTRACT REVIEW BOARD RULES

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RESOLUTION

DOUGLAS COUNTY CLERK

This matter came before the Local Contract Review Board of Douglas County.

NOW, THEREFORE THE LOCAL CONTRACT REVIEW BOARD makes the following FINDINGS:

The Local Contract Review Board Rules attached to this Resolution and hereby made a part hereof are consistent with State law and will better serve the residents of Douglas County than the previously adopted Rules.

The exemptions to competitive procurement contained in the attached Rules are unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts, and will result in substantial cost savings to the County. The exemptions have been prepared to allow less expensive selection processes to be used when a more expensive process would not result in sufficient contract cost reduction to justify a more expensive process. These exemptions were contained in the previously adopted Rules.

The Rules as a whole, including all exemptions, are unlikely to encourage favoritism in the awarding of public contracting or substantially diminish competition for public contracts.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE LOCAL CONTRACT REVIEW BOARD that the Local Contract Review Board Rules attached hereto be applicable to contracting on behalf of Douglas County (and any agency meeting the definition of Contracting Agency, as defined in the Rules), effective upon the signing of this Resolution.

Dated this 25 day of November 2020.

REVIEWED AS TO CONTENT

By Daniel J. Loomis
County Accountant
Date 11/20/2020

REVIEWED AS TO FORM

By Tiffany Podlynski
Office of County Counsel
Date Nov. 23, 2020

LOCAL CONTRACT REVIEW BOARD
DOUGLAS COUNTY

By [Signature]
Chair

By [Signature]
Member

By - Absent -
Member

Date 11-25-2020

**LOCAL CONTRACT REVIEW BOARD RULES
TABLE OF CONTENTS**

- 1. PURPOSE**
- 2. DEFINITIONS**
- 3. LOCAL CONTRACT REVIEW BOARD**
- 4. MODEL RULES**
- 5. PUBLIC CONTRACTS**
- 6. EXEMPTIONS**
 - 6.1 Advertising Contracts
 - 6.2 Asphaltic Concrete and Rock
 - 6.3 Ballot Printing Services
 - 6.4 Contract Amendments
 - 6.5 Contract Renewals
 - 6.6 Contract Temporary Extensions or Renewals
 - 6.7 Copyrighted Materials
 - 6.8 Equipment with Credit for Trade-In
 - 6.9 Fair Service Contracts
 - 6.10 Federal Purchasing Programs
 - 6.11 Galesville Water
 - 6.12 Government Regulated Items
 - 6.13 Maintenance, Repair, or Conversion
 - 6.14 Museum Objects or Specimens
 - 6.15 Non-Owned Property
 - 6.16 ORCPP Agreement Purchases
 - 6.17 Petroleum Products
 - 6.18 Requirements Contracts
 - 6.19 Sole Source (Single Seller of Product Required)
 - 6.20 Sponsor Agreements
 - 6.21 Structures
 - 6.22 Temporary Use of Contracting Agency-Owned Property
 - 6.23 Used Equipment
 - 6.24 Utilities
- 7. ELECTRONIC ADVERTISING**
 - 7.1 Generally
 - 7.2 Public Improvement Contracts
 - 7.3 Permissive Cooperative Procurements
 - 7.4 Interstate Cooperative Procurements
 - 7.5 Special Procurements

8. SURPLUS PROPERTY

- 8.1 General Methods
 - 8.1.1 Governments
 - 8.1.2 Auction
 - 8.1.3 Bids
 - 8.1.4 Liquidation Sale
 - 8.1.5 Fixed Price Sale
 - 8.1.6 Trade-In
 - 8.1.7 Donation
 - 8.1.8 On-Line Public Sales
- 8.2 Electronic Advertising
- 8.3 Exemptions from General Methods
 - 8.3.1 Statutory Procedures
 - 8.3.2 Public Works Materials
 - 8.3.3 Sanitary Landfill Materials
 - 8.3.4 Software
 - 8.3.5 Surplus Wood Materials
 - 8.3.6 Emergencies
- 8.4 Valueless Property
- 8.5 Transfer Within Contracting Agency
- 8.6 Conditions of Disposal of Property
- 8.7 Public Works Materials
- 8.8 Sanitary Landfill Materials
- 8.9 Transfer of Title
- 8.10 Surplus Wood Materials

9. CLASSES OF CONTRACTS EXEMPT FROM BID SECURITY

10. CLASSES OF CONTRACTS EXEMPT FROM PERFORMANCE AND PAYMENT BONDS

11. Reserved

12. PERSONAL SERVICE CONTRACTS

LOCAL CONTRACT REVIEW BOARD RULES

1. **PURPOSE:** It is the policy of Douglas County in adopting the Public Contracting Rules to utilize public contracting practices and methods that maximize the efficient use of public resources and the purchasing power of public funds by:
 - 1.1. Promoting impartial and open competition;
 - 1.2. Using solicitation materials that are complete and contain a clear statement of contract specifications and requirements; and
 - 1.3. Taking full advantage of evolving procurement methods that suit the contracting needs of Douglas County as they emerge within various industries.

2. **DEFINITIONS:** Words and phrases used by these Rules that are defined in the Public Contracting Code and in the Model Rules have the same meaning as defined in the Public Contracting Code and the Model Rules. The following terms used in these Rules shall have the meanings set forth below.
 - 2.1. "*Award*" means the selection of a person to provide goods, services or public improvements under a public contract. The award of a contract is not binding on Douglas County until the contract is executed and delivered by Douglas County.
 - 2.2. "*Bid*" means a binding, sealed, written offer to provide goods, services or public improvements for a specified price or prices.
 - 2.3. "*Contracting Agency*" includes, but is not limited to, Douglas County, the Douglas County Fair Board, the 4-H Extension Service District, and all other commissions, committees, advisory boards, and volunteer programs governed by, directly or indirectly, the Board of County Commissioners.
 - 2.4. "*Contracting Officer*" means, in the case of Douglas County, the County Accountant or the Accountant's designee, and in any other case, the person designated by the Contracting Agency.
 - 2.5. "*County*" means Douglas County.
 - 2.6. "*Governing Body*" means, in the case of Douglas County its Board of Commissioners, and in any other case, the board or other body or person authorized to make decisions on behalf of the Contracting Agency.
 - 2.7. "*Invitation to Bid*" (sometimes referred to as "Request for Bids") means a publicly advertised request for competitive sealed bids.

- 2.8. “*Local Contract Review Board*” or “*LCRB*” means Douglas County Local Contract Review Board.
- 2.9. “*Model Public Contract Rules*” or “*Model Rules*” means the rules adopted by the Oregon Attorney General pursuant to ORS 279A.065, including all modifications to the Model Rules that the Attorney General may adopt, that specify procedures for public contracting under the Public Contracting Code and are located as follows:
- 2.9.1. OAR Chapter 137, Division 46
(General Provisions Related To Public Contracting)
 - 2.9.2. OAR Chapter 137, Division 47
(Public Procurements For Goods Or Services)
 - 2.9.3. OAR Chapter 137, Division 48
(Consultant Selection: Architectural, Engineering Or Land Surveying Services And Related Services Contracts)
 - 2.9.4. OAR Chapter 137, Division 49
(General Provisions Related To Public Contracts For Construction Services)
- 2.10. “*Proposal*” means a binding offer to provide goods, services or public improvements with the understanding that acceptance will depend on the evaluation of factors other than, or in addition to, price.
- 2.11. “*Quote*” means a price offer made in response to an informal solicitation to provide goods, services or public improvements.
- 2.12. “*Request for Proposals*” means a publicly advertised request for sealed competitive proposals.
- 2.13. “*Solicitation*” means an invitation to one or more potential contractors to submit a bid, proposal, quote, statement of qualifications or letter of interest with respect to a proposed project, procurement or other contracting opportunity. The word “solicitation” also refers to the process by which the Contracting Agency requests, receives and evaluates potential contractors and awards public contracts.
- 2.14. “*Surplus Property*” means personal property owned by the Contracting Agency which is no longer needed for use by the department to which such property has been assigned.

3. **LOCAL CONTRACT REVIEW BOARD:** Pursuant to ORS 279A.060, the Douglas County Board of Commissioners is designated as the Local Contract Review Board under the Public Contracting Code. No special procedure shall be necessary before the Board of Commissioners, otherwise meeting properly for transaction of County business and making any necessary findings, may exercise the powers of the LCRB.
4. **MODEL RULES:** Except as otherwise provided in these Rules or by order of the LCRB, the LCRB adopts the Attorney General's Model Public Contracting Rules, as they now exist and as they may be amended in the future, as the rules of procedure for Public Contracting. These Rules shall be in addition to, and shall supersede any conflicting provision in, the Model Rules.
5. **PUBLIC CONTRACTS:** All Public Contracts, as defined by ORS 279A.010, will be procured and awarded as provided by the Public Contracting Code and the Model Rules, and as implemented by these Rules.
6. **EXEMPTIONS:** Pursuant to ORS 279B.085, the LCRB finds the following classes of contracts exempt from competitive procurement on the basis that it is unlikely such exemptions will encourage favoritism or substantially diminish competition. The LCRB also finds that the awarding of Public Contracts pursuant to the exemptions will result in substantial cost savings. These classes of contracts may be awarded in any manner the Contracting Agency deems appropriate, including direct appointment or purchase.
 - 6.1. *Advertising Contracts.* Contracts for the purchase of advertising, including those intended for the purpose of giving public notice.
 - 6.2. *Asphaltic Concrete and Rock.* Contracts for the purchase of asphaltic concrete and rock where the material is to be used for maintenance.
 - 6.3. *Ballot Printing Services.* Contracts for printing ballots, including sample ballots, ballot pages, and labeling ballot cards.
 - 6.4. *Contract Amendments.* Any contract amendment, including change orders, extra work, field orders, or other change in the original specifications which changes the original contract price or alters the work to be performed, may be made with the contractor subject to the following conditions:
 - 6.4.1. The original contract imposes a binding obligation on the parties covering the terms and conditions regarding changes in the work; or
 - 6.4.2. The amended contract does not substantially alter the scope or nature of the project; or

- 6.4.3. If the amendment has the effect of substantially altering the scope or nature of the project, the amount of the aggregate cost change resulting from all amendments creating such new obligations shall not exceed 10% of the initial contract.
- 6.5. *Contract Renewals.* Contracts that are being renewed in accordance with their terms are not considered to be newly issued contracts and are not subject to competitive procurement procedures.
- 6.6. *Contract Temporary Extensions or Renewals.* Contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and non-renewable, or recently expired, contract.
- 6.7. *Copyrighted Materials.* Contracts for the purchase or acquisition of materials entitled to copyright, including but not limited to, works of art and design, literature and music.
- 6.8. *Equipment with Credit for Trade-In.* Public contracts for procurement of vehicles or equipment, if the total cash price does not exceed \$150,000 after deducting the value of any trade-in.
- 6.9. *Fair Service Contracts.* Contracts for ticket sales, ticket collection, information booths, parking services, and other similar services for fairs subject to the following conditions:
 - 6.9.1. The contractors shall be non-profit public service groups operating within Douglas County.
 - 6.9.2. All services provided through the contract shall be performed by volunteers without compensation.
 - 6.9.3. Eligible organizations shall be allowed to submit proposals for performing the service contracts.
- 6.10. *Federal Purchasing Programs.* Goods and services may be purchased without competitive procedures under a local government purchasing program administered by the United States General Services Administration ("GSA") as provided in this subsection.
 - 6.10.1. The procurement must be made in accordance with procedures established by GSA for procurements by local governments, and under purchase orders or contracts submitted to and approved by the Contracting Officer. The Contracting Officer shall retain a copy of the letter, memorandum or other documentation from GSA establishing permission to the Contracting Agency to purchase under the federal program.

- 6.10.2. The price of the goods or services must be established under price agreements between the federally approved vendor and GSA.
- 6.10.3. The price of the goods or services must be less than the price at which such goods or services are available under state or local cooperative purchasing programs that are available to the Contracting Agency.
- 6.10.4. If a single purchase of goods or services exceeds \$150,000, the Contracting Agency must obtain informal written quotes or proposals from at least two additional vendors (if reasonably available) and find, in writing, that the goods or services offered by GSA represent the best value for the Contracting Agency. This paragraph does not apply to the purchase of equipment manufactured or sold solely for military or law enforcement purposes.
- 6.11. *Galesville Water.* Contracts for purchase of irrigation, municipal or industrial water from the Galesville reservoir.
- 6.12. *Government Regulated Items.* Contracts for the purchase of goods or services where the rate, price, or selection of suppliers are established by federal, state, or local regulatory authority.
- 6.13. *Maintenance, Repair, or Conversion.* Contracts for the purchase of services, equipment, or supplies for maintenance, repair, or conversion of existing equipment if required for the efficient utilization of such equipment.
- 6.14. *Museum Objects or Specimens.* Contracts for the purchase, acquisition, sale, or disposal of museum objects or specimens.
- 6.15. *Non-Owned Property.* Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the Contracting Agency.
- 6.16. *ORCPP Agreement Purchases.* Contracts for the procurement of goods or services within the scope of a current Oregon Cooperative Purchasing Program (“ORCPP”) agreement between Douglas County and the Oregon Department of Administrative Services (“DAS”), that are on a current DAS Price Agreement, Solicitation, or Contract, subject to the terms and conditions of the ORCPP agreement and subject to the terms and conditions of the DAS Price Agreement, Solicitation, or Contract.

- 6.17. *Petroleum Products.* Contracts for the purchase of petroleum products.
- 6.18. *Requirements Contracts.* Purchases of goods or services pursuant to a requirements contract between the Contracting Agency and a contractor which was established by competitive bidding. Purchases may also be made by one Contracting Agency through a requirements contract between another public body and a contractor if the requirements contract was established by competitive bidding and there is an intergovernmental agreement authorizing the purchase between the Contracting Agency and the other public body.
- 6.19. *Sole Source (Single Seller of Product Required).* Contracts for purchase where there is only one seller of a product of the quality required available within a reasonable purchase area.
- 6.20. *Sponsor Agreements.* Sponsorship agreements, under which the Contracting Agency receives a gift or donation in exchange for recognition of the donor.
- 6.21. *Structures.* Contracts for the disposal of structures located on Contracting Agency-owned property.
- 6.22. *Temporary Use of Contracting Agency-Owned Property.* The Contracting Agency may negotiate and enter into a license, permit, or other contract for the temporary use of Contracting Agency-owned property without using a competitive selection process if:
- 6.22.1. The contract results from an unsolicited proposal to the Contracting Agency based on the unique attributes of the property or the unique needs of the proposer;
 - 6.22.2. The proposed use of the property is consistent with the Contracting Agency's use of the property and the public interest; and
 - 6.22.3. The Contracting Agency reserves the right to terminate the contract without penalty, in the event that the Contracting Agency determines that the contract is no longer consistent with the Contracting Agency's present or planned use of the property or the public interest.
- 6.23. *Used Equipment.* The Contracting Agency may contract for the purchase of used equipment by negotiation if such equipment is suitable for the County's needs and can be purchased for a lower cost than substantially similar new equipment.

6.24. *Utilities.* Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.

7. ELECTRONIC ADVERTISING: The LCRB finds that electronic advertisement of public notice is likely to be cost-effective. Therefore, in lieu of publication in a newspaper of general circulation in Douglas County, the LCRB authorizes electronic advertisement by posting on the Douglas County website in the location within the website maintained on a regular basis for such posting, as follows:

7.1. *Generally.* Pursuant to ORS 279B.055(4)(c), electronic advertisement of an Invitation to Bid or Request for Proposals is authorized.

7.2. *Public Improvement Contracts.* Pursuant to ORS 279C.360(1), electronic advertisement of a Public Improvement Contract is authorized. However, if the Public Improvement Contract has an estimated cost in excess of \$125,000, the advertisement must be published in at least one trade newspaper of general statewide circulation.

7.3. *Permissive Cooperative Procurements.* Pursuant to ORS 279A.215(2)(c) and 279B.055(4)(c), electronic advertisement of the intent to establish a contract or price agreement through a permissive cooperative procurement is authorized.

7.4. *Interstate Cooperative Procurements.* Pursuant to ORS 279A.220(2)(b)(C) and 279B.055(4)(c), electronic advertisement of the intent to establish a contract or price agreement through an interstate cooperative procurement is authorized.

7.5. *Special Procurements.* Pursuant to ORS 279B.085(5) and 279B.055(4)(c), electronic advertisement of the notice of the approval of a special procurement is authorized.

8. SURPLUS PROPERTY:

8.1. *General Methods.* Surplus property may be disposed of by any of the following methods upon a determination by the Contracting Agency that the method of disposal is in the best interest of the Contracting Agency. Factors that may be considered by the Contracting Agency include costs of sale, administrative costs, and public benefits to the Contracting Agency. The Contracting Agency shall maintain a record of the reason for the disposal method selected, and the manner of disposal, including the name of the person to whom the surplus property was transferred.

8.1.1. *Governments.* Without competition, by transfer or sale to another Contracting Agency department or public agency.

- 8.1.2. *Auction.* By publicly advertised auction to the highest bidder.
- 8.1.3. *Bids.* By publicly advertised invitation to bid.
- 8.1.4. *Liquidation Sale.* By liquidation sale using a commercially recognized third-party liquidator selected in accordance with rules for the award of personal services contracts.
- 8.1.5. *Fixed Price Sale.* The Contracting Agency may establish a selling price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, schedule and advertise a sale date, and sell to the first buyer meeting the sales terms.
- 8.1.6. *Trade-In.* By trade-in, in conjunction with acquisition of other price-based items under a competitive solicitation. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.
- 8.1.7. *Donation.* By donation to any organization operating within or providing a service to residents of the Contracting Agency which is recognized by the Internal Revenue Service as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended.
- 8.1.8. *On-Line Public Sales.* By on-line public sales, such as eBay, craigslist, gov-deals, or other on-line site used to sell items, provided that the minimum bid or minimum sales price for each item is determined by the Contracting Agency or facilitator to be commercially reasonable. The Contracting Agency may use an independent contractor ("facilitator") to facilitate the on-line public sale, provided that the independent contractor is paid a commission from the sales price of each item that the Contracting Agency determines to be a reasonable amount or percentage.
- 8.2. *Electronic Advertising.* The LCRB authorizes electronic advertisement of any of the procedures set forth in Rule 8.1 by posting on the Douglas County website in the location within the website maintained on a regular basis for such posting.
- 8.3. *Exemptions from General Methods.* Surplus property may be disposed of without following the procedures set forth in Rule 8.1 under any of the following conditions:

- 8.3.1. *Statutory Procedures.* Specific statutory procedures exist for the sale of the type of property involved, and the property is disposed of according to the procedures.
- 8.3.2. *Public Works Materials.* The surplus property is public works materials as defined in Rule 8.7 and is disposed of in the manner prescribed in that rule.
- 8.3.3. *Sanitary Landfill Materials.* The surplus property consists of recyclable, recycled or reusable materials that are described in Rule 8.8 and is disposed of in the manner prescribed in that rule.
- 8.3.4. *Software.* The surplus property is software developed by a Contracting Agency which will be licensed to user for a price established by the Contracting Agency.
- 8.3.5. *Surplus Wood Materials.* The surplus property consists of trees and other wood materials owned by Douglas County and is sold in the manner prescribed in Rule 8.10.
- 8.3.6. *Emergencies.* If emergency conditions require the prompt disposition of surplus property, the Board of Commissioners may authorize the disposition of such surplus property by any method that is commercially reasonable under the circumstances.
- 8.4. *Valueless Property.* The Contracting Agency may discard the property when the Contracting Agency determines that the property is of such little value that it should be discarded.
- 8.5. *Transfer within Contracting Agency.* Before disposing of surplus property, the appropriate Department Head shall make appropriate inquiries of other County or Contracting Agency departments to determine if such departments may use the surplus property. If another department has a use for the surplus property, the Contracting Officer may transfer the property to such department instead of disposing of it.
- 8.6. *Conditions of Disposal of Property.* Any sale or disposal of surplus property whether by competitive bidding or otherwise, shall be subject to the following conditions:
 - 8.6.1. Surplus supplies and equipment shall not be made available to any public employee, except through the procedures outlined in Rule 8.1.

8.6.2. No warranty or guarantee shall be made as to the condition of any item offered for sale or disposal. All surplus property is offered for sale or disposal "as is and where is," without any recourse against seller or transferor.

8.6.3. All property shall be paid for in full during the sale and legal title of ownership shall pass to the purchaser prior to removal from the site.

8.7. *Public Works Materials.*

8.7.1. Materials encountered by road or bridge maintenance crews or Contracting Agency equivalent in the performance of their duties such as slide material, unmerchantable trees, ditch cleanings or drift and wood chips shall be disposed of in the following manner:

8.7.1.1. The Road Maintenance Foreman or Bridge Superintendent, or Contracting Agency equivalent, as the case may be, shall make the determination that the material to be disposed of fits within the examples cited in Rule 8.7.1.

8.7.1.2. Disposal shall be made at the nearest available location or locations at the discretion of the foreman or superintendent. Persons receiving such material shall not be charged. This policy does not authorize disposal of material on property where the County or Contracting Agency would be charged. In such cases, express written consent to bind the County or Contracting Agency must be obtained from the appropriate governing body.

8.7.2. Material originated by road or bridge maintenance crews or Contracting Agency equivalent, in the performance of their duties, such as salvaged culvert pipe, an occasional tree, salvaged bridge members, etc., shall be disposed of in the following manner:

8.7.2.1. The foreman, superintendent, or Contracting Agency equivalent as the case may be, shall make the determination that the material to be disposed of fits within the examples cited in Rule 8.7.2.

8.7.2.2. The foreman, superintendent, or Contracting Agency equivalent as the case may be, shall appraise the value of the materials on an "as is, where is" basis and subtract the estimated cost of transporting it to the nearest County (or Contracting Agency) shop. If the cost of transportation exceeds the value then he or she shall dispose of it in the manner provided in Rule 8.7.1 except that merchantable timber shall be charged for where feasible.

8.7.2.3. If the value exceeds the cost of transportation, the material shall be transported to the nearest County (or Contracting Agency) shop for disposal pursuant to Rules 8.1 through 8.6.

8.8. *Sanitary Landfill Materials.* Recyclable, recycled and reusable materials, as defined in Chapter 13.48 of the Douglas County Code, which are delivered to disposal sites may be disposed of in the following manner:

8.8.1. The Douglas County Director of Public Works, or his or her designee, shall appraise the value of the material, if any, on an "as is, where is" basis.

8.8.2. The material shall be disposed of by written contract that will provide for maximum financial benefits to the County or Contracting Agency, efficient utilization of disposal sites and resource recovery in accordance with the legislative policies set forth in ORS 459.015. Contracts for sale or disposal of such materials shall comply with the provisions of the County Ordinance for solid waste management.

8.9. *Transfer of Title.* The Contracting Officer shall have the authority to sign bills of sale, title documents, sales contracts, or other documents that are necessary to transfer the title or ownership of personal property that is sold or otherwise disposed of in accordance with Rules 8.1 through 8.6.

8.10. *Surplus Wood Materials.*

8.10.1. Surplus trees and other wood materials owned by Douglas County may be sold without competitive bidding, provided that the sales price does not exceed the sum of \$5,000.

- 8.10.2. The value of such materials under the control of the Land Department shall be set by the Land Department. The Land Department Director shall have the authority to sign bills of sale or other documents that are necessary to transfer ownership.
- 8.10.3. The value of such materials under the control of the Park Department shall be set by the Park Department. The Park Department Director shall have the authority to sign bills of sale or other documents that are necessary to transfer ownership.
- 8.10.4. If the value of the trees or other wood materials is less than the cost the County would incur to dispose of them, ownership may be transferred without monetary consideration.
- 8.10.5. Sales pursuant to this exemption shall comply with the conditions set forth in Rule 8.6.

9. CLASSES OF CONTRACTS EXEMPT FROM BID SECURITY: Pursuant to ORS 279C.390, the LCRB exempts the following classes of contracts from bid security requirements unless the advertisement for bid, request for quotes or contract contains a notification that such is required:

- 9.1. Contracts for Public Improvements for which the contract price does not exceed \$50,000.
- 9.2. Contracts not involving a Public Improvement.

10. CLASSES OF CONTRACTS EXEMPT FROM PERFORMANCE AND PAYMENT BONDS: Pursuant to ORS 279C.390, the LCRB exempts contracts for Public Improvements for which the contract price does not exceed \$50,000 from performance and payment bond requirements unless the advertisement for bid, request for quotes or contract contains a provision that such bonds are required.

11. Reserved.

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12. PERSONAL SERVICE CONTRACTS: Pursuant to ORS 279A.055(2), the LCRB designates as personal services any contracts for services that require specialized technical, artistic, or professional skills or talent, including but not limited to contracts for the services of accountants, advertising consultants, appraisers, arbitrators, architects, artists, attorneys, auctioneers, audiologists, broadcasters, chiropractors, clergy, clinical social workers, computer programmers, concessionaires, dental hygienists, dentists, dieticians, educators, engineers, entertainers, entertainment agents, film makers, home care providers, land surveyors, landscape architects, marriage and family therapists, mediators, medical doctors, medical laboratories, meeting facilitators, naturopaths, nurses, occupational therapists, optometrists, pharmacists, photographers, physical therapists, psychologists, speakers, speech-language pathologists, and veterinarians.