

CHAPTER 2 - PROCUREMENT CONTRACTS FOR GOODS AND SERVICES

GENERALLY; EXCEPTIONS

2.10 General Procurement Contracts; Exceptions

Except as permitted by ORS 279B.065 through 279B.085, ORS 279A.200 through 279A.225, and those Contracts exempt under the Rules in this Chapter, all Contracts for the purchase of Goods and Services, not including personal/professional services, shall be based on either Competitive Sealed Proposals or Competitive Sealed Bidding.

If a contract or agreement is required for the goods and services, the Department shall submit the contract and an agenda-item cover sheet for the County's official contract review process and BOCC approval.

2.11 Small Procurement Contracts Not Exceeding \$10,000

- (1) The County may award a Public Contract without Competitive Process for Goods or Services that do not exceed \$10,000. Departments shall try to obtain at least three quotes, written or verbal. If verbal quotes are obtained, keep a written record of the sources and amounts of the quotes received.
- (2) A Procurement may not be artificially divided or fragmented so as to constitute a Small Procurement under this section.

2.12 Intermediate Procurement Contracts Not Exceeding \$50,000

- (1) The County may award a Public Contract without Competitive Sealed Bidding or Competitive Sealed Proposals for the procurement of Goods and Services that do not exceed \$50,000.
- (2) A Procurement may not be artificially divided or fragmented so as to constitute an Intermediate Procurement under this section.
- (3) The County shall seek Quotes from prospective contractors as follows:
 - (a) **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.
 - (b) **Request for Quotes.** Prior to the solicitation of a Quote, the County shall determine the specifications of the Good or Service and shall maintain written documentation of the specifications. The County shall utilize written requests for Quotes whenever reasonably practicable. The County must describe substantially the same specifications to each of the prospective contractors. Written request 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, (i.e. scoring on a points basis when taking into consideration more than just lowest price). Ranking may be done by the individual Department without utilizing a review committee, and shall be submitted to the Board of County Commissioners for final approval at a weekly public meeting. 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.
 - (c) **Number of Quotes; Record Required.** The County shall seek at least three Quotes, and keep a written record of the sources and amounts of the quotes received.
 - (d) If three Quotes are not reasonably available, the County shall make a written record of the effort made to obtain those Quotes.

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- (e) **Award.** If a Contract is awarded, the County shall award the Contract to the Offeror whose Quote or Proposal will best serve the interests of the County, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and Contractor responsibility under ORS 279B.110.
- (4) No Contractor may be awarded in the aggregate within the fiscal year Contracts in excess of \$150,000 without Competitive Sealed Bidding. In computing the aggregate under this subsection, awards under \$10,000 shall not be included.

2.13 Intermediate Procurement Contracts Not Exceeding \$150,000

- (1) The County may award a Public Contract without Competitive Sealed Bidding or Competitive Sealed Proposals for the procurement of Goods and Services that are greater than \$50,000 but do not exceed \$150,000.
- (2) A Procurement may not be artificially divided or fragmented so as to constitute an Intermediate Procurement under this section.
- (3) When conducting an Intermediate Procurement under this section, the County shall seek at least three (3) Quotes from prospective contractors as described in Section 2.206(3).
- (4) No Contractor may be awarded in the aggregate within the fiscal year Contracts in excess of \$150,000 without Competitive Sealed Bidding. In computing the aggregate under this subsection, awards under \$10,000 shall not be included.

2.14 Sole Source Procurements

The County may award a Public Contract without competition as a Sole-Source Procurement pursuant to the requirements of ORS 279B.075.

2.15 Requirements Contracts

- (1) The County may enter into Requirements Contracts whereby it is agreed to purchase requirements or an anticipated need at a predetermined price providing the following conditions are complied with:
 - (a) The Contract must be let by the Competitive Process, unless another exemption exists under these Rules or ORS Chapters 279A and 279B;
 - (b) The term of the Contract including renewals does not exceed five (5) years; and
 - (c) The Contract is subject to no less than thirty (30) days cancellation by the County.

2.16 Special Procurements

- (1) **Generally,** The County may award a Public Contract as a Special Procurement pursuant to the requirements of ORS 279B.085.
- (2) **Public Notice.** The County shall give public notice of (1) its request for approval of a Special Procurement and (2) the County's approval of a Special Procurement in a manner similar to public notice of Competitive Sealed Bids under ORS 279B.055(4) and CR 2.230. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement. The Department shall give such public notice of its request for approval of a Special Procurement at least five (5) business days prior to the approval of the Special Procurement by the Board. The County shall give such public notice of the approval of a Special Procurement at least fourteen (14) Days before award of the Contract.

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2.17 Emergency Procurements

- (1) **Emergency Declaration.** Pursuant to this Rule, the County may declare that Emergency circumstances exist that require prompt execution of a Public Contract for procurement of Goods and Services. The declaration shall be by a written declaration that describes the circumstances creating the Emergency and the anticipated harm from failure to enter into an Emergency Contract.
- (2) **Competition for Contracts.** The County shall ensure competition for an Emergency Contract as reasonable and appropriate under the Emergency circumstances, and may include written requests for offers, oral requests for offers or direct appointment without competition in cases of extreme necessity, in whatever Solicitation time periods the County considers reasonable in responding to the Emergency.
- (3) **Contract Award.** Any Contract awarded under this Rule must be awarded within 60 Days after declaration of the Emergency.
- (4) **Contract Scope.** Although no dollar limitation applies to Emergency Contracts, the scope of the Contract must be limited to work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.
- (5) **Contract Modification.** Emergency Contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional work necessary and appropriate for related Emergency circumstances.

2.18 State Cooperative Purchasing Procurements

The County may purchase Goods or Services from the Oregon Cooperative Program administered by the State of Oregon Department of Administrative Services without the Competitive Process.

2.19 Federal Program Contracts

The County may enter into a Contract without the Competitive Process under a federal program described in ORS 279A.180. [See **Federal procurement requirement illustration at end of this Chapter**]

2.20 Qualified Nonprofit Agencies Contracts

The County may enter into a Contract for Goods or Services with qualified non-profit agencies providing employment opportunities for disabled individuals pursuant to ORS 279.835 through 279.855 without following the source selection procedures set forth in either ORS 279A.200 through 279A.225 or 279B.050 through 279B.085.

2.21 State or Federal Exemptions

The County may enter into a Contract for the purchase of Goods or Services without the Competitive Process, where state or federal law or regulation allows an exemption from such competitive procurement.

2.22 Price Regulated Items or Services

The County may enter into a Contract for the purchase of Goods or Services without the Competitive Process, where the rate or price for the Goods or Services being purchased is established by Federal, State, or regulatory authority.

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EXEMPTIONS AND EXCLUSIONS FOR THE PROCUREMENT OF GOODS AND SERVICES BY TOPIC [Also see Exhibit A attached hereto for further exemptions]

2.23 Advertising Contracts

The County is exempt from the Competitive Process for the purchase of advertising. This includes, but is not limited to, space for advertising and legal notices in newspapers and other publications, and radio and television spots.

2.24 Copyrighted Materials

The County is exempt from the Competitive Process if there is only one known supplier for such Goods.

2.25 Equipment Maintenance, Repair and Overhaul

- (1) The County may let Contracts for equipment maintenance, repair or overhaul without the Competitive Process, subject to the following conditions:
 - (a) Service and/or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or
 - (b) Service and/or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source.

2.26 Election Supplies and Services

The County is exempt from the Competitive Process for the printing of official ballots, including sample and test ballots, ballot envelopes, and including polling place and drop site signs.

2.27 Gasoline, Diesel Fuel, Heating Oil, Lubricants, Asphalts and Rock

The County is exempt from formal competitive bidding requirements for the purchase of gasoline, diesel fuel, heating oil, lubricants, asphalt, rock and other road maintenance materials if the County seeks competitive quotes, makes its purchase from the least expensive source, and retains written justification for the purchase made.

2.28 Insurance Contracts

- (1) Contracts for insurance where either the annual or aggregate premium exceeds \$150,000 must by the Competitive Process or by one of the following:
 - (a) Agent of Record: The County may appoint a licensed insurance agent as Agent of Record to perform insurance services in connection with more than one insurance contract. The selection of the agent of record shall be done by the process prescribed for Personal Services Contracts by these Rules; or
 - (b) Specific Proposals for Insurance Contracts: The County may solicit proposals from licensed insurance agents for the purpose of acquiring specific insurance contracts.

2.29 Laboratory and Medical Supplies

The County is not required to purchase laboratory and medical supplies on the basis of a single award to the lowest responsible bidder, but instead may purchase different brands of the same item by awarding Contracts, after competitive bidding, to the lowest responsible bidder for each brand.

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2.30 Library and Reading Materials

The County may purchase library circulation materials without Competitive Process.

2.31 Office Supplies

The County is exempt from the Competitive Process for the purchase of office supplies.

2.32 Used Vehicles

- (1) The County is exempt from the Competitive Process for the purchase of used vehicles.
- (2) If the used vehicles are purchased through local vehicle dealers, vehicles from at least three (3) different vehicle dealers that meet the needs of the County will be considered before a specific vehicle is selected.
- (3) A mechanic from the County Road Department shall inspect each vehicle being considered to determine the condition of the vehicle.

PROCUREMENT SOURCE SELECTION SOLICITATION DOCUMENTS

2.33 Public Notice of Solicitation Documents

- (1) **Notice of Solicitation Documents.** The County shall provide public notice of every Solicitation Document by publishing the advertisement for offers in accordance with the requirements of ORS 279B.055(4) and 279B.060(4).
- (2) **Content of Advertisement.** All advertisements for offers shall set forth:
 - (a) Where, when, how, and for how long the Solicitation Document may be obtained;
 - (b) A general description of the Goods or Services to be acquired;
 - (c) The interval between the first date of notice of the Solicitation Document given in accordance with subsection 2(a) or (b) above and Closing, which shall not be less than fourteen (14) Days for an Invitation to Bid and twenty-one (21) Days for a Request for Proposals, unless the County determines that a shorter interval is in the public's interest;
 - (d) The date that Persons must file applications for prequalification if prequalification is a requirement and the class of Goods or Services is one for which Persons must be prequalified;
 - (e) The office where Contract terms, conditions and Specifications may be reviewed or obtained;
 - (f) The name, title and address of the individual authorized by the County to receive offers;
 - (g) The scheduled Opening; and
 - (h) Any other information the County deems appropriate.
- (3) **Notice of Addenda.** The County shall provide potential Offerors notice of any Addenda to a Solicitation Document in accordance with Section 2.235.

2.34 Addenda to Solicitation Document

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

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- (2) **Notice and Distribution.** The County shall notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda.
- (3) **Timelines; Extensions.** The County shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their offers.

CONTRACTOR SELECTION FOR COMPETITIVE SEALED PROPOSALS

2.35 Procedures for Competitive Range, Multistep Sealed Proposals

- (1) **Generally,** The County may procure Goods or Services, or Personal Services Contracts by employing any combination of the methods of Contractor selection as set forth in ORS 279B.060(6)(b). The County may employ the procedures set forth in Section 2.241 for Competitive Range, in Section 2.242 for Multistep Sealed Proposals.
- (2) **Solicitation Protest.** Prior to the initial Closing, the County shall provide an opportunity to protest the solicitation under ORS 279B.405 and Section 2.270.
- (3) **Award Protest.** The County shall provide an opportunity to protest its intent to award a Contract pursuant to ORS 279B.410 and Section 2.271.

2.36 Competitive Range, Discussions and Negotiations

- (1) **Competitive Range.** When the County solicitation process conducted pursuant to ORS 279B.060(6)(b) calls for the County to establish a Competitive Range at any stage in the Procurement process, it shall do so as follows:
 - (a) **Determining Competitive Range.**
 - (A) The County shall establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the County shall determine and rank the Proposers in the Competitive Range.
 - (B) The County may increase the number of Proposers in the Competitive Range if the County's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the most Advantageous Proposer. The County may decrease the number of Proposers in the initial Competitive Range only if the excluded Proposers have no reasonable chance to be the most advantageous Proposer.
 - (b) **Intent to Award; Discuss or Negotiate.** After determination of the Competitive Range, the County may either:
 - (A) Provide written notice to all Proposers in the Competitive Range of its intent to award the Contract to the highest-ranked Proposer in the Competitive Range.
 - (B) Engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them as set forth in Section (2) of this Rule and following such discussions and receipt and evaluation of revised Proposals, conduct negotiations as set forth in Section (3) of this Rule with the Proposers in the Competitive Range.
- (2) **Discussions; Revised Proposals.** If the County chooses to enter into discussions with and receive best and final offers (See Section (4) of this Rule), the County shall proceed as follows:

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- (a) Initiating Discussions. The County shall initiate oral or written discussions with all Proposers submitting Responsive Proposals or all Proposers in the Competitive Range (collectively "eligible Proposers") regarding their Proposals with respect to the provisions of the RFP that the County identified in the RFP as the subject of discussions. The County may conduct discussions for the following purposes:
 - (A) Informing eligible Proposers of deficiencies in their initial Proposals;
 - (B) Notifying eligible Proposers of parts of their Proposals for which the County would like additional information; or
 - (C) Otherwise allowing eligible Proposers to develop revised Proposals that will allow the County to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.
- (b) Conducting Discussions. The County may conduct discussions with each eligible Proposer necessary to fulfill the purposes of this section (2), but need not conduct the same amount of discussions with each eligible Proposer. The County may terminate discussions with any eligible Proposer at any time. However, the County shall offer all eligible Proposers the same opportunity to discuss their submitted Proposals with the County before the County notifies eligible Proposers of the date and time pursuant to section (4) that best and final Proposals will be due.
 - (A) In conducting discussions, the County may adjust the evaluation of a Proposal as a result of a discussion under this Section. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the scope of the Request for Proposals.
 - (B) At any time during the time allowed for discussions, the County may:
 - (i) Continue discussions with a particular eligible Proposer;
 - (ii) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or
 - (iii) Conclude discussions with all remaining eligible Proposers and provide notice pursuant to section (4) of this Rule to the eligible Proposers requesting best and final offers.
- (3) Negotiations.
 - (a) Initiating Negotiations. The County may commence serial negotiations with the highest-ranked eligible Proposers or commence simultaneous negotiations with all eligible Proposers as follows:
 - (A) After initial determination of which Proposals are Responsive; or
 - (B) After initial determination of the Competitive Range in accordance with section (1) of this Rule; or
 - (C) After conclusion of discussions with all eligible Proposers and evaluation of revised Proposals (See Section (2) of this Rule).
 - (b) Conducting Negotiations.
 - (A) Scope. The County may negotiate:
 - (i) The Statement of Work;

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- (ii) The Contract Price as it is affected by negotiating the Statement of Work; and
 - (iii) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Request for Proposals or Addenda thereto.
 - (B) Terminating Negotiations. At any time during discussions or negotiations that the County conducts in accordance with Sections (2) or (3) of this Rule, the County may terminate discussions or negotiations with the highest-ranked Proposer, or the Proposer with whom it is currently discussing or negotiating, if the County reasonably believes that:
 - (i) The Proposer is not discussing or negotiating in good faith; or
 - (ii) Further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.
 - (c) Continuing Serial Negotiations. If the County is conducting serial negotiations and the County terminates negotiations with a Proposer in accordance with paragraph 3(b)(B) of this Rule, the County may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in section (3) of this Rule until the County has either:
 - (A) Determined to award the Contract to the Proposer with whom it is currently discussing or negotiating; or
 - (B) Completed one round of discussions or negotiations with all Proposers in the Competitive Range, unless the County provided for more than one round of discussions or negotiations in the Request for Proposals, in which case the County has completed all rounds of discussions or negotiations.
 - (d) Competitive Simultaneous Negotiations. If the County chooses to conduct competitive negotiations, the County may negotiate simultaneously with competing Proposers. The County may disclose other Proposer's Proposals or the substance of negotiations with other Proposers only if the County notifies all of the Proposers with whom the County will engage in negotiations of the County's intent to disclose before engaging in negotiations with any Proposer.
 - (e) Any oral modification of a Proposal resulting from negotiations under this Section (3) shall be reduced to writing by the Proposer.
- (4) Best and Final Offers. If best and final offers are required, the County shall establish a common date and time by which Proposers must submit best and final offers. Best and final offers shall be submitted only once; provided, however, the County may make a written determination that it is in the County's best interest to conduct additional discussions, negotiations or change the County's requirements and require another submission of best and final offers. Proposers shall also be informed if they do not submit notice of withdrawal or another best and final offer, their immediately previous offer will be construed as their best and final offer. The County shall conduct evaluations. The County shall not modify evaluation factors or their relative importance after the date and time that best and final offers are due.

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2.37 Multistep Sealed Proposals

- (1) Generally, The County may procure Goods or Services by using Multistep Sealed Proposals pursuant to ORS 279.060(6)(b)(G).
- (2) Phased Process. Multistep Sealed Proposals is a phased Procurement process that seeks necessary information or un-priced technical Proposals in the initial phase and invites Proposers who submitted technically qualified Proposals in the initial phase to submit competitive sealed price Proposals on the technical Proposers in the final phase. The Contract shall be awarded to the Responsible Proposer submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the final phase. If time is a factor, the County may require Proposers to submit a separate sealed price Proposal during the initial phase to be opened after the technical evaluation.
- (3) Public Notice. Whenever Multistep Sealed Proposals are used, public notice for the first phase shall be given in accordance with Section 2.230. Public notice is not required for the subsequent phases. However, the County shall give notice of the subsequent phases to all Proposers.
- (4) Procedure for Phase One of Multistep Sealed Proposals.
 - (a) Form. Multistep Sealed Proposals shall be initiated by the issuance of a Request for Proposal in the form and manner required for competitive sealed Proposals except as provided in this Rule. In addition to the requirements set forth in Section 2.230(2), the multistep Request for Proposal shall state:
 - (A) That un-priced technical Proposals are requested;
 - (B) Whether price Proposals are to be submitted at the same time as un-priced technical Proposals; that if they are, such price Proposals shall be submitted in a separate sealed envelope;
 - (C) That the solicitation is a Multistep Sealed Proposal Procurement, and that priced Proposals will be considered only in the subsequent phases from those Proposers whose un-priced technical Proposals are found qualified in the first phase;
 - (D) The criteria to be used in the evaluation of un-priced technical Proposals;
 - (E) That the County, to the extent that it finds necessary, may conduct oral or written discussions of the un-priced technical Proposals;
 - (F) That the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposal; and
 - (G) Whether Proposers excluded from subsequent phases have a right to protest the exclusion. Such information can be given or changed through Addenda.
 - (b) Addenda to the Request for Proposal. After receipt of un-priced technical Proposals, Addenda to the Request for Proposal shall be distributed only to Proposers who submitted un-priced technical Proposals.
 - (c) Receipt and Handling of Un-Priced Technical Proposals. Un-priced technical Proposals need not be opened publicly.
 - (d) Evaluation of Un-Priced Technical Proposals. Un-priced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for Proposal. Un-priced technical Proposals shall be categorized as:

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- (A) Qualified;
 - (B) Potentially qualified; that is, reasonably susceptible of being made qualified;
or
 - (C) Unqualified. The County shall record in writing the basis for determining a Proposal unqualified and make it part of the Procurement file. The County may initiate phase two of the procedure if, in the County's opinion, there are sufficient qualified or potentially qualified un-priced technical Proposals to assure effective price competition in the second phase without technical discussions. If the County finds that such is not the case, the County shall issue an Addenda to the Request for Proposal or engage in technical discussions as set forth in subsection 4(e).
- (e) Discussion of Un-Priced Technical Proposals. The County may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified technical Proposal. During the course of such discussions, the County shall not disclose any information derived from one un-priced technical Proposal to any other Proposer. Once discussions are begun, any Proposer who has not been notified that its Proposal has been finally found unqualified may submit supplemental information amending its technical Proposal at any time until the Closing date established by the County. Such submission may be made at the request of the County or upon the Proposer's own initiative.
- (f) Notice of Unqualified Un-Priced Technical Proposal. When the County determines a Proposer's un-priced technical Proposal to be unqualified, such Proposer shall not be afforded an additional opportunity to supplement its technical Proposals.
- (5) Procedure for Subsequent Phases.
- (a) Initiation. Upon the completion of phase one, the County shall either:
 - (A) Open price Proposals submitted in phase one (if price Proposals were required to be submitted) from Proposers whose un-priced technical Proposals were found to be qualified; or
 - (B) If price Proposals have not been submitted, technical discussions have been held, or Addenda to the Request for Proposals have been issued, invite each qualified Proposer to submit price Proposals.
 - (b) Conduct. Phase two shall be conducted as any other competitive sealed Proposal solicitation except:
 - (A) As specifically set forth in this Rule; and
 - (B) No public notice need be given of the request to submit price Proposals because such notice was previously given.

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CONTRACTOR SELECTION FOR COMPETITIVE SEALED BIDDING

2.38 Multistep Sealed Bids

- (1) Generally, The County may procure Goods or Services, or Personal Services by using Multistep Sealed Bids pursuant to ORS 279B.055(12).
- (2) Phased Process. Multistep bidding is a phased process that seeks necessary information or unpriced technical Bids in the initial phase and regular competitive sealed bidding, inviting Bidders who submitted technically eligible Bids in the initial phase to submit competitive sealed price Bids on the technical Bids in the final phase. The Contract shall be awarded to the Lowest Responsible Bidder. If time is a factor, the County may require Bidders to submit a separate sealed price Bid during the initial phase to be opened after the technical evaluation.
- (3) Public Notice. Whenever Multistep Sealed Bids are used, public notice for the first phase shall be given in accordance with Section 2.230. Public notice is not required for the subsequent phases. However, the County shall give notice of subsequent phases to all Bidders.
- (4) Procedures Generally. The County shall employ the procedures set forth in this Rule for multistep bidding:
 - (a) Solicitation Protest. Prior to the Closing of phase one, the County shall provide an opportunity to protest the solicitation and under ORS 279B.405 and Section 2.270.
 - (b) Award Protest. The County shall provide an opportunity to protest its intent to award a Contract pursuant to ORS 279B.410 and Section 2.271.
- (5) Procedure for Phase One of Multistep Sealed Bids.
 - (a) Form. Multistep Sealed Bidding shall be initiated by the issuance of an Invitation to Bid in the form and manner required for competitive sealed Bids except as hereinafter provided. In addition to the requirements set forth in Section 2.230(2), the multistep Invitation to Bid shall state:
 - (A) That un-priced technical Bids are requested;
 - (B) Whether price Bids are to be submitted at the same time as un-priced technical Bids; if they are, that such price Bids shall be submitted in a separate sealed envelope;
 - (C) That the solicitation is a Multistep Sealed Bid Procurement, and priced Bids will be considered only in the second phase and only from those Bidders whose un-priced technical Bids are found eligible in the first phase;
 - (D) The criteria to be used in the evaluation of un-priced technical Bids;
 - (E) That the County, to the extent that it finds necessary, may conduct oral or written discussions for the purposes of clarification of the un-priced technical Bids;
 - (F) That the Goods or Services being procured shall be furnished generally in accordance with the Bidder's technical Bid as found to be finally eligible and shall meet the requirements of the Invitation to Bid; and
 - (G) Whether Bidders excluded from subsequent phases have a right to protest the exclusion before the notice of intent to award. Such information can be given or changed by Addenda.

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- (b) Addenda to the Invitation to Bid. After receipt of un-priced technical Bids, Addenda to the Invitation to Bid shall be distributed only to Bidders who submitted un-priced technical Bids.
 - (c) Receipt and Handling of Un-Priced Technical Bids. Un-priced technical Bids need not be opened publicly.
 - (d) Evaluation of Un-Priced Technical Bids. Un-priced technical Bids submitted by Bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation to Bid. Un-priced technical Bids shall be categorized as:
 - (A) Eligible;
 - (B) Potentially eligible; that is, reasonably susceptible of being made eligible; or
 - (C) Ineligible. The County shall record in writing the basis for determining a Bid ineligible and make it part of the Procurement file. The County may initiate phase two of the procedure if, in the County's opinion, there are sufficient eligible un-priced technical Bids to assure effective price competition in the second phase without technical discussions. If the County finds that such is not the case, the County may issue an Addenda to the Invitation to Bid or engage in technical discussions as set forth in subsection (5)(e) of this Rule.
 - (e) Discussion of Un-Priced Technical Bids. The County may seek clarification of a technical Bid by any eligible, or potentially eligible Bidder. During the course of such discussions, the County shall not disclose any information derived from one un-priced technical Bid to any other Bidder. Once discussions are begun, any Bidder who has not been notified that its Bid has been finally found ineligible may submit supplemental information amending its technical Bid at any time until the Closing of the final step established by the County. Such submission may be made at the request of the County or upon the Bidder's own initiative.
 - (f) Notice of Ineligible Un-Priced Technical Bid. When the County determines a Bidder's un-priced technical Bid to be ineligible, such Bidder shall not be afforded an additional opportunity to supplement its technical Bids.
- (6) Procedure for Phase Two of Multistep Sealed Bids.
- (a) Initiation. Upon the completion of phase one, the County shall either:
 - (A) Open price Bids submitted in phase one (if price Bids were required to be submitted) from Bidders whose un-priced technical Bids were found to be eligible; or
 - (B) If price Bids have not been submitted, technical discussions have been held, or Addenda to the Invitation to Bid have been issued, invite each eligible Bidder to submit a price Bid.
 - (b) Conduct. Phase Two shall be conducted as any other competitive sealed Bid Procurement except:
 - (A) As specifically set forth in this Rule; and
 - (B) No public notice need be given of this invitation to submit price Bids because such notice was previously given.

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AWARD OF CONTRACT

2.39 Notice of Intent to Award

- (1) The County shall provide written notice of its intent to award to all Bidders and Proposers pursuant to ORS 279B.135 at least five (5) business days before the award of a Contract, unless the County determines that circumstances require prompt execution of the Contract, in which case the County may provide a shorter notice period. The County shall document the specific reasons for the shorter notice period in the Procurement file.
- (2) Notice shall be effective upon mailing of the intent to award.

2.40 Offer Evaluation and Award

- (1) County Evaluation. The County shall evaluate offers as set forth in the Solicitation Document, pursuant to ORS 279B.055(6)(a) and 279B.060(6)(b), and in accordance with applicable law.
- (2) Offeror Disqualification. The Board may disqualify any Offeror upon the making written findings in ORS 279B.110.
 - (a) Award When Offers Identical. When the County receives offers identical in price, fitness, availability and quality, and chooses to award a Contract, the County shall award the Contract based on the following order of precedence:
 - (A) The Agency shall award the Contract to the Offeror among those submitting identical offers that is offering Goods or Services or Personal Services that have been manufactured or produced in Oregon; or
 - (B) If two or more Offerors submit identical offers, and both offer Goods or Services or Personal Services manufactured or produced in Oregon or none of the identical offers of Goods or Services or Personal Services manufactured or produced 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 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:
 - (A) Bids received in response to an Invitation to Bid are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the Goods or Services or Personal Services described in the Invitation to Bid at the same price;
 - (B) Proposals received in response to a Request for Proposals are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposal; or
 - (C) Proposals received in response to a Special Procurement conducted pursuant to ORS 279B.085 are identical in price, fitness, availability and quality if, after completing the Contracting procedure approved by the Board, the County determines, in writing, that two or more Proposals are equally advantageous to the County.
- (3) Clarification of Bids. After Bid Opening, the County may conduct discussions with apparent Responsive Bidders for the purpose of clarification to assure full understanding of the Bid. All Bids, in the County's sole discretion, needing clarification shall be accorded such an opportunity. The County shall document clarification of any Bidder's Bid in the Procurement file.

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

PROTESTS

2.41 Protests and Judicial Review of Solicitations

- (1) Purpose.
 - (a) A prospective Offeror may protest the Procurement process or the Solicitation Document for a Contract solicited under ORS 279B.055, 279B.060 and 279B.085 as set forth in ORS 279B.405(2)(a). Pursuant to ORS 279B.405(3), before seeking judicial review, a prospective Offeror must file a written protest with the County and exhaust all administrative remedies.
 - (b) Contract-Specific Special Procurements. Notwithstanding section 1(a) of this Rule, a Person may not protest, challenge, or review a Contract-Specific Special Procurement except upon the occurrence of the conditions set forth ORS 279B.405(2)(b).
- (2) Delivery. Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a written protest to the County not less than seven (7) days prior to Closing.
- (3) Content of Protest. In addition to the information required by ORS 279B.405(4), a prospective Offeror's written protest shall include a statement of the desired changes to the Procurement process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.
- (4) County Response. The County shall not consider a Prospective Offeror's solicitation protest submitted after the timeline established for submitting such protest under this Rule. The County shall consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). The County shall issue a written disposition of the protest in accordance with the timeline set forth in ORS 279B.405(6). If the County upholds the protest, in whole or in part, the County may in its sole discretion either issue an Addenda reflecting its disposition or cancel the Procurement or solicitation.
- (5) Extension of Closing. If the County receives a protest from a prospective Offeror in accordance with this Rule, the County may extend Closing if the County determines an extension is necessary to consider and respond to the protest.
- (6) Clarification. Prior to the deadline for submitting a protest, a prospective Offeror may request that the County clarify any provision of the Solicitation Document. The County's clarification to an Offeror, whether orally or in writing, does not change the Solicitation Document and is not binding on the County unless the County amends the Solicitation Document by Addenda.
- (7) Judicial Review. Judicial review of the County's decision relating to a solicitation protest shall be in accordance with ORS 279B.405.

2.42 Protests and Judicial Review of Contract Award

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

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- (2) Delivery. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a written protest to the County within seven (7) business days after issuance of the notice of intent to award the Contract for bids and proposals, or seven (7) business days after award of the Contract for Quotes.
- (3) Content of Protest. An Offeror's written protest shall specify the grounds for the protest to be considered by the County pursuant to ORS 279B.410(2).
- (4) County Response. The County shall not consider an Offeror's Contract Award protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the Solicitation Document. The County shall issue a written disposition of the protest in a timely manner as set forth in ORS 279B.410(4). If the County upholds the protest, in whole or in part, the County may in its sole discretion either award the Contract to the successful protestor or cancel the Procurement or solicitation.
- (5) Judicial Review. Judicial review of the County's decision relating to a Contract Award protest shall be in accordance with ORS 279B.415.

2.43 Protests and Judicial Review of Special Procurements

- (1) Purpose. An affected person may protest the approval of or request for approval of a Special Procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the approval or request for approval of a Special Procurement, an affected person must file a written protest with the County and exhaust all administrative remedies.
- (2) Delivery.
 - (a) Protest of Request for Approval of a Special Procurement. An affected person must deliver a written protest to the County within fourteen (14) days after the first date of public notice of a proposed Special Procurement, unless a different protest period is provided in the public notice of the proposed Special Procurement.
 - (b) Protest of Approval of a Special Procurement. Notwithstanding the requirements for filing a writ of review under ORS Chapter 34 pursuant to ORS 279B.400(4)(a), an Affected Person must deliver a written protest to the County within ten (10) days after the first date of public notice of the approval of a Special Procurement by the County, unless a different protest period is provided in the public notice of the approval of a Special Procurement.
- (3) Content of Protest. The written protest must include:
 - (a) A detailed statement of the legal and factual grounds for the protest;
 - (b) A description of the resulting harm to the Affected Person; and
 - (c) The relief requested.
- (4) The County's Response.
 - (a) Protest of Request for Approval of a Special Procurement: The County shall not consider an Affected Person's protest of the County's request for approval of a Special Procurement submitted after the timeline established for submitting such protest under this Rule or such different time period as may be provided in the public notice of the request for approval of a proposed Special Procurement. The County shall issue a written disposition of the protest in a timely manner. If the County upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special Procurement, or deny the request for approval of the Special Procurement.

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- (b) Protest of Approval of a Special Procurement: The County shall not consider an affected person's protest of the approval of a Special Procurement submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the public notice of the approval of a Special Procurement. The County shall issue a written disposition of the protest in a timely manner. If the County upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special Procurement, or revoke the approval of the Special Procurement.
- (5) Judicial Review. An Affected Person may not seek judicial review of the County's denial of a protest of a request for approval of a Special Procurement. An affected person may seek judicial review of the County's decision relating to a protest of the approval of a Special Procurement in accordance with ORS 279B.400.

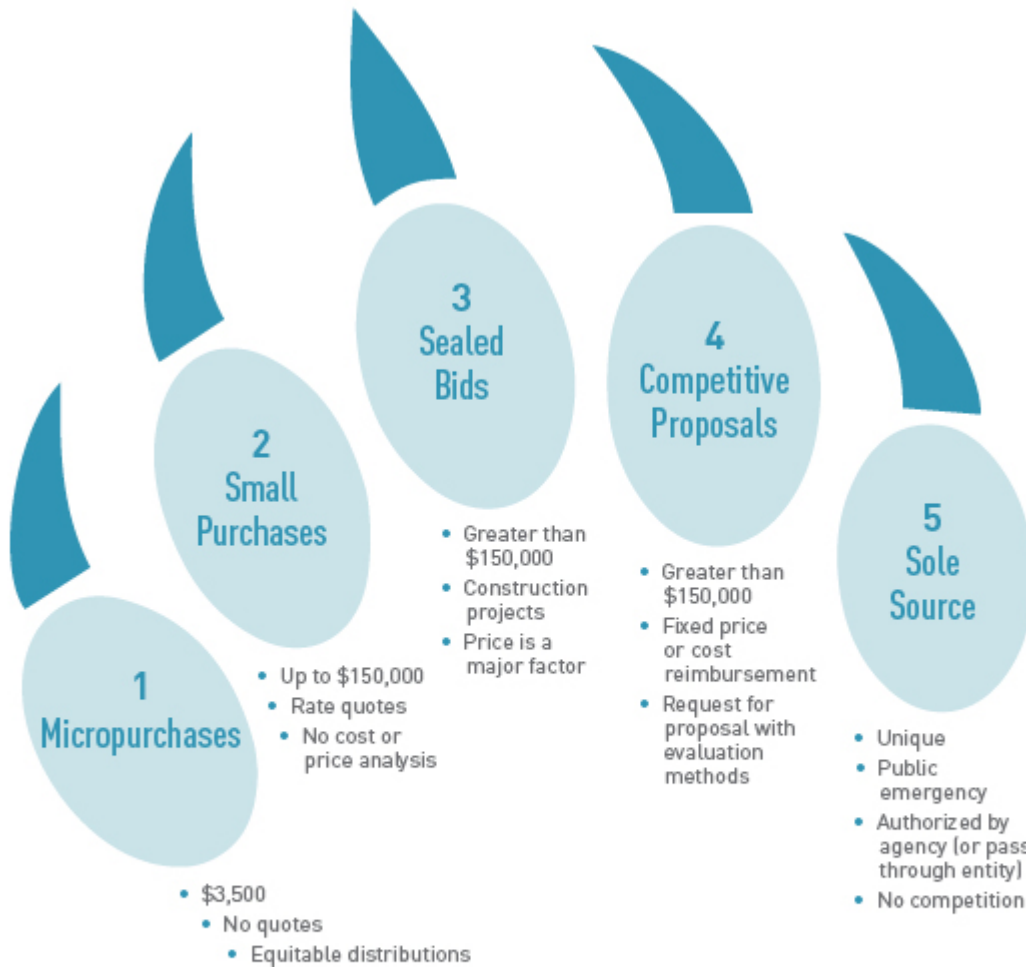
Federal Procurement Requirements Illustration [2.19]

One policy requirement for organizations receiving federal awards is compliance with the new procurement requirements, which was covered in greater detail in a May 2016 Insight article ([“Uniform Guidance in Focus: Procurement”](#)).

As a reminder, the uniform guidance sets specific requirements for each of five types of procurement: micro-purchases, small purchases, sealed bids, competitive proposals, and sole-source items. Those are summarized in the following “procurement claw”:

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Source: "Frequently Asked Questions for the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR 200," published by the Council on Financial Assistance Reform (COFAR).