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LANE TRANSIT DISTRICT SPECIAL BOARD MEETING/WORK SESSION

Monday, November 8, 2010
5:30 p.m.

LTD Board Room
3500 E. 17th Avenue, Eugene
(off Glenwood Boulevard)

A G E N D A

Page No.

I. CALL TO ORDER

II. ROLL CALL

Kortge _____ Towery _____ Necker _____ Evans _____

Dubick _____ Eyster _____ Gillespie _____

The following agenda items will begin at 5:30 p.m.

III. PRELIMINARY REMARKS BY BOARD PRESIDENT

IV. ANNOUNCEMENTS AND ADDITIONS TO AGENDA 4

V. BOARD CALENDARS (5 minutes) 5

VI. WORK SESSION

A. Investing in Transit, presented by Utah Transit Authority CEO John English (45-60 minutes) 6

B. West Eugene EmX Extension Update (if time permits) 7

The following agenda items will begin at 6:30 p.m.

VII. EMPLOYEES OF THE MONTHS – November and December 2010 (10 minutes) 8

VIII. AUDIENCE PARTICIPATION

◆ *Public Comment Note: This part of the agenda is reserved for members of the public to address the Board on any issue. The person speaking is requested to sign-in on the Audience Participation form for submittal to the Clerk of the Board. When your name is called, please step up to the podium and give your name and address for the audio record. If you are unable to utilize the podium, you may address the Board from your seat.*

◆ *Citizens testifying are asked to limit testimony to three minutes.*

IV. ITEMS FOR ACTION AT THIS MEETING

- | | | |
|----|---|-----------|
| A. | Consent Calendar (1 minute) | 10 |
| | 1. Minutes of the June 16, 2010, Regular Board Meeting (Page 11) | |
| | 2. Minutes of the September 13, 2010, Special Board Meeting (Page 21) | |
| | 3. Budget Committee Nominations (Page 24) | |
| B. | Purchasing Policy Rules (5 minutes) | 28/
57 |

V. ITEMS FOR INFORMATION AT THIS MEETING

- | | | |
|----|---|----|
| A. | Board Member Reports (10 minutes) | 31 |
| | 1. Meetings Held or Attended | |
| | a. Finance Committee (October 12) | |
| | b. Human Resources Committee (October 12) | |
| | c. Long-Range Transit Plan Project Advisory Committee (October 13) | |
| | d. Metropolitan Policy Committee (October 14 and November 4) | |
| | e. Metropolitan Planning Organization's Citizen Advisory Committee (October 21) | |
| | f. Joint Locally Preferred Alternative Committee (October 29) | |
| | g. West Eugene EmX Extension Corridor Committee (November 3) | |
| | h. EmX Steering Committee (November 3) | |
| | i. Executive Search Committee | |
| | 2. Other Activities | |
| | a. APTA Board of Directors Executive Committee (October 3) | |
| | 3. No Meeting/No Report | |
| | a. Lane Council of Governments Board of Directors | |
| | b. Springfield Stakeholder Advisory Committee | |
| | d. Department Advisory Committee for the Eugene Transportation Plan | |
| | e. Lane County Area Commission on Transportation | |
| | f. Service Committee | |
| B. | Board Committee Assignments (5 minutes) | 35 |
| C. | FTA Drug and Alcohol Audit Compliance Letter (5 minutes) | 38 |
| D. | EmX Fare Analysis (10 minutes) | 41 |

	<u>Page No.</u>
E. Monthly Financial Report—October 2010 (10 minutes)	43
F. Monthly Department Reports (respond if questions)	44
G. Monthly Performance Reports (respond if questions)	51
VI. EXECUTIVE (NON-PUBLIC) SESSION PURSUANT TO ORS 192.660(2)(d), to conduct deliberations with persons designated by the governing body to carry on labor negotiations (45 minutes)	54
VII. ITEMS FOR ACTION/INFORMATION AT A FUTURE MEETING	55
A. Board Strategic Planning Work Session (December 10)	
B. Independent Audit Report (December)	
C. Accessible Transportation Committee Membership Approval (December)	
D. FY 2009-10 Annual Performance Report (December)	
E. LTD on Facebook (December)	
F. Executive Session: Labor Negotiations (December)	
G. Gateway EmX Update (including the roundabout) (December)	
H. Veneta Park & Ride (December)	
I. Public Hearing and Approval of Lane Coordinated Human Services Transportation Plan (January)	
J. Joint Meeting with Lane County Board of Commissioners (January)	
K. Joint Meeting with Eugene City Council (January or February)	
VIII. ADDENDUM: Updated Purchasing Policy and Rules	57
IX. ADJOURNMENT	

The facility used for this meeting is wheelchair accessible. If you require any special physical or language accommodations, including alternative formats of printed materials, please contact LTD's Administration office as far in advance of the meeting as possible and no later than 48 hours prior to the meeting. To request these arrangements, please call 682-6100 (voice) or 1-800-735-2900 (TTY, through Oregon Relay, for persons with hearing impairments).

AGENDA ITEM SUMMARY

DATE OF MEETING: November 8, 2010

ITEM TITLE: ANNOUNCEMENTS AND ADDITIONS TO AGENDA

PREPARED BY: Jeanne Schapper, Administrative Services Manager/Clerk of the Board

ACTION REQUESTED: None

BACKGROUND: This agenda item provides a formal opportunity for Board members to make announcements or to suggest topics for current or future Board meetings.

ATTACHMENT: None

PROPOSED MOTION: None

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AGENDA ITEM SUMMARY

- DATE OF MEETING:** November 8, 2010
- ITEM TITLE:** BOARD CALENDARS
- PREPARED BY:** Jeanne Schapper, Administrative Services Manager/Clerk of the Board
- ACTION REQUESTED:** Discussion of Board member participation at LTD, and community events and activities.
- BACKGROUND:** Board members are asked to coordinate the Board Activity Calendars with their personal calendars for discussion at each Board meeting. Updated Board Activity Calendars are included with this packet for Board members.
- At this time, staff would like to schedule joint meetings with the **Eugene City Council** (ECC) and the **Board of County Commissioners** (BCC) during January and early February 2011. The ECC generally meets on the 2nd through 5th Mondays of each month at 5:30 p.m., and at 12 noon on the 2nd through 5th Wednesdays; and the BCC generally meets on Tuesdays and Wednesdays, 9 a.m. – 5 p.m.
- Please contact Jeanne Schapper with the dates/times during the months of January and early February that you would be available to attend these meetings.
- In addition, please let her know of any changes in your availability for LTD-related meetings and events, or to provide your fall and winter vacation dates.
- ATTACHMENT:** Board activity calendars are included separately for Board members.
- PROPOSED MOTION:** None

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AGENDA ITEM SUMMARY

DATE OF MEETING: November 8, 2010

ITEM TITLE: INVESTING IN TRANSIT

PREPARED BY: Andy Vobora, Director of Service Planning, Accessibility, and Marketing

ACTION REQUESTED: None. Information Only.

BACKGROUND: Utah Transit Authority (UTA) CEO John English will be the featured speaker at the *Let's Talk Transit* Town Hall being held at the Eugene Hilton on November 9. Mr. English will be discussing how UTA has been able to develop a vision for transportation in the Salt Lake City region. The Utah vision has been supported by a wide array of groups, including strong support from the business community and a general public that supported a tax initiative to fund expanded rail and bus service in the region.

The role that transit plays in building a strong community is a main theme of the Town Hall meeting, and Mr. English will be at the November 8 special meeting to delve into a deeper discussion with the LTD Board of Directors about the successes and lessons learned in Utah.

ATTACHMENTS: None

PROPOSED MOTION: None

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AGENDA ITEM SUMMARY

DATE OF MEETING: November 8, 2010

ITEM TITLE: WEST EUGENE EmX EXTENSION UPDATE

PREPARED BY: Tom Schwetz, Director of Planning and Development

ACTION REQUESTED: None. Information only.

BACKGROUND: Staff will provide an update on the West Eugene EmX Extension project including the initiation of the selection process for a Locally Preferred Alternative (LPA) and community outreach efforts. Staff also would like to engage the Board in a discussion regarding options of how project development might proceed in light of suggestions to delay the selection of an LPA.

ATTACHMENTS: None.

PROPOSED MOTION: None.

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AGENDA ITEM SUMMARY

DATE OF MEETING: November 8, 2010

ITEM TITLE: NOVEMBER AND DECEMBER EMPLOYEES OF THE MONTHS

PREPARED BY: Jeanne Schapper, Administrative Services Manager/Clerk of the Board

BACKGROUND: **November 2010 Employee of the Month:** Bus Operator Mary York was chosen as the November 2010 Employee of the Month. Ms. York has been with LTD since January 1997. Ms. York has received a 10-year Safe Driving Award and two monthly value awards; has served as a transportation coordinator; and, only six months after coming to work for LTD, received the Employee of the Month Award in June 1997.

Ms. York was nominated for this award by a coworker who was amazed by the calm manner in which she dealt with a potentially dangerous situation. While driving her route recently, she stopped the bus to assist a young child who was playing unattended next to a busy Eugene intersection. Mary secured the child and stayed until the father, who came from a nearby house, was able to take control of the child. The Eugene Police Department commended Ms. York for her actions.

When asked to comment on Mary's selection as the Employee of the Month, Transit Operations Field Supervisor David Thulstrup said:

During her time at the District, Mary has made a favorable impression on nearly everyone she meets. She is a caring individual, and her co-workers' and passengers' well being is always a main concern. Mary receives Employee of the Month nominations on a regular basis, yet one of her proudest moments since coming to LTD has been achieving Grandmother status. I congratulate Mary. She really deserves this special honor.

December 2010 Employee of the Month: The December Employees of the Month are all five of the LTD Inside Cleaners: Joyce Allen, Ana Banks, Mary Braun, Carolyn Hodges, and Sherry Tillett. All five began their LTD careers as cleaners with Joyce being hired in May 1998, Ana in August 1994, Mary in December 1990, Carolyn in March 1989, and Sherry in November of 1984. They were nominated for this award by a co-worker who appreciates the job they do keeping the buses clean and dealing with things that most of us take for granted. The co-worker stated that the cleaners are always cheerful and address special issues when brought to their attention.

When asked to comment on Joyce, Ana, Mary, Carolyn, and Sherry's selection as the Employees of the Month, Maintenance Supervisor Aaron Melnychuk said:

I am not surprised that Carolyn, Sherry, Mary, Ana, and Joyce were all nominated for this award. They are a group of hard working individuals who work very well together as a team, cleaning and detailing District cars and buses. They work in an environment that can be unforgiving, and yet they do so in a safe and professional manner. Together, they possess the true spirit of LTD's core values.

Congratulations to Mary York on being selected as the November Employee of the Month; and to Joyce Allen, Ana Banks, Mary Braun, Carolyn Hodges, and Sherry Tillett on being selected as the December Employees of the Month.

AWARDS:

Mary, Joyce, Ana, Mary, Carolyn, and Sherry will attend the November 8, 2010, meeting to be introduced to the Board and to receive their awards.

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AGENDA ITEM SUMMARY

DATE OF MEETING: November 8, 2010

ITEM TITLE: CONSENT CALENDAR

PREPARED BY: Jeanne Schapper, Administrative Services Manager/Clerk of the Board

ACTION REQUESTED: Approval of Consent Calendar Items

BACKGROUND: Issues that can be explained clearly in the written materials for each meeting, and that are not expected to draw public testimony or controversy, are included in the Consent Calendar for approval as a group. Board members can remove any items from the Consent Calendar for discussion before the Consent Calendar is approved each month.

The Consent Calendar for November 8, 2010:

1. Approval of the Minutes of the June 16, 2010, Regular Board Meeting
2. Approval of the Minutes of the September 13, 2010, Special Board Meeting
3. Budget Committee Nominations: Peter Davidson and Jon Hinds

ATTACHMENTS:

1. Minutes of the June 16, 2010, Regular Board Meeting
2. Minutes of the September 13, 2010, Special Board Meeting
3. Forms nominating Peter Davidson and Jon Hinds to new three-year terms on the LTD Budget Committee

PROPOSED MOTION: I move that the Board adopt the following resolution:

LTD Resolution No. 2010-033: It is hereby resolved that the Consent Calendar for November 8, 2010, is approved as presented.

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MINUTES OF DIRECTORS MEETING
LANE TRANSIT DISTRICT
REGULAR BOARD MEETING/WORK SESSION

Wednesday, June 16, 2010

Pursuant to notice given to *The Register-Guard* for publication on June 10, 2010, and distributed to persons on the mailing list of the District, the Board of Directors of the Lane Transit District held a regular Board meeting/work session on Wednesday, June 16, 2010, beginning at 5:30 p.m., in the LTD Board Room at 3500 East 17th Avenue, Eugene.

Present: Mike Eyster, President
 Greg Evans, Vice President
 Dean Kortge, Secretary
 Ed Necker, Treasurer
 Michael Dubick
 Doris Towery
 Gary Gillespie
 Mark Pangborn, General Manager
 Jeanne Schapper, Clerk of the Board
 Wade Hicks, Minutes Recorder

CALL TO ORDER/ROLL CALL: Mr. Eyster convened the meeting and called roll at 5:31 p.m.

PRELIMINARY REMARKS BY BOARD PRESIDENT: Mr. Eyster noted that he had received a letter from the Government Finance Officers Association (GFOA) notifying LTD that its Comprehensive Annual Financial Report for FY 2009-10 had qualified for a Certificate of Achievement for Excellence in Financial Reporting. Mr. Eyster went on to say that the Certificate was the highest form of recognition in governmental accounting and financial reporting and that its attainment represented a significant accomplishment by a government agency and its management. Mr. Eyster further reported that an award of Financial Reporting Achievement also had been awarded to LTD's Chief Accountant/Internal Auditor Carol James by the GFAO.

Mr. Pangborn added that LTD and its Planning Department had received the University of Oregon's (UO) Bill Wilkinson Award for transportation planning. He added that the District had received the award for its efforts to provide various transportation planning internships to UO students.

ANNOUNCEMENTS AND ADDITIONS TO THE AGENDA: Mr. Eyster noted an addition to the meeting agenda: the Board would be reconvened into open session after its executive session meeting in order to discuss the general manager search process.

BOARD CALENDARS: Mr. Pangborn pointed out that on Wednesday, June 23, the Board would hold a special meeting to approve the elimination of several alignment options regarding the West Eugene EmX Extension (WEEE) project. Mr. Pangborn added that the WEEE Advisory Committee had met on June 15 and would present its recommendations at the June 23 meeting.

Mr. Pangborn reported that the WEEE Advisory Committee also planned to present its recommendations to the Eugene City Council.

Mr. Pangborn stated that services would be discontinued on certain holidays during FY 2010-11, and discontinuing service on July 4th had been considered. However, Director of Service Planning, Accessibility, and Marketing Andy Vobora had negotiated with representatives of an international basketball tournament being held in Springfield during the Fourth of July weekend to provide transit services on July 4, 2010. Transit services will not be provided on July 4, 2011.

Mr. Evans stated that the American Public Transit Association (APTA) Transit Board Members Seminar and Board Support Employee Development Workshop would take place at the Eugene Hilton on July 17-20. He noted that staff have been trying to organize a meeting of transit board members from throughout Oregon for July 16, the day preceding the APTA conference. LTD staff soon would be distributing invitations to the event.

Mr. Eyster noted that he had attended the APTA meeting in which Eugene had been selected as the site for the Transit Board Members Seminar and Board Support Employee Development Workshop, and he was pleased that Eugene had been selected over other cities. He thanked Mr. Evans for his efforts in bringing the Conference to the Eugene area.

Mr. Pangborn stated that LTD's annual employee picnic would be held on August 8 at Armitage Park and encouraged the Board members to come and bring their families to the event.

Mr. Eyster stated that July 15 was the deadline for Board member's to return their financial disclosure forms to Ms. Schapper.

BUS OPERATOR JOHN PERRY 40TH ANNIVERSARY: The Board recognized Bus Operator John Perry for his 40 years of service to the District. Mr. Eyster presented a commemorative award to Mr. Perry and thanked him for his contributions. Mr. Perry thanked the Board and staff for their comments.

EMPLOYEE OF THE MONTH: Bus Operator Tim Jacobson was introduced as the Employee of the Month for July 2010 by Director of Transit Operations Mark Johnson who said that Mr. Jacobson is very reliable and always there for the team. Mr. Eyster presented Mr. Jacobson with a check, a pin, and a letter recognizing the accomplishment. Mr. Jacobson thanked Mr. Eyster, the Board, and staff and expressed that it had been a privilege to serve the community as an employee of LTD.

AUDIENCE PARTICIPATION: No members of the community expressed an interest in offering public comment.

ITEMS FOR ACTION AT THIS MEETING

MOTION Consent Calendar: Mr. Kortge moved adoption of LTD Resolution 2010-019: It is hereby resolved that the Consent Calendar for June 16, 2010, is approved as presented. Mr. Dubick provided the second. The Consent Calendar consisted of the minutes of the October 23, 2009, Board Strategic Planning Work Session; the minutes of the February 17, 2010, Regular Board Meeting, the minutes of the March 8, 2010, Special Board Meeting/Public Hearing; the minutes of the March 17, 2010, Regular Board Meeting, and LTD Resolution No. 2010-020, Reaffirming LTD's District Boundaries.

VOTE The Consent Calendar was approved as follows:
AYES: Gillespie, Eyster, Evans, Kortge, Necker, Towery, Dubick (7)
NAYS: None
ABSTENTIONS: None
EXCUSED: None

Public Hearing and Approval of Fiscal Year 2009-10 Supplemental Budget: Financial Services Manager Todd Lipkin noted that the proposed resolution contained the approval of the supplemental budget for the current fiscal year. It also contained appropriation items for personnel services, a transfer to the Transportation Options fund, and a transfer to the Capital Projects fund as described in the agenda item summary materials.

Mr. Eyster opened the public hearing. There being no requests to speak, Mr. Eyster closed the public hearing.

MOTION Ms. Towery moved adoption of LTD Resolution 2010-021, which amends the LTD fiscal year 2009-2010 budget as represented in the resolution. Mr. Kortge provided the second.

VOTE The motion was approved as follows:
AYES: Gillespie, Eyster, Towery, Dubick Necker, Evans, Kortge (7)
NAYS: None
ABSTENTIONS: None
EXCUSED: None

Public Hearing and Approval of Fiscal Year 2010-11 Budget: Director of Finance and Information Technology Diane Hellekson noted the most recent changes to the FY 2010-11 budget. Ms. Hellekson stated that staff had not anticipated in its budget that it would be providing home football shuttles and that an additional \$415,000 appropriation from LTD's general fund would be necessary to cover the costs of that service. She reported that the appropriation was expected to be fully covered by anticipated revenues.

Ms. Hellekson noted that LTD's Mobility Management program had been inadvertently omitted from the previous budget and that a \$60,000 appropriation from LTD's Accessible Services Fund had been identified to correct the budget.

Ms. Hellekson said that the two budget corrections were relatively minor and did not require approval by the LTD Budget Committee.

Ms. Hellekson noted that the State had miscalculated its estimate for LTD's Accessible Services Fund allotment and that the District was currently anticipating \$90,000 less than had originally been estimated. Ms. Hellekson further noted that an additional transfer from LTD's operating fund, as part of a supplemental budget process, might be necessary before the end of the next fiscal year.

Mr. Eyster opened a public hearing regarding the LTD Fiscal Year 2010-11 Budget. There being no requests to speak, Mr. Eyster closed the public hearing.

Ms. Hellekson, responding to a question from Mr. Eyster, maintained that the increased appropriations of \$415,000 for the home football services would generally be more than covered by the revenue generated by those services.

MOTION Mr. Evans moved adoption of LTD Resolution 2010-022, adopting the LTD Fiscal Year 2010-2011 approved budget as amended and appropriating \$89,154,700 as represented in the resolution. Mr. Necker provided the second.

VOTE The motion was approved as follows:
 AYES: Gillespie, Eyster, Towery, Dubick Necker, Evans, Kortge (7)
 NAYS: None
 ABSTENTIONS: None
 EXCUSED: None

Mr. Kortge commented on the additional home football transit services referenced by Ms. Hellekson and asked if any feedback had been received by staff concerning LTD not providing service to University of Oregon track meets. Mr. Vobora said that the only feedback that he had received was that some of the transportation providers had failed to show up at the correct time and location.

Federal Fiscal Year 2011 Disadvantaged Business Enterprise (DBE) Goal: Purchasing Manager Jeanette Bailor reported that the District, as a recipient of federal funds, had been required to institute a Disadvantaged Business Enterprise (DBE) program for which the specific goals and strategies were required to be updated annually. Ms. Bailor briefly discussed how the DBE program had been instituted as well as the current goals of the program.

Ms. Bailor, responding to a question from Mr. Eyster, described in detail how the DBE program had been monitored and reported to the Federal Transit Administration.

Responding to a question from Mr. Necker, Ms. Bailor noted that the current DBE goal was lower for FY 2011 because the ratio of contractors in the community to the number of specific DBE contractors in the community had calculated out differently than in previous years.

Ms. Bailor noted that 2007 census information had been used to represent the most recent county business information data that was used to calculate the DBE goal.

MOTION Mr. Evans moved adoption of LTD Resolution 2010-023: Resolved, the LTD Board of Directors hereby adopts a new Disadvantaged Business Enterprise Goal of 3.49 percent, effective August 1, 2010. Mr. Dubick provided the second.

Mr. Gillespie asked if the goal could be raised if it appeared that the District might enter a period of increased construction and/or development. Ms. Bailor responded in the affirmative and briefly noted how such a raised goal would need to be calculated and presented to the Federal Transit Administration (FTA). She further noted that a disparity study for the District would need to be conducted in order to present such calculations to the FTA.

Mr. Evans agreed by stating that the Oregon Department of Transportation had encountered difficulties in adjusting its DBE goals because staff had neglected to file a disparity study.

Mr. Eyster called for a vote on Mr. Evans' previously stated motion.

VOTE The motion was approved as follows:
 AYES: Gillespie, Eyster, Towery, Dubick Necker, Evans, Kortge (7)
 NAYS: None
 ABSTENTIONS: None
 EXCUSED: None

LTD Salaried Employees' Retirement Plan Change: Director of Human Resources and Risk Management Mary Adams presented information regarding the proposed amendment to the Salaried Employee Retirement Plan. She noted that the amendment had been proposed in order to help reduce administrative personnel costs for the District. She further noted that the amendment called for mandatory unpaid furlough days for salaried employees.

Ms. Adams said that in order to avoid adverse impacts to the salaried employees' long-term retirement benefits, LTD's pension attorney Everett Moreland of Hershner Hunter LLP had drafted language to the amendment specific to FY 2010-11 that would provide a retirement plan credit for the furloughed employees.

Mr. Pangborn described how the plan amendment had been drafted with the intent of preserving the retirement plan benefits of furloughed employees.

Mr. Kortge stated his concern that the proposed retirement plan change might set a precedent for future adjustments to LTD salaried employees' retirement plans and stated his belief that the change might not ultimately benefit those employees.

Mr. Pangborn, responding to a question from Mr. Gillespie, explained that under the proposed amendment the furloughed employees' retirement plans would be credited as though their full salaries had been paid.

Mr. Pangborn confirmed that the Board would likely revisit the retirement plan issue next year in order to determine if the provisions of the resolution under current discussion might need to be extended.

Mr. Gillespie indicated that he would be willing to support the resolution as it was specifically stated to only affect the salaried employees' retirement plan benefits for one year.

Mr. Kortge indicated that the proposed resolution was unsettling to him, and he stated that he would not support any motion regarding it.

Mr. Pangborn stated that the provisions of the proposed resolution might not be sustainable as a long-term retirement plan strategy for LTD.

Ms. Towery expressed her concerns regarding the potential long-term ethical impacts of the proposed resolution.

Mr. Evans stated his concerns that the proposed resolution would create an expectation that the revised retirement plan would become an entitlement and that such expectations might significantly affect the integrity of the Board.

Mr. Necker agreed with Mr. Kortge's comments and stated his belief that the proposed resolution might set a dangerous precedent.

Mr. Gillespie viewed the proposed resolution as a short-term solution to current economic problems and said that he hoped that the Board would carefully re-evaluate the provisions of the motion and any circumstances surrounding the potential renewal of the motion within the next year.

Mr. Dubick noted his support for the proposed resolution but added that the calculations with respect to the salaried employees' might have been made sooner. He maintained that furlough days were

not a comprehensive solution to long-term budget problems and that the intended and unintended consequences of such a strategy were often difficult to ascertain.

MOTION Mr. Dubick moved adoption of LTD Resolution 2010-024: It is hereby resolved that the LTD Board of Directors hereby approves the Ninth Amendment to the Restatement of the Lane Transit District Salaried Employees' Retirement Plan dated June 19, 2002, as stated in the attached document and directs the General Manager to sign the Ninth Amendment on behalf of LTD. Mr. Gillespie provided the second.

VOTE The motion was approved as follows:
AYES: Gillespie, Eyster, Towery, Dubick (4)
NAYS: Necker, Evans, Kortge (3)
ABSTENTIONS: None
EXCUSED: None

Designation of LTD Labor Negotiations Team: Ms. Adams noted that it had historically been the Board's practice to appoint a labor negotiations team and noted the State's public meeting laws regarding the Board's executive session privilege with respect to labor negotiations.

Ms. Adams noted that she had been appointed by the Board as its ongoing labor negotiations appointee during the previous bargaining session in 2007. She added that the negotiations team that she had recommended was the same group that had been involved during the last two bargaining sessions.

MOTION Mr. Kortge moved adoption of LTD Resolution 2010-025: It is hereby resolved that the LTD Board of Directors approve the 2013-13 Labor Negotiations team of Mary Adams, Diane Hellekson, Mark Johnson, and George Trauger, with assistance from labor attorney Jacqueline Damm. Consistent with LTD Resolution No. 2007-001, Ms. Adams has the authority to adjust the composition of the Negotiations Team as bargaining progresses, provided that the Board approve all Negotiations Team members selected prior to the Negotiations Team conducting any deliberations in executive session. Ms. Towery provided the second.

VOTE The motion was approved as follows:
AYES: Gillespie, Eyster, Evans, Kortge, Necker, Towery, Dubick (7)
NAYS: None
ABSTENTIONS: None
EXCUSED: None

Election of Board Officers: Mr. Eyster said that the current Board officers had confirmed their wishes to remain in their positions for an additional two-year term beginning July 1, 2010, and ending June 30, 2012.

MOTION Ms. Towery moved to re-elect each of the current LTD Board officers to new two-year terms: Mike Eyster as President, Greg Evans as Vice President, Dean Kortge as Secretary, and Ed Necker as Treasurer. Mr. Kortge provided the second.

VOTE The motion was approved as follows:
AYES: Gillespie, Eyster, Evans, Kortge, Necker, Towery, Dubick (7)
NAYS: None
ABSTENTIONS: None
EXCUSED: None

ITEMS FOR INFORMATION AT THIS MEETING

Board Member Reports: Mr. Eyster noted that at the West Eugene EmX Extension (WEEE) Corridor Committee on June 15, Director of Planning and Development Tom Schwetz had proposed to the committee that certain design element options of the proposed alignment alternatives be eliminated from further consideration. Mr. Necker added that the elimination of the more obvious options would help streamline the alignment selection process in order to streamline the development of the draft environmental impact statement.

Mr. Eyster commented that the Committee had expressed a desire to keep the West 7th Place alignment alternative under consideration. Mr. Eyster further noted that Committee Member Rob Zako had expressed that if the West 7th Place alternative were removed from consideration and West 11th Avenue were not selected as the alignment alternative, then only No-Build and Transportation System Management options would be available.

Mr. Kortge said that the WEEE Corridor Committee had voted to recommend to the Board that the Amazon alignment alternative be removed from consideration.

Mr. Kortge mentioned a June 16 *Register-Guard* article that had indicated that the selection of the West 11th Avenue alignment alternative was inevitable.

Mr. Pangborn noted that staff had discussed comments made by WEEE Committee members Rob Zako and Larry Reed, and he felt that they each had made the cogent argument for keeping the West 7th Place alignment alternative under consideration.

Mr. Kortge stated that there remained several public misconceptions regarding the necessity and the execution of the WEEE project.

Mr. Gillespie referenced recent WEEE Committee discussions and public comments provided therein and noted that many comments in that regard had been made out of a sense of fear regarding several divergent elements of the WEEE project.

Mr. Kortge noted comments made by Eugene City Councilor Chris Pryor at the WEEE Corridor Committee meeting and noted that Mr. Pryor clearly stated that the Eugene City Council had no interest in any design elements that would result in condemned properties.

Mr. Pangborn referenced the WEEE Corridor Committee discussions surrounding the Amazon alignment alternative and stated his belief that there was a fatal flaw with respect to that alignment involving an endangered species plan that the project might affect. Mr. Pangborn further noted that the decision to eliminate the Amazon alternative from consideration had become an emotional rather than a factual decision because of the many obstacles involved.

Mr. Schwetz commented on the WEEE Corridor Committee's discussions regarding the Amazon alignment alternative as well as the community's differences of opinion regarding that alternative in particular and the Amazon Creek area in general.

Mr. Evans referred to the WEEE Corridor Committee's discussions regarding the West 7th Place alignment alternative and recognized that there were low ridership projections for that area. Mr. Evans further noted that the execution of the WEEE project might significantly change the character of travel patterns in the West Eugene corridor in a manner that might significantly change ridership figures and future transit development.

Mr. Eyster suggested that, due to time constraints, the Board skip the remaining Board member reports.

East 11th Avenue EmX Outreach: Mr. Vobora reported on LTD's research into changing inbound EmX routing along East 11th Avenue by converting the northernmost lane along East 11th Avenue into a business access transit lane. He noted that Gateway EmX Communications Coordinator Lisa VanWinkle had done an excellent job of putting together a plan for the conversion and coordinating with Eugene City staff.

Mr. Vobora noted that the outreach plan regarding East 11th Avenue would be enacted by the end of June, and he briefed the Board members on the outreach strategy.

Board Meeting Procedure: Ms. Schapper noted the procedural items from the April 21, 2010, regular Board meeting, of which the Board had requested clarification. Ms. Schapper briefly noted the summaries of the Consent Calendar, Abstention, and Conflict of Interest procedures.

Ms. Schapper expressed that the State Attorney General's office encouraged Board members to refrain from abstaining during voting whenever possible. She then briefly described the circumstances under which Board members might choose to abstain.

The Board members and staff briefly discussed procedures for declaring conflicts of interest and the circumstances under which they would declare such a conflict during meetings.

Ms. Schapper stated that the Board members were generally encouraged to declare conflicts of interest in circumstances where the nature of any potential conflicts was in question.

Ms. Schapper, responding to a request for clarification from Mr. Kortge, stated that any Board member who had declared a conflict of interest also would be discouraged from participating in any Board discussions related to the matter at hand.

Ms. Hellekson reminded the Board members that most routine Board matters only required a majority vote of those present rather than a majority of the membership.

Monthly Financial Report – May 2010: Ms. Hellekson directed the Board to the copy of the May Financial Report and noted that no significant changes had occurred to the Report since she had spoken to the Board in May.

Ms. Hellekson reported that, with respect to payroll tax revenues, LTD was still running approximately 8 percent less than the previous year; however, it appeared as though the current recession had finally bottomed out.

Ms. Hellekson reported that fare revenues were fairly strong and that LTD's group pass sales program had been doing particularly well.

Ms. Hellekson noted that the District faced a \$2.2 million payroll tax receipt deficit by the end of June 2010.

MOTION EXECUTIVE (NON-PUBLIC) SESSION: Mr. Eyster moved that the LTD Board meet in Executive Session pursuant to ORS 192.660(2)(d), to conduct deliberations with persons designated by the governing body to carry on labor negotiations. Mr. Gillespie provided the second.

VOTE

The motion was approved as follows:

AYES: Gillespie, Eyster, Evans, Kortge, Necker, Towery, Dubick (7)

NAYS: None

ABSTENTIONS: None

EXCUSED: None

The Board entered executive (non-public) session at 6:59 p.m.

RETURN TO REGULAR (OPEN) SESSION: The Board returned to regular session at 7:40 p.m.

GENERAL MANAGER (GM) SEARCH PROCESS: Mr. Eyster stated that he had two things to discuss in regards to the GM search process: 1) internal search versus national search, and 2) the formation of a General Manager Search Committee.

Internal vs. External Search: Mr. Eyster stated that there are quite a few viable internal applicants who may be considering applying for the position.

Ms. Towery expressed her support for a national search while encouraging internal applicants to apply and compete with the rest of the candidates.

Mr. Gillespie concurred with Ms. Towery. He stated his belief that, due to LTD's high standards, there would be many highly-qualified and highly-competitive candidates who would apply from around the country.

Mr. Necker agreed. He felt that it could be a positive experience for internal candidates in that they would be competing against highly-qualified candidates from all around the country.

Mr. Kortge stated his belief that, due to the concurrent timing of Mr. Pangborn's retirement and the West Eugene EmX Extension project decisions being made, the internal candidates would be better able to keep current with the community and continue building on community relations. He felt that there was no need to go national considering the excellent group of internal candidates. He also stated the need for a GM selection process timeline.

Mr. Evans said that the District owes it to the community to search for the best possible candidate, near and far. There may very well be a suitable local candidate, but he would like to make sure that the District doesn't miss an opportunity to reach out nationally.

Mr. Dubick said that the right candidate would have to be someone who has some experience in dealing with a community with similar demographics. Whether that person is local or national doesn't matter as much as finding the right person with the desired qualities.

Ms. Towery suggested that if the Board does decide to go national, hiring a firm to do the search would be wise because they have experience in bringing the best candidates forward based on the desired skills and values that the Board is looking for. She added that doing a national search would be the best decision because the public will see that the Board cast a very wide net to find the best possible candidate.

Mr. Evans reiterated his desire to do a national search for the next general manager.

Mr. Eyster concluded that the Board is committed to performing a national search for the next General Manager.

General Manager Search Committee: Mr. Eyster asked for opinions on forming a general manager search committee made up of Board members. The tasks of the Committee would be to compile the desired qualities and characteristics of the next GM, search for and nominate a search firm for the national search, finalize a job description, and more.

Mr. Kortge suggested that the hiring of the firm be done before such a committee is formed because the search firm would need to be very involved in all aspects of the tasks that were mentioned by Mr. Eyster.

Mr. Kortge added that in addition to Board members compiling desired qualities and characteristics, it would be beneficial to have community leader's input. Mr. Pangborn added that the new general manager will be working closely with community partners, and receiving their input on what qualities are important to them would be very wise.

Mr. Eyster suggested that the District begin putting together an RFP for a national search firm since that firm should be involved in the process from the beginning.

Mr. Eyster concluded that the need for the General Manager Search Committee is not necessary at this time, but October/November would be a good time for the Committee to be formed and to begin meeting.

Mr. Gillespie suggested that a member from the ATU be involved in the process.

ADJOURNMENT: Mr. Eyster adjourned the meeting at 8:16 p.m.

Board Secretary

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MINUTES OF DIRECTORS MEETING

LANE TRANSIT DISTRICT

SPECIAL MEETING

Monday, September 13, 2010

Pursuant to notice given to *The Register-Guard* for publication on September 9, 2010, and distributed to persons on the mailing list of the District, the Board of Directors of the Lane Transit District held a special Board meeting on Monday, September 13, 2010, beginning at 5:30 p.m., in the Fleet Training Room at 3500 East 17th Avenue, Eugene.

Present: Mike Eyster, President
Greg Evans, Vice President
Dean Kortge, Secretary
Ed Necker, Treasurer
Doris Towery
Gary Gillespie
Mark Pangborn, General Manager
Jeanne Schapper, Clerk of the Board
Judy Burton, Minutes Recorder

Absent: Michael Dubick

CALL TO ORDER/ROLL CALL: Mr. Eyster called the meeting to order at 5:39 p.m. and called the roll. Michael Dubick was absent. All other Board members were present with the exception of Doris Towery, who arrived at 6:25 p.m.

PRELIMINARY REMARKS BY BOARD PRESIDENT: Mr. Eyster shared a note that appeared on LTD's Facebook page from a regular rider. Ellen Crownover wanted to personally thank the Board for bringing back the post 8 p.m. routes on North Terry.

Mr. Eyster then congratulated Board Member Greg Evans for his unanimous nomination to serve on American Public Transportation Association's Executive Committee.

Mr. Pangborn reminded the Board of the regular meeting to be held on Wednesday, September 15.

Mr. Eyster added that, prior to the meeting on the 15th, he would like the Board to consider the Board's involvement in the general manager selection process—whether it should involve all Board members or a subset of the Board. Mr. Kortge indicated that he would prefer that a smaller subset of the Board handle the preliminary process and that the entire Board be included in the final selection.

Mr. Pangborn announced two trainings that were being offered on October 5, and October 6-8 through Bleiker Training, titled "Systematic Informed Consent." These trainings deal with controversy in public decisions and could be beneficial for Board members and key LTD staff in approaching the West Eugene EmX process that is expected during the next several months.

Mr. Pangborn also mentioned the full-page paid advertisement that appeared in Sunday's *Register-Guard* voicing opposition to the West Eugene EmX Extension. Mr. Pangborn warned that opinions will be heating up as LTD enters a high-profile public process. Staff are developing a systematic response to misinformation being circulated throughout the community, including the dialog concerning a "no build" alternative. Staff also are meeting with property owners along the corridor to discuss mitigation efforts. It is of interest to note that owners are appreciative that they are being included in discussions and kept abreast of current information. It appears that peoples' attitudes and perceptions are being changed. A core opposition group exists and will not divulge its membership.

MAINTENANCE FACILITY: Director of Maintenance George Trauger described the changes to the Fleet Maintenance multi-purpose training facility that were implemented as part of the ARRA (American Recovery and Reinvestment Act) funds that LTD received, including phone conferencing and microphone system, mechanical/electrical training system, projection system, and the writeable white boards. Mr. Trauger added that the floor was original, saved and repurposed. Various staff trainings will take place in this much-needed, larger training room.

LTD JOINT MEETING WITH SPRINGFIELD CITY COUNCIL: Mr. Pangborn directed the Board to the agenda packet and the proposed October 11 Joint Meeting agenda topics, including EmX, the general manager selection process, and future budget and service issues for LTD. In addition to LTD's proposed agenda items, the City would like to discuss its proposal to make Main Street a two-way street, which potentially impacts LTD's service.

In response to a question from Mr. Necker, Mr. Pangborn reported that South A Street would become a State highway by-pass with two-way through traffic, and parking on the street may be eliminated due to the large trucks that would be heading both directions.

GATEWAY EmX EXTENSION PROJECT UPDATE: Director of Planning and Development Director Tom Schwetz distributed a fact sheet about EmX to the Board, "*Let's Talk About EmX.*" Project Manager Joe McCormack explained that bus lanes and stations are done and the process has moved from construction to implementation.

On August 26 the first bus test run indicated that the signals worked and the lanes were wide enough. The final route will be a "one-seat ride" from Eugene Station, around the Pioneer Parkway/Gateway Loop, and back to the Eugene Station. A passenger is able to go from downtown Eugene to RiverBend in one single trip.

Contingency funds remain intact as it is projected that the project will be \$.5 million under budget. LTD contributed 2/3 of the cost of path lighting along Pioneer Parkway; the City of Springfield contributed the remainder. Real-time passenger information will be implemented in early 2011. There will be money remaining for post operational modifications.

In response to a question from Mr. Evans, Mr. McCormack reported that consulting fees included design services at 20 percent of the cost of construction.

Mr. McCormack addressed the issue of excess water at Hamlin Middle School's ball field that resulted when Pioneer Parkway was extended east. Staff had to wait for water to clear and then installed a drainage pipe that is designed to drain a good portion of the field.

In response to a question from Mr. Gillespie, Mr. Pangborn reported that the General Services Administration encourages, but does not require, LTD to install art along EmX projects; however, LTD has adopted a policy of installing art along all projects. Mr. McCormack added that the budget for art was kept at the same level as the Franklin EmX project. Art was designed with a historic theme in conjunction with the City of Springfield's 125th anniversary this year. Board Member Doris Towery served on the art committee.

Service is scheduled to open on January 9, and it is anticipated that nine additional EmX operators will be needed. Operator training and further system testing/timing will occur from November through January.

Mr. Pangborn reported that fares will be charged for Gateway EmX, and there may be a short, free promotional period at the onset of service; however, the expectation is that riders will pay. Fare machines will be installed at all platforms and ready when service begins. Fares are the same as the rest of the line: \$3 round trip/all day.

Work continues on the re-routing of downtown Eugene, including eliminating the bidirectional section of 10th Avenue inbound on 11th. A business access transit (BAT) lane will be created on E. 11th to Olive Street. Staff have met with property owners all along the changed route. All property owners are on-board with the changes, with the exception of the owner of the McDonald Theater, Kit Kesey, who is not pleased with the proposed location of the shelter. Meetings are continuing with Mr. Kesey in order to find a solution.

Mr. Eyster noted that discussions should occur with University of Oregon concerning the reconfiguring of the re-routing on E. 11th.

With regards to trees, LTD is paying the City of Eugene to remove five trees at three stations, at a cost of \$10,000. This cost will cover the City's costs for planting trees elsewhere.

Mr. McCormack indicated that two new pedestrian crossing signals are being installed. Two HAWK (High Intensity Activated Crosswalk) pedestrian-activated signals have been installed with amber, rapid-flash that warn drivers to slow down as they approach the crosswalks. The signal then proceeds through the usual sequence to solid yellow, and then to solid red; followed by flashing red, allowing the driver to proceed; then the signal goes dark.

Even though service is scheduled to begin on January 9, the official grand opening is still being scheduled, dependent upon the schedules of dignitaries such as Congressman Peter DeFazio.

ADJOURNMENT: Mr. Eyster adjourned the meeting at 6:28 p.m.

Board Secretary

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Lane Transit District
P. O. Box 7070
Eugene, Oregon 97401

(541) 682-6100
Fax: (541) 682-6111

**CONSENT CALENDAR ITEM:
BUDGET COMMITTEE NOMINATIONS**

November 8, 2010

Background:

The LTD Budget Committee is composed of the seven members of LTD's Board of Directors and seven community members who are nominated and approved by the Board and serve for three-year terms. The non-Board Budget Committee members must reside within the District's service boundaries, but are not required to live in the same subdistrict as the Board member making the appointment.

Board member Dean Kortge is nominating Peter Davidson to a new three-year term, and Board member Greg Evans is nominating Jon Hinds to a new three-year term. These new terms will expire on January 1, 2014.

The nomination forms for both Mr. Davidson and Mr. Hinds are attached. Also attached is a list of Budget Committee members showing the term expiration date for each, as well as the nominating Board member.

Attachments:

1. List of 2010-11 Budget Committee Members
2. Nomination Form for Peter Davidson
3. Nomination Form for Jon Hinds

Recommended Action:

The Board is asked to approve these nominations in the Consent Calendar presented for approval by the Board at the November 8 Board meeting.

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**LANE TRANSIT DISTRICT
BUDGET COMMITTEE MEMBERS**

(FY 2010-2011 Budget)

Note: Budget Committee members are not required to live in the same subdistrict as the nominating Board member.

SUBDISTRICT	NOMINATING BOARD MEMBER	BUDGET COMMITTEE MEMBER	TERM EXPIRES
1	Doris Towery	Dwight Collins	1/02/13
2	Michael Eyster	Warren Wong	1/01/12
3	Michael Dubick	Donald Nordin	1/01/12
4	Ed Necker	Kay Metzger	1/01/12
5	Gary Gillespie	Edward Gerdes	1/01/13
6	Greg Evans	Jon Hinds	1/01/14
7	Dean Kortge	Peter Davidson	1/01/14

A Board member whose name is in italics has been appointed since the last Budget Committee nomination in that subdistrict, and would make the next appointment in that subdistrict.



**LANE TRANSIT DISTRICT
NOMINATION FOR BUDGET COMMITTEE**

BUDGET COMMITTEE APPOINTMENT QUALIFICATIONS: ORS 294.336

Budget Committee: (2) The budget committee shall consist of the members of the governing body and a number, equal to the number of members of the governing body, of qualified electors of the municipal corporation appointed by the governing body. . . . (5) The appointive members of the budget committee shall be appointed for terms of three years. The terms shall be so staggered that one-third or approximately one-third of the appointive members' terms ends each year.

Board Member: Dean Kortge

Date of Nomination: November 8, 2010

Term of Budget Committee Appointment: January 1, 2011 January 1, 2014
Effective Date Term Expiration Date

Approved by Board: _____
Date

NOMINEE'S NAME: PETER DAVIDSON

Home Address: 1607 Kona Street, Eugene 97403

Telephone Number: 685-0769

Business Address: PacificSource Health Plans, 110 International Way, Springfield 97477

Telephone Number: 684-5212

PREFERRED MAILING/DELIVERY ADDRESS: work

Occupation: Executive VP and CFO PacificSource Health Plans

Brief statement of nominee's background that is relevant to budget committee appointment:

Background includes CPA for KPMG; CFO and CEO for various health care organizations.

Mr. Davidson has an interest in how transportation affects the ability to create a growing and green economy.

He has been a member of the LTD Budget Committee since January 2007.



**NOMINATION FOR BUDGET COMMITTEE
LANE TRANSIT DISTRICT**

BUDGET COMMITTEE APPOINTMENT QUALIFICATIONS: ORS 294.336

Budget Committee: (2) The budget committee shall consist of the members of the governing body and a number, equal to the number of members of the governing body, of qualified electors of the municipal corporation appointed by the governing body. . . . (5) The appointive members of the budget committee shall be appointed for terms of three years. The terms shall be so staggered that one-third or approximately one-third of the appointive members' terms ends each year.

Board Member: Greg Evans

Date of Nomination: November 8, 2010

Term of Budget Committee Appointment: January 1, 2011 January 1, 2014
Effective Date Term Expiration Date

Approved by Board: _____
Date

NOMINEE'S NAME: JON HINDS

Home Address: 830 Fifth Street, Springfield, OR 97477

Telephone Number: 747-6368 (best time just after 10 a.m.)

Business Address: Sheldon Community Center, 2445 Willakenzie Road, Eugene, 97401

Telephone Number: 682-5312

PREFERRED MAILING/DELIVERY ADDRESS: Home

Occupation: Recreational Activity Leader, City of Eugene Parks & Recreation

Brief statement of nominee's background that is relevant to budget committee appointment:

- Regular bus rider
- Six years developing program/budget for AYSO Springfield
- Program operation at Hilyard Center
- LTD Budget Committee member since April 2005
- Site director Ducklings preschool Sheldon Community Center

AGENDA ITEM SUMMARY

DATE OF MEETING: November 8, 2010

ITEM TITLE: PURCHASING POLICY RULES UPDATE

PREPARED BY: Jeanette Bailor, Purchasing Manager

ACTION REQUESTED: Approve and Adopt the Updated Purchasing Policy and Rules

BACKGROUND: A procurement system review was conducted in September 2010 by a team contracted by the Federal Transit Administration as part of its oversight program for grantees. Contracts and purchase orders were reviewed against a checklist that assessed compliance with various federal requirements. As a result of this review, changes have been made to the Lane Transit District (LTD) Purchasing Policy.

LTD/CRB (Contract Review Board) last approved LTD's purchasing and public contracting policy on April 20, 2005, and there have been no changes since that time.

The new changes are administrative, with most addressing the need for the addition of documentation to more clearly record the history of the purchase or contract and additional clauses to add to bidding documents and additional staff oversight and documentation during contract administration. There are no changes in the way contracts are solicited or awarded.

There are two recommended changes in definitions of procurements to match the federal definitions and monetary limits. Staff recommend that the micro purchase limit be increased from \$2,500 to \$3,000 and the small purchase limit be increased from \$75,000 to \$100,000. The small purchase limit is the limit for which LTD needs to go out for a formal publicized bid. Staff often do a formal bid for under this amount for frequently purchased items. These changes in definition give LTD more leeway in the manner in which these purchases are solicited and are more in line with today's cost of goods.

RESULTS OF RECOMMENDED ACTION: The LTD Purchasing Policy will be updated to reflect procedural changes.

ATTACHMENTS: 1) Revised Purchasing Policy and Rules (included as a separate document for Board members only)

2) Lane Transit District Resolution No. 2010-034

PROPOSED MOTION: I move the following resolution:

LTD Resolution No. 2010-034: Resolved, the LTD Board of Directors hereby adopts the Purchasing Policy and Rules, as revised on November 8, 2010.

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**LANE TRANSIT DISTRICT
RESOLUTION NO. 2010-034**

A Resolution Adopting the
Lane Transit District's Purchasing Policy and Rules

Pursuant to ORS 279.055, Lane Transit District ("LTD") Board of Directors adopted Ordinance No. 30 creating a local contract review board for LTD, which solely consists of the LTD Board of Directors (the "LTD/CRB").

LTD/CRB pursuant to Ordinance No. 30 has the power to adopt, by resolution, rules governing LTD's purchasing and public contracting policy.

LTD/CRB approved LTD's last purchasing and public contracting rules on April 20, 2005, which policy incorporated administrative changes in the Oregon Revised Statutes and the Federal Transit Administration requirements.

LTD has updated the purchasing and public contracting policy to reflect changes in the Federal Transit Administration requirements.

LTD/CRB must adopt its amended purchasing and public contracting rules, by resolution, in accordance with LTD Ordinance 30, LTD Sixth Amended Ordinance No. 1, and all other applicable statutes and regulations.

The updated purchasing and public contracting rules are set forth in Exhibit A (the "Purchasing Policy and Rules").

NOW, THEREFORE, BE IT RESOLVED:

LTD/CRB hereby adopts the Purchasing Policy and Rules as set forth in Exhibit A, which is attached hereto and is incorporated herein by this reference; and

LTD/CRB hereby approves any findings and exceptions contained within the Purchasing Policy and Rules attached as Exhibit A.

Adopted by LTD/CRB on the 8th day of November, 2010.

November 8, 2010

Date

LTD/CRB Secretary

RESOLUTION - 1

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AGENDA ITEM SUMMARY

DATE OF MEETING: November 8, 2010

ITEM TITLE: BOARD MEMBER REPORTS

PREPARED BY: Jeanne Schapper, Administrative Services Manager/Clerk of the Board

ACTION REQUESTED: None

BACKGROUND: Board members have been appointed to Board committees and to the Metropolitan Policy Committee (MPC), the Lane Council of Governments (LCOG) Board of Directors, and, on occasion, to other local or regional committees. Board members also present testimony at public hearings on specific issues as the need arises. After meetings, public hearings, or other activities attended by individual Board members on behalf of LTD, time will be scheduled on the next Board meeting agenda for an oral report by the Board member. The following activities have occurred since the last Board meeting:

MEETINGS HELD

Board members may take this opportunity to report briefly on any one-on-one meetings they have held with local officials or other meetings that they have attended on behalf of LTD.

1. **Finance Committee:** The Board Finance Committee is composed of Chair Dean Kortge and Board members Mike Dubick and Ed Necker. At the October 12 meeting, the Committee reviewed the funding status of the two Lane Transit District pension plans and considered pension plan investment rate of return assumptions. In addition, the group learned about a proposal for new reporting and disclosure rules that would require organizations with unfunded pension liabilities to include the liabilities on their balance sheets.
2. **Human Resources Committee:** The Board Human Resources Committee is composed of Chair Mike Dubick and Board members Dean Kortge and Gary Gillespie. At the October 12 meeting, Human Resources staff reported on progress toward the future design of LTD pension plans. Committee members discussed the information and alternatives presented and envisioned possible next steps. The next meeting is scheduled for November 23.
3. **Long-Range Transit Plan Project Advisory Committee:** This 18-member committee is composed of members of local units of government and community representatives. Board Member Ed Necker serves on this committee, which will meet five times during the

next twelve months. At the October 13 meeting, the Committee reviewed the results of the Scenario Development workshops and the developments from the October 12 Board Luncheon. The Committee participated in small group exercises to brainstorm about possible futures for LTD and the community.

4. **Metropolitan Policy Committee (MPC):** Board members Mike Eyster and Greg Evans are LTD's MPC representatives, with Mike Dubick serving as an alternate. MPC meetings generally are held on the second Thursday of each month. The Committee met on October 14 to approve the air quality conformity determination for the FY 2010-13 Metropolitan Transportation Improvement Program. The Committee also received a report from the Lane Regional Air Protection Agency, and reviewed the FY 2012-2015 Surface Transportation Improvement Program priorities and the regional policy set. The Committee met again on November 4 to review the Regional Transportation Plan project list and greenhouse gas planning efforts.
5. **Metropolitan Planning Organization's Citizen Advisory Committee:** Board Member Gary Gillespie serves on the Citizen Advisory Committee (CAC) for the Metropolitan Planning Organization (MPO). The Committee is composed of interested citizens and representatives of groups within the MPO area and is scheduled to meet on the third Thursday of each month. The CAC met on October 21 and received a presentation from LTD General Manager Mark Pangborn and Senior Project Manager John Evans regarding the West Eugene EmX Extension project.
6. **Joint Locally Preferred Alternative Committee:** This committee is composed of members from three bodies: LTD, MPC, and the Eugene City Council. Board members Mike Eyster, Gary Gillespie, and Greg Evans serve on this committee, which will meet five times during the next three months. The first meeting was held on October 29. At the meeting the group reviewed Committee roles and set the context for the decision-making process for the WEEE project. They reviewed the design process, results from the Alternatives Analysis Report, and proposed mitigations.
7. **West Eugene EmX Extension Corridor Committee (WEECC):** The WEECC is a subcommittee of the EmX Steering Committee and is composed of Board members Greg Evans, Dean Kortge, and Ed Necker, along with members of local government and community representatives. The Committee generally meets on the first Wednesday of the month. On November 3 the Committee held a joint meeting with the EmX Steering Committee to review and discuss the final WEEE Alternatives Analysis Report.
8. **EmX Steering Committee:** The EmX Steering Committee generally meets quarterly and is composed of Chair Greg Evans, Board members Doris Towery and Gary Gillespie, and members of local units of government and community representatives. On November 3

a special joint meeting with the West Eugene EmX Extension Corridor Committee (WEEEC) was held to review and discuss the final WEEE Alternatives Analysis (AA) Report. The next regular meeting of the EmX Steering Committee is scheduled to be held on December 7.

9. **Executive Search Committee:** The Board Executive Search Committee is composed of Board President Mike Eyster and Board members Mike Dubick, Greg Evans, Gary Gillespie, and Doris Towery. At the next meeting on November 16, the Committee will review the Request for Proposals received from Executive Search firms.

OTHER ACTIVITIES

1. **APTA Board of Directors Executive Committee:** Board Member Greg Evans was recently elected to this committee. The Committee met on October 3 at the APTA Annual Meeting held in San Antonio, Texas. The legislative subcommittee also met that day.

NO MEETINGS HELD

1. **Lane Council of Governments (LCOG) Board of Directors:** LTD Board Member Mike Dubick represents LTD on the LCOG Board of Directors as a non-voting member, with Mike Eyster serving as the alternate. The LCOG Board meets every other month. The next meeting is scheduled to be held on December 9.
2. **Springfield Stakeholder Advisory Committee:** Board President Mike Eyster represents the District on the Stakeholder Advisory Committee for the development of the Springfield Transportation System Plan. Committee members consist of citizens and representatives from organizations with a distinct interest in the future of transportation in Springfield. The Committee plans to meet five times during the next 18 months, with the next meeting being planned for January 2011.
3. **Department Advisory Committee (DAC) for the Eugene Transportation System Plan:** The DAC is in the process of being formed; and the list of participants is still being finalized, but will include 15-20 community members that have interest in transportation issues in the City of Eugene. Board Member Gary Gillespie represents the MPO's Citizen Advisory Committee (CAC) on the DAC for the development of the Eugene Transportation System Plan. The Committee is still gathering members and meeting dates will be scheduled soon.
4. **Lane County Area Commission on Transportation:** The State Legislature in 2009 directed Lane County to develop an Area Commission on Transportation (ACT). Committee membership includes representatives from the County, cities within the County, LCOG, and LTD. Board President Mike Eyster represents LTD on this

committee. Formation of the ACT is pending further action by the Lane County Board of Commissioners and the Oregon Transportation Commission.

5. **Service Committee**: The Board Service Committee is composed of Chair Greg Evans and Board members Ed Necker and Doris Towery. The next meeting has not been scheduled.

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AGENDA ITEM SUMMARY

DATE OF MEETING: November 8, 2010

ITEM TITLE: BOARD COMMITTEE ASSIGNMENTS UPDATE

PREPARED BY: Mike Eyster, Board President

ACTION REQUESTED: None. Information only.

BACKGROUND: The cities of Springfield and Eugene are updating their Transportation System Plans (TSP) to reflect the next 20 years of projected growth. These updates are being coordinated with other transportation planning efforts going on concurrently, including Lane Transit District's Long-Range Transit Plan, Eugene's Pedestrian and Bicycle Master Plan, and Springfield's Transportation Plan Update. Both cities have formed advisory committees for the TSP updates.

Board President Mike Eyster represents the District on the Stakeholder Advisory Committee (SAC) for the development of the Springfield TSP. Committee members consist of citizens and representatives from organizations with a distinct interest in the future of transportation in Springfield.

Board Member Gary Gillespie serves on the Citizen Advisory Committee (CAC) for the Metropolitan Planning Organization (MPO). The Committee is composed of interested citizens and representatives of groups within the MPO area.

Board Member Gary Gillespie has accepted a position on the TSP Department Advisory Committee (DAC) for the City of Eugene, representing the Metropolitan Planning Organization's (MPO) Citizen Advisory Committee.

ATTACHMENT: LTD Board of Directors Committees and Special Assignments

PROPOSED MOTION: None

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LTD BOARD OF DIRECTORS COMMITTEES AND SPECIAL ASSIGNMENTS

November 8, 2010

BOARD OFFICERS (Terms expire 6/30/12)

President – Mike Eyster
Vice President – Greg Evans
Secretary – Dean Kortge
Treasurer – Ed Necker

HUMAN RESOURCES COMMITTEE (meets 2nd and 4th Thursdays, as needed)

*Mike Dubick
Gary Gillespie
Dean Kortge

SERVICE COMMITTEE (meets every other month, or as needed)

*Greg Evans
Doris Towery
Ed Necker

EmX STEERING COMMITTEE – BOARD REPRESENTATIVES (meets quarterly)

*Greg Evans
Gary Gillespie
Doris Towery

EmX STEERING COMMITTEE Government Representatives: Rob Handy, Lane County Commissioner Hillary Wylie, Springfield City Councilor George Poling, Eugene City Councilor

Appointees:
Josh Skov
Bobby Lee
Gerry Gaydos
Sonny Chickering
Steve Gordon
Dave Jewett
Dan Egan
Tammy Fitch

EXECUTIVE SEARCH COMMITTEE (meets September 2010 through June 2011)

Mike Eyster
Greg Evans
Gary Gillespie
Doris Towery
Michael Dubick

METROPOLITAN POLICY COMMITTEE (MPC) REPRESENTATIVES

(meets 2nd Thursday of the month)
Greg Evans
Mike Eyster
Alternate: Mike Dubick

FINANCE COMMITTEE (meetings scheduled as needed)

Mike Dubick
*Dean Kortge
Ed Necker

LANE COUNCIL OF GOVERNMENTS BOARD OF DIRECTORS

(meets every other month - 4th Thursday)
Mike Dubick
Alternate: Mike Eyster

WEST EUGENE CORRIDOR COMMITTEE – BOARD REPRESENTATIVES

(a subcommittee of the EmX Steering Committee)
(meets 1st Wednesday of the month)
Greg Evans
Ed Necker
Dean Kortge

WEST EUGENE EmX CORRIDOR COMMITTEE Government Representatives:

Jennifer Solomon, Eugene City Councilor
Chris Pryor, Eugene City Councilor
Rob Handy, Lane County Commissioner

Appointees:
Larry Reed
Ray Bradley
Will Shaver
Micah Sardell
Anand Keathley
Garrick Mishaga
Kari Turner
Jim Thomas
Ilona Koleszar
Rob Zako
Ric Ingham
Steve Lamb
John Woodrich
Rick Reno
Cassidy Clausen
Josh Skov

**LONG-RANGE TRANSIT PLAN
PROJECT ADVISORY COMMITTEE
BOARD REPRESENTATIVE**

(will meet five times from September 2010 –
September 2011)

Ed Necker

**WEST EUGENE EmX JOINT
LOCALLY PREFERRED ALTERNATIVE COMMITTEE
BOARD REPRESENTATIVES**

(Began meeting in Fall 2010)

Mike Eyster
Gary Gillespie
Greg Evans

**LONG-RANGE TRANSIT PLAN
PROJECT ADVISORY COMMITTEE**

Committee Members:

Celia Barry, Lane County
Christopher Ramey, University of Oregon
Dan Egan, Springfield Chamber of Commerce
David Reesor, City of Springfield
Edward Goodnough, 4J School District
Kurt Yeiter, City of Eugene
Pat McGillivray, Bethel School District
Tom Lindly, Springfield School District
Jennifer Hayward, Lane Community College
Will Shaver, Eugene Chamber of Commerce
Andrea Riner, Lane Council of Governments

Project Team:

Mary Archer, LRTP Project Manager, LTD
Tom Schwetz, Planning and Development
Director, LTD
Price Armstrong, Planning Intern, LTD
David Helton, Grant Manager, ODOT
Kristin Hull, Consultant, CH2M HILL
Sam Seskin, Consultant, CH2M Hill

**WEST EUGENE EmX JOINT
LOCALLY PREFERRED ALTERNATIVE COMMITTEE**

Committee Members:

Eugene Representatives:

Kitty Piercy, Mayor of Eugene
Chris Pryor, Eugene City Councilor
Andrea Ortiz, Eugene City Councilor

MPC Representatives:

Rob Handy, Lane County Commissioner
Sonny Chickering, Oregon Department of
Transportation

**METROPOLITAN PLANNING ORGANIZATION
CITIZEN ADVISORY COMMITTEE (MPO CAC)
BOARD REPRESENTATIVE**

Gary Gillespie

**SPRINGFIELD TRANSPORTATION SYSTEM
PLAN STAKEHOLDER ADVISORY
COMMITTEE
BOARD REPRESENTATIVE**

Mike Eyster

**EUGENE TRANSPORTATION SYSTEMS PLAN
DEPARTMENT ADVISORY COMMITTEE
REPRESENTING MPO CAC
BOARD REPRESENTATIVE**

Gary Gillespie

* Denotes Committee Chair

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AGENDA ITEM SUMMARY

DATE OF MEETING: November 11, 2010

ITEM TITLE: FTA DRUG AND ALCOHOL AUDIT COMPLIANCE LETTER

PREPARED BY: David Collier, Senior Human Resource Specialist

ACTION REQUESTED: None. Information Only.

BACKGROUND: Subject to its regulatory authority, the Federal Transportation Administration (FTA) conducts random audits of transit districts' drug and alcohol programs. Lane Transit District's program was audited in late July 2010, and the auditors found some items requiring correction. LTD was given until October 20, 2010, to make these corrections, which have since been made and approved by the FTA. David Collier, LTD's Drug and Alcohol Program manager, will be present to answer any questions that Board members may have regarding the program changes.

ATTACHMENT: The FTA Drug and Alcohol Compliance Letter

PROPOSED MOTION: None.

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U.S. Department of Transportation
Federal Transit Administration

1200 New Jersey Ave., S.E.
Washington, D.C. 20590



**U.S. DEPARTMENT OF TRANSPORTATION
Federal Transit Administration**

**FINAL AUDIT REPORT AND COMPLIANCE
SUBSTANCE ABUSE MANAGEMENT OVERSIGHT
PROGRAM**

**FEDERAL TRANSIT ADMINISTRATION
OFFICE OF SAFETY AND SECURITY**

**JERRY POWERS
DRUG AND ALCOHOL PROGRAM MANAGER**

October 26, 2010

Mr. Mark Pangborn
General Manager
Lane Transit District
PO Box 7070
Eugene, OR 97401

RE: Substance Abuse Management Oversight Audit Compliance

Dear Mr. Pangborn,

The Federal Transit Administration has reviewed Lane Transit District's response to the formally-submitted findings of the Substance Abuse Management Oversight Program Audit Team. Based on the information provided, the Federal Transit Administration has found Lane Transit District to currently be in compliance with the Federally-mandated Drug and Alcohol Testing Program.

It is important for you and your organization to diligently maintain all aspects of the drug and alcohol testing program so that all will remain in compliance in the future.

Thank you for your cooperation and for being prompt in your response. Please let me know if I can be of service to you.

Sincerely,



Jerry Powers
Drug and Alcohol Program Manager

Electronic cc:

Mr. Rick Krochalis, FTA Region 10 Administrator
Mr. Ken Feldman, FTA Region 10
Mr. Michael Redington, Volpe National Transportation Systems Center
Mr. Joe Lofgren, Cahill Swift, LLC

AGENDA ITEM SUMMARY

DATE OF MEETING: November 8, 2010

ITEM TITLE: EmX FARE ANALYSIS

PREPARED BY: Andy Vobora, Director of Service Planning, Accessibility, and Marketing and Steve Parrott, Information Technology Manager

ACTION REQUESTED: None. Information Only.

BACKGROUND: Lane Transit District began operating EmX service in January 2007. Part of the implementation strategy included allowing customers to ride for free while the District continued evaluating fare ticketing equipment. Ticketing equipment for light and heavy rail applications simply did not meet the cost-effectiveness test. While offering a plethora of fare purchase choices and cash and credit/debit options, the machine's per-unit cost of \$50,000 (and higher) was simply not an alternative for LTD. The Franklin Corridor required 12 fare machines, which would have cost a minimum of \$600,000 to purchase. Additionally, the size of these machines simply did not fit the scale of LTD's EmX station platforms. Making this decision even easier was the fact that LTD's customers are heavy users of prepaid fares. In a survey of EmX riders, LTD found that 91 percent already had a pass or paid a fare on a connecting route, which confirmed that fare revenue losses during the free fare period were not significant.

With the intent to add an off-board fare collection system when the Gateway EmX Extension was launched, LTD staff pursued fare ticketing machines that would fit the District's needs. LTD selected a product favored by many streetcar and trolley system operators: a ticketing machine originally designed to vend parking meter tickets. Parkeon, a firm based in France, redesigned its North American product to vend a limited range of fare products. The machine's small footprint, combined with its attractive price of approximately \$11,300 per unit, fit the District's operational and budgetary needs.

In Summer 2009 LTD Information Technology staff worked with Facilities Services staff and Finance staff to implement the Parkeon ticket vending system. LTD officially launched the system in September 2009. LTD Security staff began riding EmX buses to assist in educating riders about the need to have a valid fare when riding. This transition went very well.

With a little more than a year since implementation, LTD now has a healthy amount of experience and data to evaluate the effectiveness of the EmX fare system.

At the November 8 Board meeting, staff will provide the following information:

- Capital cost to purchase and install the equipment
- Operational costs to:
 - Maintain/repair equipment
 - Collect cash
 - Manage financial transactions
 - Monitor system status
- Revenues: Actual vs. Projected
- Fare enforcement
- Ridership
- Customer feedback

ATTACHMENTS: None

PROPOSED MOTION: None

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AGENDA ITEM SUMMARY

DATE OF MEETING: November 8, 2010

ITEM TITLE: OCTOBER FINANCIAL STATEMENTS

PREPARED BY: Diane Hellekson, Director of Finance and Information Technology

ACTION REQUESTED: None

BACKGROUND: Because the November Board meeting date is so early in the month, it is not possible to close October transactions and prepare the financial reports in time for inclusion in the Board meeting packet. Every effort will be made to have the reports available as handouts for the November 8 meeting. In the event that reports are not available on November 8, the reports will be mailed to Board members as soon thereafter as possible. Staff regret any inconvenience that this distribution method may cause.

ATTACHMENTS: None

PROPOSED MOTION: None

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MONTHLY DEPARTMENT REPORTS

November 8, 2010

PLANNING AND DEVELOPMENT

Tom Schwetz, Director of Planning and Development

PROJECT DEVELOPMENT

West Eugene EmX Extension (WEEE):

During the past month, work on the WEEE project included the following activities:

- The Alternatives Screening Report was updated based on requested changes from the Federal Transit Administration (FTA).
- The FTA approved the Alternatives Analysis (AA) Report for release.
- With the release of the AA Report, staff were able to schedule the first of a series of meetings with the Joint Locally Preferred Alternative Committee and introduce the AA Report to the WEEE Corridor Committee and the EmX Steering Committee.
- Three open house events were held in late October and early November that provided opportunities for reviewing proposed mitigation designs.

Ongoing activities:

- Multiple one-on-one meetings with property owners along the corridor were scheduled to review potential property impacts and mitigation options.
- The Next Stop Center continues to be open on Tuesdays between 1:00 p.m. and 5:00 p.m., and staff are available to provide information to the public about the West Eugene EmX Extension project.

Regional Planning:

During the past month, staff work that concentrated on regional planning included the following activities:

- As required by the FTA, staff supervised the implementation of a survey that creates a baseline understanding of ridership prior to the opening of Gateway EmX. The on-board survey was conducted on routes 12, 13, 18, 19, and EmX. In two years the same survey will be implemented to compare how transit travel has been affected with the opening of Gateway EmX.
- Staff answered questions about the relocation of bus stops along Main Street as part of an open house for the City of Springfield Main Street Pedestrian Safety study.

- On November 3 staff attended an all-day scenario planning and climate change workshop, which was sponsored by the City of Eugene.

Ongoing activities:

- The Regional Transportation Options Plan project management team has set up bi-weekly meetings to complete tasks in the work plan.
- LTD staff met with other regional partners to discuss development of a streetcar feasibility study for downtown Eugene.

Point2point Solutions

Jody Cline, Interim Program Manager

School Solutions:

Dozens of local schools participated in the International Walk and Bike to School Day observed on Wednesday, October 6. Point2point Solutions provided mini-grants totaling \$5,000 to help local schools provide incentives and healthy snacks for participating students.

The Bethel School District has hired a half-time coordinator to implement programs that promote walking and biking to school. The two-year position is funded by an Oregon Safe Routes to School grant. Point2point Solutions and other local groups will assist in this effort.

Work Solutions:

A quarterly Employee Transportation Coordinator Luncheon was held on October 14 at Lane Council of Governments. Twenty-one organizations were present, representing more than 20,000 individuals.

Education and Outreach:

On October 15 staff attended the Oregon Department of Transportation's Flex Funds Application Webcast. On October 22 staff attended a webinar on community-based marketing.

Tracy Smith attended the Oregon Transportation Conference in Seaside on October 24-27.

Outreach was conducted in the Gateway and Coburg areas regarding the ODOT one-week closure/detour of exit 195A from northbound I-5.

On-the-go Solutions:

There were 13 commuters added to the Rideshare database for a total of 733 commuters on file.

A new vanpool from Eugene to Corvallis began service in October.

Program Management:

Point2point Solutions staff and members of the Drive Less Save More project team met with KEZI staff to discuss the marketing and promotions calendar for the upcoming year.

On October 22 Point2point Solutions co-sponsored Transportation Remix, which is a panel discussion on emerging and innovative bicycle and pedestrian designs.

CAPITAL PROJECTS

Joe McCormack, Project Manager

Gateway EmX:

Construction of the new EmX platforms at the Eugene Station is well underway. These platforms will be complete by early to mid-December. Fabrication of a mounting system for real-time information displays at all EmX platforms has begun. It is anticipated that the displays will be installed shortly after the Gateway EmX corridor becomes operational. Staff continue testing the traffic signals and performing timing runs along the corridor. Operator training will begin in November. The Gateway EmX Extension will begin revenue service on January 9, 2011.

UO Transit Station:

After considering public input as well as possible construction funding scenarios, design of the University of Oregon (UO) transit station has begun. The first phase would be based on the schematic design of the station between 12th Avenue and 13th Avenue on Kincaid Street. This design would replace the existing transit infrastructure, provide saw-tooth independent pull-out bus bays, and potentially new traffic signals at 13th & 11th. The second phase, to be implemented at a future date, would either involve completing the rest of the developed schematic design between 11th and 12th or renovating the existing south station area between 13th & 14th.

The most immediate construction funding opportunity is an ODOT Flexible Funds Program. The District will submit a grant request for \$2 million in November to fund Phase One of the UO Transit Station.

Veneta Park & Ride:

Construction is 30 percent complete and is scheduled to be finished and operational by mid-December.

**SERVICE PLANNING, ACCESSIBILITY,
AND MARKETING**

Andy Vobora, Director of Service Planning, Accessibility, and Marketing

January Bid:

Service Planning is putting the final touches on service changes that will be effective January 9, 2011. This includes the final timing of the EmX route and changes to Springfield routes. A number of other running time changes will be made to routes that are struggling to meet station connections. The Communications staff has taken the route and schedule change information and translated it into a new *Rider's Digest*. This is the first time that the District has printed the *Rider's Digest* twice in one year. The benefit of a second printing is that the new EmX route will be highlighted and the new schedules for Springfield routes will be better communicated.

Outreach:

Most outreach efforts have been focused on West Eugene EmX. The list of meetings with businesses, chat sessions, public meetings, and one-on-ones grows daily. On October 14 the Eugene Chamber Business Expo gave us a good opportunity to talk with business members who were not directly connected to the project. Many good questions came up, and several contacts were made for follow-up.

Staff are working on the *Let's Talk Transit* Town Hall scheduled for November 9 at the Hilton. Many open houses are scheduled and more will be added as the WEEE process moves forward. There will be more of an active media presence in the coming weeks as a full media schedule has been developed and will be airing soon.

Group Pass:

The Associated Students of the University of Oregon (ASUO) budget process has kicked off for the 2011-12 school year. Agreements made last year should smooth the process this year. The students, administration, and LTD staff agreed on a methodology for calculating the contract cost, which has been a sticking point in past years. The ASUO will pay a small price increase in the 2011-12 school year because they needed to pay a lower price this year to address a 2010-11 budget issue. There is continuing discussion regarding a program change, but it is not anticipated that these discussions will affect this year's budget process.

Media:

EmX, both Gateway and the West Eugene extensions, dominated LTD's earned media for the month. Several very positive stories were run on the status of the Gateway EmX, including specific elements such as the new pedestrian crossings. Coverage of federal grants for hybrid buses was generated as well.

Editorial Board meetings are scheduled for early November. Now that the editor is back to work, a fairly comprehensive story regarding West Eugene EmX will appear in the *Eugene Weekly*.

In October the District's Community Leaders Together ads featured the SMART Reading Program and United Way. In November LTD's partnership with Food for Lane County will be featured in the ads.

ACCESSIBLE SERVICES

Terry Parker, Accessible Services Manager

Accessible Services is gearing up for the Oregon Public Transit Division's biennial Discretionary Grant process. LTD is the regional administrator within Lane County and coordinates the application and project prioritization process for transportation services that will benefit older adults and people with disabilities.

TRANSIT OPERATIONS

Mark Johnson, Director of Transit Operations

Gateway EmX:

Operations staff have been very busy testing and developing operational procedures and training manuals for the Gateway EmX corridor. The operator training is scheduled to begin later this month.

UO Football Service:

UO football service is nearly wrapped up for the year. LTD will provide service on Saturday, November 6, and on Friday, November 26. The supervisors and transit coordinator did an exceptional job of assisting the transit contractors that provided service for the October 21 UO/UCLA game. Operations staff trained and worked with the contractors on game day to ensure that the community received the best service possible.

MAINTENANCE

George Trauger, Director of Maintenance

Articulated Bus Purchase:

All five of the new hybrid articulated buses are now in service.

7100 series:

Bus 7102 is still at Brattain International Trucks for fire damage repair.

EmX:

All of the 9100-series EmX buses are now in service. The original 6100-series BRT's are in various stages of having radio antennas relocated and having GPS traffic priority signal antennas added in preparation for operation of all BRT buses in both segments of EmX service. Three of the 6100's radio and antenna work have been completed, and there are three remaining. Bus 6101 is in Berkeley, CA, for installation of a test vehicle guidance system.

Parts have been ordered to replace coolant hoses on Bus 9103. The hoses are covered under warranty.

FINANCE AND INFORMATION TECHNOLOGY

Diane Hellekson, Director of Finance and Information Technology

FINANCE

Todd Lipkin, Finance Manager

Grants Management:

- Monthly American Recovery and Reinvestment Act (ARRA) reporting to the Transportation and Infrastructure Committee of the House of Representatives was submitted.
- Quarterly 1512 ARRA reporting was submitted to the Office of Management and Budget.
- Work continues on the development of the monthly grant report requested by the Board of Directors at the September meeting. A process is being developed to make the creation of the report repeatable so it can be updated at any time. There was not sufficient time to complete this work for the November meeting. Development work will be completed so that the grant report is included starting with the December Board packet.

Payroll Processing:

- Fifty-two (52) payroll checks and 550 payroll direct deposits totaling \$853,273 were made in October 2010 (two pay dates).

Accounts Payable:

- Two hundred ninety-seven (297) vendor paper and electronic checks totaling \$3,865,802 were processed during the month of October 2010. This included \$424,373 to New Flyer of America towards the purchase of five new hybrid-electric articulated buses.

Accounts Receivable:

- Twelve (12) cash fare deposits totaling \$113,727 were processed in October 2010.

ACCOUNTING/INTERNAL AUDIT

Carol James, Chief Accountant/Internal Auditor

Accounting:

- The September 2010 financial reports were completed for the October 11, 2010, special Board meeting.
- Staff reviewed the GASB 45 Actuarial Valuation of Postemployment Benefits Other than Pensions for Lane Transit District received October 11, 2010, and incorporated data into the Comprehensive Annual Financial Report (CAFR).
- The first draft of the FY 2010 CAFR was substantially completed.

Internal Audit:

- Staff began the biennial review and physical inventory of fixed assets. The physical inventory is required every two years as part of the triennial Federal Transit Administration review.

PURCHASING

Jeanette Bailor, Purchasing Manager

A request for proposal (RFP) has been sent out for an LED display system, with responses due mid-November. An RFP is being drafted for a consultant to both review the business and operational needs of the RideSource Call Center and to develop a specification in RFP format for software and technology that will help automate those business and operational needs.

The purchasing policy has been updated to reflect changes in the federal rules and to implement administrative changes suggested during the procurement review. These changes and a summary of the review are being presented to the Board of Directors as a separate agenda item.

**HUMAN RESOURCES AND
RISK MANAGEMENT**

Mary Adams, Director of Human Resources and Risk Management

Labor Negotiations:

Labor negotiations were held October 13, November 3, and November 4 at the Hilton. Upcoming dates include November 10 and possibly November 5.

HUMAN RESOURCES/TRAINING

David Collier, Senior Human Resources Analyst

Terminations:

Assistant General Manager Stefano Viggiano retired after more than 30 years of service.

Benefits:

LTD held the retiree Medicare supplement meeting on October 20, which experienced a very good turnout. Plan changes were reviewed for the retirees, who then had an opportunity to ask questions of the providers.

On November 9 the annual Benefits Fair will be held. This annual fair provides an opportunity for employees to ask questions of LTD vendors. As in past years, biometric and body fat screenings are again being offered.

SAFETY AND RISK MANAGEMENT

David Lindelien, Risk Manager

A flu shot clinic was held on October 28, which was open to all LTD employees and their dependents.

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AGENDA ITEM SUMMARY

DATE OF MEETING: November 8, 2010

ITEM TITLE: MONTHLY PERFORMANCE REPORTS

PREPARED BY: Mark Pangborn, General Manager

ACTION REQUESTED: None

BACKGROUND: In response to a request by the Board for regular reporting on the District's performance in several areas, monthly performance reports are provided for the Board's information.

ATTACHMENTS: October 2010 Performance Reports (*to be handouts at Board meeting*)
September 2010 RideSource Activity and Productivity Report

PROPOSED MOTION: None

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Special Mobility Services: RideSource Activity and Productivity Information

	Current		Prior		Current YTD	Previous YTD	Current YTD % Change	Prior 12 Month	Current 12 Month	Prior 12 Month % Change
	Month	Month	Year's Month	Year's Month						
September-10	15,203	13,648	11.4%	45,674	42,090	8.5%	178,390	163,696	9.0%	
RideSource Ridership										
RideSource(All Modes)	12,449	11,138	11.8%	37,614	34,746	8.3%	147,461	134,446	9.7%	
Shopper	444	453	-2.0%	1,311	1,361	-3.7%	5,212	5,569	-6.4%	
Escort Volunteers-Metro	770	771	-0.1%	2,536	2,283	11.1%	9,839	8,096	21.5%	
Escort Volunteers-Rural	1,540	1,286	19.8%	4,213	3,700	13.9%	15,878	15,585	1.9%	
RideSource Cost per Ride	\$ 24.57	\$ 23.93	2.7%	\$ 24.96	\$ 23.58	5.9%	\$ 23.81	\$ 22.35	6.5%	
RideSource(All Modes)	\$ 29.35	\$ 28.74	2.1%	\$ 29.73	\$ 28.00	6.2%	\$ 28.24	\$ 26.66	5.9%	
RideSource Shopper	\$ 12.53	\$ 12.78	-2.0%	\$ 12.53	\$ 12.78	-2.0%	\$ 12.53	\$ 12.78	-2.0%	
RideSource Escort	\$ 3.54	\$ 3.12	13.3%	\$ 3.22	\$ 3.25	-0.9%	\$ 3.25	\$ 3.14	3.6%	
Ride Reservations	13,119	11,964	9.7%	39,436	36,868	7.0%	155,601	143,925	8.1%	
Cancelled Number	1,251	1,213	3.1%	3,745	3,529	6.1%	15,071	13,943	8.1%	
Cancelled % of Total	9.54%	10.14%		9.50%	9.57%		9.69%	9.69%		
No-Show Number	127	108	17.6%	381	347	9.8%	1,635	1,454	12.4%	
No-Show % of Total	0.97%	0.90%		0.97%	0.94%		1.05%	1.01%		
Ride Refusals Number	0	0	0.0%	2	1	100.0%	3	12	-75.0%	
Ride Refusals % of Total	0.00%	0.00%		0.01%	0.00%		0.00%	0.01%		
Service Hours	6,650	5,724	16.2%	20,117	17,985	11.9%	78,808	70,817	11.3%	
Agency Staff	6,438	5,511	16.8%	19,394	17,255	12.4%	75,533	67,761	11.5%	
Agency SMS Volunteer	212	213	-0.5%	723	730	-1.0%	3,275	3,056	7.2%	
Avg. Trips/Service Hr.	1.94	2.02	-4.0%	1.93	2.01	-4.0%	1.94	1.98	-2.0%	
RideSource System Miles	89,781	79,536	12.9%	276,438	248,301	11.3%	1,069,977	974,468	9.8%	
Avg. Miles/Trip	6.96	6.86	1.5%	7.10	6.88	3.3%	7.01	6.96	0.7%	
Miles/Vehicle Hour	13.50	13.90	-2.8%	13.74	13.81	-0.5%	13.58	13.76	-1.3%	

Special Mobility Services: RideSource Activity and Productivity Information

September-10	Current		Prior		Change	%	Change	%	Prior	12 Month	Change	%
	Month	Month	Month	Month								
On-Time Performance %	82.6%	82.8%	83.4%	84.3%	-1.1%	-1.1%	85.4%	-2.3%	116,107	132,545	110,517	99,115
Sample	11,254	9,947	33,854	30,886								
On-Time	9,299	8,240	28,232	26,034								

- RideSource (All Modes) includes rides done by taxi and SMS volunteers.
- Escort Volunteers-Metro includes in-district volunteer rides and SMS volunteer escort rides.
- Escort Volunteers-Rural is out of district volunteer rides.
- RideSource cost per Ride (All Modes) does not include volunteer mileage reimbursement.
- Shopper cost per ride is from the most recent quarterly cost model.
- Escort cost per ride is mileage reimbursement to all volunteers.
- RideSource System Miles includes miles by volunteers in agency vehicles.
- On-Time Performance reflects a 100% sample of all rides with scheduled pickup times, plus will-call rides. The standard is +/- 10 minutes for scheduled pickups and within 30 minutes of will-call request.

AGENDA ITEM SUMMARY

DATE OF MEETING: November 8, 2010

ITEM TITLE: EXECUTIVE (NON-PUBLIC) SESSION PURSUANT TO ORS 192.660(2)(d)

PREPARED BY: Mary Adams, Director of Human Resources and Risk Management and Board Designee for Labor Negotiations

ACTION REQUESTED: That the Board meet in Executive Session pursuant to ORS 192.660(2)(d), to conduct deliberations with persons designated by the governing body to carry on labor negotiations. Members of the District's negotiating team will be present for this discussion.

ATTACHMENT: None

PROPOSED MOTION: I move that the Board meet in Executive Session pursuant to ORS 192.660(2)(d), to conduct deliberations with persons designated by the governing body to carry on labor negotiations.

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AGENDA ITEM SUMMARY

DATE OF MEETING: November 8, 2010

ITEM TITLE: ITEMS FOR ACTION/INFORMATION AT A FUTURE MEETING

PREPARED BY: Jeanne Schapper, Administrative Services Manager/Clerk of the Board

ACTION REQUESTED: None

BACKGROUND: The action or information items listed below will be included on the agenda for future Board meetings:

- A. **Board Strategic Planning Work Session:** A joint work session, which will include the Budget Committee, has been scheduled for December 10 at Northwest Community Credit Union in Springfield. The discussion will include LTD budget and service, Board accessibility, leadership succession planning/general manager recruitment, and the scenario framework for the Long-Range Transit Plan.
- B. **Independent Audit Report:** The annual audit findings will be presented at the December meeting.
- C. **Accessible Transportation Committee (ATC) Membership Approval:** Membership appointments to the ATC will be on the Consent Calendar for the December Board meeting.
- D. **FY 2009-10 Annual Performance Report:** Staff will prepare a performance report for FY 2009-10 for presentation to the Board at the December Board meeting.
- E. **LTD on Facebook:** Social media is being used more and more to communicate with riders and community members. At the December Board meeting, staff will provide an overview of how Facebook works and how this tool allows targeted messaging to be delivered in a timely and cost-effective manner.
- F. **Executive Session: Labor Negotiations:** The existing labor contract expired on June 30, 2010, and the first three negotiations meetings have taken place. An executive session will be held at the December Board meeting to update Board members on the process and to discuss strategy.
- G. **Gateway EmX Update (including the roundabout):** Members of the Disabled Services Advisory Committee have expressed concerns about pedestrian safety at the Pioneer Parkway Roundabout along Gateway EmX. The Committee has requested

that LTD keep members apprised of progress related to the issue, and an update to the Board will be provided at the December Board meeting.

- H. **Veneta Park & Ride**: Construction is scheduled to be completed by mid-December. An update will be provided to the Board at the December meeting.
- I. **Public Hearing and Approval of Lane Coordinated Human Services Transportation Plan**: The Lane Coordinated Human Services Transportation plan is in the process of being updated. It will be ready for a public hearing and Board approval at the January Board meeting.
- J. **Joint Meeting with Lane County Board of Commissioners**: Staff are in the process of rescheduling a joint meeting of the LTD Board and the Lane County Board of Commissioners for sometime in January. Work session items will include a discussion of transit funding options; updates on Franklin EmX ridership, the Gateway EmX implementation, West Eugene EmX project status and the selection of the locally preferred alternative; and a discussion of the Long-Range Transit Plan.
- K. **Joint Meeting with Eugene City Council**: A joint meeting is in the process of being scheduled for mid-January to mid-February 2011. The topics of discussion will include an update on future LTD budget and service issues that may impact Eugene and an update and public hearing on the West Eugene EmX Locally Preferred Alternative process.



*Lane Transit District
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*(541) 682-6100
Fax: (541) 682-6111*

ADDENDUM TO NOVEMBER 8, 2010
LTD BOARD AGENDA PACKET

LANE TRANSIT DISTRICT
PURCHASING POLICY AND RULES

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DRAFT 11/8/2010

LANE TRANSIT DISTRICT PURCHASING POLICY AND RULES

On June 18, 1985, Lane Transit District's Board of Directors adopted Ordinance 30 creating a local contract review board for LTD. This local contract review board is known as the LTD Contract Review Board ("LTD/CRB"). Pursuant to ORS 279A.065(5), LTD/CRB hereby adopts the following purchasing policy and public contracting rules (the "Rules"). The following Rules are in lieu of the model rules adopted by the Attorney General; therefore, the Attorney General model rules do not apply to LTD. These Rules apply to all public contracts for goods and services made by or on behalf of LTD. All public contracts must be authorized, have funds available, be charged to the proper budget line item, and satisfy all pertinent governmental legal requirements, including all requirements set forth in these Rules.

SECTION 1. Definitions.

For the purposes of these Rules, the following definitions apply:

- 1.1 Addendum or Addenda:** A document from LTD that sets forth an addition or deletion to, a modification in, or an explanation of a Solicitation Document.
- 1.2 Affected Person or Affected Offeror:** An Offeror or Person whose ability to participate in a procurement is adversely affected by an LTD decision.
- 1.3 Bid:** A written, competitive Offer submitted in response to an Invitation for Bid, binding on the Offeror, in which price and conformance to specification will be the award criteria.
- 1.4 Bidder:** An Offeror that submits a Bid in response to an Invitation for Bid.
- 1.5 Blanket Purchase Agreement or BPA:** A long-term contractual tool which will require purchase orders to release specific items or products for delivery to LTD during a contract period.
- 1.6 Board of Directors:** The Board of Directors of LTD.
- 1.7 Class Special Procurement:** A contracting procedure that differs from the procedures described for Competitive Procurements under these Rules and is for the purpose of entering into a series of contracts over time for the acquisition of a specified class of goods or services.
- 1.8 Closing Date:** The date and time announced by LTD as the deadline for the receipt of an Offer (at least five days after last advertisement of the Solicitation Document).
- 1.9 Competitive Procurement:** The solicitation of competitive Offers through the issuance of a Solicitation Document.
- 1.10 Contract Period:** The period of contract performance for rolling stock and replacement parts shall not exceed five years, inclusive of options, as defined in FTA C 4220.1F. The

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LTD Purchasing Policy and Rules - 1

Adopted April 20, 2005; amended November 8, 2010

length of all other contracts shall be based upon sound business judgment, including consideration of issues such as the nature of the item being purchased, the need to afford the contractor a reasonable opportunity to recapture any start-up costs, the need to afford competing vendors the opportunity to do business with LTD, and the relative benefit to LTD of a longer or shorter contract term. All contracts must specify a contract period of performance, either in the form of delivery schedules for contract deliverables such as commodities, or a specific end date for service contracts.

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- 1.11 Contract-Specific Special Procurement:** A contracting procedure that differs from the procedures described for Competitive Procurements under these Rules and is for the purpose of entering into a single contract or a number of related contracts for the acquisition of specified goods or services on a one-time basis or for a single project.
- 1.12 Contracting Agency:** A public body authorized by law to conduct a procurement, including without limitation LTD, the Director of the Oregon Department of Administrative Services, and any person authorized by a contracting agency to conduct a procurement on the contracting agency's behalf. Contracting Agency does not include the judicial department or the legislative department.
- 1.13 Contractor:** The person or entity awarded the Public Contract in response to a solicitation by LTD.
- 1.14 Date of Solicitation Document:** The date when the first advertisement for the Solicitation Document is published.
- 1.15 Descriptive Literature:** Written materials submitted by an Offeror to provide information concerning the products available in response to a Solicitation Document.
- 1.16 Director:** LTD's Assistant General Manager.
- 1.17 Emergency Contract:** Those contracts meeting the criteria set forth in Section 6.9.
- 1.18 Foreign Contractor:** A contractor that is not domiciled, or registered to do business, in the state of Oregon.
- 1.19 Grant:** An agreement under which a Contracting Agency receives moneys, property, or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the Contracting Agency and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions; or an agreement under which a Contracting Agency provides moneys, property, or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the Contracting Agency is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions. Grant does not include a Public Contract for a Public Improvement, for Public Works, or for emergency work, minor alterations, or ordinary repair or maintenance necessary to

preserve a Public Improvement, when under the Public Contract a Contracting Agency pays, in consideration for contract performance intended to realize or to support the realization of the purposes for which grant funds were provided to the Contracting Agency, moneys that the Contracting Agency has received under a Grant.

- 1.20 Invitation for Bid or IFB:** All documents issued by LTD used for soliciting Bids from prospective Bidders and used to explain offering procedures and requirements.
- 1.21 Lowest Responsible Bidder:** The lowest priced, responsible Bidder who has substantially complied with all prescribed public bidding procedures and requirements and who has not been disbarred by LTD under Section 13 and ORS 279B.130, disqualified pursuant to Section 6.2.4, or, if in connection with the procurement of a Public Improvement Contract, has not been disqualified pursuant to Section 41.10 and ORS 279C.440 to 279C.450.
- 1.22 LTD:** Lane Transit District.
- 1.23 Offer:** A Bid, Proposal, or other written response to a Solicitation Document as applicable.
- 1.24 Offeror:** A Bidder, Proposer, or other Person, as applicable, who submits an Offer.
- 1.25 Person:** An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity that has legal capacity to enter into a Contract.
- 1.26 Personal Services:** Services performed as an independent contractor in a professional capacity, where the primary purpose of the Contract is to acquire specialized skills, knowledge, and resources in the application of scientific expertise, or exercise of professional, artistic, or management judgment, including but not limited to the professional services of the following:
 - 1.26.1** Accountant;
 - 1.26.2** Attorney;
 - 1.26.3** Architectural or land use planning consultant;
 - 1.26.4** Physician;
 - 1.26.5** Dentist;
 - 1.26.6** Registered professional engineer, appraiser, or surveyor;
 - 1.26.7** Passenger aircraft pilot;
 - 1.26.8** Aerial photographer;
 - 1.26.9** Timber cruiser;
 - 1.26.10** Broadcaster;

- 1.26.11 Artist in the performing or fine arts, including but not limited to photographer, filmmaker, painter, weaver, and sculptor;
- 1.26.12 Consultant;
- 1.26.13 Educational or human custodial caretaker; and
- 1.26.14 Services requiring specialized skills, knowledge, and resources in the application of technical or scientific expertise or the exercise of professional, artistic, or management discretion or judgment.

However, Personal Services do not include:

- a. Services, even if rendered in a professional capacity, if the predominant result of the Contract is a product (for example, a contract with a landscape architect to design a garden is for personal services, but a contract to design a garden and supply all the plants is not);
 - b. Labor that is of a type that generally can be done by any competent worker, including but not limited to janitorial work, security guard work, crop spraying, laundry, and landscape maintenance; and
 - c. Trade-related activities, even if a specific license is required to engage in the activities.
- 1.27 **President:** The presiding officer of LTD/CRB and who is the same person who serves as President of the LTD Board of Directors.
- 1.28 **Product Sample:** A representative specimen of the item that will be offered by an Offeror in response to a Solicitation Document. Unless otherwise provided in the Solicitation Document, the Product Sample shall be the exact product or a representative portion of the product offered by the Offeror.
- 1.29 **Proposal:** A written, competitive Offer submitted in response to a Request for Proposal, binding on the Proposer, in which price, conformance to specification, and other listed factors will be part of the award criteria.
- 1.30 **Proposer:** An Offeror who submits a Proposal in response to a Request for Proposal.
- 1.31 **Public Contract or Contract:** A sale or other disposal, or a purchase, lease, rental, or other acquisition, by LTD of personal property, services, including Personal Services, Public Improvement, Public Works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. Public Contract does not include grants.
- 1.32 **Public Improvement:** A project for construction, reconstruction, or major renovation on real property by or for LTD. However, Public Improvement does not include either:
(i) projects for which no funds of LTD are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or
(ii) any emergency work, minor alteration, ordinary repair, or maintenance necessary in order to preserve a Public Improvement.

LTD Purchasing Policy and Rules - 4

| Adopted April 20, 2005; amended November 8, 2010

- 1.33 **Public Works:** Has the meaning set forth in ORS 279C.800(5).
- 1.34 **Receipt of Offer:** Occurs when an Offer and any associated documentation is actually received by LTD at the delivery point and/or by the person designated in the Solicitation Document.
- 1.35 **Request for Proposal or RFP:** All documents issued by LTD used for soliciting Proposals from prospective Proposers and explaining offering procedures and requirements.
- 1.36 **Responsive Offer (also Responsive Bid or Responsive Proposal):** An Offer that is in substantial compliance with applicable solicitation procedures, these rules, and all requirements and criteria set forth in the Solicitation Document.
- 1.37 **Responsible Offeror (also Responsible Bidder or Responsible Proposer):** An Offeror who meets the standards set forth in Section 26.1, has not been disqualified by LTD under Sections 6.2.4 or 33.3, and has not been debarred under Section 13.
- 1.38 **Revenue Contracts:** Third-party contracts whose primary purpose is to either generate revenues in connection with a transit-related activity or create business opportunities utilizing an FTA-funded asset. These contracts are required to be awarded utilizing competitive selection procedures and principles suitable to the type and scope of the activity involved.
- 1.39 **Rules:** These rules adopted by LTD/CRB.
- 1.40 **Signature:** 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.
- 1.41 **Signed:** A written document that contains a signature.
- 1.42 **Solicitation Document:** An Invitation for Bid, Request for Proposal, or other document issued to invite Offers from prospective Offerors pursuant to the Rules.
- 1.43 **Special Procurement:** Unless context requires otherwise, a Class Special Procurement, a Contract-Specific Special Procurement, or both.
- 1.44 **Submittal Period:** The span of time between the date of the Solicitation Document and Closing Date.
- 1.45 **Written or Writing:** Conventional paper documents, whether handwritten, typewritten, or printed, in contrast to spoken words. It also includes electronic transmission or facsimile documents when required by applicable law or permitted by a Solicitation Document or Contract.

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SECTION 2. General Purchasing Authority Policy.

- 2.1 LTD Public Contracting and purchasing is centralized. As such, pursuant to ORS 279A.075, LTD/CRB hereby delegates the following contracting authority:

LTD Purchasing Policy and Rules - 5
 | Adopted April 20, 2005; amended November 8, 2010

2.1.1 The persons holding the following positions are authorized to enter into Public Contracts for LTD up to the following amounts.

a.	Purchasing Manager	\$75,000
b.	Purchasing Assistant	\$10,000
c.	Inventory Supervisor	\$10,000
d.	Parts Clerk	\$ 2,500

2.1.2 The Purchasing Manager also shall have authority to enter into Sole Source procurements in an amount of \$75,000 or less, pursuant to Section 6.8 of the Rules. The General Manager shall have authority for any Sole Source procurement above \$75,000.

2.1.3 In the absence of the Purchasing Manager or Inventory Supervisor, the Director of Finance shall act as the Purchasing Manager. In the absence of the Inventory Supervisor, the Purchasing Manager shall make purchases over \$2,500 and the Purchasing Assistant shall make purchases up to \$10,000. The Parts Clerk shall make purchases in an amount of \$2,500 or less. The Inventory Supervisor and Purchasing Assistant shall make all purchases up to \$10,000. The Purchasing Manager shall sign Contracts and contract modifications in the amount of \$75,000 or less. The General Manager shall sign all other Contracts exceeding \$75,000.

2.2 No LTD employee shall enter negotiations with any Contractors without receiving authority from the Purchasing Manager.

2.3 The Purchasing Manager shall be responsible for determining the most effective procurement method, in accordance with these Rules.

2.4 The Purchasing Manager shall see that all Solicitation Documents are circulated to pertinent LTD personnel prior to a Solicitation Document being mailed to Offerors.

2.5 Petty cash in the amount of \$50 or less may be used when the procurement is a non-repetitive purchase.

SECTION 3. Contract Review Board Powers; Procedures; Meetings.

3.1 LTD/CRB shall consist of members of the Board of Directors. LTD/CRB and all of its members shall have all the powers granted to it under ORS 279A.060 et seq. The President of the Board of Directors shall be the President of LTD/CRB.

3.2 LTD/CRB meetings may be held at Board of Directors meetings, or at another time after public notice. The Board of Directors may sit as LTD/CRB during its meetings without formal adjournment of the Board of Directors meeting and formally convening the LTD/CRB meeting, by announcing that it is sitting as LTD/CRB.

3.3 Notices of LTD/CRB meetings or other actions shall be of the same type and given in the same manner as notices of meetings or actions of the Board of Directors. LTD/CRB notices may be published as part of the Board of Director notices when the actions that are the subject of the notices will occur on the same date and at the same place.

- 3.4 A majority of the members of LTD/CRB shall constitute a quorum. Exercise of LTD/CRB authority shall be by majority vote of the entire LTD/CRB.
- 3.5 LTD/CRB proceedings shall be governed by the same procedural rules that govern the Board of Directors proceedings, insofar as they are consistent with these Rules and are applicable to LTD/CRB under ORS Chapters 279, 279A, 279B, and 279C.
- 3.6 Meetings of LTD/CRB may be held by conference call after the required public notice. If the meeting is held by conference call, the President shall conduct the meeting using a speakerphone to ensure all attending the meeting may hear.
- 3.7 On urgent or perfunctory matters, the President may poll the members of LTD/CRB by telephone. Electronic transcripts of the polling calls shall be made and retained. In the course of the poll, any member of LTD/CRB may request the matter be discussed by conference call or deferred to a meeting.
- 3.8 Prior to conference calls or telephone polls, the press and public, including persons directly interested in the subject matter of the poll, shall be given reasonable notice so that they may be present with the President at the time of the meeting or poll.
- 3.9 The agenda of the meetings of LTD/CRB shall include the following:
 - 3.9.1 Unanimous consent calendar, including a brief description of each contract exempted and the amount of the contract.
 - 3.9.2 A brief description of proposed exemptions, including the amount of each contract.
 - 3.9.3 The agenda of a meeting of LTD/CRB may be included in the agenda of a meeting of the Board of Directors when the two meetings will be at the same place and on the same date.
- 3.10 Records of LTD/CRB proceedings shall be made in the same manner as those of Board of Directors proceedings and may be made a part of the latter records.

SECTION 4. Statutory Exceptions to the Oregon Public Contracting Code and the Competitive Procurement Requirements of these Rules.

These Rules requiring Public Contracts to be awarded through the Competitive Procurement process do not apply to the following types of contracts:

- 4.1 Contracts between other Contracting Agencies or the federal government.
- 4.2 Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals. If federal funds are to be used by LTD for the procurement, this exemption is not available.
- 4.3 Contracts for insurance.
- 4.4 Grants.

LTD Purchasing Policy and Rules - 7

| Adopted April 20, 2005; amended November 8, 2010

- 4.5 Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which a public body is or may become interested.
- 4.6 Acquisitions or disposal of real property or an interest in real property.
- 4.7 Energy performance savings contracts.
- 4.8 Contracts, agreements or other documents approved by the General Manager and entered into, issued, or established in connection with:
 - 4.8.1 The incurring of debt by LTD, including but not limited to the issuance of bonds, certificates of participation and other debt repayment obligations, and any associated contracts, agreements, or other documents, regardless of whether the obligations that the contracts, agreements, or other documents establish are general, special, or limited; or
 - 4.8.2 The investment of funds by LTD as authorized by law, and other financial transactions of LTD that by their character cannot practically be established under the Competitive Procurement procedures required by Oregon law or these Rules.
- 4.9 Contracts for employee benefit plans as provided in ORS 243.105(1), 243.125(4), 243.221, 243.275, 243.291, 243.303, and 243.565.
- 4.10 Any procurement that is made under 10 U.S.C. 381, the Electronic Government Act of 2002 (P.L. 107-347) or other federal law that is, as determined by LTD/CRB, similar to 10 U.S.C. 381 or Section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to contracting agencies.

SECTION 5. Additional Exceptions: Class Special Procurements.

LTD/CRB finds that the following Class Special Procurements are unlikely to encourage favoritism in awarding Public Contracts or diminish competition for Public Contracts and that these Class Special Procurements will result in substantial cost savings to LTD or the public and will otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under the Competitive Procurement requirements of these Rules. LTD, therefore, adopts the following Class Special Procurements:

- 5.1 Contracts for Rolling Stock may be awarded pursuant to the “Competitive Proposal” procedure detailed in FTA Circular 4220.1E, as amended from time to time. For the purposes of this Section 5.1, “Rolling Stock” means buses, transportation vans, vehicles used to repair or support those vehicles, and any other vehicle or component included in the definition of Rolling Stock by federal statute, regulation, or guideline.

The contract term limit for rolling stock shall not exceed five years, inclusive of options, without prior written FTA approval when FTA funds are involved.
- 5.2 All contracts for utility services regulated by federal, state, or local regulating authority.
- 5.3 Contracts for equipment repair or overhaul if one of the following criteria are satisfied:

LTD Purchasing Policy and Rules - 8
 | Adopted April 20, 2005; amended November 8, 2010

- 5.3.1** The service or parts required are unknown and cannot be determined without extensive preliminary dismantling or testing;
- 5.3.2** The service or parts required are for sophisticated equipment and the service or parts installation requires specially trained personnel that are available from only one source; or
- 5.3.3** LTD shall solicit quotes from at least three firms, where practicable, and award to the firm whose offer is most advantageous to LTD considering all factors.
- 5.4** LTD may procure contracts for Personal Services or trade services using the RFP process under these Rules rather than the IFB process under these Rules.
- 5.5** LTD/CRB may adopt other Special Procurements in accordance with the following procedures:
 - 5.5.1** A written request for a Special Procurement shall be submitted to LTD/CRB. Such request shall describe the proposed contracting procedure, the goods or services or the class of goods or services to be acquired through the Special Procurement, and the circumstances that justify the use of a Special Procurement under the standards set forth in Sections 5.5.2.
 - 5.5.2** LTD/CRB finds that the written request submitted under Section 5.5.1 demonstrates that the use of a Special Procurement as described in the request or an alternative procedure prescribed by LTD/CRB will:
 - a.** Be unlikely in that the exemption will encourage favoritism in the award of Public Contracts or substantially diminish competition for Public Contracts; and
 - b.** Result in substantial cost savings to LTD or the public, or otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under the Competitive Procurement procedures of these Rules.
 - 5.5.3** In the case of a Contract Specific Special Procurement, public notice of LTD's request for the approval of a proposed Contract Specific Special Procurement must be published at least once in at least one newspaper of general, county-wide circulation in Lane County a minimum of seven (7) days prior to approval and a minimum of fourteen (14) days prior to award of the Contract. The public notice shall describe the goods or services to be acquired through the Contract Specific Special Procurement.

In the case of a Class Special Procurement, public notice of LTD's request for the approval of a proposed Class Special Procurement must be published at least once in at least one newspaper of general, county-wide circulation in Lane County a minimum of seven (7) days prior approval and a minimum of fourteen (14) days prior to award of any Contract under the Class Specific Special Procurement. The public notice shall describe the class of goods or services to be acquired through the Class Special Procurement.

- 5.5.4 If a Public Contract is awarded through a Special Procurement, LTD shall award the Contract to the Offeror whom Offer LTD determines in writing to be the most advantageous to LTD.
- 5.5.5 When LTD/CRB approves a Class Special Procurement under this Section 5, LTD may award Public Contracts to acquire goods or services within the class of goods or services in accordance with the terms of LTD/CRB's approval without making a subsequent request for a Special Procurement.
- 5.5.6 A Person may protest the approval of or request for approval of a Special Procurement in accordance with Section 36.3.

SECTION 6. Additional Statutory Exceptions.

6.1 Affirmative Action.

- 6.1.1 The provisions of these Rules may not be construed to prohibit LTD from engaging in public contracting practices designed to promote affirmative action goals, policies, or programs for disadvantaged or minority groups.
- 6.1.2 Pursuant to ORS 279A.100, LTD may limit competition on Public Contracts for goods and services, or on other Public Contracts with an estimated cost of \$50,000 or less to carry out affirmative action policies, in accordance with policies and procedures established by LTD.

6.2 Emerging Small Businesses.

- 6.2.1 As set forth in ORS 279A.105, LTD may require a Contractor to subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:
 - a. A business enterprise that is certified under ORS 200.055 as an emerging small business; or
 - b. A business enterprise that is:
 - (i) Certified under ORS 200.055 as an emerging small business; and
 - (ii) Is located in or draws its workforce from economically distressed areas, as designated by the Oregon Economic and Community Development Department.
- 6.2.2 A subcontractor certified under ORS 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:
 - a. Its principal place of business is located in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department; or

- b. The Contractor certifies in a signed writing to LTD that a substantial number of the subcontractor's employees or subcontractors that will manufacture the goods or complete the services under the Contract reside in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department. For the purposes of making the foregoing determination, LTD shall determine in each particular instance what proportion of a Contractor's subcontractor's employees or subcontractors constitute a substantial number.

6.2.3 LTD may require that a Public Contract be awarded to a "Responsible Bidder" defined in ORS 200.005, who LTD determines has made good faith efforts as prescribed in ORS 200.045(2). For purposes of this Section 6.2, "Responsible Bidder" includes a responsible Proposer that has made good faith efforts as prescribed in ORS 200.045(3).

6.2.4 DBE Disqualification.

- a. LTD may disqualify a Person from bidding or participating in any LTD Contracts under ORS 200.065(5), or suspend a Person's right to bid on or participate in any Public Contract pursuant to ORS 200.075(1) after providing the Person with notice and a reasonable opportunity to be heard in accordance with sections (d) and (e) of this Section 6.2.4.
- b. As provided in ORS 200.065 and 200.075, LTD may disqualify or suspend a Person's right to submit an Offer or to participate in a Contract (e.g., act as a subcontractor) as follows:
 - (i) For a DBE Disqualification under ORS 200.065, LTD may disqualify a Person upon finding that the Person engaged in any of the activities made unlawful by ORS 200.065(1) or (2), or if the Person has been disqualified by another Contracting Agency pursuant to ORS 200.065.
 - (ii) For a DBE Disqualification under ORS 200.075, LTD may suspend a Person upon finding that the Person engaged in any of the acts prohibited by ORS 200.075(a) through (c).
- c. LTD may disqualify or suspend a Person's right to submit Offers or participate in Public Contracts only for the length of time permitted by ORS 200.065 or 200.075, as applicable.
- d. LTD must notify the Person in writing of a proposed DBE Disqualification pursuant to this Section 6.2.4, served personally or by registered or certified mail, return receipt requested. This notice must:
 - (i) State that LTD intends to disqualify or suspend the Person;
 - (ii) Set forth the reasons for the DBE Disqualification;

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- (iii) 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 LTD 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;
 - (iv) Include a statement of the authority and jurisdiction under which the hearing will be held;
 - (v) Include a reference to the particular sections of the statutes and rules involved;
 - (vi) State the proposed DBE Disqualification period; and
 - (vii) State that the Person may be represented by legal counsel.
- e. Hearing. LTD shall schedule a hearing upon its receipt of the Person's timely request. LTD 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 prior to the hearing.

6.2.5 If federal funds are involved in the procurement, LTD shall not provide a preference to emerging small businesses under this Section 6.2.

6.3 Preference for Oregon goods and services; Nonresident Offeror.

6.3.1 "Nonresident Offeror" means an Offeror who is not a resident Offeror.

6.3.2 "Resident Offeror" means an Offeror that has paid unemployment taxes or income taxes in this state during the twelve (12) calendar months immediately preceding submission of the Offer, has a business address in this state and has stated in the Offer whether Offeror is a "Resident Offeror" under this Section 6.3.

6.3.3 For the purposes of complying with this Section 6.3, LTD may request, either in a Solicitation Document, following the Closing Date, or at any other time determined appropriate by LTD, any information LTD determines is appropriate and necessary to allow LTD to determine if the goods or services or Personal Services are manufactured or produced in Oregon. LTD may use any reasonable criteria to determine if goods or services or Personal Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that LTD applies those criteria equally to each Offeror.

6.3.4 When evaluating Offerors pursuant to Sections 26, 27 and 28, LTD shall add a percentage increase to the Offer of a Nonresident Offeror equal to the percentage, if any, of the preference that would be given to that Offeror in the state in which the Offeror resides. LTD may rely on the list prepared and maintained by the Oregon Department of Administrative Services pursuant to ORS 279A.120(4) to determine both (i) whether the Nonresident Offeror's state gives preference to in-state bidders, and (ii) the amount of such preference.

6.3.5 If federal funds are involved in the procurement, LTD shall not provide a preference for Oregon goods and services under this Section 6.3.

6.4 Recycled Materials Preference.

6.4.1 Notwithstanding provisions of law requiring LTD to award a Contract to the Responsible Bidder with the lowest Responsive Bid or the Responsible Proposer with the best Proposal or provider of a quotation, and in accordance with Section 6.4.2, LTD shall give preference to the procurement of goods manufactured from recycled materials.

6.4.2 In comparing goods from two or more Offerors, if at least one Offeror offers goods manufactured from recycled materials, and at least one Offeror does not, LTD shall select the Offeror offering goods manufactured from recycled materials if each of the following four conditions exists:

- a. The recycled product is available;
- b. The recycled product meets applicable standards;
- c. The recycled product can be substituted for a comparable non-recycled product; and
- d. The recycled product's costs do not exceed the costs of non-recycled products by more than five percent (5%) or a higher percentage if a written determination is made by LTD and set forth in the Solicitation Document. For purposes of making the foregoing determination, LTD shall consider the costs of the goods following any adjustments LTD makes to the price of the goods for purposes of evaluation pursuant to this Section 6.4.

6.5 Cooperative Procurements and Price Agreements.

6.5.1 For the purposes of these Rules, the following definitions shall apply:

- a. **"Administering Contracting Agency"** means a Contracting Agency that solicits and establishes the original Contract for procurement of goods, services or Public Improvements in a Cooperative Procurement.
- b. **"Cooperative Procurement"** means a procurement conducted by or on behalf of LTD and one or more other Contracting Agencies. "Cooperative procurement" includes but is not limited to multiparty Contracts and Price Agreements.
- c. **"Cooperative Procurement Group"** means a group of Contracting Agencies joined through an intergovernmental agreement for the purposes of facilitating Cooperative Procurements.
- d. **"Interstate Cooperative Procurement"** means a Permissive Cooperative Procurement in which the Administering Contracting Agency is a governmental body, domestic or foreign, that is authorized under the

governmental body's laws, rules, or regulations to enter into Public Contracts and in which one or more of the participating agencies are located outside this state.

- e. **“Joint Cooperative Procurement”** means a Cooperative Procurement in which the participating Contracting Agencies or the Cooperative Procurement Group and the agencies' or group's contract requirements or estimated contract requirements for Price Agreements are identified.
- f. **“Original Contract”** means the initial Contract or Price Agreement solicited and awarded during a Cooperative Procurement by an Administering Contracting Agency.
- g. **“Permissive Cooperative Procurement”** means a Cooperative Procurement in which the Purchasing Contracting Agencies are not identified.
- h. **“Purchasing Contracting Agency”** means a Contracting Agency that procures goods, services, or Public Improvements from a Contractor based on the original Contract established by an Administering Contracting Agency.

6.5.2 LTD may participate in, sponsor, conduct, or administer Cooperative Procurements for the procurement of any goods and services, but not for Public Improvements, as follows:

- a. Joint Cooperative Procurement. If LTD chooses to participate in, sponsor, conduct, or administer a Joint Cooperative Procurement, LTD may do so only in accordance with ORS 279A.210.
- b. Permissive Cooperative Procurement. If LTD chooses to participate in, sponsor, conduct, or administer a Permissive Cooperative Procurement, LTD may do so only in accordance with ORS 279A.215.
- c. Interstate Cooperative Procurement. If LTD chooses to participate in, sponsor, conduct, or administer an Interstate Cooperative Procurement, LTD may do so only in accordance with ORS 279A.220.
- d. If LTD is required to provide public notice in connection with a Cooperative Procurement, LTD may satisfy such notice requirements by including the information required in the Solicitation Document related to the Cooperative Procurement and by including instructions in the Solicitation Document to potential Offerors describing how they may submit comments in response to LTD's intent to establish a Contract or Price Agreement through the Cooperative Procurement.
- e. Any protests related to a Cooperative Procurement, or disputes related to a Contract or Price Agreement arising out of a Cooperative Procurement, shall be made and resolved as set forth in ORS 279A.225.

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6.6 Full and Open Competition.

6.6.1 Restrictions on Competition. All procurement transactions over \$3,000 will be awarded competitively, without providing an unfair competitive advantage to any potential vendor. Some of the situations considered to be restrictive of competition include, but are not limited to, the following:

- a. Unreasonable requirements placed on firms in order for them to qualify to do business.
- b. Unnecessary or excessive experience, excessive bonding, insurance, warranty, or similar requirements which affect an otherwise qualified firm's ability to compete. Such requirements must also, however, be established in a manner consistent with protection of the Agency's interests.
- c. Noncompetitive pricing practices between firms or between affiliated companies.

6.7 Small Procurements. LTD may, without following the requirements for an IFB or RFP set forth in these Rules, procure micro-purchases for goods, services, or supplies not exceeding \$5,000, if the Purchasing Manager or the Director of Finance determines the price is fair and reasonable. A contract awarded under this Section 6.6 may be amended if approved by the Purchasing Manager or the Director of Finance, but the cumulative amendments cannot exceed \$6,000.

If federal funds are used in the procurement, micro-purchases shall not exceed \$2,500 \$3,000, and any amendments must be in accordance with federal rules and regulations. If federal funds are used, LTD must document determination that price is fair and reasonable and how the determination was derived: splitting of procurements to avoid competition is prohibited; and if competition is not obtained, equitable distribution among qualified suppliers is required.

6.8 Intermediate Procurements. LTD may, without following the requirements for an IFB or RFP set forth in these Rules, procure intermediate purchases of goods, supplies, and/or services exceeding \$5,000 but not exceeding \$150,000, (not exceeding \$100,000 for federally funded small procurements) provided such Contracts are awarded in accordance with the Intermediate Procurement procedures set forth in this Section 6.7. LTD must find that the awarding of a Contract using these Intermediate Procurement procedures will not encourage favoritism or diminish competition, and will result in substantial cost savings to LTD. In making this determination, LTD shall comply with the following:

6.8.1 Reasonable efforts are made to obtain at least three quotes prior to awarding a Contract pursuant to this Section 6.7. If three quotes are not available, fewer will suffice if a written record is made of the effort to obtain quotes. A written record is made of all sources of the quotes received.

6.8.2 ~~A written record is made of all sources of the quotes received.~~ A written documentation that the price is reasonable will be placed in the file.

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6.8.3 LTD shall not award Contracts totaling in excess of \$150,000 to any one Contractor during one fiscal year pursuant to this Section 6.7.

6.9 Sole Source. LTD may, without following the Competitive Procurement requirements of the Rules and without competition, award contracts for goods or services if the LTD Purchasing Manager has determined, in writing, that the goods or service are available from only one source (“Sole Source”) and the following criteria are met:

6.9.1 LTD Purchasing Manager's written finding includes the following:

- a. That the efficient utilization of existing goods requires the acquisition of compatible goods or services;
- b. That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source;
- c. That the goods or services are for use in a pilot or an experimental project; or
- d. Other findings that support the conclusion that the goods or services are available from only one source.

6.9.2 If LTD Purchasing Manager's findings fall under Section 6.8.1(d) above, LTD shall document that LTD has undertaken reasonable efforts to identify alternate sources and has determined that competition is inadequate. Further, LTD shall:

- a. Prepare a cost analysis in connection with any procurements under a Section 6.8.1(d) Sole Source exception; and
- b. If the Sole Source procurement is over ~~\$75,000~~ **\$100,000**, LTD shall advertise the procurement in a publication that crosses state boundaries and shall not contract for the procurement for a minimum of five (5) calendar days after the date of publication.

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~~**6.9.3**~~ To the extent reasonably practical, LTD shall negotiate with the Sole Source to obtain contract terms advantageous to LTD.

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~~**6.9.4**~~ If federal funds are involved, LTD shall report Sole Source contracts to the FTA, as required by FTA regulations.

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6.10 Emergency Contracts. LTD may, without following the Competitive Procurement requirements of the Rules and without competition, make or authorize procurements of goods or services in an emergency. In making such a procurement, LTD shall document the nature of the emergency and describe the source selection methods used for the procurement.

6.10.1 For a contract of \$50,000 or less, the General Manager shall, by written resolution, document the nature of the emergency and describe the source selection methods used for the procurement.

6.10.2 For a contract over \$50,000, LTD/CRB shall, by written resolution, document the nature of the emergency and describe the source selection methods used for the procurement.

6.10.3 A contract must be awarded within sixty (60) days following the written resolution of the General Manager or Board of Directors.

SECTION 7. Specifications for Contracts.

7.1 Except as set forth in Sections 7.3 and 7.4 below, specifications for public contracts shall not expressly or implicitly require any product by any brand name or mark, nor the product of any particular manufacturer or seller unless the products so identified are followed by the terms “or equal specifications.” Notwithstanding the foregoing, nothing in this Section 7, shall prohibit LTD from specifying one or more comparable products as examples of quality, performance, functionality, or other characteristics of the product needed by LTD.

7.2 LTD shall determine what constitutes a product that is equal or superior to the product specified, and any such determination by LTD shall be final.

7.3 If federal funds are not utilized in the procurement, LTD may develop and maintain a list of qualified products in instances where the testing or examination of goods before initiating the procurement is necessary or desirable to best meet LTD’s requirements, such as (i) when it is impractical to create specific design or performance specifications for a type of product to be purchased; or (ii) when there are certain safety requirements the product must meet. If LTD desires to develop a list of qualified products, LTD shall follow the procedure set forth below in this Section 7.

7.3.1 LTD must make reasonable efforts to notify all known manufacturers or vendors of competitive products of its intention to accept applications for inclusion in its list of products. Notification shall include public notice, published at least once in at least one newspaper of general, county-wide circulation in Lane County.

7.3.2 LTD may establish deadlines for the submission of applications of similar products; however, applicants shall be allowed to submit applications until at least fifteen (15) days prior to the advertisement of the procurement document which will rely on the list of qualified products.

7.3.3 If an application for inclusion in a list of products is denied, or an existing inclusion is revoked, LTD shall notify the applicant in writing. The applicant may appeal to LTD/CRB for a review of the denial or revocation.

7.4 ~~Provided federal funds are not used in the procurement,~~ Whenever a “brand name or equal” specification is used, minimum needs must be carefully identified and salient physical and functional characteristics of the brand name product must be clearly set forth in the solicitation. LTD may also specify a particular product or list of products by brand name or mark without the term “or equal specifications” if LTD determines that only the identified product or list of products will meet its needs and such determination is based on one or more of the following written determinations:

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- 7.4.1 The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to LTD;
- 7.4.2 There is only one manufacturer or seller of the product of the quality required;
- 7.4.3 Efficient utilization of existing goods, equipment, or supplies requires the acquisition of compatible goods, equipment, or supplies; or
- 7.4.4 The use of such particular product or list of products by brand name or mark is unlikely to encourage favoritism in awarding Public Contracts or diminish competition for Public Contracts.

The inclusion of a particular product by brand name or mark pursuant to this Section 7.4 shall be subject to review only as provided under Section 36.7.

SECTION 8. Competitive Procurement and Procedures.

- 8.1 In general, all Public Contracts awarded by LTD shall be awarded through the Competitive Procurement process, except as otherwise allowed by law and/or as set forth in these Rules. Notwithstanding any exceptions to Competitive Procurement allowed by these Rules, LTD may nevertheless award a Contract using the Competitive Procurement process in these Rules.
- 8.2 If federal funds are involved, federal laws, rules and regulations shall govern the procurement in the event of a conflict with these Rules or any applicable Oregon statutory laws or regulations. Further, if federal funds are involved in the procurement, federal laws, rules, and regulations shall govern and preempt any Competitive Procurement exceptions listed under Section 4, Section 5, or Section 6 of these Rules in the event of a conflict between the federal laws, rules, and regulations and Section 4, Section 5, or Section 6 of these Rules.
- 8.3 Except as otherwise expressly allowed by these Rules, LTD must award a Public Contract using either an IFB or an RFP.
 - 8.3.1 **Invitation for Bid.** LTD may use the IFB process, when: (i) no discussion with Offerors is needed; (ii) complete specifications and requirements for the purchase are available; and (iii) LTD believes it will receive optimum value by the selection of the lowest-priced offer meeting all specifications and requirements.
 - 8.3.2 **Request for Proposal.** LTD may use the RFP process when LTD believes it will receive optimum value by (i) negotiating with the Offerors as permitted under Sections 10 and 11.2; (ii) selecting the offer based on both price and non-price related factors; and (iii) the Contract to be awarded is for personal or trades services as set forth in Section 5.4 or the requirements of Section 5.5 have been met.
- 8.4 **Procurement of Architectural and Engineering Services.** LTD shall procure architectural and engineering services in accordance with the procedures set forth in Section 40 of these Rules.

8.5 Contracts for Public Improvements. The general Competitive Procurement processes and procedures set forth in these Rules, as supplemented or modified by Section 41, shall be applicable to the procurement of Contracts for Public Improvements.

8.6 Economic Purchasing. Procurement activity will be reviewed by the Purchasing Manager at least annually to determine if certain classes of purchases should be consolidated or broken out to obtain more economic pricing. Where appropriate, analysis will also be made of lease versus purchase alternatives or any other appropriate methodology to determine the most economical approach.

8.7 Time and Material Contracts. Time and Material contracts are to be used only after a documented determination that no other type of contract is suitable. Such contracts will specify a ceiling price (a limitation of funding) that the contractor shall not exceed except at its own risk. Prior to the use of a Time and Material contract, the Contracting Officer shall make a determination that the contractor's accounting system is adequate to properly segregate and bill costs.

8.8 Cost Plus Percent of Cost Contracts. Contracts that are structured with payment provisions based on the incurrence and payment of actual costs, such as direct labor, with a fixed mark-up on the actual costs incurred for (a) profit, (b) indirect costs, or (c) both, are prohibited by federal statute and shall not be used.

SECTION 9. Solicitation Documents.

All Solicitation Documents for either an IFB or RFP shall contain the following:

9.1 General solicitation information as follows:

- 9.1.1** All information required by ORS 279B.055(2);
- 9.1.2** Notice and information about pre-Offer conferences, including, without limitation, the time, date, and place of any pre-Offer conferences, whether such conferences are mandatory or voluntary, and that any statement by LTD at such conference is not binding on LTD unless confirmed in writing;
- 9.1.3** The form, instructions, and requirements for Offer preparation and submission, including whether Offers may be submitted by facsimile;
- 9.1.4** The Closing Date and time after which Offers will not be accepted;
- 9.1.5** The address to which Offers are to be delivered;
- 9.1.6** The time, date, and place set for opening of Offers;
- 9.1.7** The office where the Solicitation Document may be reviewed;
- 9.1.8** A statement that each Offeror to a Solicitation Document must identify whether the Offeror is a "resident Offeror," as defined in ORS 279A.120;
- 9.1.9** Offeror's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4);

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- 9.1.10** Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385;
 - 9.1.11** A statement explaining how LTD will notify Offerors of Addenda, if any, and how to obtain Addenda, if any;
 - 9.1.12** The purchase description, specifications, delivery and performance schedule, inspection and acceptance requirements;
 - 9.1.13** Offer protest specifications;
 - 9.1.14** Procedures for claiming a confidential information exemption;
 - 9.1.15** If LTD intends to award Public Contracts to more than one Offeror pursuant to Section 26.6;
 - 9.1.16** Any applicable preferences pursuant to ORS 279A.120, 279A.125, 279B.055(6)(b), or 282.210; and
 - 9.1.17** Any other information LTD considers applicable.
- 9.2** As part of the terms and conditions of all Contracts, LTD shall include all applicable provisions of FTA Circular 4220.1f, as amended, and all required provisions from ORS Chapters 279A, 279B, and 279C, including without limitation:
- 9.2.1** Payment of laborers and materialmen furnishing labor or material; contributions to the Industrial Accident Fund; liens and withholding taxes in compliance with ORS 279B.220 or 279C.505;
 - 9.2.2** Hours of labor in compliance with ORS 279B.020 and 279B.235 or 279C.520;
 - 9.2.3** Payment for medical care and attention to employees in compliance with ORS 279B.230 or 279C.530;
 - 9.2.4** Maximum hours and overtime in compliance with ORS 279B.235 or 279C.520;
 - 9.2.5** Prevailing wage rates in compliance with ORS 279C.800 to 279C.870 or if federal funds are used, include Davis Bacon Act provisions (40 USC §276(a));
 - 9.2.6** Performance security requirements;
 - 9.2.7** If federal funds are involved, FTA-mandated third-party contract clauses (see Attachment A);
 - 9.2.8** If the Contract calls for demolition work, a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective in compliance with ORS 279C.510(1);

- 9.2.9 If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost-effective in compliance with ORS 279B.225 or 279C.510(2);
- 9.2.10 Overtime requirement for local governments in compliance with ORS 279B.020 or 279C.540 and 279C.545;
- 9.2.11 A Contract provision substantially as follows: "All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS 279B.230(2) or 279C.530(2));
- 9.2.12 Contractor's certification of compliance with Oregon tax laws in accordance with ORS 305.385.
- 9.2.13 If federal funds are involved, federal laws, rules, and regulations applicable to the project shall govern in the event they conflict with any provisions required by ORS 279A.100 to 279A.155.

9.2.14 If federal funds are involved and the contract is in excess of \$10,000 the following termination provisions shall be included.

9.2.14.1 Termination for Default - Remedies for Breach. All contracts in excess of the small purchase limit as defined herein shall include contractual provisions that allow for administrative or legal remedies in instances where contractors violate or breach the contract terms. The following clause will be inserted in all contracts:

Termination for Default -

- (a) (1) LTD may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—
 - (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
 - (ii) Make progress, so as to endanger performance of this contract (but see paragraph (a) (2) of this clause); or
 - (iii) Perform any of the other provisions of this contract (but see paragraph (a) (2) of this clause).
- (2) LTD's right to terminate this contract under subdivisions (a) (1) (ii) and (1) (iii) of this clause may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

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(b) If LTD terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to LTD for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

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(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) fires, (3) floods, (4) epidemics, (5) quarantine restrictions, (6) strikes, (7) freight embargoes, and (8) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

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(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

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(e) If this contract is terminated for default, LTD may require the Contractor to transfer title and deliver to LTD, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

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(f) LTD shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. LTD may withhold from these

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amounts any sum the Contracting Officer determines to be necessary to protect LTD, against loss because of outstanding liens or claims of former lien holders.

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(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of LTD.

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(h) The rights and remedies of LTD in this clause are in addition to any other rights and remedies provided by law or under this contract.

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9.2.14.2 Termination for Convenience

Termination for cause and for convenience provisions shall be included in all contracts in excess of \$10,000, including the manner by which termination will be effected and the basis on which a settlement will be accomplished. The following clause will be inserted in all contracts:

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Termination for Convenience - LTD may terminate this contract, in whole or in part, for its convenience at any time by giving at least 10 days' written notice to Contractor of such termination and specifying the effective date thereof.

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If the contract is terminated for the convenience of LTD, the Contractor shall be paid in accordance for its allowable costs (as determined by 48 C.F.R. Part 31.2) and overhead incurred through the effective date of termination, less payments of compensation previously made. Contractor shall also be paid that portion of the Fee earned to the date of termination. Further, Contractor shall be reimbursed for the actual eligible costs and overhead, not otherwise reimbursed under this contract, incurred by Contractor to implement the termination, to the extent allowable pursuant to 48 C.F.R. Part 31.2.

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Upon receipt of the notice of termination, Contractor shall immediately (1) discontinue those Contract Services affected (unless the notice directs otherwise), and (2) deliver to LTD, all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated or prepared in performing the affected Contract Services, whether completed or in process. In the event of termination for any reason, all finished or unfinished documents and other materials shall immediately become the property of LTD.

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9.3 Evaluation Process.

- 9.3.1** The procurement document shall contain a statement that LTD may reject any Offer not in compliance with all prescribed procedures and requirements and other applicable laws, and that LTD may reject for good cause any or all Offers upon LTD's finding that it is in its best interest to do so. Reasons for any such cancellation or rejection shall be documented in writing and made part of the solicitation file.
- 9.3.2** The procurement document shall contain a statement that LTD may delay or suspend any solicitation or procurement upon LTD's finding that it is in its best interest to do so. Reasons for any such delay or suspension shall be documented in writing and made part of the solicitation file.
- 9.3.3** If the Solicitation Document is an IFB, LTD shall set forth objective evaluation criteria in the Solicitation Document in accordance with ORS 279B.055(6). Examples of objective evaluation criteria include, but are not limited to, conversion costs, transportation costs, volume weighting, trade-in allowances, cash discounts, depreciation allowances, cash discounts, depreciation allowances, cartage penalties, ownership or life-cycle cost formulas, performance history on other private and Public Contracts, experience of key personnel, adequacy of equipment and physical plant, financial ability, sources of supply, references, and warranty provisions.
- 9.3.4** If the Solicitation Document is an RFP, LTD shall set forth in the Solicitation Document the manner and/or method for evaluating Proposals and the evaluation criteria LTD will use in evaluating Proposals. Further, LTD may employ any combination of the procurement methods of Contractor selection set forth in ORS 279B.060(6)(b). Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management capability, technical expertise, personnel qualifications, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or facilities, financial ability, sources of supply, references, and warranty provisions. Further, if LTD is willing to negotiate the terms and conditions of the contract, LTD must state that in the Solicitation Document and identify the areas open to negotiation.
- 9.3.5** Objective evaluation factors included in a Solicitation Document need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall:
- a. Be reasonable estimates based upon information LTD staff has available concerning future use; and
 - b. Treat all Offers equitably.
- 9.4** LTD's Purchasing Manager also may include any other special terms and conditions applicable to the contracts to be awarded including, without limitation, provisions regarding whether the Contract can assign or delegate its obligations or subcontract without the prior written approval of LTD.

SECTION 10. Competitive Range, Multi-Tiered and Multi-Step Proposals.

- 10.1** If the RFP calls for the establishment of a competitive range or allows for multi-tiered or multi-step Proposals, or allows for discussions or negotiations, LTD, in addition to procedures applicable to RFP process set forth in these Rules, shall follow the procedures set forth in Section 10 for competitive range, multi-tiered and multi-step RFPs.
- 10.2** In addition to the procedures set forth in these Rules for RFPs, LTD shall employ the procedures set forth in this rule for multi-step RFPs:
- 10.2.1** Solicitation Protest. Prior to the closing of the initial phase of a multi-step or multi-tiered RFP, LTD shall provide an opportunity to protest the solicitation under Section 36.5 and ORS 279B.405.
- 10.2.2** Addenda Protest. LTD may, but is not required to, provide an opportunity to protest any Addenda issued during the second phase of a multi-step or multi-tiered RFP pursuant to Section 18.
- 10.2.3** Exclusion Protest. LTD may, but is not required to, provide an opportunity for a Proposer to protest exclusion from the competitive range or exclusion from the second phase of a multi-step or multi-tiered RFP process as set forth in Section 36.5.
- 10.2.4** Administrative Remedy. If protests under Sections 10.2.2 or 10.2.3 are provided for in the RFP, failure of a Proposer to so protest shall be considered a failure by Proposer to pursue an administrative remedy made available to the Proposer by LTD.
- 10.2.5** Award Protest. LTD shall provide an opportunity to protest its intent to Award a Contract pursuant to Section 36.5 and ORS 279B.410. An Affected Offeror may protest, for any of the bases set forth in Section 36.4.2, its exclusion from the competitive range or any phase after the initial phase of a multi-step or multi-tiered RFP, or an Addendum issued following closing of the initial phase, if LTD did not previously provide Proposers the opportunity to protest such exclusion or Addendum.
- 10.3** When LTD's RFP process conducted pursuant to ORS 279B.060(6)(b) calls for LTD to establish a competitive range at any stage in the RFP process, it shall do so as follows:
- 10.3.1** Determining Competitive Range.
- a.** LTD shall establish a competitive range after evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the RFP. After such evaluation, LTD shall determine and rank the Proposers in the competitive range.
 - b.** LTD may increase the number of Proposers in the competitive range if LTD's evaluation of Proposals establishes a natural break in the scores of Proposers indicating that a number of Proposers greater than the initial competitive range are closely competitive, or have a reasonable chance

of being determined the Responsible Proposer with the best Responsive Proposal. LTD may decrease the number of Proposers in the initial competitive range only if the excluded Proposers have no reasonable chance to be the Responsible Proposer with the best Responsive Proposal.

10.3.2 LTD shall provide written notice to all Proposers identifying Proposers in the competitive range. LTD may, but is not required to, provide an opportunity for Proposers excluded from the competitive range to protest LTD's evaluation and determination of the competitive range in accordance with Section 36.4.

10.3.3 After determination of the competitive range and after any protest period provided in accordance with Section 10.3.2 expires, or after LTD has provided a final response to any protest, whichever date is later, then LTD 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; or
- b. Engage in discussions with Proposers in the competitive range and accept revised Proposals from them as set forth in Section 10.3.4 and, following such discussions and receipt and evaluation of revised Proposals, conduct negotiations as set forth in Section 10.3.5 with the Proposers in the competitive range.
- c. An unsuccessful Proposer may protest LTD's intent to Award in accordance with Section 36.6 and ORS 279B.410.

10.3.4 If LTD chooses to enter into discussions with and receive best and final Proposals (see Section 36.6), LTD shall proceed as follows:

- a. LTD 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 that were identified in the RFP as the subject of discussions. LTD may conduct discussions for the following purposes:
 - (i) Informing eligible Proposers of deficiencies in their initial Proposals;
 - (ii) Notifying eligible Proposers of parts of their Proposals for which LTD would like additional information; or
 - (iii) Otherwise allowing Eligible Proposers to develop revised Proposals that will allow LTD to obtain the best Proposal based on the requirements and evaluation criteria set forth in the RFP.
- b. LTD may conduct discussions with each Eligible Proposer necessary to fulfill the purposes of this Section 10.3, but need not conduct the same amount of discussions with each Eligible Proposer. LTD may terminate discussions with any Eligible Proposer at any time. However, LTD shall

offer all Eligible Proposers the same opportunity to discuss their Proposals with LTD before LTD notifies Eligible Proposers of the date and time pursuant to Section 10.3.6 that best and final Proposals will be due.

- (i) In conducting discussions, LTD:
 - (1) Shall treat all Eligible Proposers fairly and shall not favor any Eligible Proposer over another;
 - (2) Shall disclose other Eligible Proposer's Proposals or discussions only in accordance with ORS 279B.060(6)(a)(B) or (C); and
 - (3) 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 RFP.
- (ii) At any time during the time allowed for discussions, LTD may:
 - (1) Continue discussions with a particular Eligible Proposer;
 - (2) Terminate discussions with a particular Eligible Proposer and continue discussions with other Eligible Proposers; or
 - (3) Conclude discussions with all remaining Eligible Proposers and provide notice pursuant to Section 10.3.6 to the Eligible Proposers requesting best and final Proposals.

10.3.5 After the protest period provided in accordance with Section 36.6 expires, or after LTD has provided a final response to any protest, whichever date is later, LTD shall commence negotiations in accordance with this Section 10.3.5.

- a. LTD may commence serial negotiations with the highest-ranked Eligible Proposers or commence simultaneous negotiations with all Eligible Proposers as follows:
 - (i) After initial determination of which Proposals are responsive; or
 - (ii) After initial determination of the competitive range in accordance with Section 10.3.1; or
 - (iii) After conclusion of discussions with all Eligible Proposers and evaluation of revised Proposals (see Section 10.3.4).
- b. Conducting Negotiations.
 - (i) Scope. LTD may negotiate:
 - (1) The statement of Work;

- (2) The Contract price as it is affected by negotiating the statement of Work; and
 - (3) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the RFP or Addenda thereto. Accordingly, Proposers shall not submit, and LTD shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the RFP or Addenda thereto.
 - (ii) At any time during discussions or negotiations that LTD conducts in accordance with Sections 10.3.4 or 10.3.5, LTD may terminate discussions or negotiations with the highest-ranked Proposer, or the Proposer with whom it is currently discussing or negotiating, if LTD reasonably believes that:
 - (1) The Proposer is not discussing or negotiating in good faith; or
 - (2) 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. If LTD is conducting serial negotiations and LTD terminates negotiations with a Proposer in accordance with Section 10.3.5.b(ii), LTD may then commence negotiations with the next highest scoring Proposer in the competitive range, and continue the process described in this Section 10.3.5 until LTD has either:
 - (i) Determined to Award the Contract to the Proposer with whom it is currently discussing or negotiating; or
 - (ii) Completed one round of discussions or negotiations with all Proposers in the competitive range, unless LTD provided for more than one round of discussions or negotiations in the RFP, in which case LTD has completed all rounds of discussions or negotiations required.
- d. If LTD chooses to conduct competitive negotiations, LTD may negotiate simultaneously with competing Proposers. LTD:
 - (i) Shall treat all Proposers fairly and shall not favor any Proposer over another; and
 - (ii) May disclose other Proposer's Proposals or the substance of negotiations with other Proposers only if LTD notifies all of the Proposers with whom LTD will engage in negotiations of LTD's intent to disclose before engaging in negotiations with any Proposer.

- e. Any oral modification of a Proposal resulting from negotiations under this Section 10.3.5 shall be reduced to writing by the Proposer.

10.3.6 If best and final Proposals are required, LTD shall establish a common date and time by which Proposers must submit best and final Proposals. Best and final Proposals shall be submitted only once; provided, however, LTD may make a written determination that it is in LTD's best interest to conduct additional discussions or negotiations or change LTD's requirements and require another submission of best and final Proposals. Otherwise, no discussion of or changes in the best and final Proposals shall be allowed prior to award of the Contract. Proposers shall also be informed that if they do not submit notice of withdrawal or another best and final Proposal, their immediately previous Proposal will be construed as their best and final Proposal. LTD shall evaluate Proposals as modified by the best and final Proposal. LTD shall conduct evaluations as described in Section 26, 27, and 28. LTD shall not modify evaluation factors or their relative importance after the date and time that best and final Proposals are due.

SECTION 11. Multi-Step IFB and RFP Procurements.

11.1 Multi-Step Sealed Bids. If LTD considers it impractical to initially prepare an IFB that contains a procurement description to support a Contract award based on price, LTD may procure goods or services by using a multi-step IFB process pursuant to ORS 279B.055(12). A multi-step IFB process is a phased process that seeks necessary information or unpriced technical Bids in the initial phase and invites Bidders who submitted technically eligible Bids in the initial phase to submit competitive sealed price Bids on the technical Bids in the second, final phase. As with any IFB process, LTD shall award the Contract to the lowest Responsible Bidder. If time is a factor, LTD may require Bidders to submit a separate sealed price Bid during the initial phase to be opened after the technical evaluation.

11.1.1 Public Notice. Whenever the multi-step IFB process is used, public notice for the first phase shall be given in accordance with Section 14. Public notice is not required for the subsequent phases. However, LTD shall give notice of subsequent phases to all Bidders that submitted a Bid in the first phase and inform Bidders of the right to protest any Addenda issued after the closing of the initial phase pursuant to Section 18 and inform any Bidders excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to Section 36.4.

11.1.2 In addition to the procedures set forth in these Rules for IFBs, LTD shall employ the procedures set forth in this rule for multi-step IFBs:

- a. **Solicitation Protest.** Prior to the closing of the initial phase, LTD shall provide an opportunity to protest the solicitation under Section 36.5 and ORS 279B.405.
- b. **Addenda Protest.** LTD may, but is not required to, provide an opportunity to protest any Addenda issued during the second phase pursuant to Section 18.

- c. Exclusion Protest. LTD may, but is not required to, provide an opportunity for a Bidder to protest exclusion from the phase of the multi-step IFB process as set forth in Section 36.4.
- d. Administrative Remedy. If protests under Sections 11.1.2.b or 11.1.2.c are provided for in the IFB, failure of a Bidder to so protest shall be considered a failure by a Bidder to pursue an administrative remedy made available to the Bidder by LTD.
- e. Award Protest. LTD shall provide an opportunity to protest its intent to Award a Contract pursuant to Section 36.6 and ORS 279B.410. An Affected Offeror may protest, for any of the bases set forth in Section 36.4.2, its exclusion from the second phase of a multi-step IFB.

11.1.3 Initial Phase of the Multi-Step IFB Process.

- a. A multi-step IFB shall be initiated by the issuance of an IFB in the form and manner required for competitive sealed Bids except as hereinafter provided. In addition to the requirements set forth in Section 9, the multi-step IFB shall provide:
 - (i) That unpriced technical Bids are requested;
 - (ii) Whether price Bids are to be submitted at the same time as unpriced technical Bids; if they are, that such price Bids shall be submitted in a separate sealed envelope;
 - (iii) That the IFB is a multi-step sealed IFB procurement, and priced Bids will be considered only in the second phase and only from those Bidders whose unpriced technical Bids are found eligible in the initial, first phase;
 - (iv) The criteria to be used in the evaluation of unpriced technical Bids;
 - (v) That LTD, to the extent that it finds it necessary, may conduct oral or written discussions for the purposes of clarification of the unpriced technical Bids;
 - (vi) 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 IFB; and
 - (vii) 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.
- b. After receipt of unpriced technical Bids, Addenda to the IFB shall be distributed only to Bidders who submitted unpriced technical Bids.

- c. Unpriced technical Bids need not be opened publicly.
- d. Unpriced technical Bids submitted by Bidders shall be evaluated solely in accordance with the criteria set forth in the IFB. Unpriced technical Bids shall be categorized as:
 - (i) Eligible;
 - (ii) Potentially eligible; that is, reasonably susceptible of being made eligible; or
 - (iii) Ineligible. IF LTD finds a Bid ineligible, it shall record in writing the basis for determining the Bid ineligible and make it part of the procurement file.

11.1.4 LTD may initiate the second phase of the IFB process if, in LTD's opinion, there are sufficient eligible unpriced technical Bids to assure effective price competition in the second phase without technical discussions. If LTD finds that such is not the case, LTD may issue an Addendum to the IFB or engage in technical discussions as set forth in Section 11.1.5.

11.1.5 LTD may seek clarification of a technical Bid by any eligible, or potentially eligible Bidder. During the course of such discussions, LTD shall not disclose any information derived from one unpriced 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 second phase as established by LTD. Such submission may be made at the request of LTD or upon the Bidder's own initiative.

11.1.6 If LTD determines a Bidder's unpriced technical Bid to be ineligible, such Bidder shall not be afforded an additional opportunity to supplement its technical Bid.

11.1.7 Mistakes may be corrected or Bids may be withdrawn during the initial phase:

- a. Before unpriced technical Bids are considered;
- b. After any discussions have commenced under Section 11.1.5;
- c. When responding to any Addenda of the IFB; or
- d. In accordance with Section 23.

11.1.8 After closing of the Initial Phase, LTD may issue Addenda that modify the specifications for the IFB or modify other terms and conditions of the IFB. LTD shall issue the Addenda to all Bidders who initially submitted unpriced-technical Bids. LTD may then require those Bidders provided the Addenda to submit revised unpriced, technical Bids.

11.1.9 Second Phase of Multi-Step IFB Process.

- a. Upon the completion of phase one, LTD shall either:
 - (i) Open price Bids submitted in the initial phase (if price Bids were required to be submitted) from Bidders whose unpriced technical Bids were found to be eligible; or
 - (ii) If price Bids have not been submitted, technical discussions have been held, or Addenda to the IFB have been issued, invite each eligible Bidder to submit a price Bid.
- b. The second phase shall be conducted as any other IFB procurement except:
 - (i) As specifically set forth in this rule; and
 - (ii) No public notice need be given of this invitation to submit price Bids because such notice was previously given.

11.2 Multi-Step Sealed Proposals. LTD may procure goods or services by using a multi-step RFP process pursuant to ORS 279B.060(6)(b)(G). A multi-step RFP process is a phased process that seeks necessary information or unpriced technical Proposals in the initial phase and invites Proposers who submitted technically eligible Proposals in the initial phase to submit competitive sealed price Proposals on the technical Proposals in the second, final phase. As with any RFP process, LTD shall award the Contract to the Responsible Proposer submitting the best, Responsive Proposal. If time is a factor, LTD may require Proposers to submit a separate sealed price Proposal during the initial phase to be opened after the technical evaluation.

11.2.1 Public Notice. Whenever the multi-step RFP process is used, public notice for the first phase shall be given in accordance with Section 14. Public notice is not required for the subsequent phases. However, LTD shall give notice of subsequent phases to all Proposers that submitted a Proposal in the first phase and inform Proposers of the right to protest any Addenda issued after the closing of the initial phase pursuant to Section 18 and inform any Proposers excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to Section 36.4.

11.2.2 Initial Phase of the Multi-Step RFP Process.

- a. A multi-step RFP shall be initiated by the issuance of an RFP in the form and manner required for competitive sealed Proposals except as hereinafter provided. In addition to the requirements set forth in Sections 9 and 10, the multi-step RFP shall provide:
 - (i) That unpriced technical Proposals are requested;
 - (ii) Whether price Proposals are to be submitted at the same time as unpriced technical Proposals; if they are, that such price Proposals shall be submitted in a separate sealed envelope;

- (iii) That the RFP is a multi-step sealed RFP procurement, and priced Proposals will be considered only in the second phase and only from those Proposers whose unpriced technical Proposals are found qualified in the initial, first phase;
 - (iv) The criteria to be used in the evaluation of unpriced technical Proposals;
 - (v) That LTD, to the extent that it finds it necessary, may conduct oral or written discussions for the purposes of clarification of the unpriced technical Proposals;
 - (vi) 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 RFP; and
 - (vii) Whether Proposers 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.
- b. After receipt of unpriced technical Proposals, Addenda to the RFP shall be distributed only to Proposers who submitted unpriced technical Proposals.
 - c. Unpriced technical Proposals need not be opened publicly.
 - d. Unpriced technical Proposals submitted by Proposers shall be evaluated solely in accordance with the criteria set forth in the RFP. Unpriced technical Bids shall be categorized as:
 - (i) Qualified;
 - (ii) Potentially qualified; that is, reasonably susceptible of being made qualified; or
 - (iii) Unqualified. IF LTD finds a Proposal unqualified, it shall record in writing the basis for determining the Proposal unqualified and make it part of the procurement file.

11.2.3 LTD may initiate the second phase of the RFP process if, in LTD's opinion, there are sufficient qualified unpriced technical Proposals to assure effective price competition in the second phase without technical discussions. If LTD finds that such is not the case, LTD may issue an Addendum to the RFP or engage in technical discussions as set forth in Section 11.2.4.

11.2.4 LTD may seek clarification of a technical Proposal by any qualified, or potentially qualified, Proposer. During the course of such discussions, LTD shall not disclose any information derived from one unpriced 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 of the second phase as established by LTD. Such submission may be made at the request of LTD or upon the Proposer's own initiative.

11.2.5 If LTD determines a Proposer's unpriced technical Proposal to be unqualified, such Proposer shall not be afforded an additional opportunity to supplement its technical Proposal.

11.2.6 Mistakes may be corrected or Proposals may be withdrawn during the initial phase:

- a. Before unpriced technical Proposals are considered;
- b. After any discussions have commenced under Section 11.2.4;
- c. When responding to any Addenda of the RFP; or
- d. In accordance with Section 23.

11.2.7 After closing of the Initial Phase, LTD may issue Addenda that modify the specifications for the RFP or modify other terms and conditions of the RFP. LTD shall issue the Addenda to all Proposers who initially submitted unpriced-technical Proposals. LTD may then require those Proposers provided the Addenda to submit revised unpriced, technical Proposals.

11.2.8 Second Phase of the Multi-Step RFP Process.

- a. Upon the completion of the first phase, LTD shall either:
 - (i) Open price Proposals submitted in the initial phase (if price Proposals were required to be submitted) from Proposers whose unpriced technical Proposals were found to be qualified; or
 - (ii) If price Proposals have not been submitted, technical discussions have been held, or Addenda to the RFP have been issued, invite each qualified Proposer to submit a price Proposal.
- b. The second phase shall be conducted as any other RFP procurement except:
 - (i) As specifically set forth in this rule; and
 - (ii) That no public notice need be given of this request to submit price Proposals because such notice was previously given.

SECTION 12. Prequalification.

12.1 LTD may, in accordance with these Rules and ORS 279B.120 to 279B.130, permit or require prospective Offerors to prequalify. If LTD permits or requires Offerors to prequalify, LTD shall provide the following:

- 12.1.1 The information required to be submitted by the prospective Offerors;
- 12.1.2 The form(s) and application(s) to be used by the prospective Offerors seeking prequalification;
- 12.1.3 The time for submitting an application for prequalification;
- 12.1.4 The period of time the prequalification will be valid; and
- 12.1.5 The type and nature of the contract(s) that the prospective Offeror will be qualified to compete for.

12.1.6 If the procurement is federally funded, the standards of FTA Circular 4220.1f, as amended, will be followed for Offeror prequalification.

- 12.2 The deadline for receipt of prequalification applications must be set long enough after the date the notice of prequalification is issued or advertised to allow prospective Offerors a reasonable opportunity to complete and submit the application materials. In no event may the deadline be set earlier than fifteen (15) days after the issue date of the notice of prequalification.
- 12.3 If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Offeror shall be rebuttably presumed to be qualified to perform substantially similar Contracts for LTD.
- 12.4 LTD shall approve or deny each application in accordance with ORS 279B.120 and 279B.125 and these Rules.
- 12.5 In determining whether to approve an application, LTD may only consider the applicable standards set forth in ORS 279B.110(2).
- 12.6 If LTD subsequently has reasonable cause to believe that there has been a substantial change in the condition of a prospective Offeror, heretofore prequalified, who is no longer qualified or is less qualified, LTD may revoke or revise or reissue the prequalification upon reasonable notice to the prospective Offeror. The notice shall state the reasons found under ORS 279B.120 for revocation or revision of the prequalification and shall inform the Offeror of its right to a hearing under ORS 279B.425. A revocation or revision does not apply to any Contract for which advertisement of a Solicitation Document commenced prior to the date the notice of revocation or revision was received by the prequalified prospective Offeror.
- 12.7 Any information submitted by an Offeror or prospective Offeror in connection with an application for prequalification that the Offeror deems confidential and/or a trade secret shall clearly be labeled "confidential trade secret."
- 12.8 Any prospective Offeror who wishes to appeal a revocation or revision may do so in accordance with ORS 279B.125.

SECTION 13. Debarment of Prospective Offerors.

LTD Purchasing Policy and Rules - 35
 | Adopted April 20, 2005; amended November 8, 2010

- 13.1** LTD may debar prospective Offerors from consideration of the award of a Contract by LTD for the reasons set forth in ORS 279A.110 or after providing notice and the opportunity for hearing as set forth in ORS 279B.130.
- 13.2** LTD shall provide such notice required under ORS 279B.130, in writing, personally delivered or sent by registered or certified mail, to the prospective Offeror. The notice shall specify the following:
- 13.2.1** That LTD intends to debar the prospective Offeror;
 - 13.2.2** The reasons for the debarment;
 - 13.2.3** The period of debarment, which period may not be longer than three (3) years; and
 - 13.2.4** A statement of the prospective Offeror's appeal rights and appeal deadlines.
- 13.3** LTD shall notify the prospective Offeror, in writing, personally delivered or sent by registered or certified mail, of the debarment of the Offeror. The notice shall specify the following:
- 13.3.1** The effective date and period of the debarment;
 - 13.3.2** The reasons for the debarment; and
 - 13.3.3** A statement of the debarred Offeror's appeal rights and appeal deadlines.
- 13.4** Notwithstanding the limitation on the term for debarment in ORS 279B.130(1)(b), LTD may determine that a previously debarred Offeror is not responsible prior to Award of a Contract.
- 13.5** LTD may attribute improper conduct of a Person or its affiliate or affiliates having a Contract with a prospective Offeror to the prospective Offeror for purposes of debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.
- 13.6** If a prospective Offeror wishes to appeal a debarment by LTD, such prospective Offeror may do so in accordance with ORS 279B.130.

SECTION 14. Public Notice of Procurement.

- 14.1** LTD shall provide public notice of every formal Solicitation Document in accordance with this Section 14. Such notices shall be in the manner specified in Section 14.2 and contain all information set forth in Section 14.2. Notices may also contain any other appropriate information. LTD may charge a fee or require a deposit for copies of the Solicitation Documents. LTD may give additional notice using any method determined by LTD to foster and promote competition, including:
- 14.1.1** Mailing notice of availability of Solicitation Documents to any prospective Offerors that have expressed an interest in LTD's procurements; or

14.1.2 Placing notice on LTD's Web site if the requirements of Section 14.3 are met.

14.2 Unless LTD authorizes the publication of notice of the Solicitation Document in electronic format on its Web site, every Solicitation Document shall be advertised by publication at least once in at least one newspaper of general circulation in the area where the contract is to be performed and in as many additional issues and publications as LTD's Purchasing Manager may determine to be necessary or desirable to foster and promote competition. All advertisements for Solicitation Documents shall state:

14.2.1 Where, when, how, and for how long the Solicitation Documents may be obtained;

14.2.2 That the Closing Date shall not be less than fourteen (14) days from the first notice for an IFB or thirty (30) days from the first notice for an RFP, unless LTD determines that a shorter interval is in LTD's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with Section 14.2 and the Closing Date be less than seven (7) days as set forth in ORS 279B.055(4)(f).

14.2.3 The address where Offers will be received and the name and title of the person designated to receive Offers;

14.2.4 The date that prequalification applications must be filed, if prequalification is a requirement;

14.2.5 The character of the services or work to be done or the products or goods to be purchased;

14.2.6 The office where specifications for the Contract and terms and conditions of the Contract may be reviewed;

14.2.7 The date, time, and place that Offers will be publicly opened;

14.2.8 That each Offer must contain a statement as to whether the Offeror is a "Resident Bidder" as defined in ORS 279A.120;

14.2.9 That LTD may reject any Offer not in compliance with all prescribed public contracting procedures and requirements and may reject for good cause any or all Offers upon a finding by LTD that it is in LTD's best interest to do so;

14.2.10 Whether or not a contractor must be licensed under ORS 468A.720;

14.2.11 If applicable, the federal funding amount or percentage of the project that will be paid for by federal funds;

14.2.12 If applicable, that the Contract is for a Public Work subject to ORS Chapter 279C or the Davis Bacon Act (40 U.S.C. §276(a)); and

14.2.13 Any other information LTD deems appropriate.

14.3 If LTD/CRB desires to advertise the procurement on its Web site, it shall: (i) publish notice of its intent to do so weekly, for not less than four (4) consecutive weeks, in at least one newspaper of general circulation in the area where the Contract is to be performed; and (ii) post in its business office a notice of its intent that LTD will publish the advertisement on its Web site. This notice shall include LTD's Web site address where the procurement will be advertised.

14.4 If the Contract is for a Public Improvement having an estimated cost in excess of \$125,000, then in addition to the foregoing requirements of this Section 14, LTD shall follow the procedures set forth in Sections 39 and 41 of these Rules.

SECTION 15. Pre-Offer Conferences.

At the option of LTD, pre-Offer conferences may be held to explain the procurement requirements and/or to conduct site inspections. LTD may require attendance at the pre-Offer conference as a condition for making an Offer. Such conferences shall be announced to all prospective Offerors in the Solicitation Documents. The pre-Offer conference shall be held within a reasonable time after the Solicitation Documents have been issued to allow Offerors to become aware of it, but sufficiently before the Closing Date to allow consideration of the conference results in preparing Offers. Statements at the pre-Offer conference shall not change the Solicitation Document unless confirmed to all prospective Offerors by means of a written Addendum to the Solicitation Document.

SECTION 16. Offer Preparation and Submission.

16.1 Offers shall be typed or prepared in ink and shall be Signed in ink by the Offeror or authorized representative of the Offeror.

16.2 Offers shall be submitted in a sealed envelope, appropriately marked and in accordance with the instructions in the Solicitation Document.

16.3 Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless otherwise instructed in the Solicitation Document.

16.4 Alterations, corrections, or erasures, if any, to its Offer shall be initialed in ink by Offeror and submitted prior to opening of the Offers and in accordance with the requirements for submitting an Offer set forth in the Solicitation Document.

16.5 Offers shall include all documents, descriptive literature, and/or samples required under the Solicitation Document. LTD will dispose of product samples, or make them available for Offerors to retrieve, in accordance with the Solicitation Document.

16.6 It is Offeror's responsibility to ensure that its Offer is actually submitted in the manner and format specified in the Solicitation Document and to the delivery point and/or person designated in the Solicitation Document. LTD will not be responsible for any Offer not submitted in accordance with the requirements of the Solicitation Document.

16.7 It is Offeror's responsibility for ensuring that LTD receives its Offer prior to the Closing Date, regardless of the method used to deliver and submit the Offer.

- 16.8** Any information submitted by Offeror in connection with an Offer that Offeror deems confidential and/or a trade secret shall clearly be labeled "confidential trade secret."
- 16.9** The Offer is Offeror's offer to enter into a Contract. The Offer is a "Firm Offer," i.e., the Offer shall be held open by the Offeror for LTD's acceptance for the period specified in Section 24 below. LTD's award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.
- 16.10** Except to the extent the Proposer is authorized to propose certain terms and conditions pursuant to Section 10, a Proposer shall not make its Proposal contingent upon LTD's acceptance of any terms or conditions (including specifications) other than those contained in the Solicitation Document.
- 16.11** By signing and submitting the Offer, the Offeror acknowledges that it has received and understands the terms and conditions of the Solicitation Document and that it accepts and agrees to be bound by those terms and conditions. If the RFP permits proposal of alternative terms under Section 10, the Proposer's Proposal shall include the non-negotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by LTD.
- 16.12** LTD may authorize Offerors to submit facsimile Offers. If LTD determines that Bid or Proposal security is or will be required, LTD should not authorize facsimile Offers unless LTD has another method for receipt of such security. Prior to authorizing the submission of facsimile Offers, LTD shall determine that its equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, LTD shall establish administrative procedures and controls: (i) to receive, identify, record, and safeguard facsimile Offers; (ii) to ensure timely delivery of Offers to the location of the opening of Offers; and (iii) to preserve the Offers as sealed. LTD shall include a provision that it shall not be responsible for any failure attributable to the transmission or receipt of the facsimile Offer.

SECTION 17. Offer Security.

- 17.1** LTD may, but does not have to, require Offer security for Contracts other than Public Improvement Contracts. If LTD does require Offer security, it shall not exceed ten percent (10%) of the Offeror's Offer.
- 17.2** LTD shall require Offer security on all Public Improvement Contracts in accordance with Section 39 of these Rules.
- 17.3** The following forms of Offer security will be accepted by LTD:
- 17.3.1** A Surety Bond from a surety company authorized to do business in the State of Oregon and meeting any applicable federal regulations;
 - 17.3.2** An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or
 - 17.3.3** A cashier's check, certified check, or savings and loan secured check.

17.4 Return of Offer Security. Subject to Section 17.5 below, LTD shall return the Offer security of all Offerors after a Contract has been executed, or all Offers have been rejected. LTD may return the Offer security of unsuccessful Offerors after Offer opening but prior to award, if the return does not prejudice the Contract Award and provided that the security of at least the three (3) lowest Offerors is retained pending the execution of a Contract.

17.5 Retention of Offer Security. LTD may retain Offer security in accordance with ORS 279B.055(3) if the Offer is in response to an IFB or in accordance with ORS 279B.060(3) if the Offer is in response to an RFP.

SECTION 18. Addenda to Solicitation Documents.

18.1 LTD may modify a Solicitation Document only by written Addenda. The Offeror shall provide written acknowledgment of the receipt of any Addendum issued either with the Solicitation Document or separately prior to Offer opening, on the form included with the Addendum. Offeror must acknowledge the Addendum by including the Addendum number and signing the "Receipt of Addendum" section. If the Addendum is issued prior to the Closing Date, this Signed acknowledgment must be returned at the same time and in the same envelope with the Offer.

18.2 The Solicitation Document shall notify all prospective Offerors of how LTD will make Addenda available before the Closing Date, and at each subsequent step or tier of evaluation, if LTD will engage in a multi-step IFB process in accordance with Section 11.1 of these Rules, or a multi-tiered or multi-step RFP process in accordance with Section 10 and Section 11.2 of these Rules. For example, LTD may mail notice of Addenda to all prospective Offerors known to have obtained Solicitation Documents or may provide notice by posting such notice of Addenda on LTD's Web site.

18.3 All Addenda shall be issued within a reasonable time to allow prospective Offerors to consider them in preparing their Offers. Where circumstances mandate quick action, and where the change or correction described in an Addendum is minor, as determined at the discretion of LTD, the time period between issuance of the Addendum and the Closing Date may be as little as seventy-two (72) hours, but in the absence of such a finding by LTD, the time period shall be at least five (5) calendar days. If necessary, LTD may notify prospective Offerors by telephone, followed by written confirmation.

18.4 Notwithstanding Section 18.3 of these Rules, an Addendum that modifies the evaluation criteria selection process or procedure for any tier of competition under a multi-step IFB or a multi-tiered or multi-step RFP issued in accordance with ORS 279B.060(6)(d) and Section 10 through Section 11 must be issued no fewer than five (5) days before the beginning of that tier or step of competition, unless LTD determines that a shorter period is sufficient to allow Offerors to prepare for that step or tier of competition. LTD shall document the factors in making such determination.

18.5 Unless the Addendum provides a different deadline, an Offeror must submit any protest or request for change to the Addendum within twenty-four (24) hours following the issuance of the Addendum, or until the last day the Offeror may submit a request for change under Section 20 or protest under Section 36.5, whichever is longer. If a request for change or protest is made pursuant to this section, LTD will only consider requests for change or protests to the Addendum. LTD will not consider requests for change or

protests on any matter not directly addressed by the Addendum. Notwithstanding any provision of this Section 18, LTD is not required to provide a protest period for Addenda issued after the initial Closing Date during a multi-tier or multi-step procurement process.

SECTION 19. Pre-Closing Date Modification or Withdrawal of Offer.

19.1 Offers, once submitted, may be modified in writing prior to the Closing Date. Any modifications shall be prepared on the Offeror's letterhead, Signed by an authorized representative, and shall state that the new document supersedes or modifies the prior Offer. Offeror shall prepare and submit any modification in accordance with the requirements of Section 16. Facsimile modification shall not be accepted unless expressly authorized in the Solicitation Document. To ensure the integrity of the procurement process, the envelope containing any modifications to an Offer shall be marked as follows:

Offer Modification
Offer Number or Other Identification

19.2 Offers may be withdrawn by written notification on Offeror's letterhead, Signed by an authorized representative, delivered to the individual and location specified in the Solicitation Document, and received prior to the Closing Date. Offers also may be withdrawn in person prior to the scheduled Closing Date upon presentation of appropriate identification and evidence of authority satisfactory to LTD.

19.2.1 Unopened Offers withdrawn under this Section 19.2 may be released to the Offeror after voiding any date and time stamp.

19.2.2 Requests to withdraw Offers shall be marked as follows:

Offer Withdrawal
Offer Number or Other Identification

19.3 All documents relating to the modification or withdrawal of an Offer shall be made a part of the appropriate procurement file.

SECTION 20. Request for Change or Clarification.

20.1 An Offeror may submit a written request for a change to the Solicitation Document and/or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver the written request for change to LTD not less than ten (10) days prior to the initial Closing Date. In submitting a request for change, the Offeror shall include a statement of the requested change(s) together with the detailed reason for the requested change. All requests for change shall be marked as follows:

Request for Change
Offer Number or Other Identification

- 20.2** LTD shall not consider an Offeror's request for change after the deadline established for submitting such request. LTD shall provide notice to the applicable Offeror if it entirely rejects a request. If LTD is agreeable to the request, in whole or in part, LTD shall issue an Addendum, in accordance with Section 18, reflecting its determination.
- 20.3** Prior to the deadline for submitting a request for change, an Offeror may request that LTD clarify any provision of the Solicitation Document. LTD's clarification to an Offeror, whether orally or in writing, does not change the Solicitation Document and is not binding on LTD unless LTD amends the Solicitation Document by an Addendum.

SECTION 21. Receipt, Opening, and Recording of Offers.

- 21.1** Upon LTD's receipt of an Offer and/or modification to an Offer, LTD shall time-date stamp or mark by hand the time and date of receipt of the Offer and shall store the Offer and/or modification, unopened, in a secure place until Offer opening. If Offers or modifications are opened inadvertently or are opened prior to the time and date set for Offer opening, the Offers or modification documents shall be resealed and stored for opening at the correct time. If an Offer or modification to an Offer is resealed, documentation of this procedure shall be placed in the procurement file.
- 21.2** Offers and modifications shall be opened publicly at the time, date, and place designated in the Solicitation Document.
- 21.2.1** In the case of an IFB, if witnesses are present at the Offer opening, and to the extent practicable, the name of each Offeror, the Offer price(s), and such other information as LTD considers appropriate, shall be read aloud. On voluminous Offers, Offerors may be advised, as part of the Solicitation Document, that the Offers will not be read aloud.
- 21.2.2** In the case of an RFP, if the Solicitation Document so provides, LTD will not read Offers aloud at the public opening. Further, Proposals may be opened in a manner to avoid disclosure of contents to competing Proposers during, when applicable, the process negotiation, but LTD shall record and make available the identity of all Proposers from and after opening of the Proposals. Notwithstanding ORS 192.410 to 192.505, LTD does not have to open Proposals to public inspection until after the notice of intent to award a Contract is issued. Further, the fact that Proposals are opened at a meeting defined in ORS 192.610 does not make their contents subject to disclosure, regardless of whether LTD fails to give notice of, or provide for an executive session for the purpose of, opening Proposals.
- 21.3** Except as provided above, the opened Offers shall be available for public inspection. Notwithstanding the requirement to make Offers available for public inspection, LTD may withhold from disclosure to the public materials that are exempt or conditionally exempt from disclosure under ORS 192.501 and 192.502. LTD may verify and determine that the information claimed to be exempt under ORS 192.501 and/or 192.502, in fact, is exempt or conditionally exempt from disclosure. If LTD determines that such designation is not in accordance with applicable law, LTD shall make those portions of the Offer available for public inspection. Offeror shall clearly designate any such information as exempt/conditionally exempt under ORS 192.501 and/or 192.502.

LTD Purchasing Policy and Rules - 42

| Adopted April 20, 2005; amended November 8, 2010

Further, Offeror shall separate such material designated as exempt/conditionally exempt from other submitted materials. Prices, makes, model, or catalog numbers of items offered, scheduled delivery dates, and terms of payment shall be publicly available regardless of any designation to the contrary.

SECTION 22. Late Offers, Late Withdrawals, and Late Modifications.

- 22.1** Any Offer, request for modification of an Offer, or request for withdrawal of an Offer received by LTD after the Closing Date will be considered late. Except as set forth in Section 22.2 below, late Offers or late requests for modification or withdrawal shall not be considered by LTD.
- 22.2** A late Offer, late request for modification of an Offer, or late request for withdrawal of an Offer shall be considered by LTD either if: (i) expressly permitted in Section 23 or (ii) the Offeror has an original, unaltered receipt issued by LTD acknowledging the timely receipt of the Offer or request for modification or withdrawal and such receipt contains LTD's time-date stamp clearly and legibly showing that the Offer or request for modification or withdrawal was received prior to the Closing Date.

SECTION 23. Mistakes in Offers.

- 23.1** This Section 23 proscribes the actions LTD may take if LTD discovers mistakes in an Offer after the Closing Date but prior to award of the Contract.
- 23.2** LTD shall carefully consider a request to clarify or withdraw an Offer because of a mistake to protect the integrity of the Competitive Procurement process and to assure fairness. If the mistake is attributable to an error in judgment, LTD shall not allow the Offeror to correct or withdraw the Offer. If the mistake is attributable to a minor informality or a clerical error, LTD may take the following action:
- 23.2.1** LTD may waive, or permit the Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or is an insignificant mistake that can be waived or corrected promptly without prejudice to other Offerors or LTD. A minor informality does not affect price, quantity, quality, delivery, or substantive contractual conditions. Examples of minor informalities include, but are not limited to, the failure of an Offeror to:
- a.** Submit the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;
 - b.** Sign the Offer form in the designated block, provided Offeror's signature appears in the Offer, evidencing an intent to be bound; or
 - c.** Acknowledge receipt of an Addendum to the Solicitation Document, provided it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms, and that the Addendum involved did not affect price, quantity, quality, or delivery.
- 23.2.2** LTD may permit the Offeror to correct a clerical error if the intended Offer and clerical error are clearly evident on the face of the Offer, and the Offeror confirms LTD's correction in writing. A clerical error is an Offeror's error in transcribing its

Offer. Examples of clerical errors include typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors. For discrepancies between unit prices and extended prices, unit prices shall prevail.

23.2.3 LTD may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

- a. The nature of the error;
- b. That the error is not a minor informality under this Section 23 or an error in judgment;
- c. That the error cannot be corrected or waived under this Section 23.2;
- d. That Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;
- e. That Offeror acted without gross negligence in submitting an Offer that contained a claimed error;
- f. That Offeror will suffer substantial detriment if LTD does not grant Offeror permission to withdraw the Offer;
- g. That LTD's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on LTD or the public it represents; and
- h. That Offeror promptly gave notice of the claimed error to LTD.

The criteria in Section 23.2.3 shall determine whether LTD will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether LTD will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Offer security), or without liability to LTD based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by LTD, whether by Award to the next lowest responsive and Responsible Bidder or the Responsible Proposer with the best Proposal, or by resort to a new solicitation.

23.3 LTD shall reject any Offer in which a mistake is clearly evident on the face of the Offer and the intended correct Offer cannot be substantiated from accompanying documents, i.e., documents submitted with the Offer pursuant to the Solicitation Document requirements.

23.4 The procedures and criteria set forth in this Section 23 are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to these Rules only to the extent permitted by applicable law.

SECTION 24. Time for Acceptance.

Offers are "Firm Offers," irrevocable and binding on the Offeror for not less than thirty (30) days from the Closing Date, unless otherwise specified in the Solicitation Document.

SECTION 25. Extension of Time for Acceptance of Offers.

Notwithstanding Section 24, after opening Offers, LTD may request, orally or in writing, that Offerors agree, in writing, to extend the time during which LTD may accept their Offers. If the Offerors agree to such extension, the Offer shall continue as a Firm Offer for the agreed-upon extension.

SECTION 26. Evaluation.

26.1 Responsibility. Before awarding a Contract, LTD shall make a determination that the Offeror submitting the lowest Responsive Bid or the best Responsive Proposal is responsible. LTD shall use the standards set forth in ORS 279B.110 and Section 33 to determine if a Bidder or a Proposer is responsible. If LTD determines a Bidder or Proposer is not responsible, it shall prepare a written determination of non-responsibility as required by ORS 279B.110 or 279C.375 and shall reject the Offer. If the determination of non-responsibility is made in connection with the procurement for a Public Improvement, LTD shall provide a copy of its written determination to the Construction Contractors Board ("CCB").

If the procurement is federally funded, LTD shall ensure the contractor and subcontractors are not debarred, suspended, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements. LTD shall do so by reviewing the Excluded Parties Listing System located at <http://epls.arnet.gov/> before entering into any third party contract.

A written determination of responsibility shall be placed in the contract file.

26.2 LTD may require an Offeror to submit Product Samples, Descriptive Literature, technical data, or other material, and may require any of the following prior to award:

26.2.1 Demonstration, inspection, or testing of a product prior to award for such characteristics as quality or workmanship;

26.2.2 Examination of such elements as appearance, finish, or feel; or

26.2.3 Other examinations to determine whether the product conforms to the specifications set forth in the Solicitation Document.

26.3 LTD shall evaluate product acceptability only in accordance with the evaluation criteria set forth in the Solicitation Document and only to determine that the product does, in fact, meet the criteria provided in the Solicitation Document. LTD shall reject any Offer that provides a product that does not meet the requirements set forth in the Solicitation Document. LTD's rejection of an Offer because it offers goods and/or services that do not conform to the requirements of the Solicitation Document is not considered a disqualification and is not appealable under ORS 279B.130.

LTD Purchasing Policy and Rules - 45
| Adopted April 20, 2005; amended November 8, 2010

26.4 Evaluation of Bids. If LTD solicited Bids using an IFB, the following procedures apply:

- 26.4.1** The Contract, if awarded, shall be awarded to the Responsible Bidder with the lowest Responsive Bid. LTD shall evaluate the Bids using only the objective criteria that was set forth in the IFB to determine the Responsible Bidder that submitted the lowest Responsive Bid. In determining the lowest Responsive Bid, LTD shall add a percent increase to the Bid of any nonresident Bidder equal to the percent, if any, of the preference given that Bidder in the state in which the Bidder resides.
- 26.4.2** Nothing in this Section 26.4 shall be deemed to permit a Contract award to a Responsible Bidder submitting a higher quality item than that designated in the IFB if such Bidder does not also have the lowest Responsive Bid.
- 26.4.3** After Bid opening, LTD may conduct discussion with Responsible Bidders, submitting apparent Responsive Bids, for the purpose of clarification to assure full understanding of the Bid. All Bids, in LTD's sole discretion, which need clarification shall be accorded such an opportunity. LTD shall document clarification of any Bidder's Bid in the procurement file.
- 26.4.4** Except as permitted by Section 26.4.3, LTD shall not negotiate with any Bidder.

26.5 Evaluation of Proposals. If LTD solicited Proposals using an RFP, the following procedures apply:

- 26.5.1** The Contract, if awarded, shall be awarded to the Responsible Proposer with the best Responsive Proposal. LTD shall evaluate the Proposals using only the criteria that was set forth in the RFP and allowed by applicable law. LTD shall evaluate the Proposals to determine the Responsible Proposer that submitted the best Responsive Proposal.
- 26.5.2** If LTD permitted negotiation in accordance with Section 10, LTD may negotiate with Proposers in determining the best Proposal by a Responsible Proposer.

26.6 Award.

- 26.6.1 General.** In general, if awarded, LTD shall award the Contract to the Responsible Bidder who submitted the lowest Responsive Bid or to the Responsible Proposer who submitted the best Responsive Proposal. In awarding the Contract, LTD shall evaluate the Offer only on the basis set forth in the Solicitation Document, these Rules, and applicable law. If consistent with the provisions of the Solicitation Document and it is in the public interest, LTD may award by item, groups of items, or entire Offer.
- 26.6.2** An IFB or RFP may call for pricing of multiple items of similar or related type with Award based on individual line item, group total of certain items, a "market basket" of items representative of LTD's expected purchases, or the grand total of all items.

26.6.3 Multiple Awards. Notwithstanding Section 26.6.1, LTD may award multiple Contracts under an IFB or RFP in accordance with the criteria set forth in the Solicitation Document. Multiple awards shall not be made if a single award will meet LTD's needs, including but not limited to adequate availability, delivery, service, or product compatibility. Multiple awards may not be made for the purpose of dividing the procurement into multiple solicitations, or to allow for user preference unrelated to utility or economy. A notice to prospective Offerors that multiple Contracts may be awarded for the IFB or RFP shall not preclude LTD from awarding a single Contract for such procurement. If the IFB or RFP permits the award of multiple Contracts, LTD shall specify in the Solicitation Document the criteria it will use to choose from the multiple Contracts when purchasing goods or services.

26.6.4 Partial Awards. If after evaluation of Offers, LTD determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

- a. LTD may award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or
- b. LTD may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions, and specifications.

26.6.5 All or None Offers. LTD may award all or none Offers if the evaluation shows an all or none award to be the lowest cost for Bids or the best of the Proposals of those submitted.

26.7 If federal funds are involved, a cost or price analysis must be made for every procurement, including Contract modifications, as outlined in FTA Circular 4220.1E, as amended.

26.7.1 LTD can accomplish a price analysis by comparison of proposed prices received in response to a Solicitation Document, by comparison of prior Contract prices for same or similar products or services, by comparison with competitive published price lists, and by comparison of proposed prices with independent cost estimates.

26.7.2 ~~LTD must perform a cost analysis if there is a single Offer and there is no pricing data available, as defined above, or for Contract modifications and change orders valued at more than \$100,000. A cost analysis means reviewing and evaluating the separate cost elements and proposed profit of an Offeror's cost or pricing data in order to form an opinion on the degree to which the proposed costs represent what the Contract should cost, assuming reasonable economy and efficiency. To perform a cost analysis, each element of cost must be reviewed to determine whether an Offeror's estimate contains an accurate and reasonable prediction of the costs that will be incurred during Contract performance. The Contract price is figured by adding a rate of profit determined to be fair. All reasonable costs of performance should be considered.~~

~~LTD must perform a cost analysis if there is a single Offer and there is no pricing data available, as defined above, or for Contract modifications and change orders valued at more than \$100,000. A cost analysis means reviewing and evaluating the separate cost elements and proposed profit of an Offeror's cost or pricing data in order to form an opinion on the degree to which the proposed costs represent what the Contract should cost, assuming reasonable economy and efficiency. To perform a cost analysis, each element of cost must be reviewed to determine whether an Offeror's estimate contains an accurate and reasonable prediction of the costs that will be incurred during Contract performance. The Contract price is figured by adding a rate of profit determined to be fair. All reasonable costs of performance should be considered.~~

A cost analysis must be performed when the Offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost.

A cost analysis will be necessary when adequate price competition is lacking, including sole source procurements (which include contract modifications and change orders), unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

Profit is to be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Costs or prices based on estimated costs for contracts will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles contained in Part 31 of the Federal Acquisition Regulations.

Receipt of a single responsive and responsible bid or proposal is not, by itself, conclusive evidence that competition was inadequate; the Contracting Officer must determine if there was a perception of competition which would affect the bid or proposal. Under these circumstances, award is not considered a sole source. The Contracting Officer, however, must investigate the reason why no other bids or proposals were received; verify that the specification was not unduly restrictive and that the solicitation cannot be modified in a manner that would result in greater competition; and document the file accordingly.

The contract file must include a sole source determination signed by the Purchasing Manager, explaining the reasons for the award on a noncompetitive basis.

Deleted: LTD must perform a cost analysis if there is a single Offer and there is no pricing data available, as defined above, or for Contract modifications and change orders valued at more than \$100,000. A cost analysis means reviewing and evaluating the separate cost elements and proposed profit of an Offeror's cost or pricing data in order to form an opinion on the degree to which the proposed costs represent what the Contract should cost, assuming reasonable economy and efficiency. To perform a cost analysis, each element of cost must be reviewed to determine whether an Offeror's estimate contains an accurate and reasonable prediction of the costs that will be incurred during Contract performance. The Contract price is figured by adding a rate of profit determined to be fair. All reasonable costs of performance should be considered.

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SECTION 27. Life Cycle Costing.

- 27.1** In determining the lowest Bid or best Proposal, LTD may use "Life Cycle Costing," provided LTD meets the requirements of Section 27.2. As used in this rule, "Life Cycle Costing" means determining the cost of a product for its estimated useful life, including its disposal.
- 27.2** If LTD uses Life Cycle Costing in connection with a procurement, LTD must comply with the following requirements:
- 27.2.1** LTD shall identify in the Solicitation Document those factors that, for evaluation purposes, will have cost implications over the life of the product and that will be used to adjust the Bid or Proposal price of the product;

- 27.2.2** The Solicitation Document shall clearly set out the factors and the methodology to be used in calculating the Life Cycle Costing adjustments; and
- 27.2.3** The Life Cycle Costing adjustments shall be applied to the price of the product(s) offered in the Bid or Proposal. After application of the Life Cycle Costing adjustments, the Bid or Proposal that results in the lowest overall ownership costs shall be considered the lowest Bid or best Proposal for purposes of price evaluation of the product(s).

SECTION 28. Low Tie Offers.

- 28.1 Definition.** “Low Tie Offers” are either (i) low tie Responsive Bids from Responsible Bidders; or (ii) high tie Responsive Proposals from Responsible Proposers that are identical in price, fitness, availability, and quality.
- 28.2 Award.** If awarded, LTD shall award the Contract in the following order of precedence:
 - 28.2.1** LTD shall prefer the goods or services that have been manufactured in Oregon in accordance with ORS 279A.120.
 - 28.2.2** If Low Tie Offers remain tied after application of Section 28.2.1, preference shall be awarded according to the following order of precedence:
 - a.** Preference shall be given to the Offeror whose principal offices or headquarters are located in Oregon.
 - b.** If a tie still remains after applying subsection a. above, award shall be made by drawing lots among any tied Oregon Offerors. LTD shall give such Offerors notice and an opportunity to be present when the lots are drawn.
 - c.** If none of the tied Offerors is located in Oregon, award of the Contract shall be made by drawing lots among all tied Offerors.
 - 28.2.3** If federal funds are to be used in the procurement, neither Section 28.2.1 nor Sections 28.2.2.a. and b. shall apply. In such event, award of the Contract shall be made by drawing lots pursuant to Section 28.2.2.c.

SECTION 29. Notice of Intent to Award.

- 29.1** LTD shall provide written notice of its intent to award to all Bidders and Proposers pursuant to ORS 279B.135 at least seven (7) days before the award of a Contract, unless LTD determines that circumstances require prompt execution of the Contract, in which case LTD may provide a shorter notice period. LTD shall document the specific reasons for the shorter notice period in the procurement file.
- 29.2** LTD’s award shall not be final until the later of the following:
 - 29.2.1** The expiration of the protest period provided pursuant to Section 36.6; or

29.2.2 LTD provides written responses to all timely-filed protests denying the protests and affirming the award.

SECTION 30. Documentation of Award.

30.1 Basis of Award. Following award of a Contract, LTD shall make a record showing the basis for determining the successful Offeror as part of the procurement file.

30.2 Contents of Award Record. LTD's record shall consist of the following:

30.2.1 Offers received by LTD.

30.2.2 If in response to an IFB, the completed Bid tabulation sheet and written justification for any rejection of lower Bids.

30.2.3 If in response to an RFP, the completed evaluation of Proposals and written justification for any rejection of higher scoring Proposals.

30.2.4 If LTD engaged in any methods of Contractor selection described in ORS 279B.060(b)(6) and Sections 10 and 11.2, written documentation of the content of any discussions, negotiations, best and final Offers, or any other procedures LTD used to select a Proposer to which LTD awarded a Contract.

SECTION 31. Foreign Contractor (ORS 279A.120).

If the amount of the Contract exceeds \$10,000 and the Contractor is a "Nonresident Bidder," the Contractor shall promptly report to the Oregon Department of Revenue on forms to be provided by the Department of Revenue the total Contract price, terms of payment, length of Contract, 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 LTD. LTD must satisfy itself that the requirement of this Section 31 has been complied with before LTD issues a final payment on the Public Contract. For the purposes of these Rules, a Nonresident Bidder is defined under ORS 279A.120(a).

SECTION 32. Availability of Award Decisions.

32.1 Contract Documents. To the extent required by the Solicitation Document, LTD shall deliver to the successful Offeror a Signed purchase order, Price Agreement, or other Contract documents, as applicable.

32.2 Notification of Unsuccessful Offerors. LTD will notify unsuccessful Offerors within three (3) days of a Contract award. Tabulations of received Bids or evaluation summaries of received Proposals may be obtained for a nominal charge, either in person or by submitting a written request to LTD accompanied by payment. If the request is in writing, it must include the Solicitation Document number and have a self-addressed, postage-prepaid envelope enclosed.

32.3 Availability of Procurement File. After notice of intent to award under Section 29, LTD shall make the completed procurement file available for public review at LTD's main office in accordance with these Rules and applicable law. Notwithstanding the requirement to make the procurement file available for public inspection, as set forth in

Section 21, LTD may withhold from disclosure to the public materials that are exempt or conditionally exempt from disclosure under ORS 192.501 and 192.502.

32.4 Copies from Procurement File. Copies of material from the procurement file may be obtained upon payment of a reasonable copying charge.

32.5 Debriefing. If the procurement utilized the RFP process, unsuccessful Proposers may, within three (3) days after receipt of notice of intent to award, submit to LTD a written request for a debriefing of the award decision. LTD shall hold a debriefing for all unsuccessful Proposers who timely submitted a written request within five (5) days after receipt of such requests, or as soon as reasonably practical. LTD will cover the following topics at the debriefing:

32.5.1 LTD's evaluation of the significant weaknesses or deficient factors in the unsuccessful Proposers' Proposals;

32.5.2 The overall evaluated cost and technical rating of the successful Proposal, the overall evaluated cost and technical rating of the unsuccessful Proposals of the debriefed Proposers, and the overall ranking of all Proposals;

32.5.3 A summary of the rationale for the award;

32.5.4 In the case of a Proposal that proposes a commercial item as an end item under the Contract, the make and model of the item being provided by the successful Proposer; and

32.5.5 The debriefing will not include a point-by-point comparison of all Proposals, and LTD will not disclose any information that is exempt from disclosure by these Rules and/or applicable law.

SECTION 33. Rejection of Offers.

33.1 LTD has the right to reject any or all Offers if it is in LTD's best interest, as determined by LTD. If LTD rejects all Offers, LTD shall notify all Offerors of the rejection of all Offers, along with the reasons for rejection of all Offers.

33.2 LTD shall reject an Offer upon finding that the Offer:

33.2.1 Is contingent upon LTD's acceptance of terms and conditions that differ from the Solicitation Document;

33.2.2 Takes exceptions to terms and conditions (including specifications) in the Solicitation Document or Contract;

33.2.3 Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;

33.2.4 Is not in substantial compliance with the Solicitation Document or the prescribed public solicitation process; or

33.2.5 Is late.

33.3 LTD shall reject an Offer upon finding that the Offeror:

33.3.1 Has not prequalified, if prequalification was required;

33.3.2 Has been debarred as set forth in Section 13 and ORS 279B.130 or disqualified pursuant to Section 6.2.4;

33.3.3 Has been declared ineligible under ORS 279.361 by the Bureau of Labor and Industries, if the Contract is for a Public Work; or if the contractor has been found to be debarred, suspended, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements by reviewing the Excluded Parties Listing System located at <http://epls.arnet.gov/>.

33.3.4 Is not qualified by the CCB, if the Contract is for a Public Improvement;

33.3.5 Has not submitted the required Offer security, if required by the Solicitation Document;

33.3.6 Is not a Responsible Offeror. In determining if an Offeror is responsible, LTD must determine pursuant to ORS 279B.110 that the Offeror has appropriate financial, technical, material, equipment, facility, and personnel resources and expertise necessary to demonstrate Offeror's ability to meet all Contract requirements. In making this determination, LTD may investigate to determine if Offeror has a satisfactory record of contract performance, a satisfactory record of integrity, a satisfactory record of compliance with public policy, and is legally qualified to contract with LTD. LTD may require Offeror to supply all necessary information in connection with its inquiry into Contractor's responsibility; or

33.3.7 Has not met the requirements of ORS 279A.105, if required by the Solicitation Document.

For the purposes of this Section 33, LTD may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this Section 33 or to apply the debarment provisions of ORS 279B.130.

SECTION 34. Cancellation, Delay, or Suspension of Procurement.

34.1 LTD may cancel, delay, or suspend an IFB, RFP, or any other procurement if LTD finds it is in LTD's best interest, as determined by LTD. LTD reasons for such cancellation, delay, or suspension, as applicable, shall become part of the procurement file.

34.2 If such cancellation, delay, or suspension is prior to the Closing Date, LTD shall provide notice of such cancellation, delay, or suspension in the same manner as LTD initially provided notice of the solicitation. If such cancellation, delay, or suspension is after the Closing Date, LTD shall provide notice to all Offerors who submitted Offers.

34.3 LTD shall not be liable to any Offeror for any loss or expense caused by or resulting from the cancellation, delay, or suspension of a solicitation or award.

SECTION 35. Disposition of Offers if Solicitation Document Canceled.

35.1 **Prior to Offer Opening.** When a Solicitation Document is canceled prior to Offer opening, all Offers received will be returned to Offerors unopened, if submitted with a clearly visible return address. If there is no return address on the envelope, the Offer will be opened to determine the source and then returned to Offeror.

35.2 **After Offer Opening.** If LTD cancels the procurement after opening, LTD may either return the Offers or retain them for the procurement file. If all Offers are rejected, LTD shall retain any Offers received as part of LTD's procurement file.

SECTION 36. Protest Procedures.

36.1 Offerors may protest to LTD that they were prejudiced by LTD's procurement or award procedures. All protests must be submitted in writing to LTD in accordance with these Rules. The Purchasing Manager will inform FTA immediately of a protest received by LTD that involves a procurement funded by FTA.

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36.2 General Procedures.

36.2.1 All protests shall be marked as follows:

Offer or Award Protest
Offer Number or Other Identification

36.2.2 The burden is on the protesting Offeror to produce evidence to sustain its protest. Unless a hearing is required by statute, LTD may base its decision on Offeror's or LTD's written materials or, in its discretion, may allow oral testimony. If oral testimony will be allowed, LTD shall provide the protesting Offeror with notice of such allowance, and the oral testimony shall be heard within ten (10) business days after the protesting Offeror receives the notice allowing oral testimony.

36.2.3 If federal funds are used in the procurement at issue, an Offeror may seek review by the FTA after the Offeror has complied with the protest procedures of this Section 36 and if otherwise permitted under FTA Circular 4220.1E, as amended. The FTA also may entertain a protest that alleges that LTD failed to have or follow its written protest procedures. Any protest to the FTA must be filed by the Offeror with the FTA not later than five (5) days after the date the protesting Offeror receives notice of the decision of LTD, or within five (5) days after the protesting Offeror knows or has reason to know that LTD has failed to render a final decision.

36.2.4 Unless otherwise required by federal rules or regulations or Oregon statutes, LTD shall not be obligated to postpone Offer opening or award of a Contract pending resolution of a protest where LTD determines that proceeding with the

selection process or award is in the best interest of LTD. LTD shall document the basis and include it in the procurement file.

36.3 Protests and Judicial Review of Special Procurements.

36.3.1 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 of a Special Procurement, an Affected Person must file a written protest with LTD and exhaust all administrative remedies.

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

36.3.3 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.

36.3.4 Contract Review Authority Response. LTD 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 Section 36.3 or such different time period as may be provided in the public notice of the approval of a Special Procurement. LTD shall issue a written disposition of the protest in a timely manner. If LTD 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.

36.3.5 Judicial Review. An Affected Person may seek judicial review of LTD's decision relating to a protest of the approval of a Special Procurement in accordance with ORS 279B.400.

36.4 Protests and Judicial Review of Multi-Tiered and Multi-Step Solicitations.

36.4.1 Purpose. An Affected Offeror may protest exclusion from the competitive range or from subsequent tiers or steps of a solicitation in accordance with the applicable Solicitation Document. When such a protest is permitted by the Solicitation Document, then pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Offeror must file a written protest with LTD and exhaust all administrative remedies.

36.4.2 Basis for Protest. An Affected Offeror may protest its exclusion from a tier or step of competition only if the Offeror is Responsible and submitted a Responsive Offer and but for LTD's mistake in evaluating the Offeror's or other Offerors' Offers, the protesting Offeror would have been eligible to participate in

the next tier or step of competition. For example, the protesting Offeror must claim it is eligible for inclusion in the competitive range if all ineligible higher-scoring Offerors are removed from consideration, and those ineligible Offerors are ineligible for inclusion in the competitive range because: their Proposals were not Responsive, or LTD committed a substantial violation of a provision in the Solicitation Document or of an applicable procurement statute, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been included in the competitive range.

- 36.4.3 Delivery.** Unless otherwise specified in the Solicitation Document, an Affected Offeror must deliver a written protest to LTD within five (5) business days after issuance of the notice of the competitive range or notice of subsequent tiers or steps.
- 36.4.4 Content of Protest.** The Affected Offeror's protest shall be in writing and must specify the grounds upon which the protest is based.
- 36.4.5 LTD Response.** LTD shall not consider an Affected Offeror's multi-tiered or multi-step solicitation protest submitted after the timeline established for submitting such protest under Section 36.4, or such different time period as may be provided in the Solicitation Document. LTD shall issue a written disposition of the protest in a timely manner. If LTD upholds the protest, in whole or in part, LTD may in its sole discretion either issue an Addendum under Section 18 reflecting its disposition or cancel the procurement or solicitation under Section 34.
- 36.4.6 Judicial Review.** Judicial review of LTD's decision relating to a multi-tiered or multi-step solicitation protest shall be in accordance with ORS 279B.420.

36.5 Protests and Judicial Review of Solicitations.

- 36.5.1 Purpose.** A prospective Offeror may protest the procurement process or the Solicitation Document, including its specifications, terms, and/or conditions 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 LTD and exhaust all administrative remedies.
- 36.5.2 Delivery.** Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a written protest to LTD not less than five (5) business days prior to the Closing Date.
- 36.5.3 Content of Protest.** The protest must include a detailed statement of the legal and factual grounds for the protest, include the claimed prejudice to the Offeror, demonstrate how the procurement process is contrary to law or how the Solicitation Document is flawed, include evidence or supporting documentation for the grounds on which the protest is based, and include the course of action the prospective Offeror would like LTD to take.
- 36.5.4 LTD Response.** LTD shall not consider a Prospective Offeror's solicitation protest submitted after the timeline established for submitting such protest

under this Section 36.5, or such different time period as may be provided in the Solicitation Document. LTD shall consider the protest if it is timely filed and meets the conditions set forth in Section 36.5.4 and ORS 279B.405(4). LTD shall issue a written disposition of the protest no less than three (3) business days prior to the Closing Date, unless LTD makes a written determination that circumstances exist that require a shorter time limit. If LTD upholds the protest, in whole or in part, LTD may in its sole discretion either issue an Addendum reflecting its disposition under Section 18 or cancel the Procurement or solicitation under Section 34.

36.5.5 Extension of Closing. If LTD receives a protest from a prospective Offeror in accordance with this Section 36.5, LTD may extend the Closing Date if LTD determines an extension is necessary to consider and respond to the protest.

36.5.6 Judicial Review. Judicial review of LTD's decision relating to a solicitation protest shall be in accordance with ORS 279B.405.

36.6 Protests and Judicial Review of Contract Award.

36.6.1 Purpose. An Offeror may protest the award of a Contract, or the intent to award 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 LTD and exhaust all administrative remedies before seeking judicial review of LTD's Contract award decision.

36.6.2 Delivery. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a written protest to LTD within five (5) business days after issuance of the notice of intent to award the Contract.

36.6.3 Content of Protest. An Offeror's written protest shall include a detailed statement of the legal and factual grounds for the protest, the claimed prejudice to the Offeror, and the course of action the Offeror would like LTD to take.

36.6.4 LTD Response. LTD shall not consider an Offeror's Contract award protest submitted after the timeline established for submitting such protest under this Section 36.6, or such different time period as may be provided in the Solicitation Document. LTD shall issue a written disposition of the protest in a timely manner. If LTD upholds the protest, in whole or in part, LTD may in its sole discretion either award the Contract to the successful protestor or cancel the procurement or solicitation.

36.6.5 Judicial Review. Judicial review of LTD's decision relating to a Contract award protest shall be in accordance with ORS 279B.415.

36.7 Protests and Judicial Review of Qualified Products List Decisions.

36.7.1 Purpose. A prospective Offeror may protest LTD's decision to exclude the prospective Offeror's goods from LTD's qualified products list under Section 7 and ORS 279B.115. A prospective Offeror must file a written protest and exhaust all administrative remedies before seeking judicial review of LTD's qualified products list decision.

- 36.7.2 Delivery.** Unless otherwise stated in LTD's notice to prospective Offerors of the opportunity to submit goods for inclusion on the qualified products list, a prospective Offeror must deliver a written protest to the LTD within five (5) business days after issuance of LTD's decision to exclude the prospective Offeror's goods from the qualified products list.
- 36.7.3 Content of Protest.** The prospective Offeror's protest shall be in writing and must specify the grounds upon which the protest is based.
- 36.7.4 LTD Response.** LTD shall not consider a prospective Offeror's qualified products list protest submitted after the timeline established for submitting such protest under this Section 36.7, or such different time period as may be provided in LTD's notice to prospective Offerors of the opportunity to submit goods for inclusion on the qualified products list. LTD shall issue a written disposition of the protest in a timely manner. If LTD upholds the protest, it shall include the successful protestor's goods on the qualified products list.
- 36.7.5 Judicial Review.** Judicial review of LTD's decision relating to a qualified products list protest shall be in accordance with ORS 279B.425.
- 36.8 Judicial Review of Other Violations.** All protests of any other violation of ORS Chapter 279A or 279B by LTD for which no judicial remedy is otherwise provided in the Oregon Public Contracting Code is subject to judicial review as set forth in ORS 279B.420.

SECTION 37. Contract Modification.

- 37.1 Additional Goods or Services.** Any amendments for additional work or product requested by LTD, which is reasonably within the scope of work under the original Contract, including change orders, extra work, field orders, or other changes in the original specifications that increases the original Contract price, may be made with the Contractor without the Competitive Procurement process, provided one or more of the following criteria is satisfied:
- 37.1.1** The original Contract (i) was let under the Competitive Procurement process; and (ii) imposes a binding obligation on the parties covering the terms and conditions of the additional work or product; or
- 37.1.2** The aggregate increase resulting from all amendments to a Contract shall not exceed ten percent (10%) of the initial Contract amount, or twenty percent (20%) of the initial Contract amount if such aggregate increase does not exceed \$100,000.
- 37.1.3** The use of tag-ons is prohibited and applies to the original buyer as well as to others. Tag-on is defined as the addition of work (supplies, equipment, or services) that is beyond the scope of the original contract that amounts to a cardinal change and is subject to noncompetitive procurement procedures.
- 37.2 Small or Intermediate Contract.** LTD may amend a Contract awarded as small or intermediate Procurement pursuant to this Section 37, only if the total price of the

LTD Purchasing Policy and Rules - 57
Adopted April 20, 2005; amended November 8, 2010

Contract after the increase does not exceed the amount set forth in Section 6.6 for Small Procurements if Contract was originally awarded under Section 6.6 or Section 6.7 for Intermediate Procurements in the Contract was originally awarded under Section 6.7.

37.3 Emergency Contract. LTD may amend a Contract awarded as an emergency if the emergency justification for entering into the Contract still exists, and the amendment is necessary to address the continuing emergency.

37.4 Price Agreements. LTD may amend or terminate a Price Agreement as follows:

37.4.1 As permitted by the Price Agreement;

37.4.2 As permitted by this Section 37;

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

37.4.4 As permitted by applicable law.

37.5 Change Order Procedure. Before an amendment or change order (change notice) to a contract or purchase order can be made, the following steps must occur:

37.5.1 Identify the change and ensure that the change is desired or required and that it falls within the original scope of the project. Unforeseen conditions that occur in a construction project that must be remedied to proceed with construction are allowable. The Project Manager must identify the need for a change in writing, which might be in a simple handwritten format or e-mail.

37.5.2 The Project Manager must make an independent estimate of the cost of the change. The Project Manager must identify the estimated cost in writing, in an internal document, which may be in a simple handwritten format or e-mail.

37.5.3 The request for a proposal for the change must go to the Contractor or Consultant on the project, giving a description of the change in whatever terms are needed to allow the Contractor/Consultant to respond.

37.5.4 The written response from the Contractor should be reviewed, comparing the proposed cost to the estimated cost previously established. The proposal should contain supporting documentation for costs of materials or for any subcontractor work proposed. It should also contain pertinent drawings or other supplemental information needed to identify the work.

37.5.5 The Project Manager will then make a statement about the reasonability of the price. The statement may be in a simple handwritten format or e-mail.

37.5.6 This information makes up a complete change order request package, which will then go to Purchasing to review and process a change order to the purchase order and/or contract.

37.6 Options. An option is a unilateral right in a contract by which, for a specified time, the buyer may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. The use of options must be

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limited to quantities of goods or services that are reasonably anticipated to be required by the Agency during the term of the contract; options may not be included solely with the intent of assigning them to another entity in the future; however, contracts may include a provision allowing assignment to other agencies in the event of a change in the Agency's anticipated requirements, in accordance with FTA regulations and guidance.

37.6.1 The option quantities or periods must be defined in the solicitation; contained in the offer upon which a contract is awarded; and evaluated as part of the initial award process; i.e., the options must be evaluated in combination with bid prices for the base quantity to determine the low bidder. When an option has not been evaluated to determine the low bidder for award of the contract, exercise of the option will be considered a sole source procurement and must be justified as such.

37.6.2 The exercise of an option must be in accordance with the terms and conditions of the option as stated in the initial contract, and an option may not be exercised unless it is determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised, cost and other factors considered.

37.6.3 If sequential options (e.g., a series of one-year extensions) exist, the failure to timely and properly exercise any option will void all subsequent options.

37.7 **Piggybacking.** LTD may exercise options in contracts of other public agencies ("piggybacking") in accordance with FTA regulations and guidance.

SECTION 38. Right to Audit Records.

38.1 Contractors and subcontractors shall maintain all fiscal records relating to Contracts with LTD in accordance with generally accepted accounting principles ("GAAP"), unless otherwise specified in the Solicitation Document or Contract documents. Additionally, Contractors and subcontractors shall maintain all other records relating to Contracts with LTD in a manner to clearly document the following:

38.1.1 Contractors' and subcontractors' performance under the Contract(s); and

38.1.2 Any claims arising from or relating to Contractors' and subcontractors' performance under the Contract(s). Contractors and subcontractors shall make all records (books, fiscal records, and all other records and documents, hereafter the "Records") relating to their performance and any claims under a Contract with LTD reasonably accessible to LTD, whether or not litigation has been filed in connection with such claims.

38.2 **Inspection and Audit.** LTD may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the Records of any Person who has submitted cost or pricing data according to the terms of a Contract with LTD to the extent that the Records relate to such cost or pricing data. If a Person must provide cost or pricing data under a Contract with LTD, that person or entity shall maintain such Records and keep such Records accessible and available for a minimum period of three (3) years from the date of final payment under the Contract or subcontract, as applicable, or until the conclusion of any audit, controversy, or litigation arising out of or

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related to the Contract, whichever date is longer, unless a shorter period is otherwise authorized by LTD in writing.

- 38.3 Inspection; Contract Audit.** LTD shall be entitled to inspect, examine, copy, and audit any of Contractors' or subcontractors' Records as provided under Section 38.1. Contractors and subcontractors shall maintain and keep such Records accessible and available for a minimum period of three (3) years from the date of final payment under the Contract or subcontract, as applicable, or until the conclusion of any audit, controversy, or litigation arising out of or related to the Contract, whichever date is later, unless a shorter period is otherwise authorized by LTD in writing.

SECTION 39. Performance Security.

- 39.1 Public Improvements Contract.** Unless the required performance bond is waived under ORS 279C.380 or exempted by all of LTD/CRB pursuant to Section 39.3 below, Contractor shall execute and deliver to LTD, a payment bond and a performance bond, each in a sum equal to the Contract price, for any Public Improvement Contracts.
- 39.2 Other Public Contracts.** LTD may require performance and payment security for other Public Contracts.
- 39.3 Exemption and/or Waiver.** If all members of LTD/CRB concur:
- 39.3.1** LTD/CRB may exempt certain contracts or classes of contracts from the requirements for performance and/or payment security pursuant to ORS 279C.390; provided, however, LTD may require payment and/or performance security even though the Contract is one of a class exempted by LTD/CRB.
- 39.3.2** LTD/CRB may waive the performance and/or payment security requirements in cases of emergency pursuant to ORS 279C.380(4).
- 39.3.3** If federal funds are used in the procurement of a Public Improvement Contract in excess of \$100,000, the exemptions under this Section 39 are not available.
- 39.4 Requirement for Surety Bond.** LTD shall only accept a surety bond furnished by a surety company authorized to do business in Oregon as performance security, unless specified in the Solicitation Document. If specified in the Solicitation Document, LTD may accept the following alternative forms of payment and performance security: (i) a cashier's check or certified check in an amount equal to one hundred percent (100%) of the Contract price; or (ii) an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 in an amount equal to one hundred percent (100%) of the Contract price.
- 39.5 Time for Submission.** The apparent successful Offeror must furnish the required performance bond and payment bond within ten (10) days of LTD's request. If Offeror fails to furnish the bond prior to the deadline, LTD may reject the Offer, may forfeit the Offeror's Offer security, and may award the Contract to the Bidder with the next lowest Responsive Offer with the next highest-scoring Offer.

SECTION 40. Procurement of Architectural and Engineering Services.

40.1 LTD will use qualification-based competitive proposal procedures based on the Brooks Act, Chapter 11 of Title 40 of the United States Code, and 49 U.S.C. §5325(b), when contracting for architectural and engineering services which include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying mapping, or related services.

40.1.1 If federal funds are not used in the procurement, the following definition applies: "Related Services" means personal services, other than architectural, engineering, and land surveying services, that are related to the planning, design, engineering, or oversight of public improvement projects or components thereof, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, environmental impact studies, hazardous substances or hazardous waste or toxic substances testing services, wetland delineation studies, wetland mitigation studies, Native American studies, historical research services, endangered species studies, rare plant studies, biological services, archaeological services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services, and owner's representative services or land-use planning services.

40.2 Selection Procedure.

40.2.1 General. Competitive RFP procedures, based on the Brooks Act, shall be used when procuring Consultant services. The Brooks Act requires that:

- a. An Offeror's qualifications be evaluated;
- b. Price be excluded as an evaluation factor;
- c. Negotiations be conducted with only the most qualified Offeror; and
- d. Failing agreement on price, negotiations with the next most qualified Offeror be conducted until a Contract award can be made to the most qualified Offeror whose price is fair and reasonable.

40.2.2 State Funds. If LTD: (i) receives moneys from the State Highway Fund or a grant or loan from the State that will be used to pay for any portion of the design and construction of the project; and (ii) where the total amount of any grants, loans, or moneys from either the State Highway Fund or the State exceeds ten percent (10%) of the value of the project; and (iii) where the value of the project exceeds \$900,000, LTD shall use an RFP procurement process set forth under Section 40.2.1 and shall select a Consultant on the basis of qualifications. LTD may consider pricing factors only after it has selected candidates based on qualifications. In selecting candidates based on qualifications, LTD may consider some or all of the following:

- a. Specialized experience, capabilities, and technical competence that may be demonstrated by the proposed approach and methodology to meet the

Deleted: Definitions. In addition to the definitions set forth in ORS 279C.100, the following definitions apply to Section 40:

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40.1.1 "Consultant" means an Architect, Engineer, Land Surveyor, or provider of Related Services.¶

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project requirements;

- b. Resources available to perform the work and the proportion of the candidate staff's time that would be spent on the project, including any specialized services, within the applicable time limits;
- c. Record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration;
- d. Ownership status and employment practices regarding minority, women, and emerging small businesses or historically underutilized businesses;
- e. Availability to the project locale;
- f. Familiarity with the project locale; and
- g. Proposed project management techniques.

40.3 Ties Among Proposers. If LTD determines after the ranking of Proposers that two or more Proposers are equally qualified, LTD shall select the Proposer to which the Contract will be awarded pursuant to Section 28.

40.4 Request for Change or Clarification. Consultants who are prospective Offerors may submit a written request for a change or clarification to the Solicitation Document and/or Contract terms and conditions pursuant to the procedures set forth in Section 20.

40.5 Protest and Judicial Review Procedures.

40.5.1 Solicitation Protest and Request. Consultants may submit a written protest of anything contained in the Solicitation Document, pursuant to the procedures provided under Sections 36.2 and 36.5.

40.5.2 Protest of Consultant Selection. LTD shall provide to all Proposers a copy of the selection notice that LTD sent to the highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to LTD pursuant to the procedures provided under Section 36.2 and 36.6.

40.6 Cancellation. LTD may cancel a solicitation or reject all Proposals or responses to a Solicitation Document issued pursuant to this Section 40, without liability to LTD at anytime after issuing the Solicitation Document, if LTD determines it is in its best interest to do so, as determined by LTD. Consultants responding to a Solicitation Document are solely responsible for all costs they may incur in connection with submitting Proposals.

SECTION 41. Public Improvement Contracts.

41.1 Application. This Section 41 applies to Public Improvement Contracts and addresses matters covered in ORS Chapter 279C, except for Architectural, Engineering, Land Surveying, and Related Services, which are addressed in Section 40. LTD shall follow

LTD Purchasing Policy and Rules - 62

Adopted April 20, 2005; amended November 8, 2010

all applicable sections of these Rules, including those for IFB and RFP procurements, in connection with the procurement of Public Improvement Contracts except to the extent this Section 41 requires alternate or additional procedures.

- 41.2 Construction Contracts other than Public Improvements.** LTD may enter into Contracts for minor alteration, ordinary repair, or maintenance of Public Improvements, as well as any other construction Contract that is not defined as a “Public Improvement” under ORS 279A.010, in accordance with the provisions these Rules applicable to trade services.
- 41.3 Competitive Procurement.** LTD shall solicit Bids for Public Improvement Contracts by IFB, except as otherwise allowed or required pursuant to these Rules, ORS 279C.335, and federal statutes and regulations.
- 41.4 Exceptions.** As provided above in Section 41.3, all Public Improvement Contracts shall be based upon competitive Bids except:
- 41.4.1** A Contract for a Public Improvement if the value of such Contract is less than \$5,000. In awarding a Contract under this Section 41.4.1, LTD shall follow the procedures for Small Procurements set forth in Section 6.6.
- 41.4.2 Emergency Contracts.** Pursuant to ORS 279C.335(5) and this Section 41.4.2, LTD may declare that emergency circumstances exist that require prompt execution of a Contract for emergency construction or repair work. In awarding an Emergency Contract under this Section 41.4.2, LTD shall follow the procedures for Emergency Contracts set forth in Section 6.9. Further, pursuant to ORS 279C.380(4) and this Section 41.4.2, the emergency declaration may also state that LTD waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract.
- 41.4.3 Intermediate Procurements.** Public Improvement Contracts estimated by LTD not to exceed \$100,000, or not to exceed \$50,000 in the case of Contracts for highways, bridges, and other transportation projects, may be awarded in accordance with intermediate level procurement procedures set forth in this Section 41.4.3. A procurement may not be artificially divided or fragmented so as to constitute an intermediate procurement under this Section 41.4.3 or to circumvent competitive procurement requirements under the Section 41.3. Intermediate procurements under this Section 41.4.3 need not be made through IFB process. However, nothing in this Section 41.4.3 may be construed as prohibiting LTD from conducting a procurement that does not exceed the thresholds in Section 41.4.3 under an IFB process. LTD shall follow the procedures set forth below in procuring a Public Improvement Contract under this Section 41.4.3:
- 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.** LTD shall utilize written requests for quotes whenever reasonably practicable. 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. When requesting quotations orally, prior to requesting the price quote LTD 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.

- c. **Number of Quotes; Record Required.** LTD 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 LTD shall make a written record of the effort made to obtain those quotes.
- d. **Award.** If LTD awards a Contract, LTD shall award the Contract to the prospective Contractor whose quote will best serve LTD's interests, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, LTD shall make a written record of the basis for Award.
- e. **Amendments.** A Contract awarded under this Section 41.4.3 may be amended only if the total price of the Contract after the increase does not exceed the thresholds set forth in this Section 41.4.3.

41.4.4 LTD may exempt other Public Improvement Contracts or a class of Public Improvement Contracts from the competitive bidding requirements of this Section 41.4 upon approval of the following findings:

- a. It is unlikely that the exemption will encourage favoritism in the awarding of Public Improvement Contracts or substantially diminish competition for Public Improvement Contracts; and
- b. The awarding of Public Improvement Contracts under the exemption will result in substantial cost savings to LTD. In making the finding, LTD may consider the type, cost, and amount of the Contract, the number of persons available to Bid, and such other factors as may be deemed appropriate.
- c. In making findings to support an exemption for a class of Public Improvement Contracts, LTD shall clearly identify the class using the classes defining characteristics, including project descriptions and locations, time periods, contract values, and other factors that distinguish the class from LTD's overall construction program. However, LTD may not distinguish a class solely based on its funding sources or its method of procurement.

In granting exemptions under this Section 41.4.4, LTD shall, when appropriate, direct the use of alternate contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.

Before final adoption of Findings exempting a Public Improvement Contract or class of Public Improvement Contracts under this section, LTD shall hold a public

hearing. Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of fourteen (14) days prior to the hearing. The notice shall state that the public hearing is for the purpose of taking comments on LTD's draft Findings for an exemption from the Competitive Procurement requirement. At the time of the notice, copies of the draft Findings shall be made available to the public. At the option of LTD, the notice may describe the process by which the Findings are finally adopted and may indicate the opportunity for any further public comment. At the public hearing, LTD shall offer an opportunity for any interested party to appear and present comment. If LTD is required to act promptly due to circumstances beyond its control that do not constitute an emergency, notification of the public hearing can be published simultaneously with LTD's solicitation of offers, as long as responses to the solicitation are due at least five (5) days after the meeting and approval of the Findings.

41.5 Solicitation Documents. Pursuant to ORS 279C.365 and this Section 41.5, in addition to the information required under Section 9.1, the Solicitation Document for a Public Improvement project shall include the following:

41.5.1 Identification of the Public Improvement project, including the character of the work, applicable plans, specifications, and other contract documents;

41.5.2 A statement that LTD will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered with the CCB, or is licensed by the State Landscape Contractors Board, as applicable and as required by law; and

41.5.3 Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects.

41.5.4 As set forth in Section 17, a requirement for Offer Security to be submitted concurrently with the Offer.

41.6 Evaluation Process. In addition to the evaluation factors set forth in Section 9.3, LTD, if the Solicitation Document is an RFP, may include the following additional evaluation factors set forth in Section 41.12.

41.7 Construction Contract Provisions. In addition to the information required under Section 9.2, the Solicitation Document for a Public Improvement project shall include all contract terms and conditions, including warranties, insurance, and bonding requirements, that LTD considers appropriate for the Public Improvement project. LTD must also include the following provisions required by Oregon law as follows:

41.7.1 Payment of claims by public officers in compliance with ORS 279C.515;

41.7.2 Environmental and natural resources regulations in compliance with ORS 279C.525;

41.7.3 Claims for overtime in compliance with ORS 279C.545;

- 41.7.4 If the Contract is for a Public Improvement, a condition that the Contractor shall demonstrate it has established a drug-testing program for employees in compliance with ORS 279C.505(2);
- 41.7.5 Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515;
- 41.7.6 Person's right to file a complaint with the CCB for all Contracts related to a Public Improvement Contract in compliance with ORS 279C.515;
- 41.7.7 Fee paid to BOLI, if applicable, in compliance with ORS 279C.830(2);
- 41.7.8 Prompt payment policy in compliance with ORS 279C.570;
- 41.7.9 Contractor's relations with subcontractors in compliance with ORS 279C.580;
- 41.7.10 Notice of claim in compliance with ORS 279C.605;
- 41.7.11 Contractor's certification that all subcontractors performing work described in ORS 701.005(2) (i.e., construction work) will be registered with the CCB or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract;
- 41.7.12 Progress payments in compliance with ORS 279C.570; and
- 41.7.13 Retainage in compliance with ORS 279C.550 to 279C.570.

41.8 First-Tier Subcontractors: Disclosure and Substitution.

41.8.1 Required Disclosure. Within two (2) working hours after the Closing Date on an IFB for a Public Improvement having a contract price anticipated by LTD to exceed \$100,000, all Bidders shall submit to LTD a disclosure form as described by this Section 41.8, identifying any first-tier subcontractors (those entities that would be contracting directly with the prime Contractor) that will be furnishing labor or labor and materials on the Contract, if awarded, whose subcontract value would be equal to or greater than:

- a. Five percent (5%) of the total contract price, but at least \$15,000; or
- b. \$350,000, regardless of the percentage of the total contract price.

41.8.2 Bid Closing, Disclosure Deadline, and Bid Opening. For each IFB to which this Section 41.8 applies, LTD shall:

- a. Receive Bids until the time identified as the Closing Date and at the location described in the IFB;
- b. Set a subsequent time and place for Bid opening, which time is at least two (2) working hours after the Closing Date; and

- c. Consider for contract award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by LTD.

41.8.3 Bidder Instructions and Disclosure Form. For purposes of this rule, LTD in its procurement for competitive Bids shall:

- a. Prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279C.370(2); and
- b. Provide instructions in a notice substantially similar to the following:

"Instructions for First-Tier Subcontractor Disclosure"

Bidders are required to disclose information about certain first-tier subcontractors when the Contract value for a Public Improvement is greater than \$100,000 (see ORS 279C.370). Specifically, when the Contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to: (i) five percent (5%) of the project Bid, but at least \$15,000, or (ii) \$350,000 regardless of the percentage, the Bidder must disclose the following information about that subcontract either in its Bid submission or within two hours after Bid closing:

- (1) The subcontractor's name;
- (2) The category of work that the subcontractor would be performing; and
- (3) The dollar value of the subcontract.

If the Bidder will not be using any subcontractors that are subject to the above disclosure requirements, the Bidder is required to indicate "NONE" on the accompanying form.

LTD MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE. (See LTD Rules Section 41.8.3.)

41.8.4 Submission. A Bidder shall submit the disclosure form required by this Section 41.8 either in its Bid submission or within two working hours after the Closing Date in the manner specified by the IFB.

41.8.5 Responsiveness. Compliance with the disclosure and submittal requirements of ORS 279C.370 and this Section 41.8 is a matter of responsiveness. Bids which are submitted by the Closing Date, but for which the disclosure submittal has not been made by the specified deadline, are not responsive and shall not be considered for contract award.

41.8.6 LTD Role. LTD shall obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this Section 41.8. LTD shall

also provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279C.835. LTD is not required to determine the accuracy or completeness of the information provided on the disclosure forms.

41.8.7 Substitution. Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585. LTD shall accept written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, LTD does not have a statutory role or duty to review, approve, or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the CCB on improper substitution. However, LTD is not precluded from making related inquiries or investigating complaints in order to enforce contract provisions that require compliance generally with laws, rules, and regulations.

41.9 Prequalification. LTD may, in accordance with these Rules and ORS 279C.430, permit or require prospective Offerors to prequalify. If LTD permits or requires Offerors to prequalify, LTD shall provide the following:

41.9.1 The information required to be submitted by the prospective Offerors;

41.9.2 The form(s) and application(s) to be used by the prospective Offerors seeking prequalification;

41.9.3 The time for submitting an application for prequalification;

41.9.4 The period of time the prequalification will be valid; and

41.9.5 The type and nature of the Contract(s) that the prospective Offeror will be qualified to compete for.

The deadline for receipt of prequalification applications must be set long enough after the date the notice of prequalification is issued or advertised to allow prospective Offerors a reasonable opportunity to complete and submit the application materials. In no event may the deadline be set earlier than fifteen (15) days after the issue date of the notice of prequalification.

If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Offeror shall be rebuttably presumed to be qualified to perform substantially similar Contracts for LTD.

LTD shall approve or deny each application in accordance with ORS 279C.430 and 279C.450 and this Section 41.

In determining whether to approve an application, LTD may only consider the applicable standards set forth in ORS 279C.375(3).

If LTD subsequently has reasonable cause to believe that there has been a substantial change in the condition of a prospective Offeror, heretofore prequalified, who is no longer qualified or is less qualified, LTD may revoke or revise or reissue the prequalification upon reasonable notice to the prospective Offeror. The notice shall state

the reasons found under ORS 279C.375(3) for revocation or revision of the prequalification and shall inform the Offeror of its right to a hearing under ORS 279C.445 and 279C.450. A revocation or revision does not apply to any Contract for which advertisement of a Solicitation Document commenced prior to the date the notice of revocation or revision was received by the prequalified prospective Offeror.

Any information submitted by an Offeror or prospective Offeror in connection with an application for prequalification that the Offeror deems confidential and/or a trade secret shall clearly be labeled "confidential trade secret."

Any prospective Offeror who wishes to appeal a revocation or revision may do so in accordance with ORS 279C.445 and 279C.450.

41.10 Disqualification of Prospective Offerors.

41.10.1 LTD may disqualify prospective Offerors from consideration of the award of a Contract by LTD for the reasons set forth in ORS 279C.440(2) after providing notice and the opportunity for hearing as set forth in ORS 279C.445 and 279C.450.

41.10.2 In lieu of the disqualification process described in Section 41.10.1, LTD may petition the CCB to disqualify a person from consideration for award of LTD's Public Improvement Contracts for the reasons listed in this Section 41.10 and ORS 279C.440(2). The CCB shall provide the Person with notice and a reasonable opportunity to be heard.

41.10.3 If LTD seeks to disqualify a prospective Offeror under Section 41.10.1, LTD shall provide such notice required under ORS 279C.440, in writing, personally delivered or sent by registered or certified mail, to the prospective Offeror. The notice shall specify the following:

- a. That LTD intends to disqualify the prospective Offeror;
- b. The reasons for the disqualification;
- c. The period of disqualification, which period may not be longer than three (3) years; and
- d. A statement of the prospective Offeror's appeal rights and appeal deadlines.

41.10.4 If LTD disqualifies a prospective Offeror under Section 41.10.1, LTD shall notify the prospective Offeror, in writing, personally delivered or sent by registered or certified mail, of the debarment of the Offeror. The notice shall specify the following:

- a. The effective date and period of the disqualification;
- b. The reasons for the disqualification; and

- c. A statement of the disqualified Offeror's appeal rights and appeal deadlines.

41.10.5 Notwithstanding the limitation on the term for disqualification in ORS 279C.44(1)(c), LTD may determine that a previously disqualified Offeror is not responsible prior to award of a Contract.

41.10.6 LTD may attribute improper conduct of a Person or its affiliate or affiliates having a Contract with a prospective Offeror to the prospective Offeror for purposes of disqualification where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.

41.10.7 If a prospective Offeror wishes to appeal a disqualification by LTD, such prospective Offeror may do so in accordance with ORS 279C.445 and 279C.450.

41.10.8 If the procurement is funded by the Federal Transit Administration, the prequalification terms must be modified to meet the standards outlined in 4220.1f, as amended.

41.11 Protest and Judicial Review Procedures. The protest procedures set forth in Section 36 shall be applicable to the procurement and award of Public Improvement Contracts under this Section 41.

41.12 Alternative Contracting Methods. Alternate contracting methods allow for innovative procurement techniques for obtaining Public Improvement Contracts, utilizing processes other than the traditional method of "Design-Bid-Build" (with award based solely on price, in which a final design is issued with formal Bid documents, construction services are obtained by sealed Bid awarded to the lowest Responsive, Responsible Bidder, and the project is built in accordance with those documents). Two common alternate methods include Design-Build contracting, CM/GC forms of contracting.

41.12.1 Definitions.

- a. **Construction Manager/General Contractor (or "CM/GC")** means a form of procurement that results in a Public Improvement Contract for a Construction Manager/General Contractor to undertake project team involvement with design development; constructability reviews; value engineering, scheduling, estimating and subcontracting services; establish a guaranteed maximum price ("GMP") to complete the Contract; act as general contractor; hold all subcontracts, self-perform portions of the Work as may be allowed by LTD under the CM/GC Contract; coordinate and manage the building process; provide general contractor expertise; and act as a member of the project team along with LTD, architect/engineers and other consultants.
- b. **Design-Build** means a form of procurement that results in a Public Improvement Contract in which the construction contractor also provides or obtains specified design services, participates on the project team with LTD, and manages both design and construction. In this form of Contract,

LTD Purchasing Policy and Rules - 70

| Adopted April 20, 2005; amended November 8, 2010

a single Person provides LTD with all of the services necessary to both design and construct the project.

41.12.2 Use of Alternative Contracting Methods. As provided above in Section 41.3 and ORS Chapter 279C Public Improvement Contracts should be competitively Bid unless a statutory exemption applies or LTD has exempted a individual or class of Contracts in accordance with ORS 279C.335 and Section 41.4. LTD may utilize an alternate contracting method and an alternative contracting method only if authorized in accordance with ORS 279C.335, 279C.400 to 279C.410, and Section 41.4.

41.12.3 Evaluation Factors. In addition to the evaluation factors for RFPs set forth in these Rules, LTD may also include the following evaluation factors if using an alternate contracting method:

- a. In CM/GC contracting, factors may include the ability to respond to the technical complexity or unique character of the project, analyze and propose solutions or approaches to complex project problems, coordination of multiple disciplines, the time required to commence and complete the improvement, and related matters that affect cost or quality.
- b. In Design-Build contracting, in addition to Section 41.12.3, factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience, and related matters that affect cost or quality.

41.13 Post-Project Evaluation. ORS 279C.355 requires that LTD prepare a formal post-project evaluation of Public Improvement projects in excess of \$100,000 for which the competitive Bidding process was not used. The purpose of this evaluation is to determine whether it was actually in LTD's best interest to use an alternative contracting method or RFP. The evaluation must be delivered to the LTD/CRB within thirty (30) days of the date LTD "accepts" the Public Improvement project, which event is typically defined in the Contract. In the absence of such definition, acceptance of the Project occurs on the later of the date of final payment or the date of final completion of the work. ORS 279C.355 describes the timing and content of this evaluation, with three required elements:

41.13.1 Financial information, consisting of cost estimates, any guaranteed maximum price, changes, and actual costs;

41.13.2 A narrative description of successes and failures during design, engineering, and construction; and

41.13.3 An objective assessment of the use of the alternative contracting method or RFP as compared to the exemption Findings.

41.14 Design-Build Contracts.

41.14.1 General. The Design-Build form of contracting has technical complexities that are not readily apparent. In order to use the Design-Build process, LTD should be able to reasonably anticipate the following types of benefits:

- a. Obtaining, through a Design-Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control, and required documentation as a fully integrated function with a single point of responsibility;
- b. Integrating value engineering suggestions into the design phase, as the construction contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing Contract changes;
- c. Reducing the risk of design flaws, misunderstandings, and conflicts inherent in construction contractors building from designs in which they have had no opportunity for input, with the potential of reducing Contract claims;
- d. Shortening project time as construction activity (early submittals, mobilization, subcontracting, and advance Work) commences prior to completion of a "Biddable" design, or where a design solution is still required (as in complex or phased projects); or
- e. Obtaining innovative design solutions through the collaboration of the Contractor and design team, which would not otherwise be possible if the Contractor had not yet been selected.

41.14.2 Selection. Design-Build selection criteria may include those factors set forth above in Section 41.12.3.

41.14.3 Licensing. If a Design-Build Contractor is not an Oregon licensed design professional, LTD shall require that the Design-Build Contractor disclose in its written Offer that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction services.

41.14.4 Performance Security. In addition to the performance security requirements in Section 39 above, ORS 279C.380(1)(a) provides that for Design-Build Contracts the surety's obligation on performance bonds, or the Bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related Personal Services specified in the Contract. This additional obligation, beyond performance of construction services, extends only to the provision of Personal Services and related design revisions, corrective work and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance and does not include errors and omissions or latent defects coverage.

41.14.5 Contract Requirements. LTD shall include the following requirements in its Design-Build contracting practices:

- a. **Design Services.** The level or type of design services required must be clearly defined within the Procurement documents and Contract, along with a description of the level or type of design services previously performed for the project. The services to be performed shall be clearly delineated as either design Specifications or performance standards, and performance measurements must be identified.
- b. **Professional Liability.** The Contract shall clearly identify the liability of design professionals with respect to the Design-Build Contractor and LTD, as well as requirements for professional liability insurance.
- c. **Risk Allocation.** The Contract shall clearly identify the extent to which LTD requires an express indemnification from the Design-Build Contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations, and faulty work claims.
- d. **Warranties.** The Contract shall clearly identify any express warranties made to LTD regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.
- e. **Incentives.** The Contract shall clearly identify any economic incentives and disincentives, the specific criteria that apply, and their relationship to other financial elements of the Contract.
- f. **Honoraria.** If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the solicitation process on the basis that LTD is benefited from such deliverables.

g. **Brooks Act.** If the cost of design exceeds the construction cost, the Brooks Act will be used to select the Design Build Contractor.

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41.15 Construction Manager/General Contractor (CM/GC).

41.15.1 General. The CM/GC form of contracting is a technically complex project delivery system. LTD should use this contracting method only with the assistance of knowledgeable staff or consultants who have a demonstrated capability of managing the CM/GC process in the necessary disciplines of engineering, construction scheduling and cost control, accounting, legal, Public Contracting, and project management. Unlike the Design-Build form of contracting, the CM/GC form of contracting does not contemplate a "single point of responsibility" under which the Contractor is responsible for successful completion of all work related to a performance specification. The CM/GC has defined contract obligations, including responsibilities as part of the project team along with LTD and design professional, although in CM/GC there is a separate contract between LTD and design professional. In order to utilize the CM/GC method, LTD should be able to reasonably anticipate the following types of benefits:

- a. **Time Savings.** The Public Improvement has significant schedule ramifications, such that concurrent design and construction are necessary in order to meet critical deadlines and shorten the overall duration of construction. LTD may consider operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods;
- b. **Cost Savings.** Early Contractor input during the design process is expected to contribute to significant cost savings. LTD may consider value engineering, building systems analysis, life cycle costing analysis, and construction planning that lead to cost savings. LTD should specify any special factors influencing this analysis, including high rates of inflation, market uncertainty due to material and labor fluctuations or scarcities, and the need for specialized construction expertise due to technical challenges; or
- c. **Technical Complexity.** The Public Improvement presents significant technical complexities that are best addressed by a collaborative or team effort between LTD, design professionals, and Contractor, in which the Contractor will assist in addressing specific project challenges through preconstruction services. LTD may consider the need for Contractor input on issues such as operations of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling projects, and projects requiring complex phasing or highly coordinated scheduling.

41.15.2 Selection. CM/GC selection criteria may include those factors set forth above in Section 41.12.3.

41.15.3 Basis for Payment. The CM/GC process adds specified construction manager services to traditional general contractor services, requiring full Contract performance within a negotiated guaranteed maximum price ("GMP"). The basis for payment is reimbursable direct costs as defined under the Contract, plus a fee constituting full payment for work and services rendered, which together shall not exceed the GMP.

41.15.4 Performance Security. In addition to the performance security requirements in Section 39 above, ORS 279C.380(2) provides that for CM/GC contracts, in which a GMP may be established by an amendment authorizing construction period services following preconstruction period services, Contractor shall provide the performance security required by ORS 279C.380(1) and Section 39, upon execution of an amendment establishing the GMP. LTD shall also require Contractor to provide bonds equal to the value of construction services authorized by any early work amendment in advance of the GMP amendment. Such bonds must be provided before construction starts.

41.15.5 Contract Requirements. LTD shall include the following requirements in its CM/GC contracting practices:

- a. **Setting the GMP.** The GMP shall be set at an identified time consistent with industry practice, after supporting information reasonably considered necessary to its use has been developed, and the supporting information shall define with particularity both what is included and excluded from the GMP. A set of drawings and Specifications shall be produced establishing the GMP scope.
- b. **Adjustments to the GMP.** The Contract shall clearly identify the standards or factors under which changes or additional work will be considered outside of the work scope that warrants an increase in the GMP, as well as criteria for decreasing the GMP. The GMP shall not be increased without a concomitant increase to the scope defined at the establishment of the GMP or most recent GMP amendment.
- c. **Cost Savings.** The Contract shall clearly identify the disposition of any cost savings resulting from completion of the work below the GMP; that is, under what circumstances, if any, the CM/GC might share in those cost savings, or whether they accrue only to LTD's benefit.
- d. **Cost Reimbursement.** The Contract shall clearly identify what items or categories of items are eligible for cost reimbursement within the GMP, including any category of "General Conditions" (a general grouping of direct costs that are not separately invoiced, subcontracted, or included within either overhead or fee), and may also incorporate a mutually-agreeable cost-reimbursement standard.
- e. **Audit.** Cost reimbursements shall be made subject to final audit adjustment, and the Contract shall establish an audit process to ensure that Contract costs are allowable, properly allocated, and reasonable.
- f. **Fee.** Compensation for the CM/GC's services shall be paid on the basis of a fee that is inclusive of profit, overhead, and all other indirect or non-reimbursable costs. Costs determined to be included within the fee should be expressly defined wherever possible. The fee, first expressed as a proposed percentage of all reimbursable costs, shall be identified during and become an element of the selection process. It shall subsequently be expressed as a fixed amount when the GMP is established.
- g. **Incentives.** The Contract shall clearly identify any economic incentives, the specific criteria that apply, and their relationship to other financial elements of the Contract (including the GMP).
- h. **Early Work.** The RFP shall clearly identify, whenever feasible, the circumstances under which any of the following activities may be authorized and undertaken for compensation prior to establishing the GMP:
 - (1) Early Procurement of materials and supplies;
 - (2) Early release of Bid packages, such as for site development; and

- (3) Other advance Work related to critical components of the Contract.
- i. **Subcontractor Selection.** The Contract shall clearly describe the methods by which the CM/GC shall publicly receive, open, and record Bids or price quotations, and competitively select subcontractors to perform the contract work based upon price, as well as the mechanisms by which LTD may waive those requirements. The documents shall also describe completely the methods by which the CM/GC and its affiliated or subsidiary entities may compete to perform the work.
- j. **Subcontractor Approvals and Protests.** The Contract shall clearly establish whether LTD must approve subcontract awards, and to what extent, if any, LTD will resolve procurement protests of subcontractors and suppliers. In any event, LTD shall retain the right to monitor the subcontracting process in order to protect LTD's interests.
- k. **CM/GC Self-Performance.** Whenever feasible, the Contract shall establish the elements of work the CM/GC may self-perform without competition, including, for example, the work of the job-site general conditions. In the alternative, the Contract shall include a process for LTD approval of CM/GC self-performance.
- l. **Socio-Economic Programs.** The Contract shall clearly identify conditions relating to any required socio-economic programs (such as Affirmative Action or Prison Inmate Labor Programs), including the manner in which such programs affect the CM/GC's subcontracting requirements, the enforcement mechanisms available, and the respective responsibilities of the CM/GC and LTD.

41.16 Contract Suspension, Termination, and Cancellation Procedures.

41.16.1 Suspension of Work. In the event LTD suspends performance of work for any reason considered by LTD to be in the public interest other than a labor dispute, the Contractor shall be entitled to a reasonable extension of contract time, and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.

41.16.2 Termination by Mutual Agreement. LTD and the Contractor may terminate the Contract or a divisible portion thereof if:

- a. LTD suspends work under the contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the work filed to resolve a labor dispute);
- b. Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work; and

- c. When a contract, or any divisible portion thereof, is terminated pursuant to this Section 41.16, LTD shall pay the Contractor a reasonable amount of compensation for preparatory work completed, and for costs and expenses arising out of termination. LTD shall also pay for all work completed, based on the contract price. Unless the work completed is subject to unit or itemized pricing under the Contract, payment shall be calculated based on percent of contract completed. No claim for loss of anticipated profits will be allowed.

41.16.3 Public Interest Termination. LTD may include in its contracts terms detailing the circumstances under which the Contractor shall be entitled to compensation as a matter of right in the event LTD unilaterally terminates the Contract for any reason considered by LTD to be in the public interest.

41.16.4 Responsibility for Completed Work. Termination of the Contract or a divisible portion thereof shall not relieve the Contractor of responsibility for the work completed, nor shall it relieve the surety of its obligation for any just claims arising from the work performed.

41.16.5 Remedies Cumulative. LTD may, at its discretion, avail itself of any or all of rights or remedies set forth in these Rules, in the Contract or available at law or in equity.

41.17 Waiver of Delay Damages Against Public Policy. Any clause in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from LTD's unreasonable delay in performing the Contract is void and unenforceable, as against public policy. However, contract provisions requiring notice of delay, providing for alternative dispute resolution such as arbitration or mediation, providing other procedures for settling contract disputes, or providing for reasonable liquidated damages, are enforceable.

41.18 Advance Payments. The use of FTA funds for payments in advance of the incurrence of costs by the contractor is generally prohibited, without prior written approval from FTA. FTA does permit advance payments from FTA funds for those purchases where advance payment is customary in the commercial marketplace such as utility services, rents and subscriptions. FTA approval of such advance payments is required when the amount exceeds \$100,000. LTD should not make advance payments using other funds (including local match funds) except where (a) it is customary in the industry, or (b) there are sound business reasons (e.g., to enable a more cost-effective pricing structure) for doing so; in the latter case, the file shall be documented to fully justify the advance payment.

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41.18 Progress Payments.

41.18.1 Request for Progress Payments. Progress payments are to be made only for costs incurred in the performance of the contract. When progress payments are used, LTD must obtain title to property or other adequate security for the amount of the progress payment. Progress payments for construction contracts may be made on a percentage of completion basis; this method may not be used for non-construction contracts.

At a regular time each month, the Contractor shall, as required by the Contract, submit to LTD a request for payment based upon an estimate of the amount of work completed. At LTD's discretion, this request may also include an estimate of the amount and value of material to be incorporated in the completed work that has been delivered and acceptably stored. Upon verification and approval by LTD, the sum of these estimates is referred to as the "value of completed work." With these estimates as a base, LTD shall make a progress payment to the Contractor, which progress payment shall be equal to: (i) the value of completed work; (ii) less such amounts as may have been previously paid; (iii) less such other amounts as may be deductible or as may be owing and due to LTD for any cause; and (iv) less the appropriate amount of retainage.

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41.18.2 Progress Payments Do Not Mean Acceptance of Work. Progress payments shall not be construed as an acceptance or approval of any part of the work, and they shall in no manner relieve the Contractor of responsibility for defective workmanship or material.

41.19 Retainage in Public Improvement Contracts.

41.19.1 Retainage of Five Percent. The amount to be retained from any given progress payment will be such that when added to the sum of amounts previously retained will equal not more than five percent (5%) of the estimated value of completed work. If Contractor has performed at least fifty percent (50%) of the work and the work is progressing satisfactorily, upon Contractor's submission of a written application containing the surety's written approval, LTD may, in its discretion, reduce or eliminate retainage on any remaining progress payments. LTD shall respond in writing to all such applications within a reasonable time. When the contract work is ninety-seven and a half percent (97.5%) completed, LTD may, in its discretion and without application by the Contractor, reduce the retained amount to one hundred percent (100%) of the value of the uncompleted contract work. LTD may at any time reinstate retainage. Retainage shall be included in the final payment of the contract price.

41.19.2 Deposit in Interest-Bearing Accounts. Upon written request of the Contractor, LTD shall deposit any amounts withheld as retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association for the benefit of LTD. Earnings on such account shall accrue to the Contractor.

41.19.3 Recovery of Costs. LTD may recover from Contractor all costs incurred in the proper handling of cash retainage, by reductions of the final payment.

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41.20 Interest.

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41.20.1 Prompt Payment Policy. LTD shall pay promptly all payments due and owing to the Contractor on Contracts for Public Improvements.

41.20.2 Interest on Progress Payments. Late payment interest shall begin to accrue on payments due and owing on the earlier of thirty (30) days after receipt of invoice or fifteen (15) days after LTD's approval of payment (the "Progress Payment Due Date"). The interest rate shall equal three times the discount

rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve district that includes Oregon, up to a maximum rate of thirty percent (30%).

41.20.3 Interest on Final Payment. Final payment on the contract price, including retainage, shall be due and owing no later than thirty (30) days after contract completion and acceptance of the work. Late-payment interest on such final payment shall thereafter accrue at the rate of one and one-half percent (1.5%) per month until paid.

41.20.4 Settlement or judgment interest. In the event of a dispute as to compensation due a Contractor for work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment shall be added to, and not made part of, the settlement or judgment. Such interest, at the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, shall accrue from the later of the Progress Payment Due Date, or thirty (30) days after the Contractor submitted a claim for payment to LTD in writing or otherwise in accordance with the contract requirements.

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41.21 Final Inspection.

41.21.2 Notification of Completion. When the Contractor determines that all work on the project has been completed, the Contractor shall so notify LTD in writing. LTD shall inspect the project and project records within fifteen (15) days of receiving Contractor's notice of completion. If, at such inspection, all work under the Contract is complete and satisfactory to LTD, and all certifications, bills, forms, and documents have been submitted properly, such inspection shall constitute the final inspection.

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41.21.2 Instructions to Complete the Work. If, however, at any inspection, LTD finds any work, in whole or in part, unsatisfactory, or finds that all certifications, bills, forms, and documents have not been submitted properly, LTD shall within fifteen (15) days from receipt of notice of completion from the Contractor, provide instructions to the Contractor on outstanding requirements to complete the project. At such time as the Contractor determines full compliance with, and the execution of such instructions, the Contractor shall notify LTD in writing. LTD shall make another inspection within fifteen (15) days after such notice to determine if all required contract work has been completed satisfactorily. This process will continue until LTD finds that all work required under the Contract has been completed satisfactorily.

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41.22 LTD Payment for Unpaid Labor or Supplies.

41.22.1 Contract Incomplete. If the Contract is still in force, LTD may, in accordance with ORS 279C.515(1), pay a valid claim to a Person furnishing the labor or services, and charge the amount against payments due or to become due to the Contractor under the Contract. If LTD chooses to make such a payment as provided in ORS 279C.515(1), the Contractor and the Contractor's surety shall not be relieved from liability for unpaid claims.

41.22.2 Contract Completed. If the Contract has been completed and all funds disbursed to the prime Contractor, all claims shall be referred to the Contractor's surety for resolution. LTD shall not make payments to subcontractors or suppliers for work already paid for by LTD.

41.23 Liquidated Damages.

41.23.1 Risk Management. LTD shall determine whether to use or not to use a liquidated damages provision for a specific procurement as part of an overall risk management program.

41.23.2 Calculation. The amount of liquidated damages must be reasonably calculated to reflect anticipated damages LTD might suffer as the result of an inadequacy or delay in contract performance, and such damages would be difficult or impossible to determine.

41.23.3 Measurement. Liquidated damages may be imposed for an entire contract or for a readily identifiable milestone or deliverable, and the measurement period may be other than a day, where appropriate.

41.23.4 Solicitation Requirements. If it is determined that a liquidated damages provision will be included, the solicitation shall identify with specificity the circumstances in which the liquidated damages will be imposed and the rate to be charged. The file shall document the derivation of the rate of assessment and ensure it is reasonable, proper, and not arbitrary or punitive.

41.23.5 Recovery Credited to Project. All liquidated damages recovered under an FTA-funded contract will be credited to the project unless FTA agrees otherwise.

SECTION 42. Public Works Contracts.

42.1 Generally. ORS 279C.800 to 279C.870 regulates Public Works Contracts, as defined in ORS 279C.800(5), and requirements for payment of prevailing wage rates. Also see administrative rules of the Bureau of Labor and Industries (BOLI) at OAR Chapter 839.

42.2 Required Contract Conditions. As detailed in the above statutes and rules, every Public Works Contract must contain the following provisions:

42.2.1 LTD's authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).

42.2.2 Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).

42.2.3 Employer notice to employees of hours and days that employees may be required to work, as set forth in ORS 279C.520(2).

42.2.4 Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.

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- 42.2.5 Requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1).
- 42.2.6 Requirement for payment of fee to BOLI, as set forth in ORS 279C.830(2) and administrative rule of the BOLI commissioner.
- 42.2.7 Requirement that the Contractor and every subcontractor must have a Public Works bond, as set forth in ORS 279C.830(3), filed with the CCB prior to commencing any work on the project, unless otherwise exempt as provided under ORS 279C.830.
- 42.2.8 Notwithstanding Section 41.7.13 and ORS 279C.555, if a Contractor is required to file certified payroll statements and fails to do so, then pursuant to ORS 279C.845(7), LTD shall retain twenty-five percent (25%) of any amounts earned by Contractor on a Public Works Contract until Contractor has filed such statements with LTD. LTD shall pay Contractor the amount retained under this section within fourteen (14) days after Contractor files all required certified statements, regardless of whether a subcontractor has failed to file certified statements as required under ORS 279C.845. LTD shall not be required to verify the truth of the contents of Contractor's certified statements.

42.3 Requirements for Specifications. The specifications for every Public Works Contract, consisting of the procurement package (such as the Project Manual, Bid or Proposal Booklets, Request for Quotes or similar procurement specifications), must contain the following provisions:

- 42.3.1 The prevailing rate of wage, as required by ORS 279C.830(1), physically contained within or attached to hard copies of procurement specifications, and by a downloadable direct link to the specific wage rates that apply to the project (either on LTD's Web site or the BOLI Web site) when procurement specifications are also made available in electronic format.
- 42.3.2 Reference to payment of fee to BOLI, as required by ORS 279C.830(2).

42.3.3 If applicable, the federal prevailing wage rate and information concerning whether the state or federal rate is higher in each trade or occupation in each locality, as determined by BOLI in a separate publication.

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SECTION 43. Standards of Conduct.

The Rules in this Section 43 are applicable to all LTD officers, employees, board members, or agents engaged in the selection, award, and administration of third-party contracts supported by FTA funds. The Rules in this Section 43 are intended to supplement the State of Oregon Government Ethics law that is applicable to and governs the conduct of all public officers, employees, board members, or agents, and is contained in Chapter 244 of the Oregon Revised Statutes.

43.1 Conflict of Interest. No officers, employees, board members, or agents of LTD shall participate in the selection, award, or administration of a Contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- 43.1.1 The officer, employee, board member, or agent;
- 43.1.2 Any member of their immediate family;
- 43.1.3 His or her partner; or
- 43.1.4 An organization that employs, or is about to employ, any of the above, has a financial or any other interest in the firm selected for award.

Any conflict of interest, real or apparent, must be reported to the Director and, if an employee, their immediate supervisor, if applicable. After careful review of the situation, the representative may be disqualified from participating in selection, award, or administration of the Contract involved.

No officers, employees, board members, or agents of LTD shall in any way use their position or office to obtain financial gain for themselves or any member of their household, or any business with which the employee or a member of the employee's household is associated, other than an honorarium or an employee's official salary or reimbursement of expense.

Employees shall not take or divert the funds of LTD to private use of that employee or anyone else.

No officers, employees, board members, or agents of LTD shall seek or hold a substantial undisclosed financial interest in any organization doing business with LTD. It will be the responsibility of each officer, employee, board member, or agent of LTD to review his/her financial holdings and report to the Director the nature of any possible conflict, requesting the Director to appoint another person to dispose of the matter giving rise to the actual or possible conflict.

No LTD employee or business owned or operated by an LTD employee shall contract with LTD to supply any goods or services.

43.1.5 Organizational Conflict of Interest.

- a. An organizational conflict of interest exists where other activities, relationships, or contracts of a contractor inhibit, affect, or prevent the contractor from rendering impartial assistance or advice to LTD; a contractor's objectivity in performing the contract work is or might be otherwise impaired (e.g., a contractor assisting with a design might have a financial interest in a product or system that could be utilized in implementing that design); or a contractor has an unfair competitive advantage which might be gained through its involvement in writing, or reviewing the solicitation and contract documents, including the scope or specification except as part of a general industry review.
- b. A clause will be added to bidding/proposal documents identifying the potential for organizational conflicts of interest and potential exclusions from future procurement opportunities if applicable.

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c. ~~Specifying only a "brand name" product, without specifying that equivalent products will be accepted and providing salient characteristics or other descriptive information sufficient to allow bidders to identify and propose such equivalent products.~~

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d. ~~The use of specification requirements and evaluation criteria which unnecessarily favor an incumbent contractor.~~

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e. ~~Any arbitrary action in the procurement process.~~

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43.2 Gratuities. LTD's officers, employees, board members, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from Contractors, potential contractors, or parties to sub-agreements. This does not include unsolicited items of nominal intrinsic value, such as notepads or pens that can be used by all employees. Such items must be added to the supplies inventory for use by all.

Product or service discounts specific to LTD officers, employees, board members, or agents shall be prohibited from personal use by representatives if the discounts come from a vendor who transacts business with LTD. Discount opportunities that are offered to all public officers, employees, board members, or agents are acceptable.

Any LTD officers, employees, board members, or agents who received a gift, gratuity, or promotional merchandise, the acceptance of which would constitute violation of this policy, shall immediately return said gift or gratuity to the donor. Within five (5) working days, the officers, employees, board members, or agents shall report, in writing, to the Director the receipt and subsequent return of said gift or gratuity.

43.3 Complaints. Employees who have reason to believe a violation of ethical practices as stipulated herein has occurred are encouraged to pursue their concerns with appropriate supervisory and management staff of LTD.

The Director shall investigate any complaints or concerns of violations of this policy. The Director may decide not to act on a complaint if there is reason to believe that:

43.3.1 Other remedies or avenues for the complaint are available but have not been pursued;

43.3.2 The complaint concerns an issue beyond the authority of the Director;

43.3.3 The complaint is trivial, frivolous, or not made in good faith; or

43.3.4 The complaint has been too long delayed to justify examination of the relevant facts.

Upon completion of investigation, the Director will advise in writing the findings of the investigation, and any penalties recommended.

43.4 Disciplinary Action. The Director shall follow penalties guidelines imposed in ORS Chapter 244. In addition, employees may be subject to disciplinary action up to and including termination from employment. Such disciplinary action shall be consistent with administrative personnel policies and collective bargaining agreements.

LTD Purchasing Policy and Rules - 83

Adopted April 20, 2005; amended November 8, 2010

Contractors who are found to violate the Code of Ethics may have their Contracts terminated and may be banned from providing LTD with goods or services in the future.

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SECTION 44. Contract Administration.

44.1 Contract Files. LTD must establish files containing the records of all procurement and contract actions. Contract files should be organized as to allow a file reviewer to reconstruct and understand the history of the procurement and Contract in the absence of the contract administrator. All personnel who deal with the Contractor should maintain records of contract activity, particularly those project personnel who are involved in monitoring the Contractor's performance. Maintenance of records will include notations of any problems or unusual occurrences, so that it is possible to recreate the circumstances surrounding any area of controversy or dispute that might arise.

Different staff will be involved in any particular procurement (maintenance, QA, engineers, inspectors, financial, DBE office, legal, etc.) and each may have their own individual files relating to the contract, reflecting their involvement with the administration of the contract, but it is important for the procurement office to maintain the "official" contract file. The "official" file would include all official correspondence relating to the administration of the contract so as to verify the contractor's adherence to the terms of the contract and demonstrate that the agency is following good administrative practice and sound business judgment in settling all contractual and administrative issues arising during contract performance.

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44.2 Monitoring of Contracts. Inspection of goods and services shall be performed routinely during the life of the Contract to ensure conformance with the specifications of the Contract. The reviews and inspections shall be performed as often as is reasonably necessary during the life of the Contract to ensure conformance. Records of such inspections shall be part of the contract file. Inspections and tests shall not unduly delay the work.

For all contracts above the micro-purchase level, the Purchasing Manager will ensure that the contract administration file includes the following:

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- The executed contract and notice of award;
- Performance and payment bonds, bond-related documentation, and correspondence with any sureties;
- Contract-required insurance documentation;
- Post-award (pre-performance) correspondence from or to the contractor or other Governmental agencies;
- Notice to proceed;
- Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements;
- Modifications/changes to the contract including the rationale for the change, change orders issued, and documentation reflecting any time and or increases to or decreases from the contract price as a result of those modifications;
- Documentation regarding settlement of claims and disputes including, as appropriate, results of audit and legal reviews of the claims and approval by the proper authority (i.e., FTA, board of directors, executive director) of the settlement amount;
- Documentation regarding stop work and suspension of work orders and termination

- actions (convenience as well as default); and
- Documentation relating to contract close-out,
- For micro-purchases, the buyer will ensure that the file contains a receiving report with a signature of the person inspecting and accepting the items delivered. The signature will certify that the items ordered meet the purchase order requirements with respect to quantities ordered/delivered and are of satisfactory quality.

44.3 Contract Administration Functions.

Every type of contract will have different contract administration actions and the documentation required to support that administration will differ as well. Supply contracts have different specific administrative actions than construction contracts do, just as fixed-price contracts are administered differently than cost-reimbursement contracts.

The Purchasing Manager will normally delegate certain contract administration functions to the Project Manager (PM). The delegation must be in writing and must inform the PM what his/her duties are for that specific contract.

When applicable, a delegation of authority document will be executed.

44.4 Written Procurement History. A record shall be maintained detailing the history of a procurement. At a minimum, the records shall include:

- 44.3.1 The rationale for the method of procurement;
- 44.3.2 Selection of contract type;
- 44.3.3 Reasons for Contractor selection or rejections; and
- 44.3.4 The basis for the contract price.

SECTION 45. Lobbying Certification Administration.

All contracts over \$100,000 for which Contractors have filed certification shall be reviewed periodically to determine if Standard Form LLL has been filed. If Standard Form LLL has been filed, it shall be reported, per the instructions, to FTA and updated quarterly. Once Standard Form LLL has been filed with LTD, a copy of the form shall be kept in the contract file, and a tickler file set up to ensure receipt of any subsequent updates.

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ATTACHMENT A

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

A. THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

<u>PROVISION</u>	<u>COMMENTS</u>	<u>MASTER AGREEMENT REFERENCE</u> <i>(based on FA MA(16) 10-1-2009)</i>
<u>All FTA Assisted Third Party Contracts and Subcontracts</u>		
<u>No Federal Government Obligations to Third Parties (by Use of a Disclaimer)</u>		<u>§ 2.f</u>
<u>False or Fraudulent Statements or Claims – Civil and Criminal Fraud</u>		<u>§ 3.f</u>
<u>Access to Third Party Contract Records</u>		<u>§ 15.t</u>
<u>Changes to Federal Requirements</u>		<u>§ 2.c(1)</u>
<u>Civil Rights (Title VI, EEO, ADA)</u>		<u>§ 12</u>
<u>Disadvantaged Business Enterprises (DBEs)</u>	Contract awarded on the basis of a bid/proposal offering to use DBEs.	<u>§ 12.d</u>
<u>Incorporation of FTA Terms</u>	Per FTA C 4220.1F	<u>§ 15.a</u>
<u>Awards Exceeding \$10,000</u>		
<u>Terminations</u>	If 49 CFR Part 18 applies	<u>§ 11 and § 15.a, which incorporate 49 CFR Part 18</u>
<u>Awards Exceeding \$25,000</u>		
<u>Debarment and Suspension</u>		<u>§ 11</u>
<u>Awards Exceeding \$100,000</u>		
<u>Terminations</u>	If 49 CFR Part 19 applies	<u>§§ 11 and 15.a, which incorporates 49 CFR Part 19</u>
<u>Awards Exceeding the Simplified Acquisition Threshold (\$100,000)</u>		
<u>Buy America</u>	When tangible property or construction will be acquired.	<u>§ 14.a</u>
<u>Resolution of Disputes, Breaches, or Other Litigation</u>		<u>§ 54</u>
<u>Awards Exceeding \$100,000 by Statute</u>		
<u>Lobbying</u>		<u>§ 3.d</u>
<u>Clean Air</u>		<u>§ 25.b</u>
<u>Clean Water</u>		<u>§ 25.c</u>

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ALL OR PART OF THIS CONTRACT IS FEDERALLY FUNDED. Contractor shall comply with the following applicable federal regulations in addition to all other specifications, terms and conditions of this Invitation for Bid or Request for Proposal. As used in these regulations, "Contracting Officer" means the Purchasing Administrator employed by LTD.¶
 ¶
The following provisions and references can be reviewed in Purchasing.¶

¶
 Contractor shall comply with the following provisions regardless of the contract amount:¶
Drug and Alcohol Testing 49 U.S.C. §5331¶
 49 CFR PARTS 653 & 654¶
 49 CFR PART 661 . ¶
Charter/School Bus Requirements 49 U.S.C. §5323 (d&f)¶
 49 CFR PARTS 604 & 605 . ¶
Cargo Preference 46 U.S.C. 1241¶
 46 CFR PART 381¶
Seismic Safety 42 U.S.C. 7701¶
 et seq 49/ CFR PART 41 ¶
Energy Conservation Requirements 42 U.S.C. 6321 et seq¶
 49 CFR PART 18¶
Bus Testing 49 U.S.C. 5323 (c)¶
 49 CFR PART 665¶
Pre-Award and Post-Delivery Audit Requirements . 49 U.S.C. 5323 ¶
 49 CFR PART 663¶
Access to Records and Reports 49 U.S.C. 5325¶
 18 CFR 18.36 (l)¶
 49 CFR 633.17¶
Federal Changes 49 CFR PART 18¶
 ¶
No Government Obligation to Third Parties . ¶
Program Fraud 31 U.S.C. 3801 ¶
 49 CFR PART 31 ¶
 18 U.S.C 1001¶
 49 U.S.C. 5307¶
Federal Privacy Act Requirements 5 U.S.C. 552¶
Civil Rights NUMEROUS, SEE MANUAL ¶
 ¶
Patent Rights, Rights in Data 37 CFR PART 401¶
 49 CFR PARTS 18 & 19¶
Transit Employee Protective Agreements 49 U.S.C. § 5310, ¶
 § 5311, § 5333¶
 29 CFR PART 215¶
Disadvantaged Business Enterprises . 49 CFR PART 26¶
State and Local Law Requirements¶
Incorporation of Federal Transit Administration (FTA) FTA CIRC 4220.1E¶
 ¶
 Contractor shall comply with the following provisions if this is a construction contract exceeding \$2,000:¶
Davis-Bacon Act 40 U.S.C. & 167; 276a-276a-5 (1995)¶
 29 CFR § 5 (1995)¶

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LTD Purchasing Policy and Rules - 86
 Adopted April 20, 2005; amended November 8, 2010

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

A. THIRD PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

<u>PROVISION</u>	<u>COMMENTS</u>	<u>MASTER AGREEMENT REFERENCE</u> (based on FA MA(16) 10-1-2009)
<u>Transport of Property or Persons</u>		
<u>Cargo Preference</u>	When acquiring property suitable for shipment by ocean vessel	§ 14.b
<u>Fly America</u>	When property or persons are transported by air between U.S. and foreign destinations, or between foreign locations	§ 14.c
<u>Construction Activities</u>		
<u>Construction Employee Protections</u> – Davis-Bacon Act	For contracts exceeding \$2,000	§ 24.a
<u>Construction Employee Protections</u> – Contract Work Hours & Safety Standards Act	For contracts exceeding \$100,000	§ 24.a
<u>Construction Employee Protections</u> – Sec. 1 Copeland Anti-Kickback Act – Sec. 2 Copeland Anti-Kickback Act	All contracts All construction contracts exceeding \$2,000	§ 24.a
<u>Bonding for Construction Activities</u> Exceeding \$100,000	5% bid guarantee bond 100% performance bond Payment bond equal to: – 50% for contracts < \$1M – 40% for contracts > \$1M – < \$5M – \$2.5M for contracts > \$5M	§ 15.o(1)
<u>Seismic Safety</u>	Construction contracts for new buildings or for existing buildings	§ 23.e
<u>Nonconstruction Activities</u>		
<u>Nonconstruction Employee Protection</u> – Contract Work Hours & Safety Standards Act	For all turnkey, rolling stock, and operational contracts (excluding transportation services contracts) in excess of \$100,000	§ 24.b
<u>Transit Operations</u>		
<u>Transit Employee Protective Arrangements</u>		§ 24.d
<u>Charter Bus Operations</u>		§ 28
<u>School Bus Operations</u>		§ 29
<u>Drug Use and Testing</u>	Safety sensitive functions	§ 32.b
<u>Alcohol Misuse and Testing</u>	Safety sensitive functions	§ 32.b

LTD Purchasing Policy and Rules - 87

Adopted April 20, 2005; amended November 8, 2010

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

A. THIRD PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

<u>PROVISION</u>	<u>COMMENTS</u>	<u>MASTER AGREEMENT REFERENCE</u> (based on FA MA(16) 10-1-2009)
<u>Planning, Research, Development, and Demonstration Projects</u>		
<u>Patent Rights</u>		<u>§ 17</u>
<u>Rights in Data and Copyrights</u>		<u>§ 18</u>
<u>Special Notification Requirements for States</u>		
<u>Special Notification Requirement for States</u>		<u>§ 38</u>
<u>Miscellaneous Special Requirements</u>		
<u>Energy Conservation</u>		<u>§ 26</u>
<u>Recycled Products</u>	<u>Contracts when procuring \$10,000 or more per year of items designated by EPA</u>	<u>§ 15.k</u>
<u>Conformance with National ITS Architecture</u>	<u>Contracts and solicitations for ITS projects</u>	<u>§ 15.m</u>
<u>ADA Access</u>	<u>Contracts for rolling stock or facilities construction/renovation</u>	<u>§ 12.g</u>
<u>Assignability Clause</u>	<u>Procurements through assignments</u>	<u>§ 15.a, which incorporates 49 CFR Part18 and 49 CFR Part 19</u>

LTD Purchasing Policy and Rules - 88

Adopted April 20, 2005; amended November 8, 2010

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

<u>TYPE OF PROCUREMENT</u>					
<u>PROVISION</u>	<u>Professional Services/A&E</u>	<u>Operations/ Management</u>	<u>Rolling Stock Purchase</u>	<u>Construction</u>	<u>Materials & Supplies</u>
<u>No Federal Government Obligations to Third Parties (by Use of a Disclaimer)</u>	<u>All</u>	<u>All</u>	<u>All</u>	<u>All</u>	<u>All</u>
<u>False Statements or Claims Civil and Criminal Fraud</u>	<u>All</u>	<u>All</u>	<u>All</u>	<u>All</u>	<u>All</u>
<u>Access to Third Party Contract Records</u>	<u>All</u>	<u>All</u>	<u>All</u>	<u>All</u>	<u>All</u>
<u>Changes to Federal Requirements</u>	<u>All</u>	<u>All</u>	<u>All</u>	<u>All</u>	<u>All</u>
<u>Termination</u>	<u>>\$10,000 if 49 CFR Part 18 applies.</u>	<u>>\$10,000 if 49 CFR Part 18 applies.</u>	<u>>\$10,000 if 49 CFR Part 18 applies.</u>	<u>>\$10,000 if 49 CFR Part 18 applies.</u>	<u>>\$10,000 if 49 CFR Part 18 applies.</u>
<u>Civil Rights (Title VI, EEO, ADA)</u>	<u>>\$10,000</u>	<u>>\$10,000</u>	<u>>\$10,000</u>	<u>>\$10,000</u>	<u>>\$10,000</u>
<u>Disadvantaged Business Enterprises (DBEs)</u>	<u>All</u>	<u>All</u>	<u>All</u>	<u>All</u>	<u>All</u>
<u>Incorporation of FTA Terms</u>	<u>All</u>	<u>All</u>	<u>All</u>	<u>All</u>	<u>All</u>
<u>Debarment and Suspension</u>	<u>>\$25,000</u>	<u>>\$25,000</u>	<u>>\$25,000</u>	<u>>\$25,000</u>	<u>>\$25,000</u>
<u>Buy America</u>			<u>>\$100,000</u>	<u>>\$100,000</u>	<u>>\$100,000</u>
<u>Resolution of Disputes, Breaches, or Other Litigation</u>	<u>>\$100,000</u>	<u>>\$100,000</u>	<u>>\$100,000</u>	<u>>\$100,000</u>	<u>>\$100,000</u>
<u>Lobbying</u>	<u>>\$100,000</u>	<u>>\$100,000</u>	<u>>\$100,000</u>	<u>>\$100,000</u>	<u>>\$100,000</u>
<u>Clean Air</u>	<u>>\$100,000</u>	<u>>\$100,000</u>	<u>>\$100,000</u>	<u>>\$100,000</u>	<u>>\$100,000</u>
<u>Clean Water</u>	<u>>\$100,000</u>	<u>>\$100,000</u>	<u>>\$100,000</u>	<u>>\$100,000</u>	<u>>\$100,000</u>
<u>Cargo Preference</u>			<u>For property transported by ocean vessel.</u>	<u>For property transported by ocean vessel.</u>	<u>For property transported by ocean vessel.</u>
<u>Fly America</u>	<u>For foreign air transport or travel.</u>	<u>For foreign air transport or travel.</u>	<u>For foreign air transport or travel.</u>	<u>For foreign air transport or travel.</u>	<u>For foreign air transport or travel.</u>
<u>Davis-Bacon Act</u>				<u>>\$2,000 (including ferry vessels).</u>	
<u>Contract Work Hours and Safety Standards Act</u>		<u>>\$100,000 (except transportation services)</u>	<u>>\$100,000</u>	<u>>\$100,000 (including ferry vessels).</u>	

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to construction contracts exceeding \$2,000)

<u>TYPE OF PROCUREMENT</u>					
<u>PROVISION</u>	<u>Professional Services/A&E</u>	<u>Operations/ Management</u>	<u>Rolling Stock Purchase</u>	<u>Construction</u>	<u>Materials & Supplies</u>
<u>Copeland Anti-Kickback Act</u> <u>Section 1</u> <u>Section 2</u>				<u>All</u> <u>All exceeding</u> <u>\$2,000</u> <u>(including</u> <u>ferry vessels)</u>	
<u>Bonding</u>				<u>\$100,000</u>	
<u>Seismic Safety</u>	<u>A&E for New</u> <u>Buildings &</u> <u>Additions</u>			<u>New</u> <u>Buildings &</u>	
<u>Transit Employee Protective Arrangements</u>		<u>Transit</u> <u>Operations</u>			
<u>Charter Service Operations</u>		<u>All</u>			
<u>School Bus Operations</u>		<u>All</u>			
<u>Drug Use and Testing</u>		<u>Transit</u> <u>Operations</u>			
<u>Alcohol Misuse and Testing</u>		<u>Transit</u> <u>Operations</u>			
<u>Patent Rights</u>	<u>Research &</u> <u>Development</u>				
<u>Rights in Data and Copyright Requirements</u>	<u>Research &</u> <u>Development</u>				
<u>Energy Conservation</u>	<u>All</u>	<u>All</u>	<u>All</u>	<u>All</u>	<u>All</u>
<u>Recycled Products</u>		<u>Contracts for</u> <u>items</u> <u>designated by</u> <u>EPA, when</u> <u>procuring</u> <u>\$10,000 or</u> <u>more per year</u>		<u>Contracts for</u> <u>items</u> <u>designated by</u> <u>EPA, when</u> <u>procuring</u> <u>\$10,000 or</u> <u>more per year</u>	<u>Contracts for</u> <u>items</u> <u>designated by</u> <u>EPA, when</u> <u>procuring</u> <u>\$10,000 or</u> <u>more per year</u>
<u>Conformance with ITS National Architecture</u>	<u>ITS Projects</u>	<u>ITS Projects</u>	<u>ITS Projects</u>	<u>ITS Projects</u>	<u>ITS Projects</u>
<u>ADA Access</u>	<u>A&E</u>	<u>All</u>	<u>All</u>	<u>All</u>	<u>All</u>
<u>Notification of Federal Participation for States</u>	<u>Limited to</u> <u>States</u>	<u>Limited to</u> <u>States</u>	<u>Limited to</u> <u>States</u>	<u>Limited to</u> <u>States</u>	<u>Limited to</u> <u>States</u>

LTD Purchasing Policy and Rules - 90
 Adopted April 20, 2005; amended November 8, 2010

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

C. CERTIFICATIONS, REPORTS, AND FORMS

<u>CERTIFICATIONS, REPORTS, AND FORMS</u>	<u>COMMENTS</u>	<u>REGULATORY REFERENCE</u>
<u>Bus Testing Certification</u>	<u>Procurements of buses and modified mass produced vans</u>	<u>49 CFR Part 665</u>
<u>TVM Certifications</u>	<u>All rolling stock procurements</u>	<u>49 CFR Part 26</u>
<u>Buy America Certification</u>	<u>Procurements of steel, iron or manufactured products exceeding \$100,000</u>	<u>49 CFR Part 661</u>
<u>Preaward Review</u>	<u>Rolling stock procurements exceeding procurements exceeding \$100,000</u>	<u>49 CFR Part 663</u>
<u>Preaward Buy America Certification</u>	<u>Rolling stock procurements exceeding procurements exceeding \$100,000</u>	<u>49 CFR Part 663</u>
<u>Preaward Purchaser's Requirement</u>	<u>Rolling stock procurements exceeding procurements exceeding \$100,000</u>	<u>49 CFR Part 663</u>
<u>Post Delivery Review</u>	<u>Rolling stock procurements exceeding procurements exceeding \$100,000</u>	<u>49 CFR Part 663</u>
<u>Post Delivery Buy America Certification</u>	<u>Rolling stock procurements exceeding procurements exceeding \$100,000</u>	<u>49 CFR Part 663</u>
<u>Post Delivery Purchaser's Requirement</u>	<u>Rolling stock procurements exceeding procurements exceeding \$100,000</u>	<u>49 CFR Part 663</u>
<u>On-Site Inspector's Report</u>	<u>Rolling Stock procurements for more than 10 vehicles</u>	<u>49 CFR Part 663</u>
<u>Federal Motor Vehicles Safety Standards Preaward Review and Post Delivery</u>	<u>Motor vehicle procurements (49 CFR 571)</u>	<u>49 CFR Part 663</u>
<u>Lobbying</u>	<u>Procurements exceeding \$100,000</u>	<u>49 CFR Part 20</u>
<u>Standard Form LLL and Quarterly Updates (when required)</u>	<u>Procurements exceeding \$100,000 where contractor engages in lobbying activities</u>	<u>49 CFR Part 20</u>

LTD Purchasing Policy and Rules - 91

Adopted April 20, 2005; amended November 8, 2010

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

D. OTHER MATTERS

<u>OTHER MATTERS</u>	<u>COMMENTS</u>	<u>STATUTORY OR REGULATORY REFERENCES</u>
<u>Contract Administration System</u>		<u>49 CFR § 18.36(b)(2)</u> <u>49 CFR § 19.47</u>
<u>Record of Procurement History</u>		<u>49 CFR § 18.36(b)(9)</u> <u>49 CFR § 19.47</u>
<u>Protest Procedures</u>		<u>49 CFR § 18.36(b)(12)</u>
<u>Selection Procedures</u>		<u>49 CFR § 18.36(c)(3)</u>
<u>Cost/Price Analysis</u>		<u>49 CFR § 18.36(f)</u> <u>49 CFR § 19.45</u>
<u>Justification for Noncompetitive Awards</u>	<u>If Applicable</u>	<u>49 CFR § 18.36(b)(9) by implication</u> <u>49 CFR § 19.46(b)</u>
<u>No Excessive Bonding Requirements</u>		<u>49 CFR § 18.36(h)</u> <u>49 CFR § 19.48(c)(5)</u>
<u>No Exclusionary Specifications</u>		<u>49 U.S.C. § 5325(h)</u>
<u>No Geographic Preferences</u>	<u>Except for A&E Services</u>	<u>49 CFR § 18.36(c)(2)</u>

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ALL OR PART OF THIS CONTRACT IS FEDERALLY FUNDED. Contractor shall comply with the following applicable federal regulations in addition to all other specifications, terms and conditions of this Invitation for Bid or Request for Proposal. As used in these regulations, "Contracting Officer" means the Purchasing Administrator employed by LTD.

The following provisions and references can be reviewed in Purchasing.

Contractor shall comply with the following provisions regardless of the contract amount:

<u>Drug and Alcohol Testing</u>	49 U.S.C. §5331 49 CFR PARTS 653 & 654 49 CFR PART 661
<u>Charter/School Bus Requirements</u>	49 U.S.C. §5323 (d&f) 49 CFR PARTS 604 & 605
<u>Cargo Preference</u>	46 U.S.C. 1241 46 CFR PART 381
<u>Seismic Safety</u>	42 U.S.C. 7701 et seq 49/ CFR PART 41
<u>Energy Conservation Requirements</u>	42 U.S.C. 6321 et seq 49 CFR PART 18
<u>Bus Testing</u>	49 U.S.C. 5323 (c) 49 CFR PART 665
<u>Pre-Award and Post-Delivery Audit Requirements</u>	49 U.S.C. 5323 49 CFR PART 663
<u>Access to Records and Reports</u>	49 U.S.C. 5325 18 CFR 18.36 (l) 49 CFR 633.17
<u>Federal Changes</u>	49 CFR PART 18
<u>No Government Obligation to Third Parties</u>	
<u>Program Fraud</u>	31 U.S.C. 3801 49 CFR PART 31 18 U.S.C 1001 49 U.S.C. 5307
<u>Federal Privacy Act Requirements</u>	
U.S.C. 552	
<u>Civil Rights</u>	NUMEROUS, SEE MANUAL
<u>Patent Rights, Rights in Data</u>	37 CFR PART 401 49 CFR PARTS 18 & 19
<u>Transit Employee Protective Agreements</u>	49 U.S.C. § 5310, § 5311, § 5333 29 CFR PART 215 49 CFR PART 26
<u>Disadvantaged Business Enterprises</u>	
<u>State and Local Law Requirements</u>	
<u>Incorporation of Federal Transit Administration (FTA)</u>	FTA CIRC 4220.1E

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Contractor shall comply with the following provisions if this is a construction contract exceeding \$2,000:

<u>Davis-Bacon Act</u>	40 U.S.C. & 167; 276a-276a-5 (1995) 29 CFR § 5 (1995)
<u>Contract Work Hours and Safety Standards</u>	40 U.S.C. § 327-333 29 CFR § 5, 29 CFR § 1926
<u>Copeland Act</u>	40 U.S.C. 276c, 29 CFR § 3 29 CFR § 5

Contractor shall comply with the following provisions if this contract amount exceeds \$10,000:

<u>Recycled Products</u>	42 U.S.C. 6962
(Total purchased in current or previous FY)	40 CFR PART 247, EX. ORDER 12873
<u>Termination</u>	49 U.S.C. PART 18, FTA CIRC 4220.1E

Contractor shall comply with the following provisions of the Federal Acquisition regulations (FAR) if this contract amount exceeds \$100,000:

<u>Government-wide Debarment and (Suspension Nonprocurement)</u>	49 CFR PART 29, EXECUTIVE ORDER 12549
<u>Buy America Requirements</u>	49 U.S.C. §5323 (j) 49 CFR PART 661
<u>Clean Water</u>	33 U.S.C. 1251
<u>Lobbying</u>	31 U.S.C. 1352 49 CFR PART 19 & 20
<u>Bonding Requirements</u>	FTA GRANT AGMT PT II SEC 118 (h&l)
<u>Clean Air</u>	42 U.S.C. 7401 et seq 40 CFR 15.61 49 CFR PART 18

<u>Breach of Contract and Dispute Resolution</u>	11/8/10	Page 151	49 CFR PART 18, FTA CIRC 4220.1E
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