

# LANE TRANSIT DISTRICT PROCUREMENT POLICY

Adopted by the LTD Board of Directors, acting as the Local Contract Review Board, on August 21, 2024, during its Regular Meeting of the Board of Directors and previously amended per the dates below.

5/14/2014  
6/22/2017  
9/16/2020  
9/15/2021

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**SECTION 1 – LEGAL AUTHORITY**

On June 18, 1985, Lane Transit District's Board of Directors adopted Ordinance 30 creating a Local Contract Review Board for Lane Transit District ("LTD"). This local contract review board is known as the LTD Contract Review Board (CRB).

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The CRB may, from time to time, delegate its powers and responsibilities consistent with the Oregon Public Contracting Code, the Oregon Administrative Rules (the "Model Rules"), the LTD Procurement Policy, and, where federal funds are or may be utilized, the FTA Circular 4220.1F, as may be amended. LTD's Chief Executive Officer (CEO) or their designee are designated as LTD's "Contracting Agency" for purposes of contracting powers and duties assigned to the District as a "Contracting Agency" under the State of Oregon Public Contracting Code, Model Rules, or Federal law or rules, as applicable. Except as otherwise provided in this Policy, the powers and duties of the LTD Contract Review Board shall be exercised and performed by the LTD Board of Directors and all powers and duties given or assigned to the Contracting Agencies by the Public Contracting Code, or Federal law or rules as applicable, shall be exercised or performed by the CEO or their designee.

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LTD is the recipient of federal funds, and as such, whether a third-party or direct recipient grantee, all LTD federally funded procurement activities shall comply with FTA Circular 4220.1F and 2 CFR Part 200, as may be amended; and when applicable under direct award FAR Part 31 and 2 CFR Part 200. Where Oregon Law or the Model Rules have stricter requirements, LTD shall adhere to the Oregon requirements. Those requirements appear in bold in this Policy.

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Except as otherwise provided herein, the CRB has adopted the Oregon Model Rules, Division 46, 47, 48 and 49, adopted by the Attorney General under Oregon Revised Statute ("ORS") 279A, 279B, and 279C as they now exist, and as they may be amended in the future, are hereby adopted as LTD's Public Contracting Rules.

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On August 21, 2024, the LTD Board of Directors, acting as the Local Contract Review Board (CRB) for LTD, adopted this Procurement Policy and latest revisions as follows.

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Deleted: Meeting of the Board of Directors. On August 16, 2023, the LTD Board of Directors, acting as the LTD/CRB/CRB, has approved updates and revisions to this Procurement Policy on [list all dates here], during its Regular Meeting of the Board of Directors.

**SECTION 2 – APPLICATION**

2.1. Application. This Procurement Policy applies to all public contracts made by or on behalf of Lane Transit District, unless an exception applies.

2.2. Exceptions. This Policy, requiring public contracts to be awarded through the Competitive Procurement process, does not apply to the following types of contracts or expenditures:

- a. Contracts between LTD and other public contracting agencies or the federal government;
- b. Intergovernmental Agreements authorized by Oregon Revised Statutes Chapter 190;
- c. Contracts for insurance as provided for under ORS 414.115 through 414.145;
- d. Grants;
- e. Reimbursements and authorized employee travel vouchers or per diem advances;
- f. Dues, memberships, or registrations where authorized;
- g. Fees for approved conferences, seminars, and trainings; or for the accommodations and travel thereof

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- h. Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which LTD is or may become interested;
- i. Acquisitions or disposals of real property or an interest in real property, including facility rentals or leases;
- j. Sole-source expenditures when rates are set by law or ordinance for purposes of source selection (i.e. utilities);
- k. Personal Services Contracts where allowed by ORS and LTD Policy (see Section 9 below);
- l. 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; or
- m. Any other public contracting of a public body specifically exempted from the code by another provision of law (ORS 279A.025) or contracts that do not meet the definition of a public contract. (ORS 279A.010 (1)(z)).

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Contracts for employee benefit plans as provided in ORS 243.860 to 243.886;

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2.3. **Changes in Law.** Except as explicitly provided otherwise, the terms of this Policy shall be subject to any and all changes in applicable law, including but not limited to changes to rules and regulations that subsequently may be prescribed by any federal, state or local governmental authority having competent jurisdiction. Any reference to a provision of federal, state or local shall include a reference to any applicable successor provision or law.

### SECTION 3 – DEFINITIONS

For purposes of this Policy, the following definitions apply:

- 3.1 **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.
- 3.2 **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.
- 3.3 **Bidder:** An Offeror that submits a Bid in response to an Invitation for Bid.
- 3.4 **Board of Directors:** The Board of Directors of LTD.
- 3.5 **CEO:** The Chief Executive Officer of Lane Transit District.
- 3.6 **Closing Date:** The date and time announced by LTD as the deadline for the receipt of an Offer (at least five days after last date of advertisement of the Solicitation Document).
- 3.7 **Competitive Procurement:** The solicitation of competitive Offers through the issuance of a Solicitation Document.
- 3.8 **Contract Period:** The total term of the contract agreement. The period of contract performance for rolling stock and replacement parts shall not exceed five (5) years, inclusive of options, as defined in FTA C 4220.1F. The 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 fair and open opportunity to do business with LTD. Relative benefit to LTD and best interest for the public tax dollars use of a longer or shorter contract term must be considered. 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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3.9 **Contractor:** The person or entity awarded the Public Contract in response to a solicitation by LTD.

3.10 **CRB:** [The Board of Directors acting in their capacity as the local contract review board.](#)

3.11 **Date of Solicitation:** The date when the ~~the~~ Solicitation Document is ~~first posted and available publicly.~~

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3.12 **Grant:** An agreement under which a Contracting Agency receives moneys, property, or other assistance, including but not limited to federal, state and local assistance that is characterized as a grant by law or regulation, 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, state and local assistance that is characterized as a grant by 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.

3.13 **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.

3.14 **Lowest Responsible Bidder:** The lowest priced, responsive, responsible Bidder who has substantially complied with all prescribed public bidding procedures and requirements and who has not been debarred, suspended or otherwise excluded by any agency or department of the federal government, or debarred or disqualified by LTD under Oregon law.

3.15 **LTD:** Lane Transit District.

3.16 **Non-Standard Procurement:** Any procurement other than an Invitation to Bid, Request for Proposals or Request for Qualifications solicited using full and open competition. Micro-purchases [\(Section 7.4\)](#), small purchases [\(Section 7.5\)](#), [intermediate level procurement of construction services \(Section 7.6\)](#), [Direct Negotiation of Personal Services \(Section 9.2\(a\)\)](#) and [Informal Solicitation of Personal Services \(Section 9.2\(b\)\)](#) are excluded from the definition of "non-standard procurement."

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3.17 **Offer:** A Bid, Proposal, or other written response to a Solicitation Document as applicable.

3.18 **Offeror:** A Bidder, Proposer, or other Person, as applicable, who submits an Offer.

3.19 **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.

3.20 **Personal Services:** Services where the skill, ability, resources, knowledge or expertise of an independent contractor are of paramount importance. Personal Service contracts include, but are not limited to, the following:

a. Contracts for services as an artist in the performing or fine arts.

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- b. Contracts for services where the primary purpose is to provide transit-related expertise in a professional capacity or as a consultant.
- c. Contracts for services where the primary purpose is to provide procurement-related expertise in a professional capacity or as a consultant.
- d. Contracts for services that are specialized, creative, or research oriented.

3.21 **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.

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3.22 **Proposer:** An Offeror who submits a Proposal in response to a Request for Proposal.

3.23 **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.

3.24 **Public Improvement:** A project for construction, reconstruction, or major renovation on real property by or for LTD. However, Public Improvement does not include either:

- a. 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
- b. Any emergency work, minor alteration, ordinary repair, or maintenance necessary in order to preserve a Public Improvement.

3.25 **Public Works: Has the meaning set forth in ORS 279C.800(6).**

3.26 **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.

3.27 **Request for Proposal or RFP:** All documents issued by LTD used for soliciting Proposals from prospective Proposers and explaining offering procedures and requirements.

3.28 **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.

3.29 **Responsible Offeror (also Responsible Bidder or Responsible Proposer):** An Offeror who meets the standards set forth in Section 16.3.

3.30 **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.

3.31 **Signed:** A written document that contains a signature.

3.32 **Solicitation Document:** An Invitation for Bid, Request for Proposal, or other document issued to invite Offers from prospective Offerors pursuant to the Rules.

3.33 **Submittal Period:** The span of time between the date of the Solicitation Document and Closing Date.

3.34 **Written or Writing:** Conventional paper documents, whether handwritten, typewritten, or printed, in contrast to spoken words. It also includes electronic transmission when required by applicable law or permitted by a Solicitation Document or Contract.

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**SECTION 4 – DELEGATED SIGNATURE AND PURCHASE AUTHORITY**

4.1 Delegated Contracting Authority. Refer to LTD Resolution No. 2024-08-21-23, A Resolution

Adopting the LTD Procurement Policy and Delegating Certain Authority, which includes delegation to authorize the CEO, or written designee, to execute contracts on behalf of the Board of Directors.

4.2 Purchasing and Signature Authority for Employees. The following positions have the authority to: (a) authorize a purchase ("Purchase Authority"); and (b) sign a contract document ("Signature Authority") as set forth below.

<u>Employee Title<sup>1</sup></u>	<u>Purchasing Authority</u>	<u>Signature Authority</u>
<u>CEO</u>	<u>&lt; \$250,000<sup>2</sup></u>	<u>\$250,000+</u>
<u>CAO or CFO</u>	<u>\$75,000</u>	<u>&lt; \$250,000</u>
<u>Division Chiefs</u>	<u>\$75,000</u>	<u>none</u>
<u>Authorized P-Card Holders</u>	<u>Up to designated P-Card Limit Assigned</u>	<u>none</u>
<u>Any position not listed above</u>	<u>none</u>	<u>None</u>

4.3 Requirements for Purchases Using Grant Funds or Capital Budget Resources. The CFO (or written designee) must approve all purchase requests expending grant funds or capital budget resources.

4.4 Other Limits on Purchasing Authority. Each Chief is in charge of their operating budget (excerpted from the annual adopted, or amended, budget) and all purchases must be within their operating budget. The purchase authorization levels summary above, in Section 4.2, defines the highest dollar amount of purchases that employees are allowed to authorize without the additional authorization of a higher-level supervisor. These authorizations apply to all purchases regardless of how the purchase is made (i.e. check, credit, contract, purchase order, etc.)

**SECTION 5 –WRITTEN STANDARDS OF CONDUCT**

5.1. Written Standards of Conduct. Refer to LTD's Employee Handbook (2023) as amended, for Our Code of Ethics and Conflicts of Interest. Also refer to Board of Directors Bylaws, Article VI: Code of Ethics and Conflicts of Interest Policy (2021) and Board of Directors Ethics and Conflict of Interest Policy from Board of Directors Governance Policy Manual as revised (2022).

5.2. Organizational Conflict of Interest. Engaging in practices that result in organizational conflicts of interest are prohibited.

- a. An organizational conflict of interest occurs when any of the following circumstances arise:
  - i. Lack of Impartiality or Impaired Objectivity. When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the

<sup>1</sup> The CEO, CAO, or CFO may delegate, in writing, their authority herein.  
<sup>2</sup> Except for routine annual procurements as defined in the resolution referenced in Section 4.1.

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**Deleted:** listed signature authorities; however, any contract of \$250,000 or greater must have prior Board of Directors' approval as required by Policy before executing:

**Deleted:** <#>All procurement requests and all final Contracts over \$25075,000, shalland all final Contracts, regardless of amount, MUST be signed by the GM/CEOCEO (or written designee); and the CAO or Director of Procurement (or written designee shall sign or approve all purchase and contract requests up to \$249,999.99). ¶

<#>The LTD CFO or Finance Designee(Director or Controller) must approve all purchase requests that are expending grant funds or expending capital budget resources. LTD Division Chiefs **may** approve expenditure requests, within their operational or general budget, per the approved annual budget, up to \$75k 75,000 without Finance approval.¶

<#>GM/CEOCEO: . . . . . exceedingUp to \$25049,000 or higher999 (or written designee)¶

<#>CAO/CFO: . . . . . Up to \$249,999.99 (or written designee)¶

<#>Division Chiefs: . . . . . Up to \$75,000 (purchase requests/orders)¶

<#>CAO/CFODirector of Procurement: . . . . . Up to \$249,999.99 50,000 (or written designee)¶

<#>Authorized P-Card Holders: . . . . . Up to designated P-Card limit assigned¶

<#>All Others: . . . . . \$0¶

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- c. Noncompetitive pricing practices between firms or between affiliated companies.
- d. 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. See Section 12.3, Brand Name or Equal requirements.
- e. The use of specification requirements and evaluation criteria which unnecessarily favor an incumbent contractor.
- f. Specifying in-State or local geographical preferences, or evaluating bids or proposals in light of in-State or local geographic preferences is prohibited by the FTA as restrictive of competition. However, these preferences may be permitted or even required for non-federally funded procurements. **Exceptions to the prohibition against in-State or local geographical preferences for federally funded contracts include:**
  - i. **Architectural Engineering (A&E) Services. Geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.**
  - ii. **Licensing. Oregon may enforce its licensing requirements, provided that those Oregon requirements do not conflict with Federal law.**
  - iii. **Major Disaster or Emergency Relief. Certain federally funded contracts for disaster or emergency relief, in accordance with FTA Circular 4220.1F.**
  - iv. **Construction Jobs. A local, geographical or economic hiring preference may be implemented relating to the use of labor for federal funded construction projects, including pre-hire agreements, in accordance with Section 25019 of the Infrastructure Investment and Jobs Act of 2021, provided that it does not conflict with Oregon and/or local laws, policies, and procedures.**

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g. Any arbitrary action in the procurement process.

7.3 Unsolicited Proposals. LTD may ~~not, accept or engage in~~ unsolicited proposals.

7.4 Micro-Purchases. LTD may acquire property and services valued at \$10,000 or less without obtaining competitive quotations or proposals.

- a. Written Determination. The staff person acquiring property or services through a micro-purchase must make a written determination, in advance of the purchase, that the purchase price is fair and reasonable. That determination must include a description of how they came to that determination. This written determination shall be provided to the Procurement Supervisor/Manager within two (2) business days of making the micro-purchase.
- b. No Artificial Division. A procurement may not be artificially divided or reduced merely to come within the micro-purchase limit.
- c. Construction Contracts Exceeding \$2,000. Davis-Bacon prevailing wage requirements apply to construction contracts exceeding \$2,000.

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**Deleted:** in accordance with the FTA Circular 4220.1F. To satisfy the requirement for full and open competition, LTD must take the following actions before entering into a contract resulting from an unsolicited proposal:¶  
 Publicize receipt of the unsolicited proposal;¶  
 Publicize an adequate description of the property or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought;¶  
 Publicize LTD’s interest in acquiring the property or services described in the proposal;¶  
 Provide an adequate opportunity for interested parties to comment or submit competing proposals;¶  
 Publicize LTD’s intention to award a contract based on the unsolicited proposal or another proposal submitted in response to the publication; and¶  
 An unsolicited proposal may only be accepted after written approval by the Director of Procurement and GM/CEO/CEO, subject to the contracting authority limits set forth in Section 4.

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7.5 Small Purchases (Other Than Construction Contracts). For all contracts other than construction contracts, LTD may acquire property and services valued at more than the micro-purchase threshold (currently \$10,000) but less than the small purchase threshold (currently at \$250,000) without obtaining competitive quotations or proposals, provided such Contracts are awarded in accordance with the Small Purchases procedures set forth herein and, in the FTA Circular

4220.1F.

- a. Independent Cost Estimate (ICE). An ICE is required. See Section 6, above, for requirements.
- b. Obtaining Quotes. LTD must find that the awarding of a Contract using these Small Purchase 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:
  - i. **Reasonable efforts are made to obtain at least three (3) quotes prior to awarding a Contract. 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. (ORS 279B.070).**
  - ii. A written documentation that the price is reasonable will be placed in the file. That determination must include a description of how the purchaser came to that determination.
  - iii. LTD shall not award Contracts totaling in excess of \$250,000 to any one Contractor during one fiscal year pursuant to this Section.

7.6 Intermediate Level Procurement of Construction Services. Public improvement contracts estimated by LTD not to exceed \$100,000 may be awarded in accordance with this Section.

- a. Independent Cost Estimate (ICE). An ICE is required. See Section 6, above, for requirements.
- b. Selection Criteria. The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility, and similar factors.
- c. Request for Quotes. LTD shall utilize written requests for quotes whenever reasonably practicable. Written requests for quotes shall include the selection criteria to be utilized in selecting a contractor and, if the criteria are not of equal value, their relative value or ranking. When requesting quotations orally, prior to requesting the price quote, 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 prevailing wage rates are not required by the Bureau of Labor and Industries.
- d. Number of Quotes; Records 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 to obtain those quotes.
- e. Award. If awarded, LTD shall award the Contract to the prospective contractor whose quote will best serve the interests of LTD, considering the announced selection criteria. If the award is not made to the Offeror offering the lowest price, LTD shall make a written record of the basis for award. (OAR 137-049-0160).

7.7 Sealed Bids (Formal Advertising). Sealed bidding is the preferred procurement method in which bids are publicly solicited and a firm fixed price contract is awarded to the responsible bidder whose bid, conforming to all the materials terms and conditions of the invitation for bids is lowest in price. LTD shall comply with the requirements for Sealed Bids stated in the FTA Circular 4220.1F, Oregon law, and as otherwise stated herein.

- a. When Appropriate. Sealed bid procurements should be used when the following

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circumstances are present:

- i. Precise Specifications. A complete, adequate, precise and realistic specification or purchase description is available.
- ii. Adequate Sources. Two or more responsible bidders are willing and able to compete effectively for the business.
- iii. Fixed Price Contract. The procurement generally lends itself to a firm fixed price contract.
- iv. Price Determinative. The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. Apart from responsibility determinations discussed in Section 16.3, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award.
- v. Discussions Unnecessary. Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone.

b. Procurement Procedures. The following procedures apply to sealed bid procurements:

- i. Publicity. The Invitation for Bids is publicly advertised. **See Section 13 for Oregon requirements on public advertisement.**
- ii. Adequate Sources. Bids are solicited from an adequate number of known suppliers.
- iii. Adequate Specifications. The Invitation for Bids, including any specifications and pertinent attachments, describes the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.
- iv. Sufficient Time. Bidders are allowed sufficient time to prepare bids before the date of bid opening. **A “sufficient time to prepare bids before the date of bid opening” means no less than the following under Oregon law:**
  - 1. **Solicitations for Goods and Services: The interval between the first date of public notice of the Solicitation Document and Closing shall not be less than fourteen (14) days for an Invitation to Bid and thirty (30) days for a Request for Proposals, unless LTD determines that a shorter interval is in the public’s interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of public notice of the Solicitation Document and closing be less than seven (7) days. LTD shall document the specific reasons for the shorter public notice period in the Procurement file. (OAR 137-047-0300(3)(c), ORS 279B.055 (4)(f)).**
  - 2. **Solicitations for Construction Services: The scheduled Closing shall not be less than five days after the date of the last publication of the advertisement. (OAR 137-049-0210(2)(d)(D))**
- v. Public Opening. All bids are publicly opened at the time and place described in the Invitation for Bids.
- vi. Fixed Price Contract. A firm fixed price contract is usually awarded in writing to the lowest responsive and responsible bidder, but a fixed price incentive contract

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or inclusion of an economic price adjustment provision can sometimes be appropriate. When specified in the bidding documents, factors such as transportation costs and life cycle costs affect the determination of the lowest bid; payment discounts are used to determine the low bid only when prior experience indicates that such discounts are typically taken.

- vii. Rejection of Bids. Any or all bids may be rejected if there is a sound, documented business reason.

7.8 Competitive Proposals (Request for Proposals). The use of competitive or “best value” requests for proposals is a generally accepted procurement method when the nature of the procurement does not lend itself to sealed bidding and LTD expects that more than one source will be willing and able to submit an offer or proposal. LTD shall comply with the requirements for Competitive Proposals stated in FTA Circular 4220.1F, Oregon law, and as otherwise stated herein.

a. When Appropriate. Competitive proposals should be used when any of the following circumstances are present:

- i. Type of Specifications. The property or services to be acquired are described in a performance of functional specification; or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing the contract award on factors other than price alone are present.
- ii. Uncertain Number of Sources. Uncertainty about whether more than one bid will be submitted in response to an invitation for bids and LTD lacks authority or flexibility under Oregon or local law to negotiate the contact price if it receives only a single bid.
- iii. Price Alone Not Determinative. Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors.
- iv. Discussions Expected. Separate discussions with individual offeror(s) are expected to be necessary after they have submitted their proposals.

b. Procurement Procedures. The following procedures apply to procurements by competitive proposals:

- i. Publicity. The Request for Proposals is publicly advertised. **See Section 13 for Oregon requirements on public advertisement.**
- ii. Evaluation Factors. All evaluation factors and their relative importance are specified in the solicitation. For procurement of Goods and Services, numerical or percentage ratings or weights need not be disclosed. **See Section 12 for Oregon requirements on solicitation document and evaluation factors.**
- iii. Adequate Sources. Proposals are solicited from an adequate number of known suppliers.
- iv. Evaluation Method. A specific method is established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror. **See Section 16 for Oregon requirements on evaluation of Requests for Proposals.**
- v. Price and Other Factors. An award is made to the responsible offeror whose proposal is most advantageous to LTD with price and other factors considered.
- vi. Best Value. LTD may award the contract to the offeror whose proposal provides

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the greatest value to LTD. To do so, LTD's solicitation must inform potential offerors that the award will be made on a "best value" basis and identify what factors will form the basis for award. The evaluation factors for a specific procurement should reflect the subject matter and the elements that are important to LTD. Those evaluation factors may include, but need not be limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan. **See Section 16 for Oregon requirements on evaluation of Requests for Proposals.**

7.9 **Architectural Engineering (A&E) Services and Other Services.** LTD shall select consultants to provide architectural, engineering, photogrammetric mapping, transportation planning, land surveying services, or related services on the basis of the consultant's qualifications for the type of professional service required. LTD may solicit or use pricing policies and proposals or other pricing information, including the number of hours proposed for the service required, expenses, hourly rates and overhead to determine consultant compensation only after LTD has selection a candidate pursuant to this Section.

a. **Screening and Selection Procedures.** LTD's screening and selection procedures under this Section, regardless of the estimated cost of the architectural, engineering, photogrammetric mapping, transportation planning or land surveying services for a project, may include:

- i. **Specialized experience, capabilities and technical competence, which the prospective consultant may demonstrate with the prospective consultant's proposed approach and methodology to meet the project requirements;**
- ii. **Resources committed to perform the services and the proportion of the time that the prospective consultant's staff would spend to perform services for the contracting agency, including time for specialized services, within the applicable time limits;**
- iii. **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;**
- iv. **Ownership status and employment practices regarding disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own, emerging small businesses or historically underutilized businesses;**
- v. **Availability to the project locale;**
- vi. **Familiarity with the project locale; and**
- vii. **Proposed project management techniques. (ORS 279C.110 (3)).**

b. **Pricing Information.** Notwithstanding the requirement in subsection (a) of this Section that LTD may not solicit or use pricing policies, proposals or other pricing information until after LTD has selected a consultant, a local contracting agency may use pricing policies, proposals or other pricing information as part of LTD's screening and selection of prospective consultants if LTD:

- i. **States in solicitation documents for the procurement:**
  - 1. **That LTD will screen and select prospective consultants as provided in this subsection;**

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2. How LTD will rank proposals from prospective consultants, with a specific focus on:
    - a. Which factors LTD will consider in evaluating proposals, including pricing policies, proposals or other pricing information, if LTD will use pricing policies, proposals or other pricing information in the evaluation; and
    - b. The relative weight LTD will give each factor, disclosing at a minimum the number of available points for each factor, the percentage each factor comprises in the total evaluation score and any other weighting criteria LTD intends to use;
  3. An estimate of the cost of professional services LTD requires for the procurement; and
  4. A scope of work that is sufficiently detailed to enable a prospective consultant to prepare a responsive proposal.
- ii. Evaluates each prospective consultant on the basis of the prospective consultant's qualifications to perform the professional services LTD requires for the procurement. LTD may use the criteria set forth in subsection (a) of this Section to conduct the evaluation.
  - iii. Announces the evaluation scores and rank for each prospective consultant after completing the evaluation described in paragraph (ii) of this subsection. LTD may determine that as many as three of the top-ranked prospective consultants are qualified to perform the professional services LTD requires for the procurement and may request a pricing proposal for the scope of work stated in paragraph (i)(4) of this subsection from each of the top-ranked consultants. The pricing proposal:
    1. Must consist of:
      - a. A schedule of hourly rates that the prospective consultant will charge for the work of each individual or each labor classification that will perform the professional services LTD requires for the procurement, in the form of an offer that is irrevocable for not less than 90 days after the date of the proposal; and
      - b. A reasonable estimate of hours that the prospective consultant will require to perform the professional services LTD requires for the procurement; and
    2. May include, at LTD's request, additional pricing information that is limited to:
      - a. A description of each task that the prospective consultant understands as comprising the professional services;
      - b. A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to the individual or labor classification; and
      - c. A list of expenses, including travel expenses, that the prospective consultant expects to incur in connection with providing the professional services.

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- iv. Permits a prospective consultant identified as qualified under paragraph (iii) of this subsection to withdraw from consideration for the procurement if the prospective consultant does not wish to provide a price proposal.
  - v. Completes the evaluation and selects a consultant from among the top-ranked prospective consultants that have not withdrawn as provided under paragraph (iv) of this subsection, giving not more than 15 percent of the weight in the evaluation to each prospective consultant's price proposal.
- c. Most Qualified. Negotiations are first conducted with only the most qualified offeror. Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified offeror. Then, if necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price LTD believes is fair and reasonable.

**SECTION 8 – PROCUREMENT METHODS (OTHER THAN FULL AND OPEN COMPETITION)**

8.1 Other Than Full and Open Competition. Only under those circumstances set forth in the FTA Circular 4220.1F, Oregon law, and as otherwise stated herein, may LTD conduct procurements without providing for full and open competition.

8.2 **Sole Source.** LTD may, without following the Competitive Procurement requirements and without competition, award contracts for goods or services if the CEO and the Director of Procurement (or designee(s)) have determined, in writing, that the goods or services are only available from one source, subject to the limits of their delegated signature authority under Section 4.2. (ORS 279B.075 (1))

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a. **Written Findings.** The determination must be based on written findings that may include:

- i. That the efficient utilization of existing goods requires acquiring compatible goods or services;
- ii. That the goods or services required to exchange software or data with other public or private agencies are available from only one source;
- iii. That the goods or services are for use in a pilot or an experimental project; or
- iv. Other findings that support the conclusion that the goods or services are available from only one source. (ORS 279B.075 (2))

1. This includes proprietary software where only one vendor has the ability to manufacture, distribute, and sell their software program. Proper documentation must be included with the request, including but limited to the Proprietary Software Form and written findings attesting to the justification for a sole source selection under Oregon law.

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b. **Negotiation.** To the extent reasonably practical, LTD shall negotiate with the Sole Source to obtain contract terms advantageous to LTD. (ORS 279B.075 (3))

c. Exercise of Options. See Section 24, regarding Exercise of Options.

d. Cost Analysis Required. See Section 11.4, regarding Cost Analysis.

8.3 Single Bid or Single Proposal. Upon receiving a single bid or single proposal in response to a solicitation, the Procurement Supervisor/Manager should make a written determination of whether the competition was adequate. This determination should include a review of the

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specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.

8.4 **Emergency Contracts.** The CEO or the CRB may make or authorize others to make emergency procurements of goods or services in an emergency. LTD shall document the nature of the emergency and describe the source selection methods used for the procurement.

a. For an emergency procurement of construction services that are not public improvements, LTD shall ensure competition for a contract for the emergency work that is reasonable and appropriate under the emergency circumstances. In conducting the procurement, LTD shall set a solicitation time period that LTD determines to be reasonable under the emergency circumstances and may issue written or oral requests for offers or make direct appointments without competition in cases of extreme necessity. (ORS 279B.080).

8.5 Less Than Full and Open Competition – When Prohibited. Less than full and open competition is not justified based on:

- a. Failure to Plan. LTD's lack of advance planning; or
- b. Limited Availability of Federal Assistance. Concerns about the amount of Federal assistance available to support the procurement (for example, the expiration of Federal assistance previously available for award).

8.6 Procurement Procedures (Less Than Full and Open Competition). When less than full and open competition is available, LTD shall:

- a. Potential Sources. Solicit offers from as many potential sources as is practicable under the circumstances.
- b. Sole Source Justification. If the item is only available from only one source, the Contract Manager shall complete and submit to Procurement a "Sole Source Justification" Form as soon as they become aware of the potential sole source procurement. See Section 24, regarding Evaluation of Options.
- c. Cost Analysis. The Contract Manager shall prepare a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits. The Contract Manager shall submit the Cost Analysis to the Procurement Supervisor/Manager for review and approval. See Section 11.4 regarding Cost or Price Analysis.
- d. Pre-award Review. If federal funds are or may be involved, the Procurement Supervisor/Manager shall submit the proposed procurement to FTA for pre-award review only if the FTA so requests.

**SECTION 9 – PERSONAL SERVICES CONTRACT SELECTION PROCEDURES**

Pursuant to ORS 279A.055 and 279A.065 (6), the Board of Directors, as the CRB, may: (a) designate certain contracts as Personal Services contracts; and (b) adopt rules of procedure for selection of such Personal Services contracts, in lieu of the Oregon Model Rules for public contracting, set forth in the Oregon Administrative Rules (OAR) Chapter 137, Division 046 to 049.

**This Section 9 constitutes LTD's procedures for the screening and selection of Personal Services contracts.**

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- Deleted: <#>Board Approval. Board approval is required for all contracts procured using less than full and open competition (including Sole Source Contracts) regardless of the contract value.¶
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9.1 **Definitions.** The following terms have the meanings set forth herein. Any term not defined herein shall have the definition set forth under the Oregon Public Contracting Code (ORS Ch. 279A- C) or the Oregon Model Rules (OAR 137-046 to 049).

- a. **Proposal.** An offer to provide Personal Services whether formal or informal as designated below.
- b. **Personal Services.** Services where the skill, ability, resources, knowledge or expertise of an independent contractor are of paramount importance. Personal Service contracts include, but are not limited to, the following:
  - i. Contracts for services performed in a professional capacity or as a consultant including but not limited to services of an accountant; actuary; auditor; attorney; banker; insurance agent; information technology consultant; lobbyist, or marketing specialist.
  - ii. Contracts for services as an artist in the performing or fine arts.
  - iii. Contracts for services where the primary purpose is to provide transit-related expertise in a professional capacity or as a consultant.
  - iv. Contracts for services where the primary purpose is to provide procurement-related expertise in a professional capacity or as a consultant.
  - v. Contracts for services that are specialized, creative, or research oriented.
- c. **Professional Services.** As used herein, Personal Services does not include Professional Services, as defined in ORS 279C.100 to .125, which means, “architectural, engineering, photogrammetric mapping, transportation planning or land surveying services,” or Related Services. Professional Services and Related Services are subject to the requirements of ORS Ch. 279C and OAR Chapter 137, Division 048.

9.2 **Method of Procurement.** Based on the estimated total cost of a Personal Services Contract (PSC), the following methods of procuring Personal Services shall be used, unless an exemption applies, pursuant to Section 9.4:

- a. **Direct Negotiation – Personal Services Contracts of \$25,000 or Less.** When a nonexempt Personal Services contract is estimated to be \$25,000 or less, a Personal Services contractor may be selected by direct selection or award, so long as the quality of service offered by the Personal Services contractor is sufficient for LTD’s particular needs under the circumstances, the cost to LTD is fair and reasonable under the circumstances, and the award is in all other respects in LTD’s best interests.
- b. **Informal Solicitation – Personal Services Contracts Over \$25,000 But Not Over \$250,000.** When a nonexempt Personal Services contract is estimated to be more than \$25,000 but not more than \$250,000, informal Proposals, or price quotes, may be solicited. Informal Proposals, or price quotes, shall be solicited from a sufficient number of qualified prospective proposers to ensure no fewer than three (3) qualified proposers submit Proposals or price quotes. If three quotes or Proposals are not reasonably available, fewer will suffice, and the efforts made to solicit Proposals, or price quotes, shall be documented in LTD’s files.
- c. **Formal Solicitation – Personal Services Contracts greater than \$250,000.** When a nonexempt Personal Services contract is estimated to exceed \$250,000, LTD shall

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award the nonexempt Personal Services contract by competitive sealed bidding under ORS 279B.055 or by competitive sealed proposals under ORS 279B.060 and the applicable Model Rules.

9.3 **Prequalification of Prospective Proposers.** A pool of prospective proposers may be established for a particular type of Personal Services contract by soliciting statements of qualification from individuals or firms that may be qualified to perform those particular Personal Services pursuant to ORS 279B.120 and corresponding statutes and administrative rules.

9.4 **Exemptions.** Procuring a Personal Services contract under one of the exemptions set forth herein is a non-standard procurement that requires written approval of the CEO and the Director of Procurement (or designee(s)) to enter into an agreement. In accordance with the levels of contracting authority requirements set forth in LTD Resolution No. 2024-08-21-23, Personal Services contracts entered into pursuant to an exemption under this Section and estimated to exceed \$250,000 shall be presented to the CRB for approval.

- a. **Sole Source.** If only one individual or firm is qualified and available to perform a Personal Services contract, a contract may be awarded to that individual or firm without competition. The requirements of ORS 279B.075 do not apply.
- b. **Unique or Specialized Knowledge or Expertise.** A Personal Services contract may be awarded without competition if the contractor has unique or specialized knowledge or expertise required by LTD, and soliciting informal or formal proposals from others would not be in LTD's best interests.
- c. **Emergency.** A Personal Services contract may be awarded without competition if prompt execution of a contract is necessary in an Emergency, as that term is defined in ORS 279A.010 (1)(f).

9.5 **Protests.** For purposes of this Section 9, the following protest requirements shall apply.

- a. **Purpose.** An Affected Person may protest the award of a Personal Services contract, or a notice of intent to award a Personal Services contract, whichever comes first. Before seeking judicial review of the award of a Personal Services contract, an Affected Person must file a Written protest with LTD and exhaust all administrative remedies.
- b. **Delivery.** Unless otherwise specified, an Affected Person must deliver a Written protest to LTD within seven (7) Days after award of a Personal Services contract, or issuance of the notice of intent to award a Personal Services contract, whichever comes first.
- c. **Content of Protest.** The Written protest must include those requirements set forth in OAR 137-047-0740 and any other requirements set forth in this Policy.
- d. **Contract Review Authority Response.** LTD shall not consider an Affected Person's protest submitted after the timeline established for submitting such protest.
- e. **Judicial Review.** An Affected Person may seek judicial review of LTD's decision relating to a protest of the award of a Personal Services contract only after the Affected Person has exhausted all administrative remedies set forth in this Procurement Policy and in accordance with the requirements of Oregon law.

9.6 **Federal Funds.** Notwithstanding any provision herein, LTD shall comply with applicable requirements in FTA Circular 4220.1F for Personal Services contracts funded with federal funds in accordance with applicable law.

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9.7 **Termination of Personal Service Contracts for General Counsel.** LTD's General Counsel is retained in accordance with LTD's Personal Services Contract Selection Procedures. In accordance with **Board of Directors Governance Policy Manual, Section 100.10.8**, General Counsel represents LTD as a public entity and reports directly to the Board. Accordingly, General Counsel's services may be terminated only in accordance with Board **Policy 100.10.8, as amended.**

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## SECTION 10 – JOINT AND COOPERATIVE PROCUREMENTS

10.1 Joint Procurements. The term "joint procurement" means a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a contractor for delivery of property or services in a fixed quantity, even if expressed as a total minimum and total maximum. LTD shall conduct any joint procurement in compliance with this Section.

a. **Federal Requirements.** When obtaining goods or services through a joint procurement, LTD must ensure compliance with all applicable FTA and other federal requirements.

b. **State or Local Government Purchasing Schedules or Purchasing Contracts.** LTD may, and is encouraged to do by FTA, use State or Local Government Purchasing Schedules, in accordance with the FTA Circular 4220.1F.

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i. **Use of a State or Local Purchasing Schedule is a "joint cooperative procurement" under Oregon law. A joint cooperative procurement is valid only if:**

1. **The administering contracting agency's solicitation and award process for the original contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified under ORS 279B.055, 279B.060, or 279B.085 or uses a competitive bidding process substantially equivalent to the competitive bidding process in ORS Chapter 279C;**

2. **The administering contracting agency's solicitation and the original contract or price agreement identifies the cooperative procurement group or each participating purchasing contracting agency and specifies the estimated contract requirements; and**

3. **No material change is made in the terms, conditions, or prices of the contract between the contractor and LTD from the terms, conditions, and prices of the original contract between the contractor and the administering contracting agency. (ORS 279A.210)**

ii. **Also see Section 10.3(d) regarding requirements for interstate cooperative procurements, which applies when one or more of the participating governmental bodies are located outside of Oregon.**

10.2 Federal Excess and Surplus Property. The Common Grant Rule for governmental recipients encourages recipients to use Federal excess and surplus property managed by GSA, when feasible and economical, rather than procuring new property. The GSA Federal Property Management Regulations, 41 CFR Parts 101-42 through 101-46, 101-48, and 101-49 govern the eligibility of recipients and subrecipients, as well as others, to acquire supplies and services through GSA's personal property utilization and disposal programs.

a. **Limited Use of Federal Supply Schedules.** Federal laws authorize State and Local Governments (including institutions of higher education) to use Federal Supply

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Schedules to acquire information technology (IT) and to purchase products and services to facilitate recovery from a major disaster. In both circumstances, GSA defines the term “State and Local Government” broadly to include many FTA governmental recipients and others as follows: The States of the United States, counties, municipalities, cities, towns, townships, tribal governments, public authorities (including public or Indian housing agencies under the United States Housing Act of 1937), school districts, colleges, and other institutions of higher education, council of governments (incorporated or not), regional or interstate government entities, or any agency or instrumentality of the preceding entities (including any local educational agency or institution of higher education), and including legislative and judicial departments.

The use of Federal supply schedules is permitted, only in accordance with the FTA Circular 4220.1F, as may be amended. When using GSA schedules to acquire property or services, LTD must ensure all federal requirements, required clauses, and certifications are properly followed and included, whether in the master intergovernmental contract or in LTD’s purchase document.

- i. Information Technology. Section 211 of the E-Government Act of 2002, 40 U.S.C. Section 502(c)(1), authorizes “State and local governments,” within limits established by law, to acquire IT of various types through GSA’s Cooperative Purchasing Program, Federal Supply Schedule 70.
  - ii. Major Disaster or Emergency Recovery. Since February 1, 2007, Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364, amended 40 U.S.C. Section 502(d), to authorize State and local government entities to use any GSA Federal Supply Schedule to acquire property and services in advance of a major disaster declared by the President of the United States, as well as in the aftermath of an emergency event. The State or local government is then responsible for ensuring that the property or services acquired will be used for recovery.
  - iii. Local Preparedness Acquisition. Section 2 of the Local Preparedness Acquisition Act, Pub. L. 110-248, June 26, 2008, amended 40 U.S.C. Section 502(c) by adding paragraph (2) authorizing “State and local governments”, within limits established by law, to acquire law enforcement, security and certain related items of various types through GSA’s Cooperative Purchasing Program Federal Supply Schedule 84 or any amended or later version of that Federal supply classification group.
- b. **Use of a Federal Supply Schedule is an “interstate cooperative procurement” under Oregon law. An interstate cooperative procurement is only valid if:**
- i. **The administering contracting agency’s solicitation and award process for the original contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified under ORS 279B.055, 279B.060, or 279B.085 or uses a competitive bidding process substantially equivalent to the competitive bidding process in ORS Chapter 279C;**
  - ii. **The administering contracting agency’s solicitation and the original contract or price agreement identifies the cooperative procurement group or each participating purchasing contracting agency and specifies the estimated contract requirements; and**
  - iii. **The administering contracting agency permits the contractor to extend the**

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use of the terms, conditions, and prices of the original contract to LTD.

iv. In addition to the above, the following requirements apply:

1. LTD, or the cooperative procurement group of which LTD is a member, must be listed in the solicitation of the administering contracting agency as a party that may establish contracts or price agreements under the terms, conditions, and prices of the original contract, and the solicitation must be advertised in Oregon; or
2. LTD, or the cooperative procurement group of which LTD is a member, shall advertise a notice of intent to establish a contract or price agreement through an interstate cooperative procurement.

c. Notice of Intent. The Notice of Intent must include:

- i. A description of the procurement;
- ii. An estimated amount of the procurement;
- iii. The name of the administering contracting agency; and
- iv. A time, place and date by which comments must be submitted to LTD regarding the intent to establish a contract or price agreement through an interstate cooperative procurement.

d. Public Notice. Public notice of the intent to establish a contract or price agreement through an interstate cooperative procurement must be given in the same manner as provided in ORS 279B.055 (4)(b) and (c). Unless otherwise specified in Oregon's Model Rules, LTD shall give public notice at least seven (7) days before the deadline for submission of comments regarding the intent to establish a contract or price agreement through an interstate cooperative procurement.

i. If LTD is required to provide notice of intent to establish a contract or price agreement through an interstate cooperative procurement:

1. LTD shall provide vendors who would otherwise be prospective bidders or proposers on the contract or price agreement, if the procurement were competitively procured under ORS Chapter 279B, an opportunity to comment on the intent to establish a contract or price agreement through an interstate cooperative procurement.
2. Vendors must submit comments within seven (7) days after the notice of intent is published.
3. If LTD receives comments, before LTD may establish a contract or price agreement through the interstate cooperative procurement, LTD shall make a written determination that establishing a contract or price agreement through an interstate cooperative procurement is in the best interest of LTD. LTD shall provide a copy of the written determination to any vendor that submitted comments.

10.3 Existing Contracts. LTD may find it advantageous to use existing contract rights. "Existing contract" means a contract that, when formed, was intended to be limited to the original parties thereto, and does not include State or local government purchasing schedules (discussed above). LTD may only use existing contract rights consistent with the FTA Circular 4220.1F, Oregon law, and as is set forth in this Section and Section 24.

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- a. Exercise of Options. LTD may use contract options held by another FTA recipient with the following limitations:
  - i. Consistency with Underlying Contract. LTD must ensure that the terms and conditions of the option it seeks to exercise are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded.
  - ii. Price. LTD may not exercise an option unless it has determined that the option price is better than prices available in the market, or that when it intends to exercise the option, the option is more advantageous.
  - iii. Awards Treated as Sole Source Procurements. FTA assistance may be used to support a sole source award only if that award can be justified under FTA's third-party contract standards for sole source awards. The following actions constitute sole source awards:
    - 1. Failure to Evaluate Options Before Awarding the Underlying Contract. If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award.
    - 2. Negotiating a Lower Option Price. Exercising an option after LTD has negotiated a lower or higher price will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or that price results from Federal actions that can be reliably measured, such as changes in Federal prevailing labor rates, for example.
- b. Assignment of Contract Rights. This is also referred to as "piggybacking." LTD may use contractual rights obtained through assignment after first determining that the original contract price remains fair and reasonable, and the original contract provisions are adequate for compliance with all Federal requirements.
  - i. **Use of another agency's existing contract is a "permissive cooperative procurement" under Oregon law. A permissive cooperative procurement is only valid if:**
    - 1. **The administering contracting agency's solicitation and award process for the original contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified under ORS 279B.055 or 279B.060;**
    - 2. **The administering contracting agency's solicitation and the original contract allow other agencies to establish contracts or price agreements under the terms, conditions and prices of the original contract;**
    - 3. **The contractor agrees to extend the terms, conditions and prices of the original contract to LTD; and**
    - 4. **No material change is made in the terms, conditions or prices of the contract or price agreement between the contractor and LTD from the terms, conditions and prices of the original contract between the contractor and the administering contracting agency.**
  - ii. **Public Notice.** LTD shall provide public notice of intent to establish a

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contract or price agreement through a permissive cooperative procurement if the estimated amount of the procurement exceeds \$250,000. Public notice of the intent to establish a contract or price agreement through an interstate cooperative procurement must be given in the same manner as provided in ORS 279B.055 (4)(b) and (c). Unless otherwise specified in Oregon’s Model Rules, LTD shall give public notice at least seven (7) days before the deadline for submission of comments regarding the intent to establish a contract or price agreement through an interstate cooperative procurement.

1. If LTD is required to provide notice of intent to establish a contract or price agreement through an interstate cooperative procurement:
  - a. LTD shall provide vendors who would otherwise be prospective bidders or proposers on the contract or price agreement, if the procurement were competitively procured under ORS Chapter 279B, an opportunity to comment on the intent to establish a contract or price agreement through an interstate cooperative procurement.
  - b. Vendors must submit comments within seven (7) days after the notice of intent is published.
  - c. If LTD receives comments, before LTD may establish a contract or price agreement through the interstate cooperative procurement, LTD shall make a written determination that establishing a contract or price agreement through an interstate cooperative procurement is in the best interest of LTD. LTD shall provide a copy of the written determination to any vendor that submitted comments.
2. Notice of Intent. The Notice of Intent must include:
  - a. A description of the procurement;
  - b. An estimated amount of the procurement;
  - c. The name of the administering contracting agency; and
  - d. A time, place and date by which comments must be submitted to LTD regarding the intent to establish a contract or price agreement through an interstate cooperative procurement. (ORS 279A.215 (2)(b))

## SECTION 11 – NECESSITY, LEASE VERSUS PURCHASING

- 11.1 Unnecessary Reserves. LTD will limit the acquisition of property and services to the amount it needs to support its transit system.
- 11.2 Acquisition for Assignment Purposes. LTD may only contract for its current and reasonably expected public transportation needs and may not add quantities or options to third party contracts solely to permit assignment to another party at a later date. These limits are not intended to preclude joint procurements entered into in accordance with applicable law and rules.
- 11.3 Economic Purchasing. Procurement activity will be reviewed by the Procurement Supervisor/Manager at least annually to determine if certain classes of purchases should be consolidated or broken out to obtain more economic pricing. Analysis will also be made of lease versus purchase alternatives or any other appropriate methodology to determine the most

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economical approach.

- 11.4 Cost or Price Analysis. A Cost or Price Analysis must be made for every formal procurement, including Contract modifications, as outlined in FTA Circular 4220.1F, as amended. The Contract Manager shall be responsible for completing the Cost or Price Analysis and providing it to the Procurement Supervisor/Manager for review and approval prior to any Contract award or modification. See Section 7.4 for Price Analysis requirements for Micro-Purchases and Sections 7.5 for Price Analysis requirements for Small Purchases.
- a. Price Analysis. If competition was adequate, a price analysis is used to determine the reasonableness of the proposed contract price. Common reasons supporting a price analysis of fair and reasonable pricing include but are not limited to:
    - i. Catalog or market prices offered in substantial quantities to the general public;
    - ii. Regulated prices (for example, for many utilities purchases); or
    - iii. A comparison with recent prices for similar goods and services.
  - b. Cost Analysis. A cost analysis must be performed when a price analysis will not provide sufficient information to determine the reasonableness of the contract cost.
    - i. Applicability. The Contract Manager must perform a cost analysis when:
      - 1. The Offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost (such as professional consulting and A&E contracts); or
      - 2. 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.
    - ii. Profit. 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.
    - iii. Federal Cost Principles. 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.
    - iv. LTD can accomplish a cost 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.

## SECTION 12 – SOLICITATIONS

All Solicitation Documents shall satisfy the requirements set forth in this Section 12.

12.1 Clear Descriptions/Nonrestrictive Specifications. All Solicitation Documents shall include a clear

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and accurate description of the technical requirements for the material(s), product(s), or service(s) to be procured. The description may include a statement of the qualitative nature of the property or services to be acquired. When practicable, requirements should be described in terms of functions to be performed or level of performance required, including the range of acceptable characteristics or minimum acceptable standards. In competitive procurements, the description may not contain features that unduly restrict competition. Except as set forth in Section 12.3 below, specifications 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 herein 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.

- 12.2 Quality Requirements/Preference for Performance Specifications. Detailed product specifications should be avoided if at all possible. A description may include a statement of the qualitative nature of the material(s), product(s), or service(s) to be procured and, when necessary, describe minimum essential characteristics and standards to which the property or services must conform if it is to satisfy LTD's intended use.
- 12.3 Brand Name or Equal. When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the property or services to be acquired, a "brand name or equal" description may be used to define the performance or other salient characteristics of a specific type of property. The salient characteristics of the named brand must be identified in the Solicitation Documents. Any brand name or equal specification must comply with the requirements of ORS 279B.215.
- 12.4 Preferences. LTD shall state in all Solicitation Documents what preferences apply to the solicitation, if any. See Sections 7 2 (f) and 16.1 (a) for the application of geographic preferences.
- 12.5 Time for Acceptance. LTD shall state in all Solicitation Documents that Offers are "Firm Offers," irrevocable and binding on the Offeror not less than ninety (90) days from the Closing Date, unless otherwise specified in the Solicitation Document.
- 12.6 Solicitation Documents, Terms and Conditions. In addition to the requirements set forth in this Section 12, the Procurement Supervisor/Manager may include any other special terms and conditions applicable to the procurement and the contracts to be awarded so long as those terms and conditions are consistent with the requirements of this Section 12, the FTA Circular 4220.1F, and Oregon law.
- 12.7 **Solicitation Documents for Goods and Services. As used in this Section 12.7, "bids" shall be read to include "proposals" and "invitation to bid" shall be read to include "request for proposals." The Solicitation Documents must:**
  - a. **Specify a time and date by which the bids must be received and a place at which the bids must be submitted. LTD may receive bids by electronic means or direct or permit a bidder to submit bids by electronic means.**
  - b. **Specify the name and title of the person designated to receive bids and the person LTD designates as the contact person for the procurement, if different.**
  - c. **Describe the procurement. In the description, LTD shall identify the scope of work included within the procurement, outline the contractor's anticipated duties and set expectations for the contractor's performance. Unless LTD for good cause specifies otherwise, the scope of work shall require the contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services.**

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- d. Specify a time, date and place for prequalification applications, if any, to be filed and the classes of work, if any, for which bidders must be prequalified in accordance with ORS 279B.120.
- e. State that LTD may cancel the procurement or reject any or all bids in accordance with ORS 279B.100;
- f. Require the contractor or subcontractor to possess an asbestos abatement license, if required under ORS 468A.710;
- g. Include all contractual terms and conditions applicable to the procurement, including those terms required under federal or Oregon law. See Section 12.10 for required contract terms. The contract terms and conditions shall specify clear consequences for a contractor's failure to perform the scope of work identified in the invitation to bid or the contractor's failure to meet established performance standards. (ORS 279B.055, 279B.060)

12.8 Solicitation Documents for Architectural & Engineering Services (Professional Services). LTD shall include the following in each Request for Proposals, whether or not the Request for Proposals is preceded by a Request for Qualifications:

- a. General background information, including a description of the project and the specific professional services sought for the project, the estimated project cost, the estimated time period during which the project is to be completed, the estimated time period in which the specific professional services sought will be performed;
- b. The RFP evaluation process and the criteria which will be used to select the most qualified proposer, including the weights, points, or other classifications applicable to each criterion. If LTD does not indicate the applicable number of points, weights, or other classifications, then each criterion is of equal value;
- c. Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the project, including but not limited to construction services;
- d. Whether interviews are possible and if so, the weight, points, or other classifications applicable to the potential interview;
- e. The date and time Proposals are due, and the delivery location for Proposals;
- f. Reservation of the right to seek clarifications of each Proposal;
- g. Reservation of the right to negotiate a final Contract that is in the best interest of LTD;
- h. Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at any time if doing either would be in the public interest as determined by LTD;
- i. A statement that Proposers responding to the RFP do so solely at their expense, and LTD is not responsible for any Proposer expenses associated with the RFP;
- j. A statement directing Proposers to LTD's protest procedures;
- k. Special contract requirements, including federal requirements when federal funds are involved;
- l. A statement whether or not LTD will hold a pre-Proposal meeting and if a pre-

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Proposal meeting will be held, the location of the meeting and whether attendance is mandatory

- m. A request for any information LTD deems reasonably necessary to permit LTD to evaluate, rank and select the most qualified Proposer to perform the professional services described in the RFP; and
- n. A sample form of Contract. (OAR 137-048-0220 (4)).

12.9 **Solicitation Documents for Construction Services.** LTD shall, at a minimum, include in the Solicitation Documents:

- a. A designation for or description of the public improvement project;
- b. The office where the specifications for the project may be reviewed;
- c. The date that prequalification applications must be filed and the class of work for which bidders must be prequalified if prequalification is a requirement;
- d. The date and time after which bids will be received, which must be at least five (5) days after the date of the last publication of the advertisement, and may, in the sole discretion of LTD, direct or permit bidders to submit and the contracting agency to receive bids by electronic means;
- e. The name and title of the person designated to receive bids;
- f. The date on which and the time and place at which LTD will publicly open the bids;
- g. A statement that, if the contract is for a public works project subject to the state prevailing rates of wage under ORS 279C.800 to 279C.970, the federal prevailing rates of wage under the Davis-Bacon Act (40 U.S.C. § 3141 et seq.), LTD will not receive or consider a bid unless the bid contains a statement by the bidder that the bidder will comply with ORS 279C.838 or 279C.840 or 40 U.S.C. 3141 et seq.;
- h. A statement that each bid must identify whether the bidder is a resident bidder, as defined in ORS 279A.120;
- i. A statement that LTD may reject a bid that does not comply with the prescribed public contracting procedures and requirements and that LTD may reject for good cause all bids after finding that doing so is in the public interest;
- j. Information addressing whether a contractor or subcontractor must be licensed under ORS 468A.720; and
- k. A statement that LTD may not receive or consider a bid for a public improvement contract unless the bidder is licensed by the Construction Contractors Board or the State Landscape Contractors Board (ORS 279C.365).

12.10 **Sample Contracts.** A sample contract, approved by the Procurement Supervisor/Manager shall be included with all formal solicitations, in accordance with Oregon law. For all federally funded projects, LTD shall require as part of the terms and conditions of all Contracts, all applicable provisions of the FTA Master Agreement, as amended, and all applicable provisions of the FTA Circular 4220.1F, as amended.

- a. Liquidated Damages Provision. LTD may include a liquidated damages provision in its contract documents if LTD reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. The rate and measurement standards must be calculated to reasonably reflect LTD's costs

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should the standards not be met, and must be specified in the Solicitation Documents and Contract. The procurement file should include a record of any calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account involved unless FTA permits otherwise.

### SECTION 13 – PUBLIC NOTICE, ADVERTISING REQUIREMENTS

- 13.1 Public Notice Required. LTD shall provide public notice of every formal Solicitation Document in accordance with this Section.
- 13.2 **Public Notice of Solicitation Documents. The CRB authorizes the advertisement of formal Solicitation Documents via LTD's Electronic Procurement System, in lieu of advertisement in a newspaper or trade journal. However, advertisements for Public Improvement contracts with an expected contract price of \$125,000 or more shall also be advertised in at least one trade journal or newspaper of statewide circulation in accordance with Oregon law. Notwithstanding the foregoing, the Procurement Supervisor/Manager and/or Contract Manager may elect to also provide notice of the Solicitation by:**
- a. Mailing notice of availability of Solicitation Documents to any prospective Offers that have expressed an interest in LTD's procurements;
  - b. Placing notice on LTD's web site; or
  - c. Providing formal notice in a newspaper of general circulation in the area where the contract is to be performed or in a trade journal of statewide circulation. (OAR 137-047-0300 (2), OAR 137-048-0220(2), OAR 137-049-0210 (2)).
- 13.3 **Content of Advertisement for Goods and Services. All advertisements for Offers shall set forth:**
- a. Where, when, how, and for how long the Solicitation Document may be obtained;
  - b. A general description of the Goods or Services to be acquired;
  - c. The interval between the first date of public notice of the Solicitation Document and Closing shall not be less than fourteen (14) days for an Invitation to Bid and thirty (30) days for a Request for Proposals, unless LTD determines that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of public notice of the Solicitation Document and Closing be less than seven (7) days. LTD shall document the specific reasons for the shorter public notice period in the Procurement file. (OAR 137-047-0300(3)(c), ORS 279B.055 (4)(f).
  - d. The date that persons must file applications for prequalification if prequalification is a requirement and the class of Goods or Services is one for which persons must be prequalified.
  - e. The office where Contract terms, conditions and Specifications may be reviewed;
  - f. The name, title and address of the individual authorized by LTD to receive Offers;
  - g. The scheduled Opening; and
  - h. Any other information LTD deems appropriate. (OAR 137-047-0300(3)).
- 13.4 **Content of Advertisement for Architectural & Engineering Services (Professional Services).**

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- a. LTD shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ or RFP, but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFQ or RFP.
- b. LTD shall include a brief description of the following items in the advertisement:
  - i. The Project;
  - ii. A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services LTD seeks;
  - iii. How and where Consultants may obtain a copy of the RFQ or RFP; and
  - iv. The deadline for submitting a Proposal or response to the RFQ or RFP. (OAR 137-048-0220 (2)).

13.5 Content of Advertisement for Construction Contracts.

- a. All advertisements for Offers shall set forth:
  - i. The Public Improvement project;
  - ii. The office where Contract terms, conditions and Specifications may be reviewed;
  - iii. The date that Persons must file applications for prequalification under ORS 279C.340, if prequalification is a requirement, and the class or classes of Work for which persons must be prequalified;
  - iv. The scheduled Closing, which shall not be less than five days after the date of the last publication of the advertisement;
  - v. The name, title and address of the LTD person authorized to receive Offers;
  - vi. The scheduled Opening; and
  - vii. If applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.970 or the Davis-Bacon Act (40 U.S.C. § 3141 to 3148) (OAR 137-049-0210 (2)(d)).

SECTION 14 – PREQUALIFICATION

- 14.1 Prequalification. LTD may prequalify prospective bidders or proposers to submit bids or proposals to provide goods or services. LTD may determine the method of submitting prequalification applications, the information required in order to be prequalified and the forms to be used for submitting prequalification information for each procurement requiring prequalification.
- 14.2 LTD Response. Upon receipt of a prequalification application, LTD shall investigate the prospective bidder or proposer as necessary to determine whether the prospective bidder or proposer is qualified. The determination shall be made in less than 30 days, if practicable. LTD shall notify the prospective bidder or proposer whether the bidder or proposer is qualified based on the standards of responsibility listed in ORS 279B.110 (2), the type and nature of contractors that the prospective bidder is qualified to compete for and the time period for which the prequalification is valid. If LTD does not prequalify a prospective bidder or proposer as to any contracts covered by the prequalification process, the notice must specify which of the standards of responsibility listed in ORS

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279B.110 (2) the prospective bidder failed to meet. Unless the reasons are specified, the prospective bidder or proposer shall be deemed to have been prequalified in accordance with this Section. (See Section 16.3 for Standards of Responsibility).

- 14.3 **Revocation of Prequalification.** If LTD subsequently discovers that a prospective bidder or proposer that prequalified under Sections 14.1 and 14.2, above, is no longer qualified, LTD may revoke the prequalification upon reasonable notice to the prospective bidder or proposer, except that a revocation is invalid as to any contract for which an advertisement for bids or proposals has already been issued. (ORS 279B.120, 279B.125).

#### SECTION 15 – BID OR PROPOSAL SECURITY

- 15.1 **Goods and Services.** LTD may require bid or proposal security if LTD determines that bid/proposal security is reasonably necessary or prudent to protect the interests of LTD. LTD shall return the bid/proposal security to all bidders/proposers upon the execution of the contract. LTD shall retain the bid/proposal security if a bidder who is awarded a contract fails to promptly and properly execute the contract. For purposes of this Section, prompt and proper execution of the contract includes all action by a bidder/proposer that is necessary to form a contract in accordance with the invitation to bid/request for proposals, including posting performance security and submitting proof of insurance when the invitation to bid/request for proposals requires the submission. (ORS 279B.055, 279B.060). Notwithstanding the above, see Section 7.2 (b) regarding unnecessary bonding as a prohibited restriction on competition by the FTA.

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- 15.2 **Construction Services.** For public improvement contracts with a value, estimated by LTD, of more than \$100,000, LTD shall require a bidder to submit or post a surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008, cashier's check or certified check for all bids as bid security. (ORS 279C.365 (5)). Under FTA Circular 4220.1F, the bid guarantee is equivalent to five percent (5%) of the bid price. Any exception to this bid security requirement must be approved by the FTA.

#### SECTION 16 – EVALUATION AND CONTRACT AWARD

- 16.1 **Preferences.** LTD shall apply the following preferences in accordance with FTA Circular 4220.1F and Oregon law.
- a. **Geographic Preferences.** Although mandated under Oregon law, there is a prohibition against geographic preferences under federal law. Refer to Section 7.2 (f)(iv) for the application of geographic preferences when construction related.
  - b. **Preference for Recycled Materials.** Notwithstanding provisions of law requiring LTD to award a contract to the lowest responsible bidder or best proposer or provider of a quotation and subsection (b)(i), below, LTD shall give preference to the procurement of goods manufactured from recycled materials, if the goods are for any public use.
    - i. LTD shall give preference to goods that are certified to be made from recycled materials if:
      - 1. The recycled product is available;
      - 2. The recycled product meets applicable standards;
      - 3. The recycled product can be substituted for a comparable nonrecycled product; and

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- 4. The recycled product's costs do not exceed the costs of nonrecycled products by more than five percent (5%), or a higher percentage if a written determination is made by the CRB. (ORS 279A.125).

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16.2 **Responsiveness.** LTD shall only award a contract to a responsible, responsive bidder or proposer. "Responsive" means having the characteristic of substantial compliance in all material respects with applicable solicitation requirements. (OAR 137-046-0110 (33)). The Procurement Supervisor/Manager shall ensure that a responsiveness determination is made and in the contract file before a contractor is selected.

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16.3 **Responsibility.** LTD shall only award a contract to a responsible, responsive bidder or proposer. "Responsibility" is defined in the FTA Circular 4220.1F and **supplemented by Oregon law, and Oregon Administrative Rules.** The Director of Procurement (or designee) shall ensure the applicable Responsibility Determination Form is completed prior to contract award and is in the procurement file.

## SECTION 17 – PERFORMANCE BOND AND PAYMENT BOND REQUIREMENTS

17.1 **Construction Services. Performance bond; payment bond; waiver of bonds.** Except as provided in ORS 279C.390, a successful bidder for a public improvement contract shall promptly execute and deliver to the contracting agency the following bonds:

- a. **Performance Bond.** A performance bond in an amount equal to the full contract price conditioned on the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. The performance bond must be solely for the protection of LTD. LTD may permit the successful bidder to submit a cashier's check or certified check in lieu of all or a portion of the required performance bond. (ORS 279C.380).
- b. **Payment Bond.** A payment bond in an amount equal to the full contract price, solely for the protection of claimants under ORS 279C.600 and ORS 279C.380.
- c. **Surety.** Each performance bond and each payment bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in the State of Oregon. The bonds may not constitute the surety obligation of an individual or individuals. The performance and payment bonds must be payable to LTD, as specified in the Solicitation Documents, and shall be in a form approved by LTD. (ORS 279C.380).
- d. **Exceptions.** Pursuant to ORS 279C, the CRB may exempt certain contracts, or classes of contracts, from a portion of the requirement that good and sufficient bonds be furnished to ensure payment of obligations incurred in the performance, but only so long as the exemption is consistent with the FTA's minimum bonding requirements, as is set forth in the FTA Circular 4220.1F.

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## SECTION 18 – DOCUMENTATION OF AWARD

18.1 **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.

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

- a. Offers received by LTD.
- b. If in response to an IFB, the completed Bid tabulation sheet and written justification for any rejection of lower Bids.

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- c. If in response to an RFP, the completed evaluation of Proposals and written justification for any rejection of higher scoring Proposals.
- d. If applicable, written documentation of any discussions, negotiations, best and final Offers, or other procedures LTD used to select a Proposer to which LTD awarded a Contract.

**SECTION 19 – INVENTORY AND DISPOSITION OF PERSONAL PROPERTY**

The purpose of this Policy is to establish a consistent and compliant program for the appropriate and efficient inventory and disposition of all Personal Property procured by the Lane Transit District (“LTD” or “District”). Both State and Federal requirements and best practices have been incorporated into this policy and must be followed, as appropriate. This Policy is administered by LTD’s Procurement Department.

This Policy covers both purchased and leased Personal Property. It does not apply to the disposition of Real Property.

- 19.1 Definitions. The following terms have the meanings set forth herein. Any term not defined herein shall have the definition set forth under the Federal Transit Administration (“FTA”) Circular 5010.E or Oregon Revised Statutes (“ORS”) Ch. 267 and ORS Ch. 279A – 279C
- a. Equipment. “Equipment” means an article of nonexpendable, tangible District-owned property (including information technology systems) meeting the following requirements: (a) has a useful life of more than one-year; and (b) per-unit acquisition cost of \$5,000.00 or more. “Equipment” includes rolling stock, computing devices, information technology systems, and all other such property used in the provision of public transit service.
  - b. Federal Interest. “Federal Interest” means the dollar amount that is the product of: (1) the federal share of total project costs, and (2) the current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.
  - c. Fair Market Value. “Fair market value” means the most probable price that property would bring in a competitive and open market.
  - d. Federally-Funded Personal Property. “Federally-Funded Personal Property” means any Personal Property that was acquired with Federal assistance.
  - e. Locally-Funded Personal Property. “Locally-Funded Personal Property” means any Personal Property that was acquired without Federal assistance.
  - f. Personal Property. “Personal Property” means property other than Real Property. It may be tangible if it has a physical existence, or intangible, if it does not have a physical existence. “Personal Property” under this policy includes Equipment, Supplies, Capital Assets, Fixed Assets, and Project Property (as those terms are defined by FTA) and does not include Real Property.
  - g. Real Property. “Real Property” is land and anything permanently affixed to the land, such as buildings, fences, and those things attached to the buildings that, if removed, would deface the structure or integrity of the building, such as plumbing, heating fixtures, etc.
  - h. Rolling Stock. “Rolling Stock” describes Equipment that is used to transport passengers and includes buses, vans, cars, locomotives, trolley cars, ferryboats, light rails, streetcars, other rail vehicles and vehicles used for guideways and incline planes.
  - i. Supplies. “Supplies” mean all tangible Personal Property, other than Equipment, with a unit value of less than \$5,000.

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- j. Useful Life. "Useful Life", for purposes of this policy, means the minimum acceptable period a capital asset purchased with FTA funds should be used in service. Capital assets purchased with FTA funds may frequently be used beyond their minimum useful lives, without being considered part of LTD's state of good repair backlog.

19.2 Asset Tags and Inventory

- a. Applicability. Regardless of the source of funding, all new Equipment, Capital Assets, Fixed Assets, and Project Property (all Personal Property other than Supplies, including but not limited to computer equipment, printers, photocopiers, smartphones, tablets, laptops, cameras, maintenance equipment, and vehicle components) shall be tagged and inventoried upon receipt to LTD. Asset tagging shall be sufficiently permanent to survive in the event of theft or loss. Tagged assets shall be inventoried on existing Fixed Assets inventory lists for tracking, periodic inventory reconciliation, and eventual disposition purposes.
- b. Responsibility. Asset tagging and inventory listings shall be the responsibility of the LTD department initiating centralized orders for the Equipment, Capital Assets, Fixed Assets, or Project Property.
- c. Required Information. Inventory records<sup>3</sup> shall include the following information:
  - i. Asset Tag Number
  - ii. A description of the Asset
    - 1. Manufacturers make and model,
    - 2. Year of manufacture,
    - 3. Fuel Type
  - iii. The identification number or serial number;
  - iv. The entity or individual that holds title to the asset;
  - v. The source of funding (the FAIN number under which it was procured);
  - vi. ODOT Rail and Public Transit Division Vehicle Category (Attachment A)
  - vii. The acquisition date;
  - viii. The cost of the asset;
  - ix. The percentage of state/federal participation in the cost;
  - x. The location;
  - xi. The use and condition
  - xii. The seating capacity
  - xiii. The number of ADA stations;
  - xiv. The in-service date;
  - xv. The useful life; and
  - xvi. The disposition data, including the date of disposal and sale price, or, where applicable, method used to determine its fair market value.

<sup>3</sup> Reference FTA C 5010.1E, page IV-33n(1) Management of Federally Assisted Property

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- d. Updates. Inventory listings shall be updated when any change in this information occurs.
- e. Reconciliation. Physical inventory reconciliation shall be performed at least once every two years, with any differences investigated and the cause for the differences determined/documented.

19.3 Disposition of Federally-Funded Personal Property<sup>4</sup>

- a. Generally. The procedures related to the disposition of Federally-Funded Personal Property depend on whether the property has reached the end of its Useful Life.
- b. How to Determine Useful Life. The Useful Life for some Personal Property is defined by FTA. Where the FTA has not defined a Useful Life, LTD must “make the case” to FTA in its grant application by identifying a Useful Life period for all Equipment, Capital Assets, Fixed Assets, and Project Property with an acquisition value greater than \$5,000, if the property is being procured with federal funds. LTD must identify the method used to determine an asset’s minimum Useful Life.
  - i. Acceptable methods to determine Useful Life include but are not limited to:
    1. Generally accepted accounting principles;
    2. Independent evaluation;
    3. Manufacturer’s estimated useful life;
    4. Internal Revenue Service guidelines;
    5. Industry standards;
    6. LTD experience;
    7. LTD’s independent auditor who needs to provide his or her concurrence that the Useful Life assigned to the property is reasonable for depreciation purposes; and
    8. Proven useful life developed at a federal test facility.
  - ii. Rolling Stock. FTA has determined the Useful Life for Rolling Stock based on the type of vehicle and size. For example, large, heavy-duty transit buses (approximately 35’ – 40’ or larger including articulated buses) have a Useful Life of at least 12 years of service, or an accumulation of at least 500,000 miles, whichever comes first. For Useful Life of other vehicles, see FTA Circular 5010.E, Ch. IV. For all Rolling Stock, the minimum Useful Life is calculated based on the date the vehicle is placed in revenue service and continues until it is removed from service.
- c. Disposition of Federally-Funded Personal Property after End of Useful Life.
  - i. Personal Property with a Value of \$5,000 or More. This Section 19.3(c)(i) provides all options for disposal of Federally-Funded Personal Property with a per-unit, or aggregate, fair market value of more than \$5,000. Applicable property shall not be disposed of in any other manner, except in accordance with the requirements stated herein:
    1. Procurement Approval. Procurement, in coordination with Finance, shall review, approve in advance, and coordinate any sales, disposals or

<sup>4</sup> Reference: ~~Federal Transit Administration Circular 5010.1E, Chapter IV, rev. July 16, 2018~~

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transfers of Federally-Funded Personal Property which require FTA approval, reimbursement, and/or application of proceeds to other capital projects.<sup>5</sup>

2. Disposal Options. After the Useful Life of Federally-Funded Personal Property is reached, or the property is no longer needed for the original Award, Federally-Funded Personal Property with a current market value exceeding \$5,000 per unit, or with a total aggregate fair market value of more than \$5,000, may be:
  - a. Retained by LTD and used for public transportation purposes; or
  - b. Sold; with the first \$5,000 of sales proceeds retained by LTD, and the remaining amount of sales proceeds retained by LTD and repaid to FTA in proportion to LTD's percentage of participation in the cost of the original purchase, as calculated in accordance with 49 U.S.C. § 5334(h) (4) (B).

ii. Personal Property with a Value of less than \$5,000. Federally-Funded Personal Property which has reached the end of its Useful Life and which has a fair market value of less than \$5,000.00 may be disposed of by the following means, and without FTA approval, providing the nature and justification for the disposition is recorded in the corresponding inventory record:

1. Retain and use for a different transit-related purpose within LTD;
2. Sell through auction or other competitive process (where anticipated proceeds reasonably exceed the costs for processing); \*
3. Recycled (for scrap or other re-purposing); \*
4. Donated to a non-profit organization (where there is still some monetary value, but only small after processing costs are deducted); \*or
5. Disposed of as waste (this should be considered the last alternative, and used only in cases where there is no value to the equipment and donation or recycling resources are not available).

*\*The best choice among these options shall be used after analyzing the overall loss and gain associated with disposal. A cost analysis shall be conducted, subtracting the anticipated costs for administrative, processing, and other disposal fees from the expected sale proceeds or the fair market value of the equipment.*

d. Disposition of Federally-Funded Personal Property before End of Useful Life. This Section provides all options for disposal of Federally-Funded Personal Property, regardless of value, before the end of its Useful Life. Applicable property shall not be disposed of in any other manner, except in accordance with the requirements stated herein:

- i. Procurement Approval. Any disposition of Federally-Funded Personal Property before the end of its Useful Life requires prior FTA approval. Therefore, any disposition of Federally-Funded Personal Property before the end of its Useful Life requires review and approval in advance from Procurement.
- ii. Disposal Options. Federally-Funded Personal Property before the end of its

<sup>5</sup> FTA C 5010.1E, page IV-42

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Useful Life, and only with prior FTA approval, may be disposed of as follows:

1. Rolling Stock that has not yet reached the end of its Useful Life may be transferred to another FTA recipient if LTD has acquired FTA approval and Board resolutions from both parties.<sup>6</sup>
  2. Under certain circumstances, Federally-Funded Personal Property no longer needed, which has not reached the end of its Useful Life may also be transferred to another public agency, for non-public transportation use, with prior FTA approval.
  3. With prior FTA approval, Equipment (e.g. vehicles) may be disposed of before the end of its minimum Useful Life and LTD may transfer the remaining federal interest to replacement Equipment of like kind.
- iii. Casualty, Fire, Natural Disaster, and Misused Property. LTD has obligations to the FTA in the event Federally-Funded Personal Property is damaged or destroyed before the end of its minimum Useful Life. In the event insurance proceeds are received due to the damage or destruction, LTD may have payment obligations to the FTA. In the event this Section 19.3(d)(iii) is applicable, see the requirements of FTA Circular 5010.1E, Ch. IV and work with LTD's Procurement.

#### 19.4 Disposition of Locally-Funded Personal Property<sup>7</sup>

- a. Oregon Public Contracting Rules Apply. The Oregon Public Contracting Code (ORS Ch. 279A – 279C) and Oregon Administrative Rules OAR Ch. 137, Division 046 – 049 apply to the "sale or other disposal" of Locally-Funded Personal Property. LTD may sell, transfer, or dispose of Locally-Funded Personal Property in accordance with the requirements, stated above, and as set forth in this Section 19.4.
- b. Procurement Approval. Any disposition of Locally-Funded Personal Property must be approved in advance by Procurement. The department seeking to dispose, transfer, or sell such property must make a determination that the proposed method of disposal: (a) complies with the requirements of the Oregon Public Contracting Code; and (b) is in the best interest of the District. Factors to consider in determining the method of disposal include, but are not limited to: costs of sale, administrative costs, processing fees, disposal fees, and public benefits to the District.
- c. Transfer to Other Government Entities. LTD may sell or transfer Locally-Funded Personal Property to another government entity, unless specifically prohibited by a particular State grant which funded the procurement of that property, and providing the property is used for public purpose or benefit and not for resale to a private purchaser. For any such transfer, the parties must enter into a written agreement to effect such transfer. The transfer must be approved in advance by Procurement and is subject to the delegated authority threshold established by the LTD Board of Directors.
- d. Sale. LTD may sell Locally-Funded Personal Property by auction, bids, liquidation sale, fixed price sale, trade-in or other competitive process. Proceeds from the sale must be used for public purpose or benefit.
- e. Disposal as Waste or Other Means. LTD may dispose of Locally-Funded Personal Property for which the costs of sale are likely to exceed sale proceeds. Such property may be disposed of by recycling, donation, or designation as waste. District employees

<sup>6</sup> FTA C 5010.1E, page IV-43 Transfer of Rolling Stock-Recipient to Recipient

<sup>7</sup> Reference: Oregon Revised Statutes, Sections ORS Ch. 267 and ORS Ch. 279A-279C

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making such a disposal shall make a record of the estimated value of the item and the manner of disposal.

- f. Restriction on Transfer to District Employees. LTD employees shall not compete for the purchase of publicly sold Personal Property. Further, Oregon Government Ethics Law (ORS Ch. 244) prohibits employees from using their office to obtain financial gain for the employee, a relative, or a member of the employee's household. Receipt of surplus LTD Personal Property by an LTD employee, relative, or member of the employee's household violates ORS 244.040 and is prohibited.

19.5 Other Mandates

- a. Disposition of Vehicles. LTD vehicles to be disposed of in any manner must also be properly documented as required by the State of Oregon Department of Motor Vehicles.<sup>8</sup>
- b. Communication regarding Disposition. LTD vehicles and asset-tagged Personal Property to be disposed of, removed from service, transferred in any manner, even if to long-term storage, must notify LTD's Risk Generalist, in advance of any such transfer, to perform a risk management review and adjust insurance coverage as appropriate.

19.6 Acquisition and Disposition of Real Property

- a. Federally Funded Projects. For Federally-funded projects see FTA C 5010.1E, pages IV-1- 20, as well as Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as may be amended.
- b. Locally Funded Projects. For locally-funded projects see ORS Chapter 35 — Eminent Domain; Public Acquisition of Property as may be amended.

**SECTION 20 – PROTEST PROCEDURES**

In addition to those requirements set forth in the Oregon Public Contracting Code, the Model Rules, and the FTA Circular 4220.1F, the following procedures shall apply for any protests.

20.1 Solicitation Protests. The following requirements shall apply to a solicitation protest.

- a. Protest Submission. A protest of the Solicitation Documents must be marked as follows:

-----  
 Solicitation Document Protest  
 Offeror's Name or Other Identification  
 -----

Any such protest must be addressed to the Procurement Supervisor/Manager and must be received by LTD by the time identified in the Solicitation Documents.

- b. Protest to Procurement. LTD shall not consider a prospective Offeror's solicitation protest submitted after the timeline established for submitting such protest. In accordance with Oregon law and rules, the LTD Procurement Office shall, reasonably and promptly, issue a written disposition of the protest. If the Procurement Office upholds the protest, in whole or in part, LTD may in its sole discretion issue an Addendum reflecting its disposition or cancel the procurement.
- c. Protest to the Procurement Supervisor/Manager. A prospective Offeror may appeal the

<sup>8</sup> Where applicable, also reference ODOT Rail and Public Transit Capital Program's Process for Disposal, updated 6/2018, as may be amended; see Management of Grant-Funded Capital Assets Plan (DOC-X-AST-002)

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Procurement Office's written determination to the Procurement Supervisor/Manager. The protester must submit the written determination and this, must be received by the Supervisor/Manager within forty-eight (48) hours of the prospective Offeror's receipt of the Office's written disposition. In accordance with Oregon laws and rules, the Procurement Supervisor/Manager shall, reasonably promptly, issue a written disposition of the protest. If the Procurement Supervisor/Manager upholds the protest, in whole or in part, LTD may in its sole discretion issue an Addendum reflecting its disposition or cancel the procurement.

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20.2 Protests of Contract Award. The following requirements shall apply to a protest of the contract award.

a. Protest Submission. A protest of the Contract Award must be marked as follows:

-----  
Protest of Contract Award  
Offer Number or Other Identification  
-----

Any such protest must be addressed to the Director of Procurement and must be received by LTD by the time identified in the Solicitation Documents.

b. Protest to Procurement Supervisor/Manager. LTD shall not consider an Offeror's selection protest submitted after the timeline established for submitting such protest. In accordance with Oregon law and rules, the LTD Procurement Supervisor/Manager shall, reasonably promptly, issue a written disposition of the protest. If the Procurement Supervisor/Manager 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.

c. Protest to Director of Procurement. An Offeror may appeal the Procurement Supervisor/Manager's written determination to the Director of Procurement. The Director of Procurement must receive written determination within five (5) days of the Offeror's receipt of the Procurement Supervisor/Manager's written disposition. LTD shall not consider an Offeror's protest submitted after the time established herein. In accordance with Oregon law and rules, the Director of Procurement shall, reasonably promptly, issue a written disposition of the protest. If the Director of Procurement 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.

d. Protest to CEO. An Offeror may appeal the Director of Procurement's written determination to the CEO. Any protest of the Director of Procurement's written determination must be received by LTD's CEO within five (5) days of the Offeror's receipt of the Director of Procurement's written disposition. LTD shall not consider the protest submitted after the time established herein. In accordance with Oregon law and rules, the CEO shall, reasonably promptly, issue a written disposition of the protest. If the CEO 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.

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20.3 Notice to FTA. In all instances involving FTA funds, the LTD Procurement Supervisor/Manager shall notify the FTA regarding any received protest and shall keep the FTA involved regarding the status of such protest.

20.4 Protest with the FTA. An adversely affected or aggrieved Offeror must exhaust all administrative

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remedies with LTD before pursuing any protest with the FTA for federally funded projects.

**SECTION 21 – CLAIMS REVIEW BOARD**

LTD may provide contractors the option to appeal decisions of an LTD Project Manager to the LTD Claims Review Board.

21.1 Composition of Claims Review Board. The Claims Review Board shall be comprised of the following individuals: Finance Committee President, CEO, and Legal Counsel.

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21.2 Procedure. The procedures and timelines regarding a contractor’s appeal to the Claims Review Board shall be set forth and governed by the contract. The Claims Review Board shall adopt any procedure not set forth in the contract at the time of the appeal.

**SECTION 22 – CONTRACT TYPES AND CONTRACT PAYMENTS**

22.1 Contract Types. The Solicitation Documents must state the type of contract that will be awarded.

a. Typical Contract Types. Contract types may include, but are not limited to, the following:

i. Firm Fixed Price. A firm fixed price contract includes a price that remains fixed irrespective of the contractor’s cost experience in performing the contract. A firm fixed price contract may include an economic price adjustment provision, incentives, or both.

ii. Cost Reimbursement. A cost-reimbursement contract provides for payment of the contractor’s allowable incurred costs, to the extent prescribed in the contract. Allowable costs may include incentives if LTD believes they can prove helpful. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract.

iii. Revenue Contracts. A revenue contract is a contract in which LTD or a subcontractor provides access to public transportation assets for the primary purpose of either producing revenues in connection with an activity related to public transportation, or creating business opportunities with the use of FTA assisted property. LTD has broad latitude in determining the extent and type of competition appropriate for a particular revenue contract, so long as all applicable rules and regulations are adhered to (including FTA Incidental Use guidance<sup>9</sup>). Nevertheless, to ensure fair and equal access to FTA assisted property and to maximize revenue derived from such property, LTD shall conduct its revenue contracting as follows:

1. Limited Contract Opportunities. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then LTD shall use a competitive process to permit interested parties an equal chance to obtain that limited opportunity. **See Section 8 for Oregon requirements on procurement methods (other than full and open competition).**
2. Open Contract Opportunities. If, however, one party seeks access to a public transportation asset (such as a utility that might seek cable access in a subway system), and LTD is willing and able to provide contracts or licenses to other parties similarly situated (since there is room for a

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<sup>9</sup> FTA C 5010.1E, Chapter IV *Management of the Award*

substantial number of such cables without interfering with transit operations), then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties. **See Section 7 for Oregon requirements on procurement methods (full and open competition).**

- b. Prohibited or Restricted Contract Types. The following contract types are restricted or prohibited:
  - i. Cost Plus a Percentage of Cost – Prohibited
  - ii. Percentage of Construction Cost – Prohibited
  - iii. Time and Materials – Restricted. The use of these contracts is permissible only:
    - 1. After determining that no other contract type is suitable; and
    - 2. If the contract specifies a ceiling price that the contractor may not exceed at its own risk.

22.2 Contract Payment Provisions. If LTD intends to use FTA assistance, or expects to be reimbursed with FTA assistance, or dedicates its local share funds to support contract costs it has financed, the payment provisions must be structured in accordance with FTA Circular 4220.1F and the provisions set forth in this Section.

- a. Advance Payments. LTD may not use FTA assistance to make payments to a third-party contractor before the contractor has incurred the costs for which payments would be attributable unless an exception applies.
- b. Progress Payments. Progress payments are payments for contract work that has not been completed in full. LTD may use FTA assistance to support progress payments provided LTD obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.
  - i. Adequate Security for Progress Payments. Adequate security for progress payments may include taking title, obtaining a letter of credit, or taking equivalent measures to protect LTD's financial interest in the progress payment.
  - ii. Adequate Documentation. Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made.
  - iii. Percentage of Completion Method. Any progress payments for construction contracts shall be made on a percentage of completion method. LTD may not make progress payments for other than construction contracts based on this percentage method.
- c. Retainage. **On Public Improvement Contracts, LTD may retain amounts from progress payments pursuant to ORS 279C.550 to 279C.570 and the corresponding Oregon Administrative Rules. Further, LTD may accept surety bonds in lieu of retainage in accordance with HB 4006 (2024) and must do so if the contractor requests it.**

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## SECTION 23 – CONTRACT ADMINISTRATION

23.1 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

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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.

a. Above Micro-Purchase Threshold. For all contracts above the micro-purchase level, the Procurement Supervisor/Manager will ensure that the contract administration file includes the following:

- i. The executed contract and notice of award;
- ii. Performance and payment bonds, bond-related documentation, and correspondence with any sureties;
- iii. Contract-required insurance documentation;
- iv. Post-award (pre-performance) correspondence from or to the contractor or other Governmental agencies;
- v. Notice to proceed;
- vi. Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements;
- vii. 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;
- viii. 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;
- ix. Documentation regarding stop work and suspension of work orders and termination actions (convenience as well as default); and
- x. Documentation relating to contract close-out.

b. Micro-Purchases. 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.

23.2 Monitoring of Contracts. Inspection of goods and services shall be performed routinely during the life of the Contract by the Contract Manager, or his/her designees, 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.

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- 23.3 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 Procurement Supervisor/Manager will delegate certain contract administration functions to the Contract Manager. The delegation must be in writing and must inform the Contract Manager what their duties are for that specific contract. When applicable, a delegation of authority document will be executed.
- 23.4 Written Procurement History. A record shall be maintained detailing the history of a procurement. At a minimum, the records shall include:
  - a. The rationale for the method of procurement;
  - b. Selection of contract type;
  - c. Reasons for Contractor selection or rejections; and
  - d. The basis for the contract price.

**SECTION 24 – EVALUATING CONTRACT OPTIONS**

- 24.1 Contract 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 comply with the requirements of this Section.
  - a. Only Those Goods or Services Required. The use of options must be limited to quantities of goods or services that are reasonably anticipated to be required by LTD 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 LTD’s anticipated requirements, in accordance with FTA regulations and guidance.
  - b. Evaluate Options Pre-Contract Award. 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).
  - c. If an Option is Not Evaluated; Sole Source. 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. See Section 9.4 (a), regarding Sole Source Procurements.
  - d. Exercising an Option. 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. 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.
- 24.2 **Piggybacking**. LTD may exercise option contracts of other public agencies (“piggybacking”) in accordance with FTA regulations and guidance. **See Section 10.3 regarding Existing Contracts.**

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**SECTION 25 – CONTRACT MODIFICATION**

This Section 25 shall be read broadly to include any change to a Contract, which shall include, but is not limited to: Contract Amendment, Change Order, Extra Work, Field Orders or any other changes in the Contract Documents.

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25.1 Contract Modification Process. Before an amendment or change order (change notice) to a contract or purchase order can be approved, the following steps must occur.

- a. Identify the Need for the Change. The Contract Manager shall identify the need for change, in writing. The Contract Manager shall determine that the change is desired or required and that it falls within the original scope of the project (as stated in the Solicitation Documents). If the change is beyond the scope of the contract, it must be analyzed as a sole source award. See Section 8.2, regarding Sole Source Awards. Unforeseen conditions that occur in a construction project that must be remedied to proceed with construction are allowable.
- b. Perform Independent Cost Estimate. The Contract Manager must make an independent estimate of the cost of the change. This cost estimate shall be in writing. Refer to Section 6 regarding requirements for an Independent Cost Estimate.
- c. Verify Change is Permitted by Law. The Contract Manager, in consultation with the Procurement Supervisor/Manager as necessary, shall verify the proposed change is permitted (without additional competition) in accordance with FTA Circular 4220.1F, Oregon law, and this Policy.
- d. Contracts Authorized by Board. For contracts authorized by the CRB, individual or cumulate contract amendments cannot exceed twenty percent (20%) of the initial contract or \$250,000, whichever is less, without seeking additional approval from the Board.
- e. Submission to Contractor / Consultant. Once the steps outlined in (a)-(d) are completed, the request for a proposal for the change must go to the Contractor or Consultant on the project, consistent with the terms of the contract, and giving a description of the change in whatever terms are needed to allow the Contractor/Consultant to respond.
- f. Contractor's/Consultant's Proposal. The Contractor's/Consultant's responding 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.
- g. Review of Contractor's/Consultant's Proposal. The Contract Manager shall review the Contractor's/Consultant's Proposal and perform a Cost or Price Analysis. Refer to Section 9 regarding requirements for a Cost or Price Analysis. This complete packet makes up the change order request package, which will be submitted to the Procurement Supervisor/Manager for review and approval.

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25.2 Cost Restrictions. The cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of the FTA grant or cooperative agreement, and reasonable for completion of project scope.

**SECTION 26 – ELECTRONIC COMMERCE SYSTEM**

26.1 **Annual Notice of Intent to Advertise on Electronic System. At least annually, LTD shall advertise its Notice of Intent to Advertise procurements on its electronic procurement system. The Notice shall be published weekly, for not less than four (4) consecutive**

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weeks, in at least one newspaper of general circulation for the Eugene/Springfield area. The Notice shall also be posted on LTD's website for not less than four (4) consecutive weeks. The Notice shall invite prospective contractors to request input into LTD's electronic procurement system, so that the prospective contractor receives notice of LTD's procurements that are posted on such system. LTD may indicate in the Notice that any contractors already receiving electronic notice of LTD's procurements will continue to do so and need not respond to the Notice of Intent to Advertise.

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# LANE TRANSIT DISTRICT PROCUREMENT POLICY

*Adopted by the LTD Board of Directors, acting as the Local Contract Review Board, on August 21, 2024, during its Regular Meeting of the Board of Directors and previously amended per the dates below.*

*5/14/2014  
6/22/2017  
9/16/2020  
9/15/2021*

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## SECTION 1 – LEGAL AUTHORITY

On June 18, 1985, Lane Transit District’s Board of Directors adopted Ordinance 30 creating a Local Contract Review Board for Lane Transit District (“LTD”). This local contract review board is known as the LTD Contract Review Board (CRB).

The CRB may, from time to time, delegate its powers and responsibilities consistent with the Oregon Public Contracting Code, the Oregon Administrative Rules (the “Model Rules”), the LTD Procurement Policy, and, where federal funds are or may be utilized, the FTA Circular 4220.1F, as may be amended. LTD’s Chief Executive Officer (CEO) or their designee are designated as LTD’s “Contracting Agency” for purposes of contracting powers and duties assigned to the District as a “Contracting Agency” under the State of Oregon Public Contracting Code, Model Rules, or Federal law or rules, as applicable. Except as otherwise provided in this Policy, the powers and duties of the LTD Contract Review Board shall be exercised and performed by the LTD Board of Directors and all powers and duties given or assigned to the Contracting Agencies by the Public Contracting Code, or Federal law or rules as applicable, shall be exercised or performed by the CEO or their designee.

LTD is the recipient of federal funds, and as such, whether a third-party or direct recipient grantee, all LTD federally funded procurement activities shall comply with FTA Circular 4220.1F and 2 CFR Part 200, as may be amended; and when applicable under direct award FAR Part 31 and 2 CFR Part 200. Where Oregon Law or the Model Rules have stricter requirements, LTD shall adhere to the Oregon requirements. Those requirements appear in **bold** in this Policy.

Except as otherwise provided herein, the CRB has adopted the Oregon Model Rules, Division 46, 47, 48 and 49, adopted by the Attorney General under Oregon Revised Statute (“ORS”) 279A, 279B, and 279C as they now exist, and as they may be amended in the future, are hereby adopted as LTD’s Public Contracting Rules.

On August 21, 2024, the LTD Board of Directors, acting as the Local Contract Review Board (CRB) for LTD, adopted this Procurement Policy and latest revisions as follows.

## SECTION 2 – APPLICATION

- 2.1. Application. This Procurement Policy applies to all public contracts made by or on behalf of Lane Transit District, unless an exception applies.
- 2.2. **Exceptions. This Policy, requiring public contracts to be awarded through the Competitive Procurement process, does not apply to the following types of contracts or expenditures:**
  - a. **Contracts between LTD and other public contracting agencies or the federal government;**
  - b. **Intergovernmental Agreements authorized by Oregon Revised Statutes Chapter 190;**
  - c. **Contracts for insurance as provided for under ORS 414.115 through 414.145;**
  - d. **Grants;**
  - e. **Reimbursements and authorized employee travel vouchers or per diem advances;**
  - f. **Dues, memberships, or registrations where authorized;**
  - g. **Fees for approved conferences, seminars, and trainings; or for the accommodations and travel thereof**



- h. **Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which LTD is or may become interested;**
  - i. **Acquisitions or disposals of real property or an interest in real property, including facility rentals or leases;**
  - j. **Sole-source expenditures when rates are set by law or ordinance for purposes of source selection (i.e. utilities);**
  - k. **Personal Services Contracts where allowed by ORS and LTD Policy (see Section 9 below);**
  - l. **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; or**
  - m. **Any other public contracting of a public body specifically exempted from the code by another provision of law (ORS 279A.025) or contracts that do not meet the definition of a public contract. (ORS 279A.010 (1)(z)).**
- 2.3. **Changes in Law. Except as explicitly provided otherwise, the terms of this Policy shall be subject to any and all changes in applicable law, including but not limited to changes to rules and regulations that subsequently may be prescribed by any federal, state or local governmental authority having competent jurisdiction. Any reference to a provision of federal, state or local shall include a reference to any applicable successor provision or law.**

### SECTION 3 – DEFINITIONS

For purposes of this Policy, the following definitions apply:

- 3.1 **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.
- 3.2 **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.
- 3.3 **Bidder:** An Offeror that submits a Bid in response to an Invitation for Bid.
- 3.4 **Board of Directors:** The Board of Directors of LTD.
- 3.5 **CEO:** The Chief Executive Officer of Lane Transit District.
- 3.6 **Closing Date:** The date and time announced by LTD as the deadline for the receipt of an Offer (at least five days after last date of advertisement of the Solicitation Document).
- 3.7 **Competitive Procurement:** The solicitation of competitive Offers through the issuance of a Solicitation Document.
- 3.8 **Contract Period:** The total term of the contract agreement. The period of contract performance for rolling stock and replacement parts shall not exceed five (5) years, inclusive of options, as defined in FTA C 4220.1F. The 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 fair and open opportunity to do business with LTD. Relative benefit to LTD and best interest for the public tax dollars use of a longer or shorter contract term must be considered. 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.

- 3.9 **Contractor:** The person or entity awarded the Public Contract in response to a solicitation by LTD.
- 3.10 **CRB:** The Board of Directors acting in their capacity as the local contract review board.
- 3.11 **Date of Solicitation:** The date when the the Solicitation Document is first posted and available publicly.
- 3.12 **Grant:** An agreement under which a Contracting Agency receives moneys, property, or other assistance, including but not limited to federal, state and local assistance that is characterized as a grant by law or regulation, 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, state and local assistance that is characterized as a grant by 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.
- 3.13 **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.
- 3.14 **Lowest Responsible Bidder:** The lowest priced, responsive, responsible Bidder who has substantially complied with all prescribed public bidding procedures and requirements and who has not been debarred, suspended or otherwise excluded by any agency or department of the federal government, or debarred or disqualified by LTD under Oregon law.
- 3.15 **LTD:** Lane Transit District.
- 3.16 **Non-Standard Procurement:** Any procurement other than an Invitation to Bid, Request for Proposals or Request for Qualifications solicited using full and open competition. Micro-purchases (Section 7.4), small purchases (Section 7.5), intermediate level procurement of construction services (Section 7.6), Direct Negotiation of Personal Services (Section 9.2(a)) and Informal Solicitation of Personal Services (Section 9.2(b)) are excluded from the definition of “non-standard procurement.”
- 3.17 **Offer:** A Bid, Proposal, or other written response to a Solicitation Document as applicable.
- 3.18 **Offeror:** A Bidder, Proposer, or other Person, as applicable, who submits an Offer.
- 3.19 **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.
- 3.20 **Personal Services:** Services where the skill, ability, resources, knowledge or expertise of an independent contractor are of paramount importance. Personal Service contracts include, but are not limited to, the following:
- a. Contracts for services as an artist in the performing or fine arts.

- b. Contracts for services where the primary purpose is to provide transit-related expertise in a professional capacity or as a consultant.
  - c. Contracts for services where the primary purpose is to provide procurement-related expertise in a professional capacity or as a consultant.
  - d. Contracts for services that are specialized, creative, or research oriented.
- 3.21 **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.
- 3.22 **Proposer:** An Offeror who submits a Proposal in response to a Request for Proposal.
- 3.23 **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.
- 3.24 **Public Improvement:** A project for construction, reconstruction, or major renovation on real property by or for LTD. However, Public Improvement does not include either:
- a. 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
  - b. Any emergency work, minor alteration, ordinary repair, or maintenance necessary in order to preserve a Public Improvement.
- 3.25 **Public Works: Has the meaning set forth in ORS 279C.800(6).**
- 3.26 **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.
- 3.27 **Request for Proposal or RFP:** All documents issued by LTD used for soliciting Proposals from prospective Proposers and explaining offering procedures and requirements.
- 3.28 **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.
- 3.29 **Responsible Offeror (also Responsible Bidder or Responsible Proposer):** An Offeror who meets the standards set forth in Section 16.3.
- 3.30 **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.
- 3.31 **Signed:** A written document that contains a signature.
- 3.32 **Solicitation Document:** An Invitation for Bid, Request for Proposal, or other document issued to invite Offers from prospective Offerors pursuant to the Rules.
- 3.33 **Submittal Period:** The span of time between the date of the Solicitation Document and Closing Date.
- 3.34 **Written or Writing:** Conventional paper documents, whether handwritten, typewritten, or printed, in contrast to spoken words. It also includes electronic transmission when required by applicable law or permitted by a Solicitation Document or Contract.

## SECTION 4 – DELEGATED SIGNATURE AND PURCHASE AUTHORITY

- 4.1 Delegated Contracting Authority. Refer to LTD Resolution No. 2024-08-21-023, A Resolution

Adopting the LTD Procurement Policy and Delegating Certain Authority, which includes delegation to authorize the CEO, or written designee, to execute contracts on behalf of the Board of Directors.

- 4.2 Purchasing and Signature Authority for Employees. The following positions have the authority to: (a) authorize a purchase (“Purchase Authority”); and (b) sign a contract document (“Signature Authority”) as set forth below.

<b>Employee Title<sup>1</sup></b>	<b>Purchasing Authority</b>	<b>Signature Authority</b>
CEO	< \$250,000 <sup>2</sup>	\$250,000+
CAO or CFO	\$75,000	< \$250,000
Division Chiefs	\$75,000	none
Authorized P-Card Holders	Up to designated P-Card Limit Assigned	none
Any position not listed above	none	None

- 4.3 Requirements for Purchases Using Grant Funds or Capital Budget Resources. The CFO (or written designee) must approve all purchase requests expending grant funds or capital budget resources.
- 4.4 Other Limits on Purchasing Authority. Each Chief is in charge of their operating budget (excerpted from the annual adopted, or amended, budget) and all purchases must be within their operating budget. The purchase authorization levels summary above, in Section 4.2, defines the highest dollar amount of purchases that employees are allowed to authorize without the additional authorization of a higher-level supervisor. These authorizations apply to all purchases regardless of how the purchase is made (i.e. check, credit, contract, purchase order, etc.)

## SECTION 5 –WRITTEN STANDARDS OF CONDUCT

- 5.1. Written Standards of Conduct. Refer to LTD’s Employee Handbook (2023) as amended, for Our Code of Ethics and Conflicts of Interest. Also refer to Board of Directors Bylaws, Article VI: Code of Ethics and Conflicts of Interest Policy (2021) and Board of Directors Ethics and Conflict of Interest Policy from Board of Directors Governance Policy Manual as revised (2022).
- 5.2. Organizational Conflict of Interest. Engaging in practices that result in organizational conflicts of interest are prohibited.
- a. An organizational conflict of interest occurs when any of the following circumstances arise:
- i. Lack of Impartiality or Impaired Objectivity. When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.
  - ii. Unequal Access to Information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the

<sup>1</sup> The CEO, CAO, or CFO may delegate, in writing, their authority herein.

<sup>2</sup> Except for routine annual procurements as defined in the resolution referenced in Section 4.1.

- iii. Biased Ground Rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.
- b. A Conflict of Interest Disclosure Form shall be included in every formal solicitation. For small purchases, a Conflict of Interest Disclosure Form shall be sent to prospective contractors at the time LTD requests an informal bid or quote from the prospective contractor(s). For micro-purchases, the Procurement staff member for this threshold shall attest that no organizational conflict of interest exists when approving the purchase.

## SECTION 6 – INDEPENDENT COST ESTIMATE

- 6.1. Independent Cost Estimate Required. Concurrent with the submission of a Request for New Proposal, and before issuing a solicitation, an Independent Cost Estimate (ICE) must be submitted to the Procurement Department. The ICE is an estimate of what the item or service “should cost.” Available resources for completion of an ICE include: (1) the use of published price lists; (2) historical pricing information from similar contracts previously awarded; (3) comparable purchases by other agencies; (4) engineering estimates; and (5) independent third-party estimates (e.g., an A/E construction cost estimate).
- 6.2. Application. An independent cost estimate shall be required for all procurement actions above the micro-purchase level, including contract modifications.

## SECTION 7 – PROCUREMENT METHODS (FULL AND OPEN COMPETITION)

- 7.1 Full and Open Competition. Except as provided herein, or as otherwise permitted by law, LTD shall use procurement procedures that provide full and open competition. Compliance with the solicitation procedures described herein and in FTA Circular 4220.1F, shall fulfill the requirement for “full and open competition.” Notwithstanding any exceptions to competitive procurement allowed by law or this Policy, LTD may nevertheless award a Contract using the competitive procurement process as set forth herein.
  - a. **Conflict Between Federal and State Law. There exists a conflict in the threshold levels for micro, small, intermediate and formal procurements between State and Federal law. LTD adopts, for all procurements regardless of funding source except as otherwise expressly set forth herein, the threshold levels set forth in the FTA Circular 4220.1F, and as stated herein, except where Oregon law establishes lower threshold levels than federal law. Where Oregon requirements are more stringent than the requirements in FTA Circular 4220.1F, Oregon law controls.**
- 7.2 Restrictions on Competition. “Full and open competition” means that there is no unfair competitive advantage to any potential contractor. 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 LTD’s interests.
  - c. Noncompetitive pricing practices between firms or between affiliated companies.
  - d. 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. See Section 12.3, Brand Name or Equal requirements.

- e. The use of specification requirements and evaluation criteria which unnecessarily favor an incumbent contractor.
- f. Specifying in-State or local geographical preferences or evaluating bids or proposals in light of in-State or local geographic preferences is prohibited by the FTA as restrictive of competition. However, these preferences may be permitted or even required for non-federally funded procurements. **Exceptions to the prohibition against in-State or local geographical preferences for federally funded contracts include:**
  - i. **Architectural Engineering (A&E) Services. Geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.**
  - ii. **Licensing. Oregon may enforce its licensing requirements, provided that those Oregon requirements do not conflict with Federal law.**
  - iii. **Major Disaster or Emergency Relief. Certain federally funded contracts for disaster or emergency relief, in accordance with FTA Circular 4220.1F.**
  - iv. **Construction Jobs. A local, geographical or economic hiring preference may be implemented relating to the use of labor for federal funded construction projects, including pre-hire agreements, in accordance with Section 25019 of the Infrastructure Investment and Jobs Act of 2021, provided that it does not conflict with Oregon and/or local laws, policies, and procedures.**
- g. Any arbitrary action in the procurement process.

7.3 Unsolicited Proposals. LTD may not accept or engage in unsolicited proposals.

7.4 Micro-Purchases. LTD may acquire property and services valued at \$10,000 or less without obtaining competitive quotations or proposals.

- a. Written Determination. The staff person acquiring property or services through a micro-purchase must make a written determination, in advance of the purchase, that the purchase price is fair and reasonable. That determination must include a description of how they came to that determination. This written determination shall be provided to the Procurement Supervisor/Manager within two (2) business days of making the micro-purchase.
- b. No Artificial Division. A procurement may not be artificially divided or reduced merely to come within the micro-purchase limit.
- c. Construction Contracts Exceeding \$2,000. Davis-Bacon prevailing wage requirements apply to construction contracts exceeding \$2,000.

7.5 Small Purchases (Other Than Construction Contracts). For all contracts other than construction contracts, LTD may acquire property and services valued at more than the micro-purchase threshold (currently \$10,000) but less than the small purchase threshold (currently at \$250,000) without obtaining competitive quotations or proposals, provided such Contracts are awarded in accordance with the Small Purchases procedures set forth herein and, in the FTA Circular 4220.1F.

- a. Independent Cost Estimate (ICE). An ICE is required. See Section 6, above, for requirements.

- b. Obtaining Quotes. LTD must find that the awarding of a Contract using these Small Purchase 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:
  - i. **Reasonable efforts are made to obtain at least three (3) quotes prior to awarding a Contract. 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. (ORS 279B.070).**
  - ii. A written documentation that the price is reasonable will be placed in the file. That determination must include a description of how the purchaser came to that determination.
  - iii. LTD shall not award Contracts totaling in excess of \$250,000 to any one Contractor during one fiscal year pursuant to this Section.

7.6 Intermediate Level Procurement of Construction Services. Public improvement contracts estimated by LTD not to exceed \$100,000 may be awarded in accordance with this Section.

- a. Independent Cost Estimate (ICE). An ICE is required. See Section 6, above, for requirements.
- b. Selection Criteria. **The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility, and similar factors.**
- c. Request for Quotes. LTD shall utilize written requests for quotes whenever reasonably practicable. Written requests for quotes shall include the selection criteria to be utilized in selecting a contractor and, if the criteria are not of equal value, their relative value or ranking. When requesting quotations orally, prior to requesting the price quote, 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 prevailing wage rates are not required by the Bureau of Labor and Industries.
- d. Number of Quotes; Records 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 to obtain those quotes.
- e. Award. If awarded, LTD shall award the Contract to the prospective contractor whose quote will best serve the interests of LTD, considering the announced selection criteria. If the award is not made to the Offeror offering the lowest price, LTD shall make a written record of the basis for award. (OAR 137-049-0160).

7.7 Sealed Bids (Formal Advertising). Sealed bidding is the preferred procurement method in which bids are publicly solicited and a firm fixed price contract is awarded to the responsible bidder whose bid, conforming to all the materials terms and conditions of the invitation for bids is lowest in price. LTD shall comply with the requirements for Sealed Bids stated in the FTA Circular 4220.1F, Oregon law, and as otherwise stated herein.

- a. When Appropriate. Sealed bid procurements should be used when the following circumstances are present:
  - i. **Precise Specifications**. A complete, adequate, precise and realistic specification or purchase description is available.



- ii. Adequate Sources. Two or more responsible bidders are willing and able to compete effectively for the business.
  - iii. Fixed Price Contract. The procurement generally lends itself to a firm fixed price contract.
  - iv. Price Determinative. The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. Apart from responsibility determinations discussed in Section 16.3, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award.
  - v. Discussions Unnecessary. Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone.
- b. Procurement Procedures. The following procedures apply to sealed bid procurements:
- i. Publicity. The Invitation for Bids is publicly advertised. **See Section 13 for Oregon requirements on public advertisement.**
  - ii. Adequate Sources. Bids are solicited from an adequate number of known suppliers.
  - iii. Adequate Specifications. The Invitation for Bids, including any specifications and pertinent attachments, describes the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.
  - iv. Sufficient Time. Bidders are allowed sufficient time to prepare bids before the date of bid opening. **A “sufficient time to prepare bids before the date of bid opening” means no less than the following under Oregon law:**
    - 1. **Solicitations for Goods and Services: The interval between the first date of public notice of the Solicitation Document and Closing shall not be less than fourteen (14) days for an Invitation to Bid and thirty (30) days for a Request for Proposals, unless LTD determines that a shorter interval is in the public’s interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of public notice of the Solicitation Document and closing be less than seven (7) days. LTD shall document the specific reasons for the shorter public notice period in the Procurement file. (OAR 137-047-0300(3)(c), ORS 279B.055 (4)(f)).**
    - 2. **Solicitations for Construction Services: The scheduled Closing shall not be less than five days after the date of the last publication of the advertisement. (OAR 137-049-0210(2)(d)(D))**
  - v. Public Opening. All bids are publicly opened at the time and place described in the Invitation for Bids.
  - vi. Fixed Price Contract. A firm fixed price contract is usually awarded in writing to the lowest responsive and responsible bidder, but a fixed price incentive contract or inclusion of an economic price adjustment provision can sometimes be appropriate. When specified in the bidding documents, factors such as transportation costs and life cycle costs affect the determination of the lowest bid; payment discounts are used to determine the low bid only when prior experience

indicates that such discounts are typically taken.

- vii. Rejection of Bids. Any or all bids may be rejected if there is a sound, documented business reason.

7.8 Competitive Proposals (Request for Proposals). The use of competitive or “best value” requests for proposals is a generally accepted procurement method when the nature of the procurement does not lend itself to sealed bidding and LTD expects that more than one source will be willing and able to submit an offer or proposal. LTD shall comply with the requirements for Competitive Proposals stated in FTA Circular 4220.1F, Oregon law, and as otherwise stated herein.

- a. When Appropriate. Competitive proposals should be used when any of the following circumstances are present:
  - i. Type of Specifications. The property or services to be acquired are described in a performance of functional specification; or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing the contract award on factors other than price alone are present.
  - ii. Uncertain Number of Sources. Uncertainty about whether more than one bid will be submitted in response to an invitation for bids and LTD lacks authority or flexibility under Oregon or local law to negotiate the contract price if it receives only a single bid.
  - iii. Price Alone Not Determinative. Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors.
  - iv. Discussions Expected. Separate discussions with individual offeror(s) are expected to be necessary after they have submitted their proposals.
- b. Procurement Procedures. The following procedures apply to procurements by competitive proposals:
  - i. Publicity. The Request for Proposals is publicly advertised. **See Section 13 for Oregon requirements on public advertisement.**
  - ii. Evaluation Factors. All evaluation factors and their relative importance are specified in the solicitation. For procurement of Goods and Services, numerical or percentage ratings or weights need not be disclosed. **See Section 12 for Oregon requirements on solicitation document and evaluation factors.**
  - iii. Adequate Sources. Proposals are solicited from an adequate number of known suppliers.
  - iv. Evaluation Method. A specific method is established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror. **See Section 16 for Oregon requirements on evaluation of Requests for Proposals.**
  - v. Price and Other Factors. An award is made to the responsible offeror whose proposal is most advantageous to LTD with price and other factors considered.
  - vi. Best Value. LTD may award the contract to the offeror whose proposal provides the greatest value to LTD. To do so, LTD’s solicitation must inform potential offerors that the award will be made on a “best value” basis and identify what factors will form the basis for award. The evaluation factors for a specific procurement should reflect the subject matter and the elements that are important

to LTD. Those evaluation factors may include, but need not be limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan. **See Section 16 for Oregon requirements on evaluation of Requests for Proposals.**

**7.9 Architectural Engineering (A&E) Services and Other Services.** LTD shall select consultants to provide architectural, engineering, photogrammetric mapping, transportation planning, land surveying services, or related services on the basis of the consultant's qualifications for the type of professional service required. LTD may solicit or use pricing policies and proposals or other pricing information, including the number of hours proposed for the service required, expenses, hourly rates and overhead to determine consultant compensation only after LTD has selection a candidate pursuant to this Section.

**a. Screening and Selection Procedures.** LTD's screening and selection procedures under this Section, regardless of the estimated cost of the architectural, engineering, photogrammetric mapping, transportation planning or land surveying services for a project, may include:

- i. Specialized experience, capabilities and technical competence, which the prospective consultant may demonstrate with the prospective consultant's proposed approach and methodology to meet the project requirements;**
- ii. Resources committed to perform the services and the proportion of the time that the prospective consultant's staff would spend to perform services for the contracting agency, including time for specialized services, within the applicable time limits;**
- iii. 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;**
- iv. Ownership status and employment practices regarding disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own, emerging small businesses or historically underutilized businesses;**
- v. Availability to the project locale;**
- vi. Familiarity with the project locale; and**
- vii. Proposed project management techniques. (ORS 279C.110 (3)).**

**b. Pricing Information.** Notwithstanding the requirement in subsection (a) of this Section that LTD may not solicit or use pricing policies, proposals or other pricing information until after LTD has selected a consultant, a local contracting agency may use pricing policies, proposals or other pricing information as part of LTD's screening and selection of prospective consultants if LTD:

- i. States in solicitation documents for the procurement:**
  - 1. That LTD will screen and select prospective consultants as provided in this subsection;**
  - 2. How LTD will rank proposals from prospective consultants, with a specific focus on:**
    - a. Which factors LTD will consider in evaluating proposals,**

- including pricing policies, proposals or other pricing information, if LTD will use pricing policies, proposals or other pricing information in the evaluation; and
- b. The relative weight LTD will give each factor, disclosing at a minimum the number of available points for each factor, the percentage each factor comprises in the total evaluation score and any other weighting criteria LTD intends to use;
3. An estimate of the cost of professional services LTD requires for the procurement; and
  4. A scope of work that is sufficiently detailed to enable a prospective consultant to prepare a responsive proposal.
- ii. Evaluates each prospective consultant on the basis of the prospective consultant's qualifications to perform the professional services LTD requires for the procurement. LTD may use the criteria set forth in subsection (a) of this Section to conduct the evaluation.
  - iii. Announces the evaluation scores and rank for each prospective consultant after completing the evaluation described in paragraph (ii) of this subsection. LTD may determine that as many as three of the top-ranked prospective consultants are qualified to perform the professional services LTD requires for the procurement and may request a pricing proposal for the scope of work stated in paragraph (i)(4) of this subsection from each of the top-ranked consultants. The pricing proposal:
    1. Must consist of:
      - a. A schedule of hourly rates that the prospective consultant will charge for the work of each individual or each labor classification that will perform the professional services LTD requires for the procurement, in the form of an offer that is irrevocable for not less than 90 days after the date of the proposal; and
      - b. A reasonable estimate of hours that the prospective consultant will require to perform the professional services LTD requires for the procurement; and
    2. May include, at LTD's request, additional pricing information that is limited to:
      - a. A description of each task that the prospective consultant understands as comprising the professional services;
      - b. A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to the individual or labor classification; and
      - c. A list of expenses, including travel expenses, that the prospective consultant expects to incur in connection with providing the professional services.
  - iv. Permits a prospective consultant identified as qualified under paragraph (iii) of this subsection to withdraw from consideration for the procurement if the prospective consultant does not wish to provide a price proposal.

- v. **Completes the evaluation and selects a consultant from among the top-ranked prospective consultants that have not withdrawn as provided under paragraph (iv) of this subsection, giving not more than 15 percent of the weight in the evaluation to each prospective consultant's price proposal.**
- c. Most Qualified. Negotiations are first conducted with only the most qualified offeror. Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified offeror. Then, if necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price LTD believes is fair and reasonable.

**SECTION 8 – PROCUREMENT METHODS (OTHER THAN FULL AND OPEN COMPETITION)**

- 8.1 Other Than Full and Open Competition. Only under those circumstances set forth in the FTA Circular 4220.1F, Oregon law, and as otherwise stated herein, may LTD conduct procurements without providing for full and open competition.
- 8.2 **Sole Source.** LTD may, without following the Competitive Procurement requirements and without competition, award contracts for goods or services if the CEO and the Director of Procurement (or designee(s)) have determined, in writing, that the goods or services are only available from one source, subject to the limits of their delegated signature authority under Section 4.2. (ORS 279B.075 (1))
  - a. **Written Findings.** The determination must be based on written findings that may include:
    - i. **That the efficient utilization of existing goods requires acquiring compatible goods or services;**
    - ii. **That the goods or services required to exchange software or data with other public or private agencies are available from only one source;**
    - iii. **That the goods or services are for use in a pilot or an experimental project; or**
    - iv. **Other findings that support the conclusion that the goods or services are available from only one source. (ORS 279B.075 (2))**
      - 1. This includes proprietary software where only one vendor has the ability to manufacture, distribute, and sell their software program. Proper documentation must be included with the request, including but limited to the Proprietary Software Form and written findings attesting to the justification for a sole source selection under Oregon law.
  - b. **Negotiation.** To the extent reasonably practical, LTD shall negotiate with the Sole Source to obtain contract terms advantageous to LTD. (ORS 279B.075 (3))
  - c. Exercise of Options. See Section 24, regarding Exercise of Options.
  - d. Cost Analysis Required. See Section 11.4, regarding Cost Analysis.
- 8.3 Single Bid or Single Proposal. Upon receiving a single bid or single proposal in response to a solicitation, the Procurement Supervisor/Manager should make a written determination of whether the competition was adequate. This determination should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.
- 8.4 **Emergency Contracts.** The CEO or the CRB may make or authorize others to make

**emergency procurements of goods or services in an emergency. LTD shall document the nature of the emergency and describe the source selection methods used for the procurement.**

- a. **For an emergency procurement of construction services that are not public improvements, LTD shall ensure competition for a contract for the emergency work that is reasonable and appropriate under the emergency circumstances. In conducting the procurement, LTD shall set a solicitation time period that LTD determines to be reasonable under the emergency circumstances and may issue written or oral requests for offers or make direct appointments without competition in cases of extreme necessity. (ORS 279B.080).**

8.5 **Less Than Full and Open Competition – When Prohibited.** Less than full and open competition is not justified based on:

- a. **Failure to Plan.** LTD’s lack of advance planning; or
- b. **Limited Availability of Federal Assistance.** Concerns about the amount of Federal assistance available to support the procurement (for example, the expiration of Federal assistance previously available for award).

8.6 **Procurement Procedures (Less Than Full and Open Competition).** When less than full and open competition is available, LTD shall:

- a. **Potential Sources.** Solicit offers from as many potential sources as is practicable under the circumstances.
- b. **Sole Source Justification.** If the item is only available from only one source, the Contract Manager shall complete and submit to Procurement a “Sole Source Justification” Form as soon as they become aware of the potential sole source procurement. See Section 24, regarding Evaluation of Options.
- c. **Cost Analysis.** The Contract Manager shall prepare a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits. The Contract Manager shall submit the Cost Analysis to the Procurement Supervisor/Manager for review and approval. See Section 11.4 regarding Cost or Price Analysis.
- d. **Pre-award Review.** If federal funds are or may be involved, the Procurement Supervisor/Manager shall submit the proposed procurement to FTA for pre-award review only if the FTA so requests.

## **SECTION 9 – PERSONAL SERVICES CONTRACT SELECTION PROCEDURES**

**Pursuant to ORS 279A.055 and 279A.065 (6), the Board of Directors, as the CRB, may: (a) designate certain contracts as Personal Services contracts; and (b) adopt rules of procedure for selection of such Personal Services contracts in lieu of the Oregon Model Rules for public contracting set forth in the Oregon Administrative Rules (OAR) Chapter 137, Division 046 to 049.**

**This Section 9 constitutes LTD’s procedures for the screening and selection of Personal Services contracts.**

- 9.1 **Definitions.** The following terms have the meanings set forth herein. Any term not defined herein shall have the definition set forth under the Oregon Public Contracting Code (ORS Ch. 279A- C) or the Oregon Model Rules (OAR 137-046 to 049).

- a. **Proposal**. An offer to provide Personal Services whether formal or informal as designated below.
- b. **Personal Services**. Services where the skill, ability, resources, knowledge or expertise of an independent contractor are of paramount importance. Personal Service contracts include, but are not limited to, the following:
  - i. Contracts for services performed in a professional capacity or as a consultant including but not limited to services of an accountant; actuary; auditor; attorney; banker; insurance agent; information technology consultant; lobbyist, or marketing specialist.
  - ii. Contracts for services as an artist in the performing or fine arts.
  - iii. Contracts for services where the primary purpose is to provide transit-related expertise in a professional capacity or as a consultant.
  - iv. Contracts for services where the primary purpose is to provide procurement-related expertise in a professional capacity or as a consultant.
  - v. Contracts for services that are specialized, creative, or research oriented.
- c. **Professional Services**. As used herein, Personal Services does not include Professional Services, as defined in ORS 279C.100 to .125, which means, “architectural, engineering, photogrammetric mapping, transportation planning or land surveying services,” or Related Services. Professional Services and Related Services are subject to the requirements of ORS Ch. 279C and OAR Chapter 137, Division 048.

9.2 **Method of Procurement**. Based on the estimated total cost of a Personal Services Contract (PSC), the following methods of procuring Personal Services shall be used, unless an exemption applies, pursuant to Section 9.4:

- a. **Direct Negotiation – Personal Services Contracts of \$25,000 or Less**. When a nonexempt Personal Services contract is estimated to be \$25,000 or less, a Personal Services contractor may be selected by direct selection or award, so long as the quality of service offered by the Personal Services contractor is sufficient for LTD’s particular needs under the circumstances, the cost to LTD is fair and reasonable under the circumstances, and the award is in all other respects in LTD’s best interests.
- b. **Informal Solicitation – Personal Services Contracts Over \$25,000 But Not Over \$250,000**. When a nonexempt Personal Services contract is estimated to be more than \$25,000 but not more than \$250,000, informal Proposals or price quotes, may be solicited. Informal Proposals or price quotes shall be solicited from a sufficient number of qualified prospective proposers to ensure no fewer than three (3) qualified proposers submit Proposals or price quotes. If three quotes or Proposals are not reasonably available, fewer will suffice, and the efforts made to solicit Proposals or price quotes shall be documented in LTD’s files.
- c. **Formal Solicitation – Personal Services Contracts greater than \$250,000**. When a nonexempt Personal Services contract is estimated to exceed \$250,000, LTD shall award the nonexempt Personal Services contract by competitive sealed bidding under ORS 279B.055 or by competitive sealed proposals under ORS 279B.060 and the applicable Model Rules.



- 9.3 **Prequalification of Prospective Proposers.** A pool of prospective proposers may be established for a particular type of Personal Services contract by soliciting statements of qualification from individuals or firms that may be qualified to perform those particular Personal Services pursuant to ORS 279B.120 and corresponding statutes and administrative rules.
- 9.4 **Exemptions.** Procuring a Personal Services contract under one of the exemptions set forth herein is a non-standard procurement that requires written approval of the CEO and the Director of Procurement (or designee(s)) to enter into an agreement. In accordance with the levels of contracting authority requirements set forth in LTD Resolution No. 2024-08-21-023, Personal Services contracts entered into pursuant to an exemption under this Section and estimated to exceed \$250,000 shall be presented to the CRB for approval.
- a. **Sole Source.** If only one individual or firm is qualified and available to perform a Personal Services contract, a contract may be awarded to that individual or firm without competition. The requirements of ORS 279B.075 do not apply.
  - b. **Unique or Specialized Knowledge or Expertise.** A Personal Services contract may be awarded without competition if the contractor has unique or specialized knowledge or expertise required by LTD, and soliciting informal or formal proposals from others would not be in LTD's best interests.
  - c. **Emergency.** A Personal Services contract may be awarded without competition if prompt execution of a contract is necessary in an Emergency, as that term is defined in ORS 279A.010 (1)(f).
- 9.5 **Protests.** For purposes of this Section 9, the following protest requirements shall apply.
- a. **Purpose.** An Affected Person may protest the award of a Personal Services contract, or a notice of intent to award a Personal Services contract, whichever comes first. Before seeking judicial review of the award of a Personal Services contract, an Affected Person must file a Written protest with LTD and exhaust all administrative remedies.
  - b. **Delivery.** Unless otherwise specified, an Affected Person must deliver a Written protest to LTD within seven (7) Days after award of a Personal Services contract, or issuance of the notice of intent to award a Personal Services contract, whichever comes first.
  - c. **Content of Protest.** The Written protest must include those requirements set forth in OAR 137-047-0740 and any other requirements set forth in this Policy.
  - d. **Contract Review Authority Response.** LTD shall not consider an Affected Person's protest submitted after the timeline established for submitting such protest.
  - e. **Judicial Review.** An Affected Person may seek judicial review of LTD's decision relating to a protest of the award of a Personal Services contract only after the Affected Person has exhausted all administrative remedies set forth in this Procurement Policy and in accordance with the requirements of Oregon law.
- 9.6 **Federal Funds.** Notwithstanding any provision herein, LTD shall comply with applicable requirements in FTA Circular 4220.1F for Personal Services contracts funded with federal funds in accordance with applicable law.
- 9.7 **Termination of Personal Service Contracts for General Counsel.** LTD's General Counsel is retained in accordance with LTD's Personal Services Contract Selection Procedures. In accordance with Board of Directors Governance Policy Manual, Section 100.10.8,

**General Counsel represents LTD as a public entity and reports directly to the Board. Accordingly, General Counsel’s services may be terminated only in accordance with Board Policy 100.10.8, as amended.**

## SECTION 10 – JOINT AND COOPERATIVE PROCUREMENTS

10.1 Joint Procurements. The term “joint procurement” means a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a contractor for delivery of property or services in a fixed quantity, even if expressed as a total minimum and total maximum. LTD shall conduct any joint procurement in compliance with this Section.

- a. Federal Requirements. When obtaining goods or services through a joint procurement, LTD must ensure compliance with all applicable FTA and other federal requirements.
- b. State or Local Government Purchasing Schedules or Purchasing Contracts. LTD may, and is encouraged to do by FTA, use State or Local Government Purchasing Schedules, in accordance with the FTA Circular 4220.1F.
  - i. **Use of a State or Local Purchasing Schedule is a “joint cooperative procurement” under Oregon law. A joint cooperative procurement is valid only if:**
    1. **The administering contracting agency’s solicitation and award process for the original contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified under ORS 279B.055, 279B.060, or 279B.085 or uses a competitive bidding process substantially equivalent to the competitive bidding process in ORS Chapter 279C;**
    2. **The administering contracting agency’s solicitation and the original contract or price agreement identifies the cooperative procurement group or each participating purchasing contracting agency and specifies the estimated contract requirements; and**
    3. **No material change is made in the terms, conditions, or prices of the contract between the contractor and LTD from the terms, conditions, and prices of the original contract between the contractor and the administering contracting agency. (ORS 279A.210)**
  - ii. **Also see Section 10.3(d) regarding requirements for interstate cooperative procurements, which applies when one or more of the participating governmental bodies are located outside of Oregon.**

10.2 Federal Excess and Surplus Property. The Common Grant Rule for governmental recipients encourages recipients to use Federal excess and surplus property managed by GSA, when feasible and economical, rather than procuring new property. The GSA Federal Property Management Regulations, 41 CFR Parts 101-42 through 101-46, 101-48, and 101-49 govern the eligibility of recipients and subrecipients, as well as others, to acquire supplies and services through GSA’s personal property utilization and disposal programs.

- a. **Limited Use of Federal Supply Schedules**. Federal laws authorize State and Local Governments (including institutions of higher education) to use Federal Supply Schedules to acquire information technology (IT) and to purchase products and services to facilitate recovery from a major disaster. In both circumstances, GSA defines the term “State and Local Government” broadly to include many FTA governmental recipients and

others as follows: The States of the United States, counties, municipalities, cities, towns, townships, tribal governments, public authorities (including public or Indian housing agencies under the United States Housing Act of 1937), school districts, colleges, and other institutions of higher education, council of governments (incorporated or not), regional or interstate government entities, or any agency or instrumentality of the preceding entities (including any local educational agency or institution of higher education), and including legislative and judicial departments.

The use of Federal supply schedules is permitted, only in accordance with the FTA Circular 4220.1F, as may be amended. When using GSA schedules to acquire property or services, LTD must ensure all federal requirements, required clauses, and certifications are properly followed and included, whether in the master intergovernmental contract or in LTD's purchase document.

- i. Information Technology. Section 211 of the E-Government Act of 2002, 40 U.S.C. Section 502(c)(1), authorizes "State and local governments," within limits established by law, to acquire IT of various types through GSA's Cooperative Purchasing Program, Federal Supply Schedule 70.
  - ii. Major Disaster or Emergency Recovery. Since February 1, 2007, Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364, amended 40 U.S.C. Section 502(d), to authorize State and local government entities to use any GSA Federal Supply Schedule to acquire property and services in advance of a major disaster declared by the President of the United States, as well as in the aftermath of an emergency event. The State or local government is then responsible for ensuring that the property or services acquired will be used for recovery.
  - iii. Local Preparedness Acquisition. Section 2 of the Local Preparedness Acquisition Act, Pub. L. 110-248, June 26, 2008, amended 40 U.S.C. Section 502(c) by adding paragraph (2) authorizing "State and local governments", within limits established by law, to acquire law enforcement, security and certain related items of various types through GSA's Cooperative Purchasing Program Federal Supply Schedule 84 or any amended or later version of that Federal supply classification group.
- b. **Use of a Federal Supply Schedule is an "interstate cooperative procurement" under Oregon law. An interstate cooperative procurement is only valid if:**
- i. **The administering contracting agency's solicitation and award process for the original contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified under ORS 279B.055, 279B.060, or 279B.085 or uses a competitive bidding process substantially equivalent to the competitive bidding process in ORS Chapter 279C;**
  - ii. **The administering contracting agency's solicitation and the original contract or price agreement identifies the cooperative procurement group or each participating purchasing contracting agency and specifies the estimated contract requirements; and**
  - iii. **The administering contracting agency permits the contractor to extend the use of the terms, conditions, and prices of the original contract to LTD.**
  - iv. **In addition to the above, the following requirements apply:**

1. LTD, or the cooperative procurement group of which LTD is a member, must be listed in the solicitation of the administering contracting agency as a party that may establish contracts or price agreements under the terms, conditions, and prices of the original contract, and the solicitation must be advertised in Oregon; or
  2. LTD, or the cooperative procurement group of which LTD is a member, shall advertise a notice of intent to establish a contract or price agreement through an interstate cooperative procurement.
- c. **Notice of Intent.** The Notice of Intent must include:
- i. A description of the procurement;
  - ii. An estimated amount of the procurement;
  - iii. The name of the administering contracting agency; and
  - iv. A time, place and date by which comments must be submitted to LTD regarding the intent to establish a contract or price agreement through an interstate cooperative procurement.
- d. **Public Notice.** Public notice of the intent to establish a contract or price agreement through an interstate cooperative procurement must be given in the same manner as provided in ORS 279B.055 (4)(b) and (c). Unless otherwise specified in Oregon’s Model Rules, LTD shall give public notice at least seven (7) days before the deadline for submission of comments regarding the intent to establish a contract or price agreement through an interstate cooperative procurement.
- i. If LTD is required to provide notice of intent to establish a contract or price agreement through an interstate cooperative procurement:
    1. LTD shall provide vendors who would otherwise be prospective bidders or proposers on the contract or price agreement, if the procurement were competitively procured under ORS Chapter 279B, an opportunity to comment on the intent to establish a contract or price agreement through an interstate cooperative procurement.
    2. Vendors must submit comments within seven (7) days after the notice of intent is published.
    3. If LTD receives comments, before LTD may establish a contract or price agreement through the interstate cooperative procurement, LTD shall make a written determination that establishing a contract or price agreement through an interstate cooperative procurement is in the best interest of LTD. LTD shall provide a copy of the written determination to any vendor that submitted comments.

10.3 Existing Contracts. LTD may find it advantageous to use existing contract rights. “Existing contract” means a contract that, when formed, was intended to be limited to the original parties thereto, and does not include State or local government purchasing schedules (discussed above). LTD may only use existing contract rights consistent with the FTA Circular 4220.1F, Oregon law, and as is set forth in this Section and Section 24.

- a. Exercise of Options. LTD may use contract options held by another FTA recipient with the following limitations:

- i. Consistency with Underlying Contract. LTD must ensure that the terms and conditions of the option it seeks to exercise are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded.
  - ii. Price. LTD may not exercise an option unless it has determined that the option price is better than prices available in the market, or that when it intends to exercise the option, the option is more advantageous.
  - iii. Awards Treated as Sole Source Procurements. FTA assistance may be used to support a sole source award only if that award can be justified under FTA's third-party contract standards for sole source awards. The following actions constitute sole source awards:
    - 1. Failure to Evaluate Options Before Awarding the Underlying Contract. If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award.
    - 2. Negotiating a Lower Option Price. Exercising an option after LTD has negotiated a lower or higher price will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or that price results from Federal actions that can be reliably measured, such as changes in Federal prevailing labor rates, for example.
- b. Assignment of Contract Rights. This is also referred to as "piggybacking." LTD may use contractual rights obtained through assignment after first determining that the original contract price remains fair and reasonable, and the original contract provisions are adequate for compliance with all Federal requirements.
- i. **Use of another agency's existing contract is a "permissive cooperative procurement" under Oregon law. A permissive cooperative procurement is only valid if:**
    - 1. **The administering contracting agency's solicitation and award process for the original contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified under ORS 279B.055 or 279B.060;**
    - 2. **The administering contracting agency's solicitation and the original contract allow other agencies to establish contracts or price agreements under the terms, conditions and prices of the original contract;**
    - 3. **The contractor agrees to extend the terms, conditions and prices of the original contract to LTD; and**
    - 4. **No material change is made in the terms, conditions or prices of the contract or price agreement between the contractor and LTD from the terms, conditions and prices of the original contract between the contractor and the administering contracting agency.**
  - ii. **Public Notice.** LTD shall provide public notice of intent to establish a contract or price agreement through a permissive cooperative procurement if the estimated amount of the procurement exceeds \$250,000. Public notice of the intent to establish a contract or price agreement through an interstate

**cooperative procurement must be given in the same manner as provided in ORS 279B.055 (4)(b) and (c). Unless otherwise specified in Oregon’s Model Rules, LTD shall give public notice at least seven (7) days before the deadline for submission of comments regarding the intent to establish a contract or price agreement through an interstate cooperative procurement.**

- 1. If LTD is required to provide notice of intent to establish a contract or price agreement through an interstate cooperative procurement:
  - a. LTD shall provide vendors who would otherwise be prospective bidders or proposers on the contract or price agreement, if the procurement were competitively procured under ORS Chapter 279B, an opportunity to comment on the intent to establish a contract or price agreement through an interstate cooperative procurement.**
  - b. Vendors must submit comments within seven (7) days after the notice of intent is published.**
  - c. If LTD receives comments, before LTD may establish a contract or price agreement through the interstate cooperative procurement, LTD shall make a written determination that establishing a contract or price agreement through an interstate cooperative procurement is in the best interest of LTD. LTD shall provide a copy of the written determination to any vendor that submitted comments.****
- 2. Notice of Intent. The Notice of Intent must include:
  - a. A description of the procurement;**
  - b. An estimated amount of the procurement;**
  - c. The name of the administering contracting agency; and**
  - d. A time, place and date by which comments must be submitted to LTD regarding the intent to establish a contract or price agreement through an interstate cooperative procurement. (ORS 279A.215 (2)(b)).****

## **SECTION 11 – NECESSITY, LEASE VERSUS PURCHASING**

- 11.1 Unnecessary Reserves.** LTD will limit the acquisition of property and services to the amount it needs to support its transit system.
- 11.2 Acquisition for Assignment Purposes.** LTD may only contract for its current and reasonably expected public transportation needs and may not add quantities or options to third party contracts solely to permit assignment to another party at a later date. These limits are not intended to preclude joint procurements entered into in accordance with applicable law and rules.
- 11.3 Economic Purchasing.** Procurement activity will be reviewed by the Procurement Supervisor/Manager at least annually to determine if certain classes of purchases should be consolidated or broken out to obtain more economic pricing. Analysis will also be made of lease versus purchase alternatives or any other appropriate methodology to determine the most economical approach.
- 11.4 Cost or Price Analysis.** A Cost or Price Analysis must be made for every formal procurement, including Contract modifications, as outlined in FTA Circular 4220.1F, as amended. The Contract

Manager shall be responsible for completing the Cost or Price Analysis and providing it to the Procurement Supervisor/Manager for review and approval prior to any Contract award or modification. See Section 7.4 for Price Analysis requirements for Micro-Purchases and Sections 7.5 for Price Analysis requirements for Small Purchases.

- a. Price Analysis. If competition was adequate, a price analysis is used to determine the reasonableness of the proposed contract price. Common reasons supporting a price analysis of fair and reasonable pricing include but are not limited to:
  - i. Catalog or market prices offered in substantial quantities to the general public;
  - ii. Regulated prices (for example, for many utilities purchases); or
  - iii. A comparison with recent prices for similar goods and services.
- b. Cost Analysis. A cost analysis must be performed when a price analysis will not provide sufficient information to determine the reasonableness of the contract cost.
  - i. Applicability. The Contract Manager must perform a cost analysis when:
    1. The Offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost (such as professional consulting and A&E contracts); or
    2. 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.
  - ii. Profit. 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.
  - iii. Federal Cost Principles. 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.
  - iv. LTD can accomplish a cost 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.

## SECTION 12 – SOLICITATIONS

All Solicitation Documents shall satisfy the requirements set forth in this Section 12.

- 12.1 Clear Descriptions/Nonrestrictive Specifications. All Solicitation Documents shall include a clear and accurate description of the technical requirements for the material(s), product(s), or service(s) to be procured. The description may include a statement of the qualitative nature of the property or services to be acquired. When practicable, requirements should be described in terms of functions to be performed or level of performance required, including the range of

acceptable characteristics or minimum acceptable standards. In competitive procurements, the description may not contain features that unduly restrict competition. Except as set forth in Section 12.3 below, specifications 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 herein 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.

- 12.2 Quality Requirements/Preference for Performance Specifications. Detailed product specifications should be avoided if at all possible. A description may include a statement of the qualitative nature of the material(s), product(s), or service(s) to be procured and, when necessary, describe minimum essential characteristics and standards to which the property or services must conform if it is to satisfy LTD’s intended use.
- 12.3 Brand Name or Equal. When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the property or services to be acquired, a “brand name or equal” description may be used to define the performance or other salient characteristics of a specific type of property. The salient characteristics of the named brand must be identified in the Solicitation Documents. **Any brand name or equal specification must comply with the requirements of ORS 279B.215.**
- 12.4 Preferences. LTD shall state in all Solicitation Documents what preferences apply to the solicitation, if any. See Sections 7.2 (f) and 16.1 (a) for the application of geographic preferences.
- 12.5 Time for Acceptance. LTD shall state in all Solicitation Documents that Offers are “Firm Offers,” irrevocable and binding on the Offeror not less than ninety (90) days from the Closing Date, unless otherwise specified in the Solicitation Document.
- 12.6 Solicitation Documents, Terms and Conditions. In addition to the requirements set forth in this Section 12, the Procurement Supervisor/Manager may include any other special terms and conditions applicable to the procurement and the contracts to be awarded so long as those terms and conditions are consistent with the requirements of this Section 12, the FTA Circular 4220.1F, and Oregon law.
- 12.7 **Solicitation Documents for Goods and Services. As used in this Section 12.7, “bids” shall be read to include “proposals” and “invitation to bid” shall be read to include “request for proposals.” The Solicitation Documents must:**
  - a. **Specify a time and date by which the bids must be received and a place at which the bids must be submitted. LTD may receive bids by electronic means or direct or permit a bidder to submit bids by electronic means.**
  - b. **Specify the name and title of the person designated to receive bids and the person LTD designates as the contact person for the procurement, if different.**
  - c. **Describe the procurement. In the description, LTD shall identify the scope of work included within the procurement, outline the contractor’s anticipated duties and set expectations for the contractor’s performance. Unless LTD for good cause specifies otherwise, the scope of work shall require the contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services.**
  - d. **Specify a time, date and place for prequalification applications, if any, to be filed and the classes of work, if any, for which bidders must be prequalified in accordance with ORS 279B.120.**
  - e. **State that LTD may cancel the procurement or reject any or all bids in accordance**



with ORS 279B.100;

- f. **Require the contractor or subcontractor to possess an asbestos abatement license, if required under ORS 468A.710;**
- g. **Include all contractual terms and conditions applicable to the procurement, including those terms required under federal or Oregon law. See Section 12.10 for required contract terms. The contract terms and conditions shall specify clear consequences for a contractor's failure to perform the scope of work identified in the invitation to bid or the contractor's failure to meet established performance standards. (ORS 279B.055, 279B.060)**

12.8 **Solicitation Documents for Architectural & Engineering Services (Professional Services). LTD shall include the following in each Request for Proposals, whether or not the Request for Proposals is preceded by a Request for Qualifications:**

- a. **General background information, including a description of the project and the specific professional services sought for the project, the estimated project cost, the estimated time period during which the project is to be completed, the estimated time period in which the specific professional services sought will be performed;**
- b. **The RFP evaluation process and the criteria which will be used to select the most qualified proposer, including the weights, points, or other classifications applicable to each criterion. If LTD does not indicate the applicable number of points, weights, or other classifications, then each criterion is of equal value;**
- c. **Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the project, including but not limited to construction services;**
- d. **Whether interviews are possible and if so, the weight, points, or other classifications applicable to the potential interview;**
- e. **The date and time Proposals are due, and the delivery location for Proposals;**
- f. **Reservation of the right to seek clarifications of each Proposal;**
- g. **Reservation of the right to negotiate a final Contract that is in the best interest of LTD;**
- h. **Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at any time if doing either would be in the public interest as determined by LTD;**
- i. **A statement that Proposers responding to the RFP do so solely at their expense, and LTD is not responsible for any Proposer expenses associated with the RFP;**
- j. **A statement directing Proposers to LTD's protest procedures;**
- k. **Special contract requirements, including federal requirements when federal funds are involved;**
- l. **A statement whether or not LTD will hold a pre-Proposal meeting and if a pre-Proposal meeting will be held, the location of the meeting and whether attendance is mandatory**
- m. **A request for any information LTD deems reasonably necessary to permit LTD to evaluate, rank and select the most qualified Proposer to perform the professional**

services described in the RFP; and

n. **A sample form of Contract. (OAR 137-048-0220 (4)).**

**12.9 Solicitation Documents for Construction Services. LTD shall, at a minimum, include in the Solicitation Documents:**

- a. **A designation for or description of the public improvement project;**
- b. **The office where the specifications for the project may be reviewed;**
- c. **The date that prequalification applications must be filed and the class of work for which bidders must be prequalified if prequalification is a requirement;**
- d. **The date and time after which bids will be received, which must be at least five (5) days after the date of the last publication of the advertisement, and may, in the sole discretion of LTD, direct or permit bidders to submit and the contracting agency to receive bids by electronic means;**
- e. **The name and title of the person designated to receive bids;**
- f. **The date on which and the time and place at which LTD will publicly open the bids;**
- g. **A statement that, if the contract is for a public works project subject to the state prevailing rates of wage under ORS 279C.800 to 279C.970, the federal prevailing rates of wage under the Davis-Bacon Act (40 U.S.C. § 3141 et seq.), LTD will not receive or consider a bid unless the bid contains a statement by the bidder that the bidder will comply with ORS 279C.838 or 279C.840 or 40 U.S.C. 3141 et seq.;**
- h. **A statement that each bid must identify whether the bidder is a resident bidder, as defined in ORS 279A.120;**
- i. **A statement that LTD may reject a bid that does not comply with the prescribed public contracting procedures and requirements and that LTD may reject for good cause all bids after finding that doing so is in the public interest;**
- j. **Information addressing whether a contractor or subcontractor must be licensed under ORS 468A.720; and**
- k. **A statement that LTD may not receive or consider a bid for a public improvement contract unless the bidder is licensed by the Construction Contractors Board or the State Landscape Contractors Board (ORS 279C.365).**

**12.10 Sample Contracts. A sample contract, approved by the Procurement Supervisor/Manager shall be included with all formal solicitations, in accordance with Oregon law. For all federally funded projects, LTD shall require as part of the terms and conditions of all Contracts, all applicable provisions of the FTA Master Agreement, as amended, and all applicable provisions of the FTA Circular 4220.1F, as amended.**

- a. **Liquidated Damages Provision. LTD may include a liquidated damages provision in its contract documents if LTD reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. The rate and measurement standards must be calculated to reasonably reflect LTD's costs should the standards not be met, and must be specified in the Solicitation Documents and Contract. The procurement file should include a record of any calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account involved unless FTA permits otherwise.**

## SECTION 13 – PUBLIC NOTICE, ADVERTISING REQUIREMENTS

- 13.1 Public Notice Required. LTD shall provide public notice of every formal Solicitation Document in accordance with this Section.
- 13.2 **Public Notice of Solicitation Documents. The CRB authorizes the advertisement of formal Solicitation Documents via LTD’s Electronic Procurement System, in lieu of advertisement in a newspaper or trade journal. However, advertisements for Public Improvement contracts with an expected contract price of \$125,000 or more shall also be advertised in at least one trade journal or newspaper of statewide circulation in accordance with Oregon law. Notwithstanding the foregoing, the Procurement Supervisor/Manager and/or Contract Manager may elect to also provide notice of the Solicitation by:**
- a. **Mailing notice of availability of Solicitation Documents to any prospective Offers that have expressed an interest in LTD’s procurements;**
  - b. **Placing notice on LTD’s web site; or**
  - c. **Providing formal notice in a newspaper of general circulation in the area where the contract is to be performed or in a trade journal of statewide circulation. (OAR 137-047-0300 (2), OAR 137-048-0220(2), OAR 137-049-0210 (2)).**
- 13.3 **Content of Advertisement for Goods and Services. All advertisements for Offers shall set forth:**
- a. **Where, when, how, and for how long the Solicitation Document may be obtained;**
  - b. **A general description of the Goods or Services to be acquired;**
  - c. **The interval between the first date of public notice of the Solicitation Document and Closing shall not be less than fourteen (14) days for an Invitation to Bid and thirty (30) days for a Request for Proposals, unless LTD determines that a shorter interval is in the public’s interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of public notice of the Solicitation Document and Closing be less than seven (7) days. LTD shall document the specific reasons for the shorter public notice period in the Procurement file. (OAR 137-047-0300(3)(c), ORS 279B.055 (4)(f).**
  - d. **The date that persons must file applications for prequalification if prequalification is a requirement and the class of Goods or Services is one for which persons must be prequalified.**
  - e. **The office where Contract terms, conditions and Specifications may be reviewed;**
  - f. **The name, title and address of the individual authorized by LTD to receive Offers;**
  - g. **The scheduled Opening; and**
  - h. **Any other information LTD deems appropriate. (OAR 137-047-0300(3)).**
- 13.4 **Content of Advertisement for Architectural & Engineering Services (Professional Services).**
- a. **LTD shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ or RFP, but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFQ or RFP.**
  - b. **LTD shall include a brief description of the following items in the advertisement:**

- i. The Project;
- ii. A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services LTD seeks;
- iii. How and where Consultants may obtain a copy of the RFQ or RFP; and
- iv. The deadline for submitting a Proposal or response to the RFQ or RFP. (OAR 137-048-0220 (2)).

**13.5 Content of Advertisement for Construction Contracts.**

- a. All advertisements for Offers shall set forth:
  - i. The Public Improvement project;
  - ii. The office where Contract terms, conditions and Specifications may be reviewed;
  - iii. The date that Persons must file applications for prequalification under ORS 279C.340, if prequalification is a requirement, and the class or classes of Work for which persons must be prequalified;
  - iv. The scheduled Closing, which shall not be less than five days after the date of the last publication of the advertisement;
  - v. The name, title and address of the LTD person authorized to receive Offers;
  - vi. The scheduled Opening; and
  - vii. If applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.970 or the Davis-Bacon Act (40 U.S.C. § 3141 to 3148) (OAR 137-049-0210 (2)(d)).

**SECTION 14 – PREQUALIFICATION**

- 14.1 Prequalification.** LTD may prequalify prospective bidders or proposers to submit bids or proposals to provide goods or services. LTD may determine the method of submitting prequalification applications, the information required in order to be prequalified and the forms to be used for submitting prequalification information for each procurement requiring prequalification.
- 14.2 LTD Response.** Upon receipt of a prequalification application, LTD shall investigate the prospective bidder or proposer as necessary to determine whether the prospective bidder or proposer is qualified. The determination shall be made in less than 30 days, if practicable. LTD shall notify the prospective bidder or proposer whether the bidder or proposer is qualified based on the standards of responsibility listed in ORS 279B.110 (2), the type and nature of contractors that the prospective bidder is qualified to compete for and the time period for which the prequalification is valid. If LTD does not prequalify a prospective bidder or proposer as to any contracts covered by the prequalification process, the notice must specify which of the standards of responsibility listed in ORS 279B.110 (2) the prospective bidder failed to meet. Unless the reasons are specified, the prospective bidder or proposer shall be deemed to have been prequalified in accordance with this Section. (See Section 16.3 for Standards of Responsibility).
- 14.3 Revocation of Prequalification.** If LTD subsequently discovers that a prospective bidder or proposer that prequalified under Sections 14.1 and 14.2, above, is no longer qualified, LTD may revoke the prequalification upon reasonable notice to the prospective bidder or

proposer, except that a revocation is invalid as to any contract for which an advertisement for bids or proposals has already been issued. (ORS 279B.120, 279B.125).

## SECTION 15 – BID OR PROPOSAL SECURITY

- 15.1 Goods and Services.** LTD may require bid or proposal security if LTD determines that bid/proposal security is reasonably necessary or prudent to protect the interests of LTD. LTD shall return the bid/proposal security to all bidders/proposers upon the execution of the contract. LTD shall retain the bid/proposal security if a bidder who is awarded a contract fails to promptly and properly execute the contract. For purposes of this Section, prompt and proper execution of the contract includes all action by a bidder/proposer that is necessary to form a contract in accordance with the invitation to bid/request for proposals, including posting performance security and submitting proof of insurance when the invitation to bid/request for proposals requires the submission. (ORS 279B.055, 279B.060). Notwithstanding the above, see Section 7.2 (b) regarding unnecessary bonding as a prohibited restriction on competition by the FTA.
- 15.2 Construction Services.** For public improvement contracts with a value, estimated by LTD, of more than \$100,000, LTD shall require a bidder to submit or post a surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008, cashier's check or certified check for all bids as bid security. (ORS 279C.365 (5)). Under FTA Circular 4220.1F, the bid guarantee is equivalent to five percent (5%) of the bid price. Any exception to this bid security requirement must be approved by the FTA.

## SECTION 16 – EVALUATION AND CONTRACT AWARD

- 16.1 Preferences.** LTD shall apply the following preferences in accordance with FTA Circular 4220.1F and Oregon law.
- a. Geographic Preferences.** Although mandated under Oregon law, there is a prohibition against geographic preferences under federal law. Refer to Section 7.2 (f)(iv) for the application of geographic preferences when construction related.
  - b. Preference for Recycled Materials.** Notwithstanding provisions of law requiring LTD to award a contract to the lowest responsible bidder or best proposer or provider of a quotation and subsection (b)(i), below, LTD shall give preference to the procurement of goods manufactured from recycled materials, if the goods are for any public use.
    - i. LTD shall give preference to goods that are certified to be made from recycled materials if:**
      - 1. The recycled product is available;**
      - 2. The recycled product meets applicable standards;**
      - 3. The recycled product can be substituted for a comparable nonrecycled product; and**
      - 4. The recycled product's costs do not exceed the costs of nonrecycled products by more than five percent (5%), or a higher percentage if a written determination is made by the CRB. (ORS 279A.125).**
- 16.2 Responsiveness.** LTD shall only award a contract to a responsible, responsive bidder or proposer. **“Responsive” means having the characteristic of substantial compliance in all material respects with applicable solicitation requirements. (OAR 137-046-0110 (33)).** The

Procurement Supervisor/Manager shall ensure that a responsiveness determination is made and in the contract file before a contractor is selected.

- 16.3 **Responsibility.** LTD shall only award a contract to a responsible, responsive bidder or proposer. "Responsibility" is defined in the FTA Circular 4220.1F and **supplemented by Oregon law, and Oregon Administrative Rules.** The Director of Procurement (or designee) shall ensure the applicable Responsibility Determination Form is completed prior to contract award and is in the procurement file.

## SECTION 17 – PERFORMANCE BOND AND PAYMENT BOND REQUIREMENTS

- 17.1 **Construction Services. Performance bond; payment bond; waiver of bonds. Except as provided in ORS 279C.390, a successful bidder for a public improvement contract shall promptly execute and deliver to the contracting agency the following bonds:**
- a. **Performance Bond. A performance bond in an amount equal to the full contract price conditioned on the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. The performance bond must be solely for the protection of LTD. LTD may permit the successful bidder to submit a cashier's check or certified check in lieu of all or a portion of the required performance bond. (ORS 279C.380).**
  - b. **Payment Bond. A payment bond in an amount equal to the full contract price, solely for the protection of claimants under ORS 279C.600 and ORS 279C.380.**
  - c. **Surety. Each performance bond and each payment bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in the State of Oregon. The bonds may not constitute the surety obligation of an individual or individuals. The performance and payment bonds must be payable to LTD, as specified in the Solicitation Documents, and shall be in a form approved by LTD. (ORS 279C.380).**
  - d. **Exceptions. Pursuant to ORS 279C, the CRB may exempt certain contracts, or classes of contracts, from a portion of the requirement that good and sufficient bonds be furnished to ensure payment of obligations incurred in the performance, but only so long as the exemption is consistent with the FTA's minimum bonding requirements, as is set forth in the FTA Circular 4220.1F.**

## SECTION 18 – DOCUMENTATION OF AWARD

- 18.1 **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.
- 18.2 **Contents of Award Record.** LTD's record shall consist of the following:
- a. Offers received by LTD.
  - b. If in response to an IFB, the completed Bid tabulation sheet and written justification for any rejection of lower Bids.
  - c. If in response to an RFP, the completed evaluation of Proposals and written justification for any rejection of higher scoring Proposals.
  - d. If applicable, written documentation of any discussions, negotiations, best and final Offers, or other procedures LTD used to select a Proposer to which LTD awarded a

Contract.

## SECTION 19 – INVENTORY AND DISPOSITION OF PERSONAL PROPERTY

The purpose of this Policy is to establish a consistent and compliant program for the appropriate and efficient inventory and disposition of all Personal Property procured by the Lane Transit District (“LTD” or “District”). Both State and Federal requirements and best practices have been incorporated into this policy and must be followed, as appropriate. This Policy is administered by LTD’s Procurement Department.

This Policy covers both purchased and leased Personal Property. It does not apply to the disposition of Real Property.

- 19.1 Definitions. The following terms have the meanings set forth herein. Any term not defined herein shall have the definition set forth under the Federal Transit Administration (“FTA”) Circular 5010.E or Oregon Revised Statutes (“ORS”) Ch. 267 and ORS Ch. 279A – 279C
- a. Equipment. “Equipment” means an article of nonexpendable, tangible District-owned property (including information technology systems) meeting the following requirements: (a) has a useful life of more than one-year; and (b) per-unit acquisition cost of \$5,000.00 or more. “Equipment” includes rolling stock, computing devices, information technology systems, and all other such property used in the provision of public transit service.
  - b. Federal Interest. “Federal Interest” means the dollar amount that is the product of: (1) the federal share of total project costs, and (2) the current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.
  - c. Fair Market Value. “Fair market value” means the most probable price that property would bring in a competitive and open market.
  - d. Federally-Funded Personal Property. “Federally-Funded Personal Property” means any Personal Property that was acquired with Federal assistance.
  - e. Locally-Funded Personal Property. “Locally-Funded Personal Property” means any Personal Property that was acquired without Federal assistance.
  - f. Personal Property. “Personal Property” means property other than Real Property. It may be tangible if it has a physical existence, or intangible, if it does not have a physical existence. “Personal Property” under this policy includes Equipment, Supplies, Capital Assets, Fixed Assets, and Project Property (as those terms are defined by FTA) and does not include Real Property.
  - g. Real Property. “Real Property” is land and anything permanently affixed to the land, such as buildings, fences, and those things attached to the buildings that, if removed, would deface the structure or integrity of the building, such as plumbing, heating fixtures, etc.
  - h. Rolling Stock. “Rolling Stock” describes Equipment that is used to transport passengers and includes buses, vans, cars, locomotives, trolley cars, ferryboats, light rails, streetcars, other rail vehicles and vehicles used for guideways and incline planes.
  - i. Supplies. “Supplies” mean all tangible Personal Property, other than Equipment, with a unit value of less than \$5,000.
  - j. Useful Life. “Useful Life”, for purposes of this policy, means the minimum acceptable period a capital asset purchased with FTA funds should be used in service. Capital assets purchased with FTA funds may frequently be used beyond their minimum useful lives, without being considered part of LTD’s state of good repair backlog.



## 19.2 Asset Tags and Inventory

- a. Applicability. Regardless of the source of funding, all new Equipment, Capital Assets, Fixed Assets, and Project Property (all Personal Property other than Supplies, including but not limited to computer equipment, printers, photocopiers, smartphones, tablets, laptops, cameras, maintenance equipment, and vehicle components) shall be tagged and inventoried upon receipt to LTD. Asset tagging shall be sufficiently permanent to survive in the event of theft or loss. Tagged assets shall be inventoried on existing Fixed Assets inventory lists for tracking, periodic inventory reconciliation, and eventual disposition purposes.
- b. Responsibility. Asset tagging and inventory listings shall be the responsibility of the LTD department initiating centralized orders for the Equipment, Capital Assets, Fixed Assets, or Project Property.
- c. Required Information. Inventory records<sup>3</sup> shall include the following information:
  - i. Asset Tag Number
  - ii. A description of the Asset
    1. Manufacturers make and model,
    2. Year of manufacture,
    3. Fuel Type
  - iii. The identification number or serial number;
  - iv. The entity or individual that holds title to the asset;
  - v. The source of funding (the FAIN number under which it was procured);
  - vi. ODOT Rail and Public Transit Division Vehicle Category (Attachment A)
  - vii. The acquisition date;
  - viii. The cost of the asset;
  - ix. The percentage of state/federal participation in the cost;
  - x. The location;
  - xi. The use and condition
  - xii. The seating capacity
  - xiii. The number of ADA stations;
  - xiv. The in-service date;
  - xv. The useful life; and
  - xvi. The disposition data, including the date of disposal and sale price, or, where applicable, method used to determine its fair market value.
- d. Updates. Inventory listings shall be updated when any change in this information occurs.
- e. Reconciliation. Physical inventory reconciliation shall be performed at least once every two years, with any differences investigated and the cause for the differences

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<sup>3</sup> Reference FTA C 5010.1E, page IV-33n(1) Management of Federally Assisted Property



determined/documented.

### 19.3 Disposition of Federally-Funded Personal Property<sup>4</sup>

- a. Generally. The procedures related to the disposition of Federally-Funded Personal Property depend on whether the property has reached the end of its Useful Life.
- b. How to Determine Useful Life. The Useful Life for some Personal Property is defined by FTA. Where the FTA has not defined a Useful Life, LTD must “make the case” to FTA in its grant application by identifying a Useful Life period for all Equipment, Capital Assets, Fixed Assets, and Project Property with an acquisition value greater than \$5,000, if the property is being procured with federal funds. LTD must identify the method used to determine an asset’s minimum Useful Life.
  - i. Acceptable methods to determine Useful Life include but are not limited to:
    1. Generally accepted accounting principles;
    2. Independent evaluation;
    3. Manufacturer’s estimated useful life;
    4. Internal Revenue Service guidelines;
    5. Industry standards;
    6. LTD experience;
    7. LTD’s independent auditor who needs to provide his or her concurrence that the Useful Life assigned to the property is reasonable for depreciation purposes; and
    8. Proven useful life developed at a federal test facility.
  - ii. Rolling Stock. FTA has determined the Useful Life for Rolling Stock based on the type of vehicle and size. For example, large, heavy-duty transit buses (approximately 35’ – 40’ or larger including articulated buses) have a Useful Life of at least 12 years of service, or an accumulation of at least 500,000 miles, whichever comes first. For Useful Life of other vehicles, see FTA Circular 5010.E, Ch. IV. For all Rolling Stock, the minimum Useful Life is calculated based on the date the vehicle is placed in revenue service and continues until it is removed from service.
- c. Disposition of Federally-Funded Personal Property *after* End of Useful Life.
  - i. Personal Property with a Value of \$5,000 or More. This Section 19.3(c)(i) provides all options for disposal of Federally-Funded Personal Property with a per-unit, or aggregate, fair market value of more than \$5,000. Applicable property shall not be disposed of in any other manner, except in accordance with the requirements stated herein:
    1. Procurement Approval. Procurement, in coordination with Finance, shall review, approve in advance, and coordinate any sales, disposals or transfers of Federally-Funded Personal Property which require FTA approval, reimbursement, and/or application of proceeds to other capital projects.<sup>5</sup>

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<sup>4</sup> Reference: Federal Transit Administration Circular 5010.1E, Chapter IV, rev. July 16, 2018

<sup>5</sup> FTA C 5010.1E, page IV-42

2. Disposal Options. After the Useful Life of Federally-Funded Personal Property is reached, or the property is no longer needed for the original Award, Federally-Funded Personal Property with a current market value exceeding \$5,000 per unit, or with a total aggregate fair market value of more than \$5,000, may be:
  - a. Retained by LTD and used for public transportation purposes; or
  - b. Sold; with the first \$5,000 of sales proceeds retained by LTD, and the remaining amount of sales proceeds retained by LTD and repaid to FTA in proportion to LTD's percentage of participation in the cost of the original purchase, as calculated in accordance with 49 U.S.C. § 5334(h) (4) (B).
- ii. Personal Property with a Value of less than \$5,000. Federally-Funded Personal Property which has reached the end of its Useful Life and which has a fair market value of less than \$5,000.00 may be disposed of by the following means, and without FTA approval, providing the nature and justification for the disposition is recorded in the corresponding inventory record:
  1. Retain and use for a different transit-related purpose within LTD;
  2. Sell through auction or other competitive process (where anticipated proceeds reasonably exceed the costs for processing); \*
  3. Recycled (for scrap or other re-purposing); \*
  4. Donated to a non-profit organization (where there is still some monetary value, but only small after processing costs are deducted); \*or
  5. Disposed of as waste (this should be considered the last alternative, and used only in cases where there is no value to the equipment and donation or recycling resources are not available).

*\*The best choice among these options shall be used after analyzing the overall loss and gain associated with disposal. A cost analysis shall be conducted, subtracting the anticipated costs for administrative, processing, and other disposal fees from the expected sale proceeds or the fair market value of the equipment.*
- d. Disposition of Federally-Funded Personal Property before End of Useful Life. This Section provides all options for disposal of Federally-Funded Personal Property, regardless of value, before the end of its Useful Life. Applicable property shall not be disposed of in any other manner, except in accordance with the requirements stated herein:
  - i. Procurement Approval. Any disposition of Federally-Funded Personal Property before the end of its Useful Life requires prior FTA approval. Therefore, any disposition of Federally-Funded Personal Property before the end of its Useful Life requires review and approval in advance from Procurement.
  - ii. Disposal Options. Federally-Funded Personal Property before the end of its Useful Life, and only with prior FTA approval, may be disposed of as follows:
    1. Rolling Stock that has not yet reached the end of its Useful Life may be transferred to another FTA recipient if LTD has acquired FTA approval

and Board resolutions from both parties.<sup>6</sup>

2. Under certain circumstances, Federally-Funded Personal Property no longer needed, which has not reached the end of its Useful Life may also be transferred to another public agency, for non-public transportation use, with prior FTA approval.
  3. With prior FTA approval, Equipment (e.g. vehicles) may be disposed of before the end of its minimum Useful Life and LTD may transfer the remaining federal interest to replacement Equipment of like kind.
- iii. Casualty, Fire, Natural Disaster, and Misused Property. LTD has obligations to the FTA in the event Federally-Funded Personal Property is damaged or destroyed before the end of its minimum Useful Life. In the event insurance proceeds are received due to the damage or destruction, LTD may have payment obligations to the FTA. In the event this Section 19.3(d)(iii) is applicable, see the requirements of FTA Circular 5010.1E, Ch. IV and work with LTD's Procurement.

#### 19.4 Disposition of Locally-Funded Personal Property<sup>7</sup>

- a. Oregon Public Contracting Rules Apply. The Oregon Public Contracting Code (ORS Ch. 279A – 279C) and Oregon Administrative Rules OAR Ch. 137, Division 046 – 049 apply to the “sale or other disposal” of Locally-Funded Personal Property. LTD may sell, transfer, or dispose of Locally-Funded Personal Property in accordance with the requirements, stated above, and as set forth in this Section 19.4.
- b. Procurement Approval. Any disposition of Locally-Funded Personal Property must be approved in advance by Procurement. The department seeking to dispose, transfer, or sell such property must make a determination that the proposed method of disposal: (a) complies with the requirements of the Oregon Public Contracting Code; and (b) is in the best interest of the District. Factors to consider in determining the method of disposal include, but are not limited to: costs of sale, administrative costs, processing fees, disposal fees, and public benefits to the District.
- c. Transfer to Other Government Entities. LTD may sell or transfer Locally-Funded Personal Property to another government entity, unless specifically prohibited by a particular State grant which funded the procurement of that property, and providing the property is used for public purpose or benefit and not for resale to a private purchaser. For any such transfer, the parties must enter into a written agreement to effect such transfer. The transfer must be approved in advance by Procurement and is subject to the delegated authority threshold established by the LTD Board of Directors.
- d. Sale. LTD may sell Locally-Funded Personal Property by auction, bids, liquidation sale, fixed price sale, trade-in or other competitive process. Proceeds from the sale must be used for public purpose or benefit.
- e. Disposal as Waste or Other Means. LTD may dispose of Locally-Funded Personal Property for which the costs of sale are likely to exceed sale proceeds. Such property may be disposed of by recycling, donation, or designation as waste. District employees making such a disposal shall make a record of the estimated value of the item and the manner of disposal.
- f. Restriction on Transfer to District Employees. LTD employees shall not compete for the

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<sup>6</sup> FTA C 5010.1E, page IV-43 Transfer of Rolling Stock-Recipient to Recipient

<sup>7</sup> Reference: Oregon Revised Statutes, Sections ORS Ch. 267 and ORS Ch. 279A-279C

purchase of publicly sold Personal Property. Further, Oregon Government Ethics Law (ORS Ch. 244) prohibits employees from using their office to obtain financial gain for the employee, a relative, or a member of the employee’s household. Receipt of surplus LTD Personal Property by an LTD employee, relative, or member of the employee’s household violates ORS 244.040 and is prohibited.

19.5 Other Mandates

- a. Disposition of Vehicles. LTD vehicles to be disposed of in any manner must also be properly documented as required by the State of Oregon Department of Motor Vehicles.<sup>8</sup>
- b. Communication regarding Disposition. LTD vehicles and asset-tagged Personal Property to be disposed of, removed from service, transferred in any manner, even if to long-term storage, must notify LTD’s Risk Generalist, in advance of any such transfer, to perform a risk management review and adjust insurance coverage as appropriate.

19.6 Acquisition and Disposition of Real Property

- a. Federally Funded Projects. For Federally-funded projects see FTA C 5010.1E, pages IV-1- 20, as well as Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as may be amended.
- b. Locally Funded Projects. For locally-funded projects see ORS Chapter 35 — Eminent Domain; Public Acquisition of Property as may be amended.

**SECTION 20 – PROTEST PROCEDURES**

In addition to those requirements set forth in the Oregon Public Contracting Code, the Model Rules, and the FTA Circular 4220.1F, the following procedures shall apply for any protests.

20.1 Solicitation Protests. The following requirements shall apply to a solicitation protest.

- a. Protest Submission. A protest of the Solicitation Documents must be marked as follows:

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Solicitation Document Protest  
Offeror’s Name or Other Identification

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Any such protest must be addressed to the Procurement Supervisor/Manager and must be received by LTD by the time identified in the Solicitation Documents.

- b. Protest to Procurement. LTD shall not consider a prospective Offeror’s solicitation protest submitted after the timeline established for submitting such protest. In accordance with Oregon law and rules, the LTD Procurement Office shall, reasonably and promptly, issue a written disposition of the protest. If the Procurement Office upholds the protest, in whole or in part, LTD may in its sole discretion issue an Addendum reflecting its disposition or cancel the procurement.
- c. Protest to the Procurement Supervisor/Manager. A prospective Offeror may appeal the Procurement Office’s written determination to the Procurement Supervisor/Manager. The protester must submit the written determination and this must be received by the Supervisor/Manager within forty-eight (48) hours of the prospective Offeror’s receipt of

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<sup>8</sup> Where applicable, also reference ODOT Rail and Public Transit Capital Program’s Process for Disposal, updated 6/2018, as may be amended; see Management of Grant-Funded Capital Assets Plan (DOC-X-AST-002)

the Office’s written disposition. In accordance with Oregon laws and rules, the Procurement Supervisor/Manager shall, reasonably promptly, issue a written disposition of the protest. If the Procurement Supervisor/Manager upholds the protest, in whole or in part, LTD may in its sole discretion issue an Addendum reflecting its disposition or cancel the procurement.

20.2 Protests of Contract Award. The following requirements shall apply to a protest of the contract award.

a. Protest Submission. A protest of the Contract Award must be marked as follows:

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Protest of Contract Award  
Offer Number or Other Identification  
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Any such protest must be addressed to the Director of Procurement and must be received by LTD by the time identified in the Solicitation Documents.

b. Protest to Procurement Supervisor/Manager. LTD shall not consider an Offeror’s selection protest submitted after the timeline established for submitting such protest. In accordance with Oregon law and rules, the LTD Procurement Supervisor/Manager shall, reasonably promptly, issue a written disposition of the protest. If the Procurement Supervisor/Manager 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.

c. Protest to Director of Procurement. An Offeror may appeal the Procurement Supervisor/Manager’s written determination to the Director of Procurement. The Director of Procurement must receive written determination within five (5) days of the Offeror’s receipt of the Procurement Supervisor/Manager’s written disposition. LTD shall not consider an Offeror’s protest submitted after the time established herein. In accordance with Oregon law and rules, the Director of Procurement shall, reasonably promptly, issue a written disposition of the protest. If the Director of Procurement 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.

d. Protest to CEO. An Offeror may appeal the Director of Procurement’s written determination to the CEO. Any protest of the Director of Procurement’s written determination must be received by LTD’s CEO within five (5) days of the Offeror’s receipt of the Director of Procurement’s written disposition. LTD shall not consider the protest submitted after the time established herein. In accordance with Oregon law and rules, the CEO shall, reasonably promptly, issue a written disposition of the protest. If the CEO 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.

20.3 Notice to FTA. In all instances involving FTA funds, the LTD Procurement Supervisor/Manager shall notify the FTA regarding any received protest and shall keep the FTA involved regarding the status of such protest.

20.4 Protest with the FTA. An adversely affected or aggrieved Offeror must exhaust all administrative remedies with LTD before pursuing any protest with the FTA for federally funded projects.

[SECTION 21 – CLAIMS REVIEW BOARD](#)

LTD may provide contractors the option to appeal decisions of an LTD Project Manager to the LTD Claims Review Board.

21.1 Composition of Claims Review Board. The Claims Review Board shall be comprised of the following individuals: Finance Committee President, CEO, and Legal Counsel.

21.2 Procedure. The procedures and timelines regarding a contractor's appeal to the Claims Review Board shall be set forth and governed by the contract. The Claims Review Board shall adopt any procedure not set forth in the contract at the time of the appeal.

## SECTION 22 – CONTRACT TYPES AND CONTRACT PAYMENTS

22.1 Contract Types. The Solicitation Documents must state the type of contract that will be awarded.

- a. Typical Contract Types. Contract types may include, but are not limited to, the following:
  - i. Firm Fixed Price. A firm fixed price contract includes a price that remains fixed irrespective of the contractor's cost experience in performing the contract. A firm fixed price contract may include an economic price adjustment provision, incentives, or both.
  - ii. Cost Reimbursement. A cost-reimbursement contract provides for payment of the contractor's allowable incurred costs, to the extent prescribed in the contract. Allowable costs may include incentives if LTD believes they can prove helpful. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract.
  - iii. Revenue Contracts. A revenue contract is a contract in which LTD or a subcontractor provides access to public transportation assets for the primary purpose of either producing revenues in connection with an activity related to public transportation, or creating business opportunities with the use of FTA assisted property. LTD has broad latitude in determining the extent and type of competition appropriate for a particular revenue contract, so long as all applicable rules and regulations are adhered to (including FTA Incidental Use guidance<sup>9</sup>). Nevertheless, to ensure fair and equal access to FTA assisted property and to maximize revenue derived from such property, LTD shall conduct its revenue contracting as follows:
    1. Limited Contract Opportunities. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then LTD shall use a competitive process to permit interested parties an equal chance to obtain that limited opportunity. **See Section 8 for Oregon requirements on procurement methods (other than full and open competition).**
    2. Open Contract Opportunities. If, however, one party seeks access to a public transportation asset (such as a utility that might seek cable access in a subway system), and LTD is willing and able to provide contracts or licenses to other parties similarly situated (since there is room for a substantial number of such cables without interfering with transit operations), then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties.

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<sup>9</sup> FTA C 5010.1E, Chapter IV *Management of the Award*

**See Section 7 for Oregon requirements on procurement methods (full and open competition).**

- b. Prohibited or Restricted Contract Types. The following contract types are restricted or prohibited:
  - i. Cost Plus a Percentage of Cost – Prohibited
  - ii. Percentage of Construction Cost – Prohibited
  - iii. Time and Materials – Restricted. The use of these contracts is permissible only:
    - 1. After determining that no other contract type is suitable; and
    - 2. If the contract specifies a ceiling price that the contractor may not exceed at its own risk.

22.2 **Contract Payment Provisions.** If LTD intends to use FTA assistance, or expects to be reimbursed with FTA assistance, or dedicates its local share funds to support contract costs it has financed, the payment provisions must be structured in accordance with FTA Circular 4220.1F and the provisions set forth in this Section.

- a. Advance Payments. LTD may not use FTA assistance to make payments to a third-party contractor before the contractor has incurred the costs for which payments would be attributable unless an exception applies.
- b. Progress Payments. Progress payments are payments for contract work that has not been completed in full. LTD may use FTA assistance to support progress payments provided LTD obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.
  - i. **Adequate Security for Progress Payments.** Adequate security for progress payments may include taking title, obtaining a letter of credit, or taking equivalent measures to protect LTD’s financial interest in the progress payment.
  - ii. **Adequate Documentation.** Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made.
  - iii. **Percentage of Completion Method.** Any progress payments for construction contracts shall be made on a percentage of completion method. LTD may not make progress payments for other than construction contracts based on this percentage method.
- c. **Retainage. On Public Improvement Contracts, LTD may retain amounts from progress payments pursuant to ORS 279C.550 to 279C.570 and the corresponding Oregon Administrative Rules. Further, LTD may accept surety bonds in lieu of retainage in accordance with HB 4006 (2024) and must do so if the contractor requests it.**

**SECTION 23 – CONTRACT ADMINISTRATION**

23.1 **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.

a. Above Micro-Purchase Threshold. For all contracts above the micro-purchase level, the Procurement Supervisor/Manager will ensure that the contract administration file includes the following:

- i. The executed contract and notice of award;
- ii. Performance and payment bonds, bond-related documentation, and correspondence with any sureties;
- iii. Contract-required insurance documentation;
- iv. Post-award (pre-performance) correspondence from or to the contractor or other Governmental agencies;
- v. Notice to proceed;
- vi. Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements;
- vii. 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;
- viii. 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;
- ix. Documentation regarding stop work and suspension of work orders and termination actions (convenience as well as default); and
- x. Documentation relating to contract close-out.

b. Micro-Purchases. 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.

23.2 Monitoring of Contracts. Inspection of goods and services shall be performed routinely during the life of the Contract by the Contract Manager, or his/her designees, 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.

23.3 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 Procurement Supervisor/Manager will delegate certain contract administration functions to the Contract Manager. The delegation must be in writing and must inform the Contract Manager what their duties are for that specific contract. When applicable, a delegation of authority document will be executed.

- 23.4 Written Procurement History. A record shall be maintained detailing the history of a procurement. At a minimum, the records shall include:
- a. The rationale for the method of procurement;
  - b. Selection of contract type;
  - c. Reasons for Contractor selection or rejections; and
  - d. The basis for the contract price.

## SECTION 24 – EVALUATING CONTRACT OPTIONS

- 24.1 Contract 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 comply with the requirements of this Section.
- a. Only Those Goods or Services Required. The use of options must be limited to quantities of goods or services that are reasonably anticipated to be required by LTD 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 LTD’s anticipated requirements, in accordance with FTA regulations and guidance.
  - b. Evaluate Options Pre-Contract Award. 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).
  - c. If an Option is Not Evaluated; Sole Source. 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. See Section 9.4 (a), regarding Sole Source Procurements.
  - d. Exercising an Option. 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. 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.
- 24.2 **Piggybacking.** LTD may exercise option contracts of other public agencies (“piggybacking”) in accordance with FTA regulations and guidance. **See Section 10.3 regarding Existing Contracts.**

## SECTION 25 – CONTRACT MODIFICATION

This Section 25 shall be read broadly to include any change to a Contract, which shall include, but is not limited to: Contract Amendment, Change Order, Extra Work, Field Orders or any other changes in the

## Contract Documents.

- 25.1 Contract Modification Process. Before an amendment or change order (change notice) to a contract or purchase order can be approved, the following steps must occur.
- a. Identify the Need for the Change. The Contract Manager shall identify the need for change, in writing. The Contract Manager shall determine that the change is desired or required and that it falls within the original scope of the project (as stated in the Solicitation Documents). If the change is beyond the scope of the contract, it must be analyzed as a sole source award. See Section 8.2, regarding Sole Source Awards. Unforeseen conditions that occur in a construction project that must be remedied to proceed with construction are allowable.
  - b. Perform Independent Cost Estimate. The Contract Manager must make an independent estimate of the cost of the change. This cost estimate shall be in writing. Refer to Section 6 regarding requirements for an Independent Cost Estimate.
  - c. Verify Change is Permitted by Law. The Contract Manager, in consultation with the Procurement Supervisor/Manager as necessary, shall verify the proposed change is permitted (without additional competition) in accordance with FTA Circular 4220.1F, Oregon law, and this Policy.
  - d. Contracts Authorized by Board. For contracts authorized by the CRB, individual or cumulate contract amendments cannot exceed twenty percent (20%) of the initial contract or \$250,000, whichever is less, without seeking additional approval from the Board.
  - e. Submission to Contractor / Consultant. Once the steps outlined in (a)-(d) are completed, the request for a proposal for the change must go to the Contractor or Consultant on the project, consistent with the terms of the contract, and giving a description of the change in whatever terms are needed to allow the Contractor/Consultant to respond.
  - f. Contractor's/Consultant's Proposal. The Contractor's/Consultant's responding 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.
  - g. Review of Contractor's/Consultant's Proposal. The Contract Manager shall review the Contractor's/Consultant's Proposal and perform a Cost or Price Analysis. Refer to Section 9 regarding requirements for a Cost or Price Analysis. This complete packet makes up the change order request package, which will be submitted to the Procurement Supervisor/Manager for review and approval.
- 25.2 Cost Restrictions. The cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of the FTA grant or cooperative agreement, and reasonable for completion of project scope.

## SECTION 26 – ELECTRONIC COMMERCE SYSTEM

- 26.1 Annual Notice of Intent to Advertise on Electronic System. At least annually, LTD shall advertise its Notice of Intent to Advertise procurements on its electronic procurement system. The Notice shall be published weekly, for not less than four (4) consecutive weeks, in at least one newspaper of general circulation for the Eugene/Springfield area. The Notice shall also be posted on LTD's website for not less than four (4) consecutive weeks. The Notice shall invite prospective contractors to request input into LTD's electronic procurement system, so that the prospective contractor receives notice of**

**LTD's procurements that are posted on such system. LTD may indicate in the Notice that any contractors already receiving electronic notice of LTD's procurements will continue to do so and need not respond to the Notice of Intent to Advertise.**



**LTD RESOLUTION NO. 2024-08-21-023**

**ADOPTING THE LTD PROCUREMENT POLICY AND  
DELEGATING CERTAIN AUTHORITY**

**WHEREAS**, the Lane Transit District (“LTD”) Board of Directors acts as the LTD Contract Review Board and may adopt rules by Resolution;

**WHEREAS**, the LTD Contract Review Board previously adopted the Oregon Model Rules, Section 137, Divisions 46, 47, 48, and 49, adopted by the Attorney General under Oregon Revised Statutes (“ORS”) 279A, 279B, and 279C, as they may be amended from time to time, as LTD’s Public Contracting Rules except as expressly provided otherwise in LTD’s Procurement Policy;

**WHEREAS**, the LTD Contract Review Board previously adopted the LTD Procurement Policy, as amended, on 5/14/2014, 6/22/2017, 9/16/2020, 9/15/2021; and

**WHEREAS**, the Local Contract Review Board wishes to adopt an amended version of the LTD Procurement Policy as well as delegate some of its authority while continuing to maintain adequate financial controls.

**NOW, THEREFORE, BE IT RESOLVED** by the LTD Board of Directors, acting as the LTD Contract Review Board:

1. LTD Procurement Policy. The LTD Procurement Policy, as presented, is hereby adopted. LTD hereby adopts the Oregon Model Rules, as they may be amended from time to time, as LTD’s Public Contracting Rules except as expressly provided otherwise in LTD’s Procurement Policy.
2. Levels of Contracting Authority. The LTD Contract Review Board hereby delegates to the Chief Executive Officer the authority and responsibility to approve, negotiate and execute procurements and contracts which do not exceed \$250,000.
3. Contract Amendments and Change Orders. For those contracts authorized by the LTD Board of Directors, the LTD Contract Review Board hereby delegates to the Chief Executive Officer the authority and responsibility to approve and execute contract amendments and change orders. Individual or cumulative contract amendments and change orders cannot exceed \$250,000 or twenty percent (20%) of the initial contract, whichever is less, without further approval of the LTD Board of Directors.
4. Routine Annual Procurements. The LTD Contract Review Board hereby delegates to the Chief Executive Officer the authority and responsibility to approve, negotiate, and execute routine annual procurements and contracts, regardless of amount, for operational goods and services including but not limited to diesel, fuel, gasoline, engine oil and lubricants, tires, bus batteries, bus and facilities parts, printing, proprietary software, and facilities maintenance.
5. Contract Documents. The LTD Contract Review Board hereby delegates to the Chief Executive Officer, the authority and responsibility to approve and execute all contract documents including purchase orders, blanket purchase orders, contracts, contract amendments, and change orders after any necessary authorization by the Board of Directors.
6. Sole Source. The LTD Contract Review Board hereby delegates to the Chief Executive Officer the authority and responsibility to approve all sole source contracts that do not exceed \$250,000, provided all other legal requirements for such procurement have been met.
7. Delegated Authority Report. A report regarding the Chief Executive Officer’s delegated authority, pursuant to Sections 2 – 4, shall be presented to the Board of Directors at its monthly meeting in a format satisfactory to the Board. The report shall include: (a) all

contracts that exceed \$10,000 but do not exceed \$250,000; and (b) all contract amendments within the Chief Executive Officer's delegated authority, pursuant to Section 3.

8. Intergovernmental Agreements. Subject to the limits set forth in Sections 2 and 3, Intergovernmental Agreements shall be presented to the Board of Directors prior to entering into. "Intergovernmental Agreements" shall include any contract between governmental entities that is not a Real Property Agreement.
9. Real Property Agreements. Real Property Agreements shall be presented to the Board of Directors prior to entering into. "Real Property Agreements" shall include:
  - a. Agreements for the sale or purchase of real property; and
  - b. Lease agreements that exceed the limits set forth in Sections 2 and 3, or that have a lease term of ten (10) years or more.
10. Budget and Policies. All authority delegated herein shall be exercised consistent with the adopted LTD budget and established policies and approved projects of LTD.
11. Delegation. The Chief Executive Officer may delegate in writing any of the authorities granted under this Resolution; provided, however, any such authority delegated to staff shall not exceed the authority delegated herein to the Chief Executive Officer.

**ADOPTED BY THE LANE TRANSIT DISTRICT BOARD OF DIRECTORS ON THIS 21st DAY OF AUGUST, 2024.**

*Gino Grimaldi* Aug 22, 2024  
Gino Grimaldi (Aug 22, 2024 13:36 PDT)  
Gino Grimaldi, Board President

# 2024-08-21 Resolution No. 2024-08-21-023 Adopting the LTD Procurement Policy and Delegating Certain Authority

Final Audit Report

2024-08-22

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## "2024-08-21 Resolution No. 2024-08-21-023 Adopting the LTD Procurement Policy and Delegating Certain Authority" History

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 Signer gino.grimaldi@ltd.org entered name at signing as Gino Grimaldi

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