



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: November 13, 2024

Department: Human Resources

Title: Board Order - Response to Absorb Special Procurement Protest

Management Update/Work Session Date: October 22, 2024 Audio/Visual aids

Time Required: 5 Contact: Toby Giddings Phone: 503-588-5047

Requested Action: Approve Board Order denying protest of approved special procurement for Absorb enterprise learning management system contract.

Issue, Description & Background: The Board approved a special procurement on October 2, 2024, for the County to directly award a short-term contract to Absorb Software, Inc. for continued, uninterrupted use of the Absorb Enterprise Learning Management System until a long-term solution can be selected through a formal competitive process. Public notice of the special procurement approval was posted from October 4 through 11, 2024. A protest to the special procurement approval was received on October 10, 2024 requesting the Board to reconsider its approval of the special procurement and initiate a competitive bidding process. A competitive request for proposal process is currently underway seeking a long-term solution within the enterprise resource planning system. At the October 22, 2024 Management Update, the Board decided to manage the protest directly.

Financial Impacts: None at this time.
The resulting contract will be \$53,421 for the initial one-year term.

Impacts to Department & External Agencies: Continued and uninterrupted use of the current Absorb enterprise learning management system which is used county-wide to create, monitor, and track employee training content.

List of attachments: Board Order, Protest of Approval of Special Procurement, Approval of Special Procurement

Presenter: Toby Giddings

Department Head Signature:  3BF06298D65747E...

BEFORE THE BOARD OF COMMISSIONERS
ACTING AS THE CONTRACT REVIEW BOARD
FOR MARION COUNTY, OREGON

In the matter of a Protest to the)
Approved Special Procurement to)
allow Human Resources to directly)
award a contract for the Absorb)
enterprise learning management system.)

ORDER NO. _____

This matter came before the Marion County Board of Commissioners, acting as the Marion County Contract Review Board (Board), at its regularly scheduled public meeting on Wednesday, November 13, 2024.

WHEREAS, the Board approved Special Procurement HR1588-24 for the County’s continued and uninterrupted use of the Absorb Enterprise Learning Management System on October 2, 2024 pursuant to Marion County Public Contracting Rule Section 20-0285 which allows the County to award a contract as a special procurement pursuant to the requirements of Oregon Revised Statute 279B.085; and

WHEREAS, the Board’s approval of Special Procurement HR1588-24 was based on findings pursuant to the requirements of Oregon Revised Statute 279B.085(4); and

WHEREAS, the County posted a Notice of the Approval of Special Procurement HR1588-24 on the Marion County Procurement Collaboration Portal and on OregonBuys from October 4, 2024 through October 11, 2024 providing an opportunity for the public to comment on and protest the approval pursuant to Marion County Public Contracting Rule 20-0285; and

WHEREAS, the County received a protest to the Approval of Special Procurement HR1588-24 on October 10, 2024 from Juanika Cuthbertson, President of Ladypreneur Agency LLC; and

WHEREAS, the protest requests that the Board reconsider its approval of Special Procurement HR1588-24 and initiate a transparent, competitive bidding process that ensures all qualified vendors have the opportunity to present their solutions; and

WHEREAS, the County is currently conducting a transparent, competitive process for a long-term enterprise learning management system through a formal request for proposal process advertised from October 4 through December 4, 2024, seeking an Enterprise Resource Planning system; and

WHEREAS, the County will conduct a subsequent transparent, competitive process for a long-term enterprise learning management system if the selected Enterprise Resource Planning system does not include a learning management system tool; and

WHEREAS, the Approved Special Procurement HR1588-24 allows for a direct award contract with Absorb Software, Inc. solely as a short-term solution to allow the County's continued, uninterrupted use of the current system after the contract expires on November 30, 2024 until a new, long-term solution can be implemented; and

WHEREAS, the Board is issuing this written disposition of the protest pursuant to Marion County Public Contracting Rule 20-0700(4); now, therefore,

IT IS HEREBY ORDERED that the Board, acting as the Contract Review Board for Marion County, denies the protest of the Approval of Special Procurement HR1588-24.

Dated this 13th day of November 2024.

Original: Human Resources
cc: Board of Commissioner's Office
Toby Giddings, Finance

Attachments:
Protest of Approval of Special Procurement
Approval of Special Procurement

MARION COUNTY BOARD OF
COMMISSIONERS, ACTING AS THE
CONTRACT REVIEW BOARD FOR
MARION COUNTY, OREGON

Chair

Commissioner

Commissioner

Juanika Cuthbertson
President
Ladypreneur Agency LLC
juanika@theladypreneur.com
October 10, 2024

Marion County Board of Commissioners
Procurement Collaboration Portal
<https://contracts-marioncountygcc.msapproxy.net/gateway/>

Subject: Protest of Special Procurement Approval – HR1588-24 for Absorb LMS

Dear Marion County Board of Commissioners,

I am writing on behalf of Ladypreneur Agency LLC to formally protest the approval of the Special Procurement HR1588-24, which authorizes the direct award of a contract to Absorb Software, Inc. for the continued use of their enterprise learning management system, Absorb LMS.

We believe that the decision to award this special procurement without competitive bidding undermines the principles of fairness, transparency, and open competition that govern public procurements. Our company, Ladypreneur Agency LLC, offers a comprehensive learning management system, called Ladypreneur Clout, that meets and exceeds the requirements of Marion County's needs for employee training content creation, monitoring, and tracking.

Our system not only provides a seamless transition from existing solutions but also offers enhanced features in training deployment, tracking, support, and administration. Furthermore, as a small, minority, woman-owned business, we are committed to delivering tailored solutions with exceptional value to the government sector, supporting both innovation and economic inclusion.

In accordance with Marion County Public Contracting Rule 20-0285(4) and ORS 279B.400, we respectfully request that the procurement process be reopened to allow for a competitive evaluation that includes other capable providers, such as Ladypreneur Agency LLC. By allowing open competition, Marion County stands to benefit from improved solutions at potentially lower costs and supports its mandate to foster economic opportunities for small and minority-owned businesses.

We urge the Marion County Board of Commissioners to reconsider the approval of Special Procurement HR1588-24 and to initiate a transparent, competitive bidding process that ensures all qualified vendors have the opportunity to present their solutions.

Thank you for your attention to this matter. We look forward to a favorable response and are available to provide any further information or clarification as required.

Sincerely,

Juanika Cuthbertson
President
Ladypreneur Agency LLC
juanika@theladypreneur.com



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: October 2, 2024

Department: Human Resources

Title: Special Procurement for Absorb Enterprise Learning Management System

Management Update/Work Session Date: September 17, 2024 Audio/Visual aids

Time Required: 5 Contact: Lori Klemsen Phone: 503-584-7781

Requested Action: Approve special procurement for Absorb enterprise learning management system

Issue, Description & Background: The Marion County Human Resources Department needs a new long-term solution for an enterprise learning management system. The new long-term solution may be included as a module in the enterprise resource planning (ERP) system that will be solicited for in late 2024. The contract for the current system will expire on November 30, 2024. The Department desires to continue using the current system until a new learning management system is fully implemented within the selected ERP or alternately fully implemented independently as a result of a separate formal competitive procurement.

Financial Impacts: Public Notice of this special procurement request was published in accordance with the County Public Contracting Rule 10-0285(3) and no protests were received.

Financial Impacts: None at this time.
The resulting contract is quoted at \$107,910 for the two-year contract period 12/1/2024 through 11/30/2026.

Impacts to Department & External Agencies: Continued and uninterrupted use of the current Absorb enterprise learning management system which is used county-wide to create, monitor, and track employee training content.

List of attachments: Public Notice of Request for Approval of Special Procurement, Special Procurement

Presenter: Lori Klemsen, Toby Giddings

Department Head Signature: DocuSigned by: [Signature]
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CONTRACT-SPECIFIC SPECIAL PROCUREMENT

HR1588-24

for

Enterprise Learning Management System

Marion County is conducting a special procurement pursuant to Marion County Public Contracting Rule 20-0285 and ORS 279B.085.

1. BACKGROUND

The enterprise learning management system currently being used by the County was selected in 2016 from a formal request for proposals process conducted by the County. The County awarded a three-year contract to eLogic Learning LLC, now Absorb Software, Inc., with an option to extend for two additional years, for a total of five years.

In December 2021, the Board of Commissioners approved a final contract extension through November 30, 2022, to allow time for the County to conduct another formal solicitation to establish a new contract. Because of increased workload and limited resources in multiple departments (Human Resources, Information Technology and Finance), there was insufficient capacity to conduct and complete a formal solicitation process during that time period. Therefore, in December 2022, a special procurement request was approved to allow the County to directly establish a new two-year contract with Absorb Software, Inc. as a short-term solution to allow time for the County to conduct a formal solicitation process for a new contract.

After the previous special procurement was approved for the current contract with Absorb, the County began a project to select an Enterprise Resource Planning (ERP) system that will replace many of the systems currently being used throughout the County. The enterprise learning management system is identified as a module that may be included in the ERP system. Until it is determined if the selected ERP system will or will not include this functionality, it is not practical to conduct a formal request for proposals process for selection and implementation of a new learning management system.

2. CONTRACTING PROCEDURE

Direct contract with Absorb Software, Inc.

3. GOODS OR SERVICES

Licensing, maintenance and support for the Absorb enterprise learning management system.

4. REQUIREMENTS

Pursuant to Marion County Public Contracting Rule 20-0285, the County may award a contract as a special procurement pursuant to the requirements of ORS 279B.085. The Board of Commissioners may approve a special procurement if the procurement:

A. ORS 279B.085(4)(a)

Is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and

B. ORS 279B.085(4)(b)(A)

Is reasonably expected to result in substantial cost savings to the contracting agency or to the public; or

C. ORS 279B.085(4)(b)(B)

Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any rules adopted thereunder.

5. DETERMINATION AND FINDINGS

A. ORS 279B.085(4)(a)

The County will be conducting a formal request for proposals process pursuant to ORS 279B.060 for an ERP system to meet the long-term needs of the County. If the selected ERP system does not include a learning management module, the County will conduct a separate formal request for proposals process for a new enterprise learning management system contract.

B. ORS 279B.085(4)(b)(A)

Not applicable

C. ORS 279B.085(4)(b)(B)

The proposed contract will be established as a bridge contract for a short-term solution, allowing continuing and uninterrupted service for the County, while a formal request for proposals process is conducted pursuant to ORS 279B.060.

6. LENGTH OF TIME

The length of time/duration for this special procurement is from December 1, 2024 until the County selects and fully implements an ERP system that includes a learning management module, or if the selected ERP system does not include a learning management module, the County conducts a separate competitive process to establish a new contract for an enterprise learning management system.

7. RESULTS OF INITIAL POSTING


The Department gave public notice of the request for approval of a special procurement in accordance with Marion County Public Contracting Rule 20-0285(3) and received no protests.

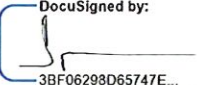
8. REVIEW AND APPROVAL


**MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:**

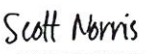

Chair _____ Date 10.2.2024



Commissioner _____ Date 10-2-2024


Commissioner _____ Date 10/2/2024

Authorized Signature:  _____ Date 9/4/2024
DocuSigned by: 3BF06298D65747E...

Authorized Signature:  _____ Date 9/5/2024
DocuSigned by: 1E984034585E453

Reviewed by Signature:  _____ Date 9/5/2024
Signed by: 60C98A6F708240B

Reviewed by Signature:  _____ Date 9/4/2024
DocuSigned by: F4592AERCAA542C
Marion County Legal Counsel
Marion County Contracts & Procurement



PUBLIC NOTICE

Request for Approval of Special Procurement HR1588-24

for

Absorb Enterprise Learning Management System

Release Date: August 26, 2024

Response Due Date: September 3, 2024, 2:30 PM

Submit responses via the Marion County Procurement Collaboration Portal:

<https://contracts-marioncountygcc.msapproxy.net/gateway/>

Instructions are listed in Section 6 of this notice.

Electronic copies of this notice and attachments, if any, can be obtained from the Marion County Procurement Collaboration Portal at the URL listed above and in Section 6.

1. INTRODUCTION

Marion County Human Resources Department proposes a direct award contract with Absorb Software, Inc. for continued, uninterrupted use of the current enterprise learning management system, Absorb LMS, being used county-wide to create, monitor, and track employee training content.

2. BACKGROUND

Since 2016, Marion County has contracted with Absorb Software, Inc. (formerly eLogic Learning LLC) for an enterprise learning management system to create, monitor, and track employee training content county-wide. The original contract was awarded from a formal request for proposal process. The current contract will reach its maximum term on November 30, 2024, and a new contract must be established. The County intends to conduct a formal competitive process in the near future to establish a new long-term contract for an enterprise learning management system, either within an enterprise resource planning system or separately. In the interim, the County needs to continue using the current Absorb LMS to create, monitor, and track employee training content without interruption.

3. PURPOSE

This is public notice of the Request for Approval of a Special Procurement as required by Marion County Public Contracting Rule 20-0285(3).

4. JUSTIFICATION FOR SPECIAL PROCUREMENT

See the attached Request for Approval of Special Procurement No. HR1588-24.

5. PROTEST

- A. An affected person may protest this request for approval of a special procurement in accordance with Marion County Public Contracting Rule 20-0700. Pursuant to ORS 279B.400(1), before seeking judicial review of the request for approval of a special procurement, an affected person must file a written protest with the contract review board or designee and exhaust all administrative remedies.
- B. A protest to this request for approval of a special procurement must be received by the County within seven days after the release date of this Public Notice. The County shall not consider an affected person's protest submitted after this deadline.
- C. The protest must include:
 - i A detailed statement of the legal and factual grounds for the protest;
 - ii A description of the resulting harm to the affected person; and
 - iii The relief requested.
- D. Protests must be submitted through the Marion County Procurement Collaboration Portal as described in Section 6 below.
- E. The Marion County Contracts and Procurement Manager will issue a written disposition of the protest in a timely manner.

6. PROTEST SUBMITTAL INSTRUCTIONS

- A. Log Into the Procurement Collaboration Portal.
 - i Go to the Marion County Procurement Collaboration Portal which can be found at: <https://contracts-marioncountygcc.msapproxy.net/gateway/>.
 - ii Sign In or Create an Account.
 - iii Creating an account MUST be completed 15-30 minutes before files will be able to be submitted through the portal.
- B. Solicitations Tab
 - i At the top of the page, hover over Solicitations.

- ii Select Search All Solicitations.
- iii Click View next to the applicable solicitation.

C. Opportunity Details

- i **Viewing Documents** – Scroll down the page to the Files, Documents, Images section, Public Files: subsection. Here you will find all of the relevant files.
- ii **Submitting a Question** – If you would like to submit a question, scroll down the page to the Questions & Answers section. Type your question in the My Questions/Answers text box and click the Ask Question box.
- iii **Register as Respondent** - If you are interested in responding to the posting, click the button Register as Respondent on the left side of the screen.
- iv **Submitting Documents** – If you would like to submit a response to this posting, scroll down the page to the Files, Documents, Images section, My Files: subsection. Here you will Select a file, select a File Category, and type a description before clicking the Save File button.
- v **Response Status** – Once you have registered as a respondent and submitted documents, scroll to the bottom of the page to the Response Status section and select the appropriate status for your submission, then click Submit.

7. PUBLIC RECORDS

Respondents should be aware that any information they submit to the County shall become the property of the County and a public record, subject to public disclosure as provided under Oregon’s Public Records Law.

The County shall take reasonable measures to hold in confidence all such labeled information but shall not be liable for release of any information when required by law or court order to do so, whether pursuant to the Oregon Public Records Law or otherwise and shall also be immune from liability for disclosure or release of information under the circumstances set out in ORS 646.473(3).

In submitting a response, each respondent agrees that the County may; (a) reveal any trade secret or other confidential materials contained in the proposal to County staff and to any outside consultant or third party who is hired by the County and (b) post the response on the County’s intranet for purposes related to its evaluation. Furthermore, each proposer agrees to indemnify and hold harmless the County and each of its officers, employees, and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material that the

respondent has designated as a trade secret and/or as confidential information. Any respondent that designates its entire response as a trade secret may be disqualified.

8. DISCLAIMER

This Notice is issued solely for compliance with Marion County Public Contracting Rule to support a Request for Approval of a Special Procurement; it does not constitute a solicitation. There will not be an evaluation or scoring of the material submitted. No information received in response to this Notice will be returned. Responses to this notice are not an offer and cannot be accepted by the County to form a binding contract. Respondents will not necessarily be notified the result of this Notice, or future solicitation opportunities.

**REQUEST FOR APPROVAL OF
SPECIAL PROCUREMENT No. HR1588-24**

Date of Request: August 26, 2024
Department Name: Human Resources Department
Contact Name: Sabrina Hay
Type of Request: Contract-specific Special Procurement
Time Period Requested: December 1, 2024 through the time period in section a
Estimated Cost: \$107,910 for the initial two year contract

Supplies and/or Services to be Acquired:

Licensing, maintenance and support for the Absorb enterprise learning management system.

Request, Background and Proposed Contracting Procedure:

a. Request:

The Department requests approval of this Special Procurement to establish a new contract directly with Absorb Software, Inc. so the county can continue to utilize the current enterprise learning management system, Absorb LMS, which is used county-wide to create, monitor, and track employee training content.

The proposed contract term is an initial 24-month period at a cost of \$107,910 with optional extension periods for 12 months, 24 months, or until the County selects and fully implements an Enterprise Resource Planning (ERP) system that includes a learning management module, or if the selected ERP system does not include a learning management module, the County conducts a separate competitive process to establish a new contract for an enterprise learning management system.

b. Background:

The enterprise learning management system currently being used by the County was selected in 2016 as a result of a formal request for proposals process conducted by the County. The County awarded a three-year contract to eLogic Learning LLC, now Absorb Software, Inc., with an option to extend for two additional years, for a total of five years.

In December 2021, the Board of Commissioners approved a final contract extension through November 30, 2022, to allow time for the County to conduct a formal solicitation to establish a new contract. Because of increased workload and limited resources in multiple departments (Human Resources, Information Technology and Finance) during that time period, there was not sufficient capacity to conduct and complete a formal solicitation process. Therefore, in December 2022, a special procurement request was approved to allow the County to directly establish a new two-year contract with Absorb Software, Inc. as a short-term solution and to allow time for the County to conduct a formal solicitation process.

After the previous special procurement was approved for the current contract with Absorb, the County began a project to select an ERP system that will replace many of the systems currently being used throughout the County. The enterprise learning management system is identified as a module that may be included in the ERP system. Until it is determined if the

selected ERP system will or will not include this functionality, it is not practical to conduct a formal RFP process for selection and implementation of a new learning management system.

c. Proposed Contracting Procedure:

Direct contract with Absorb Software, Inc.

Justification for use of Special Procurement: Describe the circumstances that justify the use of a Special Procurement. Attach relevant documentation.

The County needs a long-term solution for an enterprise learning management system to create, monitor, and track employee training content. To achieve this, the County intends to seek a learning management module within the ERP system which is anticipated to be formally solicited for in late 2024, selected in early 2025 and implemented beginning in 2026. The County will likely know in early 2025 whether or not the ERP system will include a learning management module.

If the County selects an ERP system that includes a learning management module, implementation of the module will likely occur in late 2026 at the earliest and more likely later if ERP system implementation is phased or delayed.

If the County selects an ERP system that does not include a learning management module, a separate formal competitive process will be conducted for a new contract for the learning management system.

The County continues to need this short-term solution between November 30, 2024 when the current contract with Absorb expires and when a new long-term solution can be implemented either within the selected ERP system or separately. If approved, this Special Procurement will guarantee uninterrupted service until the implementation of a new long-term solution.

Findings to Satisfy the Required Standards: This proposed special procurement:

(a) will be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts because the County will be conducting a formal Request for Proposal process pursuant to ORS 279B.060 for an ERP system to meet the long-term needs of the County. If the selected ERP system does not include a learning management module, the County will conduct a separate formal Request for Proposal process for a new enterprise learning management system contract.

and

(b)(ii) will otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the requirements of ORS 279B.055, 279B.060, 279B.065, or 279B.070, or any rules adopted thereunder because the proposed contract will be established as a bridge contract for a short-term solution, allowing uninterrupted service for the County, while a formal procurement process is conducted pursuant to ORS 279B.060.