

House Bill 2140

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Attorney General Hardy Myers for Department of Justice)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Makes technical changes to Public Contracting Code.

A BILL FOR AN ACT

1
2 Relating to the Public Contracting Code; creating new provisions; amending ORS 279A.010,
3 279A.025, 279A.050, 279A.200, 279B.005, 279B.050, 279B.085, 279B.130, 279B.200, 279B.270,
4 279B.405, 279B.415, 279C.320, 279C.335, 279C.345, 279C.350, 279C.355, 279C.365, 279C.375,
5 279C.390, 279C.400, 279C.405, 279C.410, 279C.460, 279C.830, 279C.836 and 279C.870 and sections
6 105, 105b, 110, 113 and 132, chapter 794, Oregon Laws 2003; and repealing section 332a, chapter
7 794, Oregon Laws 2003.

8 **Be It Enacted by the People of the State of Oregon:**

9 **SECTION 1.** ORS 279A.010 is amended to read:

10 279A.010. (1) As used in the Public Contracting Code, unless the context or a specifically ap-
11 plicable definition requires otherwise:

12 (a) "Bidder" means a person that submits a bid in response to an invitation to bid.

13 (b) "Contracting agency" means a public body authorized by law to conduct a procurement.
14 "Contracting agency" includes, but is not limited to, the Director of the Oregon Department of Ad-
15 ministrative Services and any person authorized by a contracting agency to conduct a procurement
16 on the contracting agency's behalf. "Contracting agency" does not include the judicial department
17 or the legislative department.

18 (c) "Days" means calendar days.

19 (d) "Department" means the Oregon Department of Administrative Services.

20 (e) "Director" means the Director of the Oregon Department of Administrative Services or a
21 person designated by the director to carry out the authority of the director under the Public Con-
22 tracting Code.

23 (f) "Emergency" means circumstances that:

24 (A) Could not have been reasonably foreseen;

25 (B) Create a substantial risk of loss, damage or interruption of services or a substantial threat
26 to property, public health, welfare or safety; and

27 (C) Require prompt execution of a contract to remedy the condition.

28 (g) "Energy savings performance contract" means a public contract between a contracting
29 agency and a qualified energy service company for the identification, evaluation, recommendation,
30 design and construction of energy conservation measures, including a design-build contract, that
31 guarantee energy savings or performance.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 (h) “Executive department” has the meaning given that term in ORS 174.112.

2 (i) **“Goods” includes supplies, equipment, materials, personal property, including any**
 3 **tangible, intangible and intellectual property and rights and licenses in relation thereto, and**
 4 **combinations of any of the items identified in this paragraph.**

5 (j) **“Goods and services” or “goods or services” includes combinations of any of the items**
 6 **identified in the definitions of “goods” and “services.”**

7 [(i)(A)] (k)(A) “Grant” means:

8 (i) An agreement under which a contracting agency receives moneys, property or other assist-
 9 ance, including but not limited to federal assistance that is characterized as a grant by federal law
 10 or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other
 11 assets, from a grantor for the purpose of supporting or stimulating a program or activity of the
 12 contracting agency and in which no substantial involvement by the grantor is anticipated in the
 13 program or activity other than involvement associated with monitoring compliance with the grant
 14 conditions; or

15 (ii) An agreement under which a contracting agency provides moneys, property or other assist-
 16 ance, including but not limited to federal assistance that is characterized as a grant by federal law
 17 or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other
 18 assets, to a recipient for the purpose of supporting or stimulating a program or activity of the re-
 19 cipient and in which no substantial involvement by the contracting agency is anticipated in the
 20 program or activity other than involvement associated with monitoring compliance with the grant
 21 conditions.

22 (B) “Grant” does not include a public contract for a public improvement, for public works, as
 23 defined in ORS 279C.800, or for emergency work, minor alterations or ordinary repair or mainte-
 24 nance necessary to preserve a public improvement, when under the public contract a contracting
 25 agency pays, in consideration for contract performance intended to realize or to support the real-
 26 ization of the purposes for which grant funds were provided to the contracting agency, moneys that
 27 the contracting agency has received under a grant.

28 [(j)] (L) “Industrial oil” means any compressor, turbine or bearing oil, hydraulic oil, metal-
 29 working oil or refrigeration oil.

30 [(k)] (m) “Judicial department” has the meaning given that term in ORS 174.113.

31 [(L)] (n) “Legislative department” has the meaning given that term in ORS 174.114.

32 [(m)] (o) “Local contract review board” means a local contract review board described in ORS
 33 279A.060.

34 [(n)] (p) “Local contracting agency” means a local government or special government body au-
 35 thorized by law to conduct a procurement. “Local contracting agency” includes any person author-
 36 ized by a local contracting agency to conduct a procurement on behalf of the local contracting
 37 agency.

38 [(o)] (q) “Local government” has the meaning given that term in ORS 174.116.

39 [(p)] (r) “Lowest responsible bidder” means the lowest bidder who:

40 (A) Has substantially complied with all prescribed public contracting procedures and require-
 41 ments;

42 (B) Has met the standards of responsibility set forth in ORS 279B.110 or 279C.375;

43 (C) Has not been debarred or disqualified by the contracting agency under ORS 279B.130 or
 44 279C.440; and

45 (D) If the advertised contract is a public improvement contract, is not on the list created by the

1 Construction Contractors Board under ORS 701.227.

2 [(q)] (s) “Lubricating oil” means any oil intended for use in an internal combustion crankcase,
 3 transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equip-
 4 ment or machinery powered by an internal combustion engine.

5 [(r)] (t) “Person” means a natural person capable of being legally bound, a sole proprietorship,
 6 a corporation, a partnership, a limited liability company or partnership, a limited partnership, a
 7 for-profit or nonprofit unincorporated association, a business trust, two or more persons having a
 8 joint or common economic interest, any other person with legal capacity to contract or a public
 9 body.

10 [(s)] (u) “Post-consumer waste” means a finished material that would normally be disposed of
 11 as solid waste, having completed its life cycle as a consumer item. “Post-consumer waste” does not
 12 include manufacturing waste.

13 [(t)] (v) “Price agreement” means a public contract for the procurement of goods or services at
 14 a set price with:

15 (A) No guarantee of a minimum or maximum purchase; or

16 (B) An initial order or minimum purchase combined with a continuing contractor obligation to
 17 provide goods or services in which the contracting agency does not guarantee a minimum or maxi-
 18 mum additional purchase.

19 [(u)] (w) “Procurement” means the act of purchasing, leasing, renting or otherwise acquiring
 20 goods or services. “Procurement” includes each function and procedure undertaken or required to
 21 be undertaken by a contracting agency to enter into a public contract, administer a public contract
 22 and obtain the performance of a public contract under the Public Contracting Code.

23 [(v)] (x) “Proposer” means a person that submits a proposal in response to a request for pro-
 24 posals.

25 [(w)] (y) “Public body” has the meaning given that term in ORS 174.109.

26 [(x)] (z) “Public contract” means **a contract for** a sale or other disposal, or a purchase, lease,
 27 rental or other acquisition, by a contracting agency of personal property, services, including per-
 28 sonal services, public improvements, public works, minor alterations, or ordinary repair or mainte-
 29 nance necessary to preserve a public improvement. “Public contract” does not include grants.

30 [(y)] (aa) “Public contracting” means procurement activities described in the Public Contracting
 31 Code relating to obtaining, modifying or administering public contracts or price agreements.

32 [(z)] (bb) “Public Contracting Code” or “code” means ORS chapters 279A, 279B and 279C.

33 [(aa)] (cc) “Public improvement” means a project for construction, reconstruction or major ren-
 34 ovation on real property by or for a contracting agency. “Public improvement” does not include:

35 (A) Projects for which no funds of a contracting agency are directly or indirectly used, except
 36 for participation that is incidental or related primarily to project design or inspection; or

37 (B) Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a
 38 public improvement.

39 [(bb)] (dd) “Public improvement contract” means a public contract for a public improvement.
 40 “Public improvement contract” does not include a public contract for emergency work, minor al-
 41 terations, or ordinary repair or maintenance necessary to preserve a public improvement.

42 [(cc)] (ee) “Recycled material” means any material that would otherwise be a useless, unwanted
 43 or discarded material except for the fact that the material still has useful physical or chemical
 44 properties after serving a specific purpose and can, therefore, be reused or recycled.

45 [(dd)] (ff) “Recycled oil” means used oil that has been prepared for reuse as a petroleum product

1 by refining, rerefining, reclaiming, reprocessing or other means, provided that the preparation or
2 use is operationally safe, environmentally sound and complies with all laws and regulations.

3 [(ee)] (gg) "Recycled paper" means a paper product with not less than:

- 4 (A) Fifty percent of its fiber weight consisting of secondary waste materials; or
- 5 (B) Twenty-five percent of its fiber weight consisting of post-consumer waste.

6 [(ff)] (hh) "Recycled PETE" means post-consumer polyethylene terephthalate material.

7 [(gg)] (ii) "Recycled product" means all materials, goods and supplies, not less than 50 percent
8 of the total weight of which consists of secondary and post-consumer waste with not less than 10
9 percent of its total weight consisting of post-consumer waste. "Recycled product" includes any
10 product that could have been disposed of as solid waste, having completed its life cycle as a con-
11 sumer item, but otherwise is refurbished for reuse without substantial alteration of the product's
12 form.

13 [(hh)] (jj) "Secondary waste materials" means fragments of products or finished products of a
14 manufacturing process that has converted a virgin resource into a commodity of real economic
15 value. "Secondary waste materials" includes post-consumer waste. "Secondary waste materials"
16 does not include excess virgin resources of the manufacturing process. For paper, "secondary waste
17 materials" does not include fibrous waste generated during the manufacturing process such as fibers
18 recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips,
19 sawdust or other wood residue from a manufacturing process.

20 (kk) "Services" mean services other than personal services designated under ORS
21 279A.055, except that, for state contracting agencies with procurement authority under ORS
22 279A.050 or 279A.140, "services" includes personal services as designated by the state con-
23 tracting agencies.

24 [(ii)] (LL) "Special government body" has the meaning given that term in ORS 174.117.

25 [(jj)] (mm) "State agency" means the executive department, except the Secretary of State and
26 the State Treasurer in the performance of the duties of their constitutional offices.

27 [(kk)] (nn) "State contracting agency" means an executive department entity authorized by law
28 to conduct a procurement.

29 [(LL)] (oo) "State government" has the meaning given that term in ORS 174.111.

30 [(mm)] (pp) "Used oil" has the meaning given that term in ORS 459A.555.

31 [(nn)] (qq) "Virgin oil" means oil that has been refined from crude oil and that has not been
32 used or contaminated with impurities.

33 (2) Other definitions appearing in the Public Contracting Code and the sections in which they
34 appear are:

- 35
- 36 (a) "Adequate"ORS 279C.305
- 37 (b) "Administering contracting
- 38 agency"ORS 279A.200
- 39 (c) "Affirmative action"ORS 279A.100
- 40 (d) "Architect"ORS 279C.100
- 41 (e) "Architectural, engineering
- 42 and land surveying
- 43 services"ORS 279C.100
- 44 (f) "Bid documents"ORS 279C.400
- 45 (g) "Bidder"ORS 279B.415

1	(h)	“Bids”	ORS 279C.400
2	(i)	“Brand name”	ORS 279B.405
3	(j)	“Brand name or equal	
4		specification”	ORS 279B.200
5	(k)	“Brand name	
6		specification”	ORS 279B.200
7	(L)	“Class special	
8		procurement”	ORS 279B.085
9	(m)	“Consultant”	ORS 279C.115
10	(n)	“Contract-specific	
11		special procurement”	ORS 279B.085
12	(o)	“Cooperative	
13		procurement”	ORS 279A.200
14	(p)	“Cooperative procurement	
15		group”	ORS 279A.200
16	(q)	“Donee”	ORS 279A.250
17	(r)	“Engineer”	ORS 279C.100
18	(s)	“Findings”	ORS 279C.330
19	(t)	“Fire protection	
20		equipment”	ORS 279A.190
21	(u)	“Fringe benefits”	ORS 279C.800
22	(v)	“Funds of a public	
23		agency”	ORS 279C.810
24	(w)	“Good cause”	ORS 279C.585
25	(x)	“Good faith dispute”	ORS 279C.580
26	(y)	“Goods”	ORS 279B.115
27	[(z)	“Goods and services” or	
28		“goods or services”	ORS 279B.005]
29	[(aa)] (z)	“Interstate cooperative	
30		procurement”	ORS 279A.200
31	[(bb)] (aa)	“Invitation to bid”	ORS 279B.005
32	and	279C.400
33	[(cc)] (bb)	“Joint cooperative	
34		procurement”	ORS 279A.200
35	[(dd)] (cc)	“Labor dispute”	ORS 279C.650
36	[(ee)] (dd)	“Land surveyor”	ORS 279C.100
37	[(ff)] (ee)	“Legally flawed”	ORS 279B.405
38	[(gg)] (ff)	“Locality”	ORS 279C.800
39	[(hh)] (gg)	“Nonprofit	
40		organization”	ORS 279C.810
41	[(ii)] (hh)	“Nonresident bidder”	ORS 279A.120
42	[(jj)] (ii)	“Not-for-profit	
43		organization”	ORS 279A.250
44	[(kk)] (jj)	“Original contract”	ORS 279A.200
45	[(LL)] (kk)	“Permissive cooperative	

1 procurement”ORS 279A.200
 2 [(mm)] (LL) “Person”ORS 279C.500
 3and 279C.815
 4 [(nn)] (mm) “Personal services”ORS 279C.100
 5 [(oo)] (nn) “Prevailing rate of
 6 wage”ORS 279C.800
 7 [(pp)] (oo) “Procurement
 8 description”ORS 279B.005
 9 [(qq)] (pp) “Property”ORS 279A.250
 10 [(rr)] (qq) “Public agency”ORS 279C.800
 11 [(ss)] (rr) “Public contract”ORS 279A.190
 12 [(tt) “Public contract for
 13 goods or services”ORS 279B.005]
 14 [(uu)] (ss) “Public works”ORS 279C.800
 15 [(vv)] (tt) “Purchasing contracting
 16 agency”ORS 279A.200
 17 [(ww)] (uu) “Regularly organized fire
 18 department”ORS 279A.190
 19 [(xx)] (vv) “Related services”ORS 279C.100
 20 [(yy)] (ww) “Request for proposals”ORS 279B.005
 21 [(zz)] (xx) “Resident bidder”ORS 279A.120
 22 [(aaa)] (yy) “Responsible bidder”ORS 279A.105
 23and 279B.005
 24 [(bbb)] (zz) “Responsible proposer”ORS 279B.005
 25 [(ccc)] (aaa) “Responsive bid”ORS 279B.005
 26 [(ddd)] (bbb) “Responsive proposal”ORS 279B.005
 27 [(eee)] (ccc) “Retainage”ORS 279C.550
 28 [(fff)] (ddd) “Special procurement”ORS 279B.085
 29 [(ggg)] (eee) “Specification”ORS 279B.200
 30 [(hhh)] (fff) “State agency”ORS 279A.250
 31 [(iii)] (ggg) “Substantial
 32 completion”ORS 279C.465
 33 [(jjj)] (hhh) “Surplus property”ORS 279A.250
 34 [(kkk)] (iii) “Unnecessarily
 35 restrictive”ORS 279B.405

36 **SECTION 2.** ORS 279A.025 is amended to read:

37 279A.025. (1) Except as provided in subsections (2) to (4) of this section, the Public Contracting
 38 Code applies to all public contracting.

39 (2) The Public Contracting Code does not apply to:

40 (a) Contracts between [*contracting agencies or between contracting agencies and the federal gov-*
 41 *ernment;*] **a contracting agency and:**

- 42 (A) Another contracting agency;
- 43 (B) The Oregon Health and Science University;
- 44 (C) The Oregon State Bar;
- 45 (D) A governmental body of another state;

1 (E) The federal government;

2 (F) A federally recognized Indian tribe;

3 (G) A nation, or a governmental body in a nation, other than the United States; or

4 (H) An intergovernmental entity formed between or among governmental bodies of this
5 or another state, the federal government, a federally recognized Indian tribe or a nation, or
6 a governmental body in a nation, other than the United States;

7 (b) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and
8 414.145 for purposes of source selection, **except that the Public Contracting Code does apply to**
9 **insurance broker contracts;**

10 (c) Grants;

11 (d) Contracts for professional or expert witnesses or consultants to provide services or testi-
12 mony relating to existing or potential litigation or legal matters in which a public body is or may
13 become interested;

14 (e) Acquisitions or disposals of real property or interest in real property;

15 (f) Sole-source expenditures when rates are set by law or ordinance for purposes of source se-
16 lection;

17 (g) Contracts for the procurement or distribution of textbooks;

18 (h) Procurements by a contracting agency from an Oregon Corrections Enterprises program;

19 (i) The procurement, transportation or distribution of distilled liquor, as defined in ORS 471.001,
20 or the appointment of agents under ORS 471.750 by the Oregon Liquor Control Commission;

21 (j) Contracts entered into under ORS chapter 180 between the Attorney General and private
22 counsel or special legal assistants;

23 (k) Contracts for the sale of timber from lands owned or managed by the State Board of Forestry
24 and the State Forestry Department;

25 (L) Contracts for forest protection or forest related activities, as described in ORS 477.406, by
26 the State Forester or the State Board of Forestry;

27 (m) Sponsorship agreements entered into by the State Parks and Recreation Director in ac-
28 cordance with ORS 565.080 (4);

29 (n) Contracts entered into by the Housing and Community Services Department in exercising the
30 department's duties prescribed in ORS chapters 456 and 458, except that the department's public
31 contracting for goods and services[, *as defined in ORS 279B.005,*] is subject to ORS chapter 279B;

32 (o) Contracts entered into by the State Treasurer in exercising the powers of that office pre-
33 scribed in ORS chapters 178, 286, 287, 288, 289, 293, 294 and 295, including but not limited to in-
34 vestment contracts and agreements, banking services, clearing house services and collateralization
35 agreements, bond documents, certificates of participation and other debt repayment agreements, and
36 any associated contracts, agreements and documents, regardless of whether the obligations that the
37 contracts, agreements or documents establish are general, special or limited, except that the State
38 Treasurer's public contracting for goods and services[, *as defined in ORS 279B.005,*] is subject to
39 ORS chapter 279B;

40 (p) Contracts, agreements or other documents entered into, issued or established in connection
41 with:

42 (A) The incurring of debt by a public body, including but not limited to the issuance of bonds,
43 certificates of participation and other debt repayment obligations, and any associated contracts,
44 agreements or other documents, regardless of whether the obligations that the contracts, agreements
45 or other documents establish are general, special or limited;

1 (B) The making of program loans and similar extensions or advances of funds, aid or assistance
 2 by a public body to a public or private body for the purpose of carrying out, promoting or sustaining
 3 activities or programs authorized by law; or

4 (C) The investment of funds by a public body as authorized by law, and other financial trans-
 5 actions of a public body that by their character cannot practically be established under the com-
 6 petitive contractor selection procedures of ORS 279B.050 to 279B.085;

7 (q) Contracts for employee benefit plans as provided in ORS 243.105 (1), 243.125 (4), 243.221,
 8 243.275, 243.291, 243.303 and 243.565; or

9 (r) Any other public contracting of a public body specifically exempted from the code by another
 10 provision of law.

11 (3) The Public Contracting Code does not apply to the *[public]* contracting activities of:

12 (a) The Oregon State Lottery Commission;

13 (b) The Oregon University System and member institutions, except as provided in ORS 351.086;

14 (c) The legislative department;

15 (d) The judicial department;

16 (e) Semi-independent state agencies listed in ORS 182.451 and 182.454, except as provided in ORS
 17 279.835 to 279.855 and 279A.250 to 279A.290;

18 (f) Oregon Corrections Enterprises;

19 (g) The Oregon Film and Video Office, except as provided in ORS 279A.100 and 279A.250 to
 20 279A.290;

21 (h) The Travel Information Council, except as provided in ORS 279A.250 to 279A.290;

22 (i) The Oregon 529 College Savings Network and the Oregon 529 College Savings Board;

23 (j) The Oregon Innovation Council; *[or]*

24 **(k) The Oregon Utility Notification Center; or**

25 *[(k)]* **(L)** Any other public body specifically exempted from the code by another provision of law.

26 (4) ORS 279A.200 to 279A.225 and 279B.050 to 279B.085 do not apply to contracts made with
 27 qualified nonprofit agencies providing employment opportunities for disabled individuals under ORS
 28 279.835 to 279.855.

29 **SECTION 3.** ORS 279A.050 is amended to read:

30 279A.050. *[(1)]* **(1)(a)** Except as otherwise provided in the Public Contracting Code, a contracting
 31 agency shall exercise all *[rights, powers and]* **procurement** authority in accordance with the pro-
 32 visions of the Public Contracting Code.

33 **(b) When a contracting agency has authority under this section to carry out functions**
 34 **described in this section, or has authority to make procurements under a provision of law**
 35 **other than the Public Contracting Code, the contracting agency is not required to exercise**
 36 **that authority in accordance with the provisions of the code if, under ORS 279A.025, the code**
 37 **does not apply to the contract or contracting authority.**

38 (2) Except as otherwise provided in the Public Contracting Code, for state agencies the Director
 39 of the Oregon Department of Administrative Services has all *[of the rights, powers and]* **the** au-
 40 thority *[necessary]* to carry out the provisions of the Public Contracting Code.

41 (3) Except as otherwise provided in the Public Contracting Code, the Director of Transportation
 42 has all *[of the rights, powers and]* **the** authority to:

43 (a) Procure or supervise the procurement of all services and personal services to construct, ac-
 44 quire, plan, design, maintain and operate passenger terminal facilities and motor vehicle parking
 45 facilities in connection with any public transportation system in accordance with ORS 184.689 (5);

1 (b) Procure or supervise the procurement of all goods, services, public improvements and per-
 2 sonal services relating to the operation, maintenance or construction of highways, bridges and other
 3 transportation facilities that are subject to the authority of the Department of Transportation; and

4 (c) Establish standards for, prescribe forms for and conduct the prequalification of prospective
 5 bidders on public improvement contracts related to the operation, maintenance or construction of
 6 highways, bridges and other transportation facilities that are subject to the authority of the De-
 7 partment of Transportation.

8 (4) Except as otherwise provided in the Public Contracting Code, the Secretary of State has all
 9 *[of the rights, powers and]* **the** authority to procure or supervise the procurement of goods, services
 10 and personal services related to programs under the *[direct]* authority of the Secretary of State.

11 (5) Except as otherwise provided in the Public Contracting Code, the State Treasurer has all
 12 *[of the rights, powers and]* **the** authority to procure or supervise the procurement of goods, services
 13 and personal services related to programs under the authority of the State Treasurer.

14 (6) The following specific limited authorities are subject to the provisions of the Public Con-
 15 tracting Code:

16 (a) The Department of Human Services to procure or supervise the procurement of goods, ser-
 17 vices and personal services for the construction, demolition, exchange, maintenance, operation and
 18 equipping of housing:

19 (A) For the chronically mentally ill, subject to applicable provisions of ORS 426.504; and

20 (B) For the purpose of providing care to individuals with mental retardation or other develop-
 21 mental disabilities, subject to applicable provisions of ORS 427.335;

22 (b) The State Department of Fish and Wildlife to procure or supervise the procurement of all
 23 goods, services, public improvements and personal services relating to dams, fishways, ponds and
 24 related fish and game propagation facilities;

25 (c) The State Parks and Recreation Department to procure or supervise the procurement of all
 26 goods, services, public improvements and personal services relating to state parks;

27 (d) The Oregon Department of Aviation to procure or supervise the procurement of all goods,
 28 services, public improvements and personal services related to airports owned or operated by the
 29 state;

30 (e) The Economic and Community Development Department to procure or supervise the pro-
 31 curement of all goods, services, personal services and public improvements related to its foreign
 32 trade offices operating outside the state;

33 *[(f) The Attorney General to enter into contracts as necessary to exercise the authority granted in*
 34 *ORS chapter 180;]*

35 *[(g)]* **(f)** The Housing and Community Services Department to procure or supervise the procure-
 36 ment of goods~~, services and personal services~~ **and services as provided in ORS 279A.025 (2)(n)**;

37 *[(h)]* **(g)** The Department of Corrections to procure or supervise the procurement of goods, ser-
 38 vices and personal services for the construction of all new buildings or additions for its institutions;

39 *[(i)]* **(h)** The Department of Corrections, subject to any applicable provisions of ORS 279A.120,
 40 279A.125, 279A.145 and 283.110 to 283.395, to procure or supervise the procurement of goods for its
 41 institutions;

42 *[(j)]* **(i)** The Department of Veterans' Affairs to procure or supervise the procurement of real
 43 estate broker and principal real estate broker services related to programs under the department's
 44 authority; and

45 *[(k)]* **(j)** Any state agency to make procurements when the agency is specifically authorized by

1 any provision of law other than the Public Contracting Code to enter into a contract.

2 **SECTION 4.** ORS 279A.200 is amended to read:

3 279A.200. (1) As used in ORS 279A.200 to 279A.225:

4 (a) “Administering contracting agency” means a contracting agency that solicits and establishes
5 the original contract for procurement of goods, services or public improvements in a cooperative
6 procurement.

7 (b) “Cooperative procurement” means a procurement conducted by or on behalf of one or more
8 contracting agencies. “Cooperative procurement” includes but is not limited to [*multiparty*] **multia-**
9 **gency** contracts and price agreements. **“Cooperative procurement” does not include an agree-**
10 **ment formed under ORS chapter 190 between or among only governmental bodies.**

11 (c) “Cooperative procurement group” means a group of contracting agencies joined through an
12 intergovernmental agreement for the [*purposes*] **purpose** of facilitating cooperative procurements.

13 (d) “Interstate cooperative procurement” means a permissive cooperative procurement in which
14 the administering contracting agency is a governmental body, domestic or foreign, that is authorized
15 under the governmental body’s laws, rules or regulations to enter into public contracts and in which
16 one or more of the participating agencies are located outside this state.

17 (e) “Joint cooperative procurement” means a cooperative procurement in which the participat-
18 ing contracting agencies or the cooperative procurement group and the agencies’ or group’s contract
19 requirements or estimated contract requirements for price agreements are identified.

20 (f) “Original contract” means the initial contract or price agreement solicited and awarded
21 during a cooperative procurement by an administering contracting agency.

22 (g) “Permissive cooperative procurement” means a cooperative procurement in which the pur-
23 chasing contracting agencies are not identified.

24 (h) “Purchasing contracting agency” means a contracting agency that procures goods, services
25 or public improvements from a contractor based on the original contract established by an admin-
26 istering contracting agency.

27 (2) As used in ORS 279A.210 (1)(a), 279A.215 (1)(a) and 279A.220 (1)(a), an administering con-
28 tracting agency’s solicitation and award process uses source selection methods “substantially
29 equivalent” to those identified in ORS 279B.055, 279B.060 or 279B.085 if the solicitation and award
30 process:

31 (a) Calls for award of a contract on the basis of a lowest responsible bidder or a lowest and best
32 bidder determination in the case of competitive bids, or on the basis of a determination of the
33 proposer whose proposal is most advantageous based on evaluation factors set forth in the request
34 for proposals in the case of competitive proposals;

35 (b) Does not permit the application of any geographic preference that is more favorable to bid-
36 ders or proposers who reside in the jurisdiction or locality favored by the preference than the
37 preferences provided in ORS 279A.120 (2); and

38 (c) Uses reasonably clear and precise specifications that promote suitability for the purposes
39 intended and that reasonably encourage competition.

40 **SECTION 5.** ORS 279B.005 is amended to read:

41 279B.005. (1) As used in this chapter, unless the context or a specifically applicable definition
42 requires otherwise:

43 [*(a) “Goods and services” or “goods or services” means supplies, equipment, materials and services*
44 *other than personal services designated under ORS 279A.055 and any personal property, including any*
45 *tangible, intangible and intellectual property and rights and licenses in relation thereto, that a con-*

1 *tracting agency is authorized by law to procure. “Goods and services” or “goods or services” includes*
 2 *combinations of any of the items identified in this paragraph.]*

3 [(b)] (a) “Invitation to bid” means all documents, whether attached or incorporated by reference,
 4 used for soliciting bids.

5 [(c)] (b) “Procurement description” means the words used in a solicitation to describe the goods
 6 or services to be procured. “Procurement description” includes specifications attached to or made
 7 a part of the solicitation.

8 [(d) “Public contract for goods or services” includes, for state contracting agencies with procure-
 9 ment authority under ORS 279A.050, contracts for personal services as designated by the state con-
 10 tracting agencies.]

11 [(e)] (c) “Request for proposals” means all documents, whether attached or incorporated by ref-
 12 erence, used for soliciting proposals.

13 [(f)] (d) “Responsible bidder” or “responsible proposer” means a person who meets the standards
 14 of responsibility described in ORS 279B.110.

15 [(g)] (e) “Responsive bid” or “responsive proposal” means a bid or proposal that substantially
 16 complies with the invitation to bid or request for proposals and all prescribed procurement proce-
 17 dures and requirements.

18 (2) ORS 279A.010 [(1)] contains general definitions applicable throughout this chapter.

19 **SECTION 6.** ORS 279B.050 is amended to read:

20 279B.050. (1) Except as provided in subsection (2) of this section, a contracting agency shall
 21 award a public contract for goods or services by competitive sealed bidding under ORS 279B.055 or
 22 competitive sealed proposals under ORS 279B.060.

23 (2) The requirements of subsection (1) of this section do not apply to public contracts established
 24 as provided in ORS 279B.065, 279B.070, 279B.075, 279B.080 or 279B.085.

25 (3) Notwithstanding the applicability of ORS 279B.065, 279B.070, 279B.075, 279B.080 or 279B.085
 26 to a public contract, a contracting agency nevertheless may award the public contract under sub-
 27 section (1) of this section.

28 [(4) Notwithstanding that the term “goods and services” as defined in ORS 279B.005 does not in-
 29 clude personal services:]

30 [(a)] (4) A local contracting agency may elect, by rule, charter, ordinance or other appropriate
 31 legislative action, to award contracts for personal services, as designated under ORS 279A.055, un-
 32 der the procedures of ORS 279B.050 to 279B.085.

33 [(b)] (5) State contracting agencies shall solicit contracts for personal services in accordance
 34 with ORS 279B.050 to 279B.085.

35 **SECTION 7.** ORS 279B.085 is amended to read:

36 279B.085. (1) As used in this section and ORS 279B.400:

37 (a) “Class special procurement” means a contracting procedure that differs from the procedures
 38 described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into
 39 a series of contracts over time [*for the acquisition of a specified class of goods or services*] **or for**
 40 **multiple projects.**

41 (b) “Contract-specific special procurement” means a contracting procedure that differs from the
 42 procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of
 43 entering into a single contract or a number of related contracts [*for the acquisition of specified goods*
 44 *or services*] on a one-time basis or for a single project.

45 (c) “Special procurement” means, unless the context requires otherwise, a class special pro-

1 curement, a contract-specific special procurement or both.

2 (2) Except as provided in subsection (3) of this section, to seek approval of a special procure-
3 ment, a contracting agency shall submit a written request to the Director of the Oregon Department
4 of Administrative Services or the local contract review board, as applicable, that describes the
5 [proposed] contracting procedure, the goods or services or the class of goods or services [to be ac-
6 quired through] **that are the subject of** the special procurement and the circumstances that justify
7 the use of a special procurement under the standards set forth in subsection (4) of this section.

8 (3) When the contracting agency is the office of the Secretary of State or the office of the State
9 Treasurer, to seek approval of a special procurement, the contracting agency shall submit a written
10 request to the Secretary of State or the State Treasurer, as applicable, that describes the
11 [proposed] contracting procedure, the goods or services or the class of goods or services [to be ac-
12 quired through] **that are the subject of** the special procurement and the circumstances that justify
13 the use of a special procurement under the standards set forth in subsection (4) of this section.

14 (4) The director, a local contract review board, the Secretary of State or the State Treasurer
15 may approve a special procurement if the director, board, Secretary of State or State Treasurer finds
16 that a written request submitted under subsection (2) or (3) of this section demonstrates that the
17 use of a special procurement as described in the request, or an alternative procedure prescribed by
18 the director, board, Secretary of State or State Treasurer[, will]:

19 (a) [Be] **Is** unlikely to encourage favoritism in the awarding of public contracts or to substan-
20 tially diminish competition for public contracts; and

21 (b)(A) **Is reasonably expected to** result in substantial cost savings to the contracting agency
22 or to the public; or

23 (B) Otherwise substantially [promote] **promotes** the public interest in a manner that could not
24 practicably be realized by complying with requirements that are applicable under ORS 279B.055,
25 279B.060, 279B.065 or 279B.070 or under any rules adopted thereunder.

26 (5) Public notice of the approval of a [proposed] special procurement must be given in the same
27 manner as provided in ORS 279B.055 (4).

28 (6) [If a contract is awarded] **If a contracting agency intends to award a contract** through
29 a special procurement **that calls for competition among prospective contractors**, the contracting
30 agency shall award the contract to the offeror [whose offer] the contracting agency determines [in
31 writing] to be the most advantageous to the contracting agency.

32 (7) When the director, a local contract review board, the Secretary of State or the State
33 Treasurer approves a class special procurement under this section, the contracting agency may
34 award contracts to acquire goods or services within the class of goods or services in accordance
35 with the terms of the approval without making a subsequent request for a special procurement.

36 **SECTION 8.** ORS 279B.130 is amended to read:

37 279B.130. (1)(a) A contracting agency may debar a prospective bidder or proposer from consid-
38 eration for award of the contracting agency's contracts for the reasons listed in subsection (2) of
39 this section after providing the prospective bidder or proposer with notice and a reasonable oppor-
40 tunity to be heard.

41 (b) A contracting agency may not debar a prospective bidder or proposer under this section for
42 more than three years.

43 (2) A prospective bidder or proposer may be debarred from consideration for award of a con-
44 tracting agency's contracts if:

45 (a) The prospective bidder or proposer has been convicted of a criminal offense as an incident

1 in obtaining or attempting to obtain a public or private contract or subcontract or in the perform-
 2 ance of [such] a **public or private** contract or subcontract.

3 (b) The prospective bidder or proposer has been convicted under state or federal statutes of
 4 embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen prop-
 5 erty or any other offense indicating a lack of business integrity or business honesty that currently,
 6 seriously and directly affects the prospective bidder’s or proposer’s responsibility as a contractor.

7 (c) The prospective bidder or proposer has been convicted under state or federal antitrust stat-
 8 utes.

9 (d) The prospective bidder or proposer has committed a violation of a contract provision [*and*
 10 *debarment for such a violation was listed in the contract terms and conditions as a potential penalty*]
 11 **that is regarded by the contracting agency or the Construction Contractors Board to be so**
 12 **serious as to justify disqualification.** A violation may include but is not limited to a failure to
 13 perform the terms of a contract or an unsatisfactory performance in accordance with the terms of
 14 the contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond
 15 the control of the contractor may not be considered to be a basis for debarment.

16 (e) The prospective bidder or proposer does not carry workers’ compensation or unemployment
 17 insurance as required by statute.

18 (3) A contracting agency shall issue a written decision to debar a prospective bidder or proposer
 19 under this section. The decision must:

20 (a) State the reasons for the action taken; and

21 (b) Inform the debarred prospective bidder or proposer of the appeal rights of the prospective
 22 bidder or proposer under ORS 279B.425.

23 (4) A copy of the decision issued under subsection (3) of this section must be mailed or otherwise
 24 furnished immediately to the debarred prospective bidder or proposer.

25 (5) A prospective bidder or proposer that wishes to appeal debarment shall, within three busi-
 26 ness days after receipt of notice of debarment, notify the contracting agency that the prospective
 27 bidder or proposer appeals the debarment as provided in ORS 279B.425.

28 **SECTION 9.** ORS 279B.200 is amended to read:

29 279B.200. As used in ORS 279B.200 to 279B.240:

30 (1) “Brand name or equal specification” means a specification that uses one or more manufac-
 31 turers’ names, makes, catalog numbers or similar identifying characteristics to describe the standard
 32 of quality, performance, functionality or other characteristics needed to meet the contracting agen-
 33 cy’s requirements and that authorizes bidders or proposers to offer goods or services that are
 34 equivalent or superior to those named or described in the specification.

35 (2) “Brand name specification” means a specification limited to one or more products, brand
 36 names, makes, manufacturer’s names, catalog numbers or similar identifying characteristics.

37 (3) “Specification” means any description of the physical or functional characteristics of, or of
 38 the nature of, goods or services to be procured by a contracting agency. “Specification” may include
 39 a description of any requirement for inspecting, testing or preparing goods or services for delivery.
 40 When a solicitation required or authorized by ORS 279B.050 (4) **or** (5) to be conducted under ORS
 41 279B.055 or 279B.060 calls in whole or in part for the performance of personal services as designated
 42 under ORS 279A.055, “specification” also includes any description of the characteristics or nature
 43 of the personal services.

44 **SECTION 10.** ORS 279B.270 is amended to read:

45 279B.270. (1) A state contracting agency procuring goods[, *materials, equipment*] or personal

1 services shall:

2 (a) Review the contracting agency's current procurement specifications in order to eliminate,
 3 wherever economically feasible, discrimination against the procurement of recovered resources or
 4 recycled materials.

5 (b) Provide incentives, wherever economically feasible, in all procurement specifications issued
 6 by the contracting agency for the maximum possible use of recovered resources and recycled mate-
 7 rials.

8 (c) Develop procurement practices that, to the maximum extent economically feasible, ensure the
 9 procurement of materials that are recycled or that may be recycled or reused when discarded.

10 (d) Establish management practices that minimize the volume of solid waste generated by reus-
 11 ing paper, envelopes, containers and all types of packaging and by limiting the amount of materials
 12 consumed and discarded.

13 (e) Use, or require persons with whom the contracting agency contracts to use in the perform-
 14 ance of the contract work, to the maximum extent economically feasible, recycled paper and recy-
 15 cled PETE products as well as other recycled plastic resin products.

16 (2) An invitation to bid or a request for proposals issued by a state contracting agency under
 17 this chapter shall include the following language: "Vendors shall use recyclable products to the
 18 maximum extent economically feasible in the performance of the contract work set forth in this
 19 document."

20 (3) Each state contracting agency shall strive to meet a recycled product procurement level es-
 21 tablished by rule by the Oregon Department of Administrative Services.

22 **SECTION 11.** ORS 279B.405 is amended to read:

23 279B.405. (1) As used in this section:

24 (a) "Brand name" means a brand name specification as defined in ORS 279B.200.

25 (b) "Legally flawed" means that a solicitation document contains terms or conditions that are
 26 contrary to law.

27 (c) "Unnecessarily restrictive" means that specifications limit competition arbitrarily, without
 28 reasonably promoting the fulfillment of the procurement needs of a contracting agency.

29 [(2)(a)] (2) A prospective bidder, proposer or offeror for a public contract solicited under ORS
 30 279B.055, 279B.060 or 279B.085 may file a protest with the contracting agency if the prospective
 31 bidder, proposer or offeror believes that the procurement process is contrary to law or that a so-
 32 licitation document is unnecessarily restrictive, is legally flawed or improperly specifies a brand
 33 name. If a prospective bidder, proposer or offeror fails to timely file such a protest, the prospective
 34 bidder, proposer or offeror may not challenge the contract on grounds under this subsection in any
 35 future legal or administrative proceeding.

36 [(b) Notwithstanding paragraph (a) of this subsection, a contract-specific special procurement under
 37 ORS 279B.085 may not be protested, challenged or reviewed unless the approval of the special pro-
 38 curement by the Director of the Oregon Department of Administrative Services or a local contract re-
 39 view board, as applicable, has been invalidated by a reviewing circuit court under ORS 279B.400.]

40 (3) The contracting agency, pursuant to rules adopted under ORS 279A.065, shall notify pro-
 41 spective bidders, proposers or offerors of the time and manner in which a protest under this section
 42 may be filed and considered. Before seeking judicial review, a prospective bidder, proposer or offeror
 43 must file a protest with the contracting agency and exhaust all available administrative remedies.

44 (4) The contracting agency shall consider the protest if the protest is timely filed and contains
 45 the following:

1 (a) Sufficient information to identify the solicitation that is the subject of the protest;

2 (b) The grounds that demonstrate how the procurement process is contrary to law or how the
 3 solicitation document is unnecessarily restrictive, is legally flawed or improperly specifies a brand
 4 name;

5 (c) Evidence or supporting documentation that supports the grounds on which the protest is
 6 based; and

7 (d) The relief sought.

8 (5) If the protest meets the requirements of subsection (4) of this section, the contracting agency
 9 shall consider the protest and issue a decision in writing. Otherwise, the contracting agency shall
 10 promptly notify the prospective bidder, proposer or offeror that the protest is untimely or that the
 11 protest failed to meet the requirements of subsection (4) of this section and give the reasons for the
 12 failure.

13 (6) The contracting agency shall issue a decision on the protest in accordance with rules
 14 adopted under ORS 279A.065 no *[less]* **fewer** than three business days before bids, proposals or offers
 15 are due, unless a written determination is made by the agency that circumstances exist that
 16 *[require]* **justify** a shorter time limit.

17 (7) A decision of a contracting agency on a protest under this section, including a protest of a
 18 special procurement, is subject to judicial review only if the *[suit]* **action** or writ of review is filed
 19 before the opening of bids, proposals or offers.

20 (8)(a) A decision of a state contracting agency on a protest under this section is reviewable by
 21 the Circuit Court for Marion County or the circuit court for the county in which the principal of-
 22 fices of the state contracting agency are located.

23 (b) A decision of a local contracting agency on a protest under this section is reviewable by the
 24 circuit court for the county in which the principal offices of the local contracting agency are lo-
 25 cated.

26 (9) If judicial review of a contracting agency's decision on a protest under this section is sought,
 27 the contracting agency may not proceed with contract execution unless the contracting agency de-
 28 termines that there is a compelling governmental interest in proceeding or that the goods and ser-
 29 vices are urgently needed. If the contracting agency makes such a determination, the contracting
 30 agency shall set forth the reasons for the determination in writing and immediately provide them
 31 to the prospective bidder, proposer or offeror that filed the protest. Thereafter, after joining the
 32 contractor as a party to the litigation and upon motion from the person filing the protest, the court
 33 may nonetheless stay the performance of the contract if the court finds that the contracting agen-
 34 cy's determination of the existence of a compelling governmental interest in proceeding with con-
 35 tract execution, or the contracting agency's determination that the goods or services were urgently
 36 needed, was not supported by substantial evidence or constituted a manifest abuse of discretion. In
 37 granting a stay, the court may require the person seeking the stay to post a bond in an amount
 38 sufficient to protect the contracting agency and the public from costs associated with delay in con-
 39 tract performance.

40 (10) In its review, the court shall give due deference to any factual decision made by the con-
 41 tracting agency and may not substitute its judgment for that of the contracting agency, but shall
 42 review all questions of law de novo. Thereafter:

43 (a) If a contract has not been executed and the court rules in favor of the party that sought
 44 judicial review, the court shall remand the procurement process to the contracting agency for a
 45 determination of whether and how to continue with the procurement process in light of the court's

1 decision.

2 (b) In addition to the relief provided for in paragraph (a) of this subsection, if a contract has
 3 been executed, the court shall include in its order a determination whether the party that signed
 4 the contract with the contracting agency is entitled to reimbursement under the conditions of, and
 5 calculated in the same manner as provided in, ORS 279C.470. Notwithstanding that ORS 279C.470
 6 otherwise applies only to public improvement contracts, under this paragraph the court shall apply
 7 ORS 279C.470 to both public improvement contracts and other public contracts of contracting
 8 agencies.

9 (c) The court may award costs and attorney fees to the prevailing party.

10 **SECTION 12.** ORS 279B.415 is amended to read:

11 279B.415. (1) As used in this section, “bidder” includes a person who submits a proposal to a
 12 public contracting agency pursuant to a request for proposals.

13 (2) A decision by a state contracting agency on a protest of a contract award is reviewable by
 14 the Circuit Court for Marion County or the circuit court for the county in which the principal of-
 15 fices of the state contracting agency are located. A decision by a local contracting agency on a
 16 protest of a contract award is reviewable by the circuit court for the county in which the principal
 17 offices of the local contracting agency are located.

18 (3) To obtain review, a complainant [*shall file a complaint with the court*] **must commence an**
 19 **action** before the contract that is the subject of the protest is approved by the Attorney General,
 20 if required by ORS 291.047, and executed by the contracting agency. In the complaint, the
 21 complainant shall state the nature of the complainant’s interest, the facts showing how the
 22 complainant is adversely affected or aggrieved by the contracting agency’s decision and the basis
 23 upon which the decision should be reversed or remanded. The complainant shall join as parties all
 24 bidders that would be in line for an award of the contract ahead of the complainant. If injunctive
 25 relief is sought, the court may require the person seeking a stay to post a bond in an amount suf-
 26 ficient to protect the contracting agency and the public from costs associated with delay in exe-
 27 cution of the contract.

28 (4) When judicial review is sought, the contracting agency may not proceed with contract exe-
 29 cution unless the contracting agency determines that there is a compelling governmental interest
 30 in proceeding or that the goods and services are urgently needed. If the contracting agency makes
 31 such a determination, the contracting agency shall set forth the reasons for the determination in
 32 writing and immediately provide them to the complainant. Thereafter, upon motion from the
 33 complainant, the court may nonetheless stay the performance of the contract if the court finds that
 34 the contracting agency’s determination of the existence of a compelling governmental interest in
 35 proceeding with contract execution, or the contracting agency’s determination that the goods or
 36 services were urgently needed, was not supported by substantial evidence or constituted a manifest
 37 abuse of discretion. In granting a stay, the court may require the person seeking the stay to post
 38 a bond in an amount sufficient to protect the contracting agency and the public from costs associ-
 39 ated with delay in contract performance.

40 (5) The court shall review the matter without a jury and shall consider only those grounds the
 41 complainant raised in the protest to the contracting agency.

42 (6) The court shall remand the matter to the contracting agency for a further decision if:

43 (a) Substantial evidence does not exist to support the contracting agency’s decision. Substantial
 44 evidence exists to support a finding of fact when the record, viewed as a whole, would permit a
 45 reasonable person to make that finding;

1 (b) The contracting agency's decision was outside the range of discretion delegated to the con-
 2 tracting agency by law;

3 (c) The decision was inconsistent with a contracting agency rule, an officially stated contracting
 4 agency position or an officially stated prior contracting agency practice, if the inconsistency is not
 5 explained by the contracting agency; or

6 (d) The decision was in violation of a constitutional or statutory provision.

7 (7)(a) In addition to remanding the decision to the contracting agency, the court may order such
 8 ancillary relief, such as the cost of bid preparation, as the court finds necessary to redress the ef-
 9 fects of official action wrongfully taken or withheld. Ancillary relief does not include the award of
 10 a contract to the complainant or the award of lost profits or other damages.

11 (b) If a contract has not been executed and the court rules in favor of the complainant, the court
 12 shall remand the matter to the contracting agency for a determination whether to continue with the
 13 procurement process in light of the court's decision.

14 (c) If a contract has been executed, in addition to the relief provided for in paragraph (a) of this
 15 subsection, the court shall include in its order a determination whether the party that signed the
 16 contract with the contracting agency is entitled to reimbursement under the conditions of, and cal-
 17 culated in the same manner as provided in, ORS 279C.470. Notwithstanding that ORS 279C.470 oth-
 18 erwise applies only to public improvement contracts, under this paragraph the court shall apply ORS
 19 279C.470 to both public improvement contracts and other public contracts of contracting agencies.

20 (d) The court may award costs and attorney fees to the prevailing party.

21 **SECTION 13.** ORS 279C.320 is amended to read:

22 279C.320. (1) Contracting agencies shall enter into contracts for **emergency work**, minor al-
 23 teration, ordinary repair or maintenance of public improvements, as well as any other construction
 24 contract that is not defined as a public improvement under ORS 279A.010, in accordance with the
 25 provisions of ORS chapter 279B. [*This subsection does not apply to emergency contracts regulated*
 26 *under ORS 279C.335.*] **Contracts for emergency work are regulated under ORS 279B.080.**

27 (2) Nothing in this section relieves contracting agencies or contractors of any other relevant
 28 requirements under this chapter, including payment of prevailing wage rates when applicable.

29 (3) When construction services are not considered to be a public improvement under this chap-
 30 ter because no funds of a public agency are directly or indirectly used, except for participation that
 31 is incidental or related primarily to project design or inspection, the benefiting public body may
 32 nonetheless condition acceptance of the services on receipt of such protections as the public body
 33 considers to be in the public interest, including a performance bond, a payment bond and appropri-
 34 ate insurance.

35 **SECTION 14.** ORS 279C.335 is amended to read:

36 279C.335. (1) All public improvement contracts shall be based upon competitive bids except:

37 (a) Contracts made with qualified nonprofit agencies providing employment opportunities for
 38 disabled individuals under ORS 279.835 to 279.855.

39 (b) A public improvement contract exempt under subsection (2) of this section.

40 (c) A public improvement contract with a value of less than \$5,000.

41 (d) A contract not to exceed \$100,000[, *or not to exceed \$50,000 in the case of a contract for a*
 42 *highway, bridge or other transportation project,*] made under procedures for competitive quotes in
 43 sections 132 and 133, chapter 794, Oregon Laws 2003.

44 (e) Contracts for repair, maintenance, improvement or protection of property obtained by the
 45 Department of Veterans' Affairs under ORS 407.135 and 407.145 (1).

1 (f) Energy savings performance contracts entered into in accordance with rules of procedure
 2 adopted under ORS 279A.065.

3 [(g) A public improvement contract awarded under subsection (6) of this section in response to an
 4 emergency.]

5 (2) Subject to subsection (4)(b) of this section, the Director of the Oregon Department of Ad-
 6 ministrative Services, a local contract review board or, for contracts described in ORS 279A.050
 7 (3)(b), the Director of Transportation may exempt a public improvement contract or a class of public
 8 improvement contracts from the competitive bidding requirements of subsection (1) of this section
 9 upon approval of the following findings submitted by the contracting agency **or, if a state agency**
 10 **is not the contracting agency, the state agency** seeking the exemption:

11 (a) It is unlikely that the exemption will encourage favoritism in the awarding of public im-
 12 provement contracts or substantially diminish competition for public improvement contracts.[: and]

13 (b) The awarding of public improvement contracts under the exemption [will] **is reasonably**
 14 **expected to** result in substantial cost savings to the contracting agency, **to the state agency** or,
 15 if the contracts are for public improvements described in ORS 279A.050 (3)(b), to the contracting
 16 agency or the public. In making the finding, the Director of the Oregon Department of Administra-
 17 tive Services, the Director of Transportation or the local contract review board may consider the
 18 type, cost and amount of the contract, the number of persons available to bid and such other factors
 19 as may be deemed appropriate.

20 (c) **As an alternative to the finding described in paragraph (b) of this subsection, when**
 21 **a contracting agency or state agency seeks an exemption that would allow the use of an al-**
 22 **ternate contracting method that the agency has not previously used, the agency may make**
 23 **a finding that identifies the project as a pilot project for which the agency intends to deter-**
 24 **mine whether the use of the alternate contracting method actually results in substantial cost**
 25 **savings to the contracting agency, to the state agency or, if the contract is for a public im-**
 26 **provement described in ORS 279A.050 (3)(b), to the contracting agency or the public. The**
 27 **agency shall include an analysis and conclusion regarding actual cost savings, if any, in the**
 28 **evaluation required under ORS 279C.355.**

29 (3) In making findings to support an exemption for a class of public improvement contracts, the
 30 contracting agency **or state agency** shall clearly identify the class using the class's defining char-
 31 acteristics. Those characteristics shall include some combination of project descriptions or locations,
 32 time periods, contract values, methods of procurement or other factors that distinguish the limited
 33 and related class of public improvement contracts from the [contracting] agency's overall con-
 34 struction program. The [contracting] agency may not identify a class solely by funding source, such
 35 as a particular bond fund, or by the method of procurement, but shall identify the class using
 36 characteristics that reasonably relate to the exemption criteria set forth in subsection (2) of this
 37 section.

38 (4) In granting exemptions under subsection (2) of this section, the Director of the Oregon De-
 39 partment of Administrative Services, the Director of Transportation or the local contract review
 40 board shall:

41 (a) When appropriate, direct the use of alternate contracting methods that take account of
 42 market realities and modern practices and are consistent with the public policy of encouraging
 43 competition.

44 (b) Require and approve or disapprove written findings by the contracting agency **or state**
 45 **agency** that support the awarding of a particular public improvement contract or a class of public

1 improvement contracts, without the competitive bidding requirement of subsection (1) of this section.
 2 The findings must show that the exemption of a contract or class of contracts complies with the
 3 requirements of subsection (2) of this section.

4 (5)(a) Before final adoption of the findings required by subsection (2) of this section exempting
 5 a public improvement contract or a class of public improvement contracts from the requirement of
 6 competitive bidding, a contracting agency **or state agency** shall hold a public hearing.

7 (b) Notification of the public hearing shall be published in at least one trade newspaper of
 8 general statewide circulation a minimum of 14 days before the hearing.

9 (c) The notice shall state that the public hearing is for the purpose of taking comments on the
 10 [contracting agency's] draft findings for an exemption from the competitive bidding requirement. At
 11 the time of the notice, copies of the draft findings shall be made available to the public. At the op-
 12 tion of the contracting agency **or state agency**, the notice may describe the process by which the
 13 findings are finally adopted and may indicate the opportunity for any further public comment.

14 (d) At the public hearing, the contracting agency **or state agency** shall offer an opportunity for
 15 any interested party to appear and present comment.

16 (e) If a contracting agency **or state agency** is required to act promptly due to circumstances
 17 beyond the [contracting] agency's control that do not constitute an emergency, notification of the
 18 public hearing may be published simultaneously with the [contracting] agency's solicitation of con-
 19 tractors for the alternative public contracting method, as long as responses to the solicitation are
 20 due at least five days after the meeting and approval of the findings.

21 *[(6) After declaring that an emergency exists in accordance with rules adopted under ORS*
 22 *279A.065, a contracting agency may award a public improvement contract in response to the emergency*
 23 *without using a competitive solicitation.]*

24 **(6) The purpose of an exemption is to exempt one or more public improvement contracts**
 25 **from competitive bidding requirements. The representations in and the accuracy of the**
 26 **findings, including any general description of the resulting public improvement contract, are**
 27 **the bases for approving the findings and granting the exception. The findings may describe**
 28 **anticipated features of the resulting public improvement contract, but the final parameters**
 29 **of the contract are those characteristics or specifics announced in the solicitation document.**

30 (7) A public improvement contract awarded under the competitive bidding requirement of sub-
 31 section (1) of this section may be amended only in accordance with rules adopted under ORS
 32 279A.065.

33 (8) Public improvement contracts excepted from competitive bid requirements under subsection
 34 (1)(a), (c), (d), (e)[, (f) or (g)] **or (f)** of this section are not subject to the exemption requirements of
 35 subsection (2) of this section.

36 **SECTION 15.** ORS 279C.335, as amended by section 104, chapter 794, Oregon Laws 2003, section
 37 13, chapter 103, Oregon Laws 2005, and section 59, chapter 625, Oregon Laws 2005, is amended to
 38 read:

39 279C.335. (1) All public improvement contracts shall be based upon competitive bids except:

40 (a) Contracts made with qualified nonprofit agencies providing employment opportunities for
 41 disabled individuals under ORS 279.835 to 279.855.

42 (b) A public improvement contract exempt under subsection (2) of this section.

43 (c) A public improvement contract with a value of less than \$5,000.

44 **(d) A contract not to exceed \$100,000 made under procedures for competitive quotes in**
 45 **sections 132 and 133, chapter 794, Oregon Laws 2003.**

1 [(d)] (e) Contracts for repair, maintenance, improvement or protection of property obtained by
 2 the Department of Veterans' Affairs under ORS 407.135 and 407.145 (1).

3 [(e)] (f) Energy savings performance contracts entered into in accordance with rules of proce-
 4 dure adopted under ORS 279A.065.

5 [(f) A public improvement contract awarded under subsection (6) of this section in response to an
 6 emergency.]

7 (2) Subject to subsection (4)(b) of this section, the Director of the Oregon Department of Ad-
 8 ministrative Services, a local contract review board or, for contracts described in ORS 279A.050
 9 (3)(b), the Director of Transportation may exempt a public improvement contract or a class of public
 10 improvement contracts from the competitive bidding requirements of subsection (1) of this section
 11 upon approval of the following findings submitted by the contracting agency **or, if a state agency**
 12 **is not the contracting agency, the state agency** seeking the exemption:

13 (a) It is unlikely that the exemption will encourage favoritism in the awarding of public im-
 14 provement contracts or substantially diminish competition for public improvement contracts.[: and]

15 (b) The awarding of public improvement contracts under the exemption [will] **is reasonably**
 16 **expected to** result in substantial cost savings to the contracting agency, **to the state agency** or,
 17 if the contracts are for public improvements described in ORS 279A.050 (3)(b), to the contracting
 18 agency or the public. In making the finding, the Director of the Oregon Department of Administra-
 19 tive Services, the Director of Transportation or the local contract review board may consider the
 20 type, cost and amount of the contract, the number of persons available to bid and such other factors
 21 as may be deemed appropriate.

22 (c) **As an alternative to the finding described in paragraph (b) of this subsection, when**
 23 **a contracting agency or state agency seeks an exemption that would allow the use of an al-**
 24 **ternate contracting method that the agency has not previously used, the agency may make**
 25 **a finding that identifies the project as a pilot project for which the agency intends to deter-**
 26 **mine whether the use of the alternate contracting method actually results in substantial cost**
 27 **savings to the contracting agency, to the state agency or, if the contract is for a public im-**
 28 **provement described in ORS 279A.050 (3)(b), to the contracting agency or the public. The**
 29 **agency shall include an analysis and conclusion regarding actual cost savings, if any, in the**
 30 **evaluation required under ORS 279C.355.**

31 (3) In making findings to support an exemption for a class of public improvement contracts, the
 32 contracting agency **or state agency** shall clearly identify the class using the class's defining char-
 33 acteristics. Those characteristics shall include some combination of project descriptions or locations,
 34 time periods, contract values, methods of procurement or other factors that distinguish the limited
 35 and related class of public improvement contracts from the [contracting] agency's overall con-
 36 struction program. The [contracting] agency may not identify a class solely by funding source, such
 37 as a particular bond fund, or by the method of procurement, but shall identify the class using
 38 characteristics that reasonably relate to the exemption criteria set forth in subsection (2) of this
 39 section.

40 (4) In granting exemptions under subsection (2) of this section, the Director of the Oregon De-
 41 partment of Administrative Services, the Director of Transportation or the local contract review
 42 board shall:

43 (a) When appropriate, direct the use of alternate contracting methods that take account of
 44 market realities and modern practices and are consistent with the public policy of encouraging
 45 competition.

1 (b) Require and approve or disapprove written findings by the contracting agency **or state**
 2 **agency** that support the awarding of a particular public improvement contract or a class of public
 3 improvement contracts, without the competitive bidding requirement of subsection (1) of this section.
 4 The findings must show that the exemption of a contract or class of contracts complies with the
 5 requirements of subsection (2) of this section.

6 (5)(a) Before final adoption of the findings required by subsection (2) of this section exempting
 7 a public improvement contract or a class of public improvement contracts from the requirement of
 8 competitive bidding, a contracting agency **or state agency** shall hold a public hearing.

9 (b) Notification of the public hearing shall be published in at least one trade newspaper of
 10 general statewide circulation a minimum of 14 days before the hearing.

11 (c) The notice shall state that the public hearing is for the purpose of taking comments on the
 12 *[contracting agency's]* draft findings for an exemption from the competitive bidding requirement. At
 13 the time of the notice, copies of the draft findings shall be made available to the public. At the op-
 14 tion of the contracting agency **or state agency**, the notice may describe the process by which the
 15 findings are finally adopted and may indicate the opportunity for any further public comment.

16 (d) At the public hearing, the contracting agency **or state agency** shall offer an opportunity for
 17 any interested party to appear and present comment.

18 (e) If a contracting agency **or state agency** is required to act promptly due to circumstances
 19 beyond the *[contracting]* agency's control that do not constitute an emergency, notification of the
 20 public hearing may be published simultaneously with the *[contracting]* agency's solicitation of con-
 21 tractors for the alternative public contracting method, as long as responses to the solicitation are
 22 due at least five days after the meeting and approval of the findings.

23 *[(6) After declaring that an emergency exists in accordance with rules adopted under ORS*
 24 *279A.065, a contracting agency may award a public improvement contract in response to the emergency*
 25 *without using a competitive solicitation.]*

26 **(6) The purpose of an exemption is to exempt one or more public improvement contracts**
 27 **from competitive bidding requirements. The representations in and the accuracy of the**
 28 **findings, including any general description of the resulting public improvement contract, are**
 29 **the bases for approving the findings and granting the exception. The findings may describe**
 30 **anticipated features of the resulting public improvement contract, but the final parameters**
 31 **of the contract are those characteristics or specifics announced in the solicitation document.**

32 (7) A public improvement contract awarded under the competitive bidding requirement of sub-
 33 section (1) of this section may be amended only in accordance with rules adopted under ORS
 34 279A.065.

35 (8) Public improvement contracts excepted from competitive bid requirements under subsection
 36 (1)(a), (c), (d), (e) or (f) of this section are not subject to the exemption requirements of subsection
 37 (2) of this section.

38 **SECTION 16.** Section 105, chapter 794, Oregon Laws 2003, as amended by section 19, chapter
 39 103, Oregon Laws 2005, is amended to read:

40 **Sec. 105.** The amendments to ORS 279C.335 by section 104, chapter 794, Oregon Laws 2003, and
 41 the amendments to ORS 279C.375 by section 18, **chapter 103, Oregon Laws 2005**, *[of this 2005*
 42 *Act]* become operative on *[July 1, 2009]* **the effective date of this 2007 Act.**

43 **SECTION 17.** ORS 279C.335, as amended by sections 104 and 105a, chapter 794, Oregon Laws
 44 2003, sections 13 and 14, chapter 103, Oregon Laws 2005, and sections 59 and 60, chapter 625,
 45 Oregon Laws 2005, is amended to read:

279C.335. (1) All public improvement contracts shall be based upon competitive bids except:

(a) Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals under ORS 279.835 to 279.855.

(b) A public improvement contract exempt under subsection (2) of this section.

(c) A public improvement contract with a value of less than \$5,000.

(d) A contract not to exceed \$100,000 made under procedures for competitive quotes in sections 132 and 133, chapter 794, Oregon Laws 2003.

[(d)] (e) Contracts for repair, maintenance, improvement or protection of property obtained by the Department of Veterans' Affairs under ORS 407.135 and 407.145 (1).

[(e)] (f) Energy savings performance contracts entered into in accordance with rules of procedure adopted under ORS 279A.065.

[(f) A public improvement contract awarded under subsection (6) of this section in response to an emergency.]

(2) Subject to subsection (4)(b) of this section, the Director of the Oregon Department of Administrative Services, *[or]* a local contract review board **or, for contracts described in ORS 279A.050 (3)(b), the Director of Transportation** may exempt a public improvement contract or a class of public improvement contracts from the competitive bidding requirements of subsection (1) of this section upon approval of the following findings submitted by the contracting agency **or, if a state agency is not the contracting agency, the state agency** seeking the exemption:

(a) It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts.*;* *and*

(b) The awarding of public improvement contracts under the exemption *[will]* **is reasonably expected to result in substantial cost savings to the contracting agency, to the state agency or, if the contracts are for public improvements described in ORS 279A.050 (3)(b), to the contracting agency or the public.** In making the finding, the Director **of the Oregon Department of Administrative Services, the Director of Transportation** or the local contract review board may consider the type, cost and amount of the contract, the number of persons available to bid and such other factors as may be deemed appropriate.

(c) As an alternative to the finding described in paragraph (b) of this subsection, when a contracting agency or state agency seeks an exemption that would allow the use of an alternate contracting method that the agency has not previously used, the agency may make a finding that identifies the project as a pilot project for which the agency intends to determine whether the use of the alternate contracting method actually results in substantial cost savings to the contracting agency, to the state agency or, if the contract is for a public improvement described in ORS 279A.050 (3)(b), to the contracting agency or the public. The agency shall include an analysis and conclusion regarding actual cost savings, if any, in the evaluation required under ORS 279C.355.

(3) In making findings to support an exemption for a class of public improvement contracts, the contracting agency **or state agency** shall clearly identify the class using the class's defining characteristics. Those characteristics shall include some combination of project descriptions or locations, time periods, contract values, methods of procurement or other factors that distinguish the limited and related class of public improvement contracts from the *[contracting]* agency's overall construction program. The *[contracting]* agency may not identify a class solely by funding source, such as a particular bond fund, or by the method of procurement, but shall identify the class using characteristics that reasonably relate to the exemption criteria set forth in subsection (2) of this

1 section.

2 (4) In granting exemptions under subsection (2) of this section, the Director **of the Oregon**
 3 **Department of Administrative Services, the Director of Transportation** or the local contract
 4 review board shall:

5 (a) When appropriate, direct the use of alternate contracting methods that take account of
 6 market realities and modern practices and are consistent with the public policy of encouraging
 7 competition.

8 (b) Require and approve or disapprove written findings by the contracting agency **or state**
 9 **agency** that support the awarding of a particular public improvement contract or a class of public
 10 improvement contracts, without the competitive bidding requirement of subsection (1) of this section.
 11 The findings must show that the exemption of a contract or class of contracts complies with the
 12 requirements of subsection (2) of this section.

13 (5)(a) Before final adoption of the findings required by subsection (2) of this section exempting
 14 a public improvement contract or a class of public improvement contracts from the requirement of
 15 competitive bidding, a contracting agency **or state agency** shall hold a public hearing.

16 (b) Notification of the public hearing shall be published in at least one trade newspaper of
 17 general statewide circulation a minimum of 14 days before the hearing.

18 (c) The notice shall state that the public hearing is for the purpose of taking comments on the
 19 *[contracting agency's]* draft findings for an exemption from the competitive bidding requirement. At
 20 the time of the notice, copies of the draft findings shall be made available to the public. At the op-
 21 tion of the contracting agency **or state agency**, the notice may describe the process by which the
 22 findings are finally adopted and may indicate the opportunity for any further public comment.

23 (d) At the public hearing, the contracting agency **or state agency** shall offer an opportunity for
 24 any interested party to appear and present comment.

25 (e) If a contracting agency **or state agency** is required to act promptly due to circumstances
 26 beyond the *[contracting]* agency's control that do not constitute an emergency, notification of the
 27 public hearing may be published simultaneously with the *[contracting]* agency's solicitation of con-
 28 tractors for the alternative public contracting method, as long as responses to the solicitation are
 29 due at least five days after the meeting and approval of the findings.

30 *[(6) After declaring that an emergency exists in accordance with rules adopted under ORS*
 31 *279A.065, a contracting agency may award a public improvement contract in response to the emergency*
 32 *without using a competitive solicitation.]*

33 **(6) The purpose of an exemption is to exempt one or more public improvement contracts**
 34 **from competitive bidding requirements. The representations in and the accuracy of the**
 35 **findings, including any general description of the resulting public improvement contract, are**
 36 **the bases for approving the findings and granting the exception. The findings may describe**
 37 **anticipated features of the resulting public improvement contract, but the final parameters**
 38 **of the contract are those characteristics or specifics announced in the solicitation document.**

39 (7) A public improvement contract awarded under the competitive bidding requirement of sub-
 40 section (1) of this section may be amended only in accordance with rules adopted under ORS
 41 279A.065.

42 (8) Public improvement contracts excepted from competitive bid requirements under subsection
 43 (1)(a), (c), (d), (e) or (f) of this section are not subject to the exemption requirements of subsection
 44 (2) of this section.

45 **SECTION 18.** Section 105b, chapter 794, Oregon Laws 2003, is amended to read:

1 **Sec. 105b.** The amendments to [section 103 of this 2003 Act] **ORS 279C.335** by section 105a,
 2 **chapter 794, Oregon Laws 2003**, [of this 2003 Act] become operative on [July 1, 2012] **the effective**
 3 **date of this 2007 Act.**

4 **SECTION 19.** ORS 279C.345 is amended to read:

5 279C.345. (1) Specifications for public improvement contracts may not expressly or implicitly
 6 require any product by any brand name or mark, nor the product of any particular manufacturer
 7 or seller unless the product is exempt under subsection (2) of this section.

8 (2) The Director of the Oregon Department of Administrative Services, [or] a local contract re-
 9 view board **or, for contracts described in ORS 279A.050 (3)(b), the Director of Transportation**
 10 may exempt certain products or classes of products from subsection (1) of this section upon any of
 11 the following findings:

12 (a) It is unlikely that the exemption will encourage favoritism in the awarding of public im-
 13 provement contracts or substantially diminish competition for public improvement contracts;

14 (b) The specification of a product by brand name or mark, or the product of a particular man-
 15 ufacturer or seller, would result in substantial cost savings to the contracting agency;

16 (c) There is only one manufacturer or seller of the product of the quality required; or

17 (d) Efficient utilization of existing equipment or supplies requires the acquisition of compatible
 18 equipment or supplies.

19 **SECTION 20.** ORS 279C.350, as amended by section 109, chapter 794, Oregon Laws 2003, is
 20 amended to read:

21 279C.350. (1) Exemptions granted by the Director of the Oregon Department of Administrative
 22 Services under ORS 279C.335 (2) or 279C.345 (2) constitute rulemaking and not contested cases un-
 23 der ORS chapter 183. However, an exemption granted with regard to a specific public improvement
 24 contract by the **Director of the Oregon Department of Administrative Services, or an ex-**
 25 **emption granted by the Director of Transportation with regard to a specific public improve-**
 26 **ment contract or class of public improvement contracts described in ORS 279A.050 (3)(b),**
 27 shall be granted by order [of the director]. The order shall set forth findings supporting the decision
 28 [of the director] to grant or deny the request for the exemption. The order is reviewable under ORS
 29 183.484 and does not constitute a contested case order. Jurisdiction for review of the order is with
 30 the Circuit Court of Marion County. The court may award costs and attorney fees to the prevailing
 31 party.

32 (2) Any person except the contracting agency or anyone representing the contracting agency
 33 may bring a petition for a declaratory judgment to test the validity of any rule adopted by the Di-
 34 rector **of the Oregon Department of Administrative Services** under ORS 279C.335 or 279C.345
 35 in the manner provided in ORS 183.400.

36 (3) Any person except the contracting agency or anyone representing the contracting agency
 37 may bring an action for writ of review under ORS chapter 34 to test the validity of an exemption
 38 granted under ORS 279C.335 or 279C.345 by a local contract review board.

39 **SECTION 21.** Section 110, chapter 794, Oregon Laws 2003, is amended to read:

40 **Sec. 110.** The amendments to [section 108 of this 2003 Act] **ORS 279C.350** by section 109,
 41 **chapter 794, Oregon Laws 2003**, [of this 2003 Act] become operative on [July 1, 2012] **the effective**
 42 **date of this 2007 Act.**

43 **SECTION 22.** ORS 279C.355 is amended to read:

44 279C.355. (1) Upon completion of and final payment for any public improvement contract, or
 45 class of public improvement contracts [described in ORS 279A.050 (3)(b)], in excess of \$100,000 for

1 which the contracting agency did not use the competitive bidding process, the contracting agency
 2 shall prepare and deliver to the Director of the Oregon Department of Administrative Services, the
 3 local contract review board or, for [a class of] public improvement contracts described in ORS
 4 279A.050 (3)(b), the Director of Transportation an evaluation of the public improvement contract or
 5 the class of public improvement contracts.

6 (2) The evaluation must include but is not limited to the following matters:

7 (a) The actual project cost as compared with original project estimates;

8 (b) The amount of any guaranteed maximum price;

9 (c) The number of project change orders issued by the contracting agency;

10 (d) A narrative description of successes and failures during the design, engineering and con-
 11 struction of the project; and

12 (e) An objective assessment of the use of the alternative contracting process as compared to the
 13 findings required by ORS 279C.335.

14 (3) The evaluations required by this section:

15 (a) Must be made available for public inspection; and

16 (b) Must be completed within 30 days of the date the contracting agency accepts:

17 (A) The public improvement project; or

18 (B) The last public improvement project if the project falls within a class of public improvement
 19 contracts [described in ORS 279A.050 (3)(b)].

20 **SECTION 23.** ORS 279C.355, as amended by section 112, chapter 794, Oregon Laws 2003, is
 21 amended to read:

22 279C.355. (1) Upon completion of and final payment for any public improvement contract, or
 23 class of public improvement contracts, in excess of \$100,000 for which the contracting agency did
 24 not use the competitive bidding process, the contracting agency shall prepare and deliver to the
 25 Director of the Oregon Department of Administrative Services, [or] the local contract review board
 26 **or, for public improvement contracts described in ORS 279A.050 (3)(b), the Director of**
 27 **Transportation** an evaluation of the public improvement contract or the class of public improve-
 28 ment contracts.

29 (2) The evaluation [shall] **must** include but is not limited to the following matters:

30 (a) The actual project cost as compared with original project estimates;

31 (b) The amount of any guaranteed maximum price;

32 (c) The number of project change orders issued by the contracting agency;

33 (d) A narrative description of successes and failures during the design, engineering and con-
 34 struction of the project; and

35 (e) An objective assessment of the use of the alternative contracting process as compared to the
 36 findings required by ORS 279C.335.

37 (3) The evaluations required by this section:

38 (a) Must be made available for public inspection; and

39 (b) Must be completed within 30 days of the date the contracting agency accepts:

40 (A) The public improvement project; or

41 (B) The last public improvement project if the project falls within a class of public improvement
 42 contracts.

43 **SECTION 24.** Section 113, chapter 794, Oregon Laws 2003, is amended to read:

44 **Sec. 113.** The amendments to [section 111 of this 2003 Act] **ORS 279C.355** by section 112,
 45 **chapter 794, Oregon Laws 2003,** [of this 2003 Act] become operative on [July 1, 2012] **the effective**

1 **date of this 2007 Act.**

2 **SECTION 25.** ORS 279C.365 is amended to read:

3 279C.365. (1) A contracting agency preparing solicitation documents for a public improvement
4 contract shall, at a minimum, include:

5 (a) The public improvement project;

6 (b) The office where the specifications for the project may be reviewed;

7 (c) The date that prequalification applications must be filed under ORS 279C.430 and the class
8 or classes of work for which bidders must be prequalified if prequalification is a requirement;

9 (d) The date and time after which bids will not be received, which must be at least five days
10 after the date of the last publication of the advertisement, and may, in the sole discretion of the
11 contracting agency, direct or permit the submission and receipt of bids by electronic means;

12 (e) The name and title of the person designated for receipt of bids;

13 (f) The date, time and place that the contracting agency will publicly open the bids;

14 (g) A statement that, if the contract is for a public works **project** subject to **the state pre-**
15 **vailing rates of wage under** ORS 279C.800 to 279C.870, [*or*] **the federal prevailing rates of wage**
16 **under the Davis-Bacon Act** (40 U.S.C. 276a) **or both the state and federal prevailing rates of**
17 **wage**, no bid will be received or considered by the contracting agency unless the bid contains a
18 statement by the bidder that ORS **279C.838** or 279C.840 or 40 U.S.C. 276a will be complied with;

19 (h) A statement that each bid must identify whether the bidder is a resident bidder, as defined
20 in ORS 279A.120;

21 (i) A statement that the contracting agency may reject any bid not in compliance with all pre-
22 scribed public contracting procedures and requirements and may reject for good cause all bids upon
23 a finding of the agency that it is in the public interest to do so;

24 (j) Information addressing whether a contractor or subcontractor must be licensed under ORS
25 468A.720; and

26 (k) A statement that a bid for a public improvement contract may not be received or considered
27 by the contracting agency unless the bidder is licensed by the Construction Contractors Board or
28 the State Landscape Contractors Board.

29 **(2) A contracting agency may provide solicitation documents by electronic means.**

30 [(2)] **(3)** All bids made to the contracting agency under ORS 279C.335 or 279C.400 must be:

31 (a) In writing;

32 (b) Filed with the person designated for receipt of bids by the contracting agency; and

33 (c) Opened publicly by the contracting agency immediately after the deadline for submission of
34 bids.

35 [(3)] **(4)** After having been opened, the bids must be made available for public inspection.

36 [(4)] **(5)** A surety bond, irrevocable letter of credit issued by an insured institution as defined
37 in ORS 706.008, cashier's check or certified check of each bidder shall be submitted with or posted
38 for all bids as bid security unless the contract for which a bid is submitted has been exempted from
39 this requirement under ORS 279C.390. The security may not exceed 10 percent of the amount bid for
40 the contract.

41 [(5)] **(6)** Subsection [(4)] **(5)** of this section applies only to public improvement contracts with a
42 value, estimated by the contracting agency, of more than \$100,000 or, in the case of contracts for
43 highways, bridges and other transportation projects, more than \$50,000.

44 **SECTION 26.** ORS 279C.375 is amended to read:

45 279C.375. (1) After bids are opened and a determination is made that a public improvement

1 contract is to be awarded, the contracting agency shall award the contract to the lowest responsible
2 bidder.

3 (2) At least seven days before the award of a public improvement contract, unless the con-
4 tracting agency determines that seven days is impractical under rules adopted under ORS 279A.065,
5 the contracting agency shall issue to each bidder or post, electronically or otherwise, a notice of
6 the contracting agency’s intent to award a contract. This subsection does not apply to a contract
7 excepted or exempted from competitive bidding under ORS 279C.335 (1)(c) or (d) [or (6)]. The notice
8 and its manner of posting or issuance must conform to rules adopted under ORS 279A.065.

9 (3) In determining the lowest responsible bidder, a contracting agency shall do all of the fol-
10 lowing:

11 (a) Check the list created by the Construction Contractors Board under ORS 701.227 for bidders
12 who are not qualified to hold a public improvement contract.

13 (b) Determine whether the bidder has met the standards of responsibility. In making the deter-
14 mination, the contracting agency shall consider whether a bidder has:

15 (A) Available the appropriate financial, material, equipment, facility and personnel resources
16 and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual
17 responsibilities.

18 (B) A satisfactory record of performance. The contracting agency shall document the record of
19 performance of a bidder if the contracting agency finds the bidder not to be responsible under this
20 subparagraph.

21 (C) A satisfactory record of integrity. The contracting agency shall document the record of in-
22 tegrity of a bidder if the contracting agency finds the bidder not to be responsible under this sub-
23 paragraph.

24 (D) Qualified legally to contract with the contracting agency.

25 (E) Supplied all necessary information in connection with the inquiry concerning responsibility.
26 If a bidder fails to promptly supply information requested by the contracting agency concerning re-
27 sponsibility, the contracting agency shall base the determination of responsibility upon any available
28 information, or may find the bidder not to be responsible.

29 (c) Document the contracting agency’s compliance with the requirements of paragraphs (a) and
30 (b) of this subsection in substantially the following form:

31 _____

32
33 RESPONSIBILITY DETERMINATION FORM

34 Project Name: _____

35 Bid Number: _____

36 Business Entity Name: _____

37 CCB License Number: _____

38 Form Submitted By (Contracting Agency): _____

39 Form Submitted By (Contracting Agency Representative’s Name): _____

40 Title: _____

41 Date: _____

42 (The contracting agency must submit this form with attachments, if any, to the Construction
43 Contractors Board within 30 days after the date of contract award.)

44 The contracting agency has (check all of the following):

45 [] Checked the list created by the

1 Construction Contractors Board
2 under ORS 701.227 for bidders who
3 are not qualified to hold a public
4 improvement contract.

5 [] Determined whether the bidder has
6 met the standards of responsibility.

7 In so doing, the contracting agency
8 has considered whether the bidder:

9 [] Has available the appropriate
10 financial, material, equipment,
11 facility and personnel resources
12 and expertise, or the ability to
13 obtain the resources and expertise,
14 necessary to meet all contractual
15 responsibilities.

16 [] Has a satisfactory record of
17 performance.

18 [] Has a satisfactory record of
19 integrity.

20 [] Is qualified legally to contract with
21 the contracting agency.

22 [] Has supplied all necessary
23 information in connection with the
24 inquiry concerning responsibility.

25 [] Determined the bidder to be
26 (check one of the following):

27 [] Responsible under ORS 279C.375
28 (3)(a) and (b).

29 [] Not responsible under ORS 279C.375
30 (3)(a) and (b).

31 (Attach documentation if the contracting agency finds the bidder not to be responsible.)
32

33
34 (d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the
35 Construction Contractors Board within 30 days after the date the contracting agency awards the
36 contract.

37 (4) The successful bidder shall:

38 (a) Promptly execute a formal contract; and

39 (b) Execute and deliver to the contracting agency a performance bond and a payment bond when
40 required under ORS 279C.380.

41 **(5) Based on competitive bids, a contracting agency may award a public improvement**
42 **contract or may award multiple public improvement contracts when specified in the invita-**
43 **tion to bid.**

44 **SECTION 27.** ORS 279C.375, as amended by section 18, chapter 103, Oregon Laws 2005, is
45 amended to read:

1 279C.375. (1) After bids are opened and a determination is made that a public improvement
2 contract is to be awarded, the contracting agency shall award the contract to the lowest responsible
3 bidder.

4 (2) At least seven days before the award of a public improvement contract, unless the con-
5 tracting agency determines that seven days is impractical under rules adopted under ORS 279A.065,
6 the contracting agency shall issue to each bidder or post, electronically or otherwise, a notice of
7 the contracting agency’s intent to award a contract. This subsection does not apply to a contract
8 excepted or exempted from competitive bidding under ORS 279C.335 (1)(c) or [(6)] (d). The notice and
9 its manner of posting or issuance must conform to rules adopted under ORS 279A.065.

10 (3) In determining the lowest responsible bidder, a contracting agency shall do all of the fol-
11 lowing:

12 (a) Check the list created by the Construction Contractors Board under ORS 701.227 for bidders
13 who are not qualified to hold a public improvement contract.

14 (b) Determine whether the bidder has met the standards of responsibility. In making the deter-
15 mination, the contracting agency shall consider whether a bidder has:

16 (A) Available the appropriate financial, material, equipment, facility and personnel resources
17 and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual
18 responsibilities.

19 (B) A satisfactory record of performance. The contracting agency shall document the record of
20 performance of a bidder if the contracting agency finds the bidder not to be responsible under this
21 subparagraph.

22 (C) A satisfactory record of integrity. The contracting agency shall document the record of in-
23 tegrity of a bidder if the contracting agency finds the bidder not to be responsible under this sub-
24 paragraph.

25 (D) Qualified legally to contract with the contracting agency.

26 (E) Supplied all necessary information in connection with the inquiry concerning responsibility.
27 If a bidder fails to promptly supply information requested by the contracting agency concerning re-
28 sponsibility, the contracting agency shall base the determination of responsibility upon any available
29 information, or may find the bidder not to be responsible.

30 (c) Document the contracting agency’s compliance with the requirements of paragraphs (a) and
31 (b) of this subsection in substantially the following form:

32 _____

33
34 **RESPONSIBILITY DETERMINATION FORM**

35 Project Name: _____

36 Bid Number: _____

37 Business Entity Name: _____

38 CCB License Number: _____

39 Form Submitted By (Contracting Agency): _____

40 Form Submitted By (Contracting Agency Representative’s Name): _____

41 Title: _____

42 Date: _____

43 (The contracting agency must submit this form with attachments, if any, to the Construction
44 Contractors Board within 30 days after the date of contract award.)

45 The contracting agency has (check all of the following):

- 1 Checked the list created by the
- 2 Construction Contractors Board
- 3 under ORS 701.227 for bidders who
- 4 are not qualified to hold a public
- 5 improvement contract.
- 6 Determined whether the bidder has
- 7 met the standards of responsibility.
- 8 In so doing, the contracting agency
- 9 has considered whether the bidder:
- 10 Has available the appropriate
- 11 financial, material, equipment,
- 12 facility and personnel resources
- 13 and expertise, or the ability to
- 14 obtain the resources and expertise,
- 15 necessary to meet all contractual
- 16 responsibilities.
- 17 Has a satisfactory record of
- 18 performance.
- 19 Has a satisfactory record of
- 20 integrity.
- 21 Is qualified legally to contract with
- 22 the contracting agency.
- 23 Has supplied all necessary
- 24 information in connection with the
- 25 inquiry concerning responsibility.
- 26 Determined the bidder to be
- 27 (check one of the following):
- 28 Responsible under ORS 279C.375
- 29 (3)(a) and (b).
- 30 Not responsible under ORS 279C.375
- 31 (3)(a) and (b).
- 32 (Attach documentation if the contracting agency finds the bidder not to be responsible.)

35 (d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the
36 Construction Contractors Board within 30 days after the date the contracting agency awards the
37 contract.

- 38 (4) The successful bidder shall:
- 39 (a) Promptly execute a formal contract; and
- 40 (b) Execute and deliver to the contracting agency a performance bond and a payment bond when
- 41 required under ORS 279C.380.

42 **(5) Based on competitive bids, a contracting agency may award a public improvement**
43 **contract or may award multiple public improvement contracts when specified in the invita-**
44 **tion to bid.**

45 **SECTION 28.** ORS 279C.390 is amended to read:

1 279C.390. (1) Subject to the provisions of subsection (2) of this section, the Director of the
 2 Oregon Department of Administrative Services, **a state contracting agency with procurement**
 3 **authority under ORS 279A.050**, a local contract review board or, for contracts described in ORS
 4 279A.050 (3)(b), the Director of Transportation may exempt certain contracts or classes of contracts
 5 from all or a portion of the requirement for bid security and from all or a portion of the requirement
 6 that good and sufficient bonds be furnished to ensure performance of the contract and payment of
 7 obligations incurred in the performance.

8 (2) The contracting agency may require bid security and a good and sufficient performance bond,
 9 a good and sufficient payment bond, or any combination of such bonds, even though the public im-
 10 provement contract is of a class exempted [*by the Director of the Oregon Department of Administra-*
 11 *tive Services, the local contract review board or, for contracts described in ORS 279A.050 (3)(b), the*
 12 *Director of Transportation*] **under subsection (1) of this section.**

13 (3) The Director of Transportation may:

14 (a) Exempt contracts or classes of contracts financed from the proceeds of bonds issued under
 15 ORS 367.620 (3)(a) from the requirement for bid security and from the requirement that a good and
 16 sufficient bond be furnished to ensure performance of the contract; or

17 (b) Reduce the amount of the required performance bond for contracts or classes of contracts
 18 financed from the proceeds of the bonds issued under ORS 367.620 (3)(a) to less than 100 percent
 19 of the contract price.

20 (4) Any recoverable damages that exceed the amount of the performance bond required under
 21 subsection (3) of this section shall be the sole responsibility of the Department of Transportation.

22 **SECTION 29.** ORS 279C.400 is amended to read:

23 279C.400. (1) When authorized or required by an exemption granted under ORS 279C.335, a
 24 contracting agency may **solicit and** award a public improvement contract, **or may award multiple**
 25 **public improvement contracts when specified in the request for proposals, by requesting and**
 26 **evaluating** competitive proposals. A contract awarded under this section may be amended only in
 27 accordance with rules adopted under ORS 279A.065.

28 (2) Except as provided in ORS 279C.330 to 279C.355, 279C.360 to 279C.390, 279C.395 and 279C.430
 29 to 279C.450, competitive proposals shall be subject to the following requirements of competitive
 30 bidding:

31 (a) Advertisement under ORS 279C.360;

32 (b) Requirements for solicitation documents under ORS 279C.365;

33 (c) Disqualification due to a Construction Contractors Board listing as described in ORS
 34 279C.375 (3)(a);

35 (d) Contract execution and bonding requirements under ORS 279C.375 and 279C.380;

36 (e) Determination of responsibility under ORS 279C.375 (3)(b);

37 (f) Rejection of bids under ORS 279C.395; and

38 (g) Disqualification and prequalification under ORS 279C.430, 279C.435 and 279C.440.

39 (3) For the purposes of applying the requirements listed in subsection (2) of this section to
 40 competitive proposals, when used in the sections listed in subsection (2) of this section, "bids" in-
 41 cludes proposals, and "bid documents" and "invitation to bid" include requests for proposals.

42 (4) Competitive proposals are not subject to the following requirements of competitive bidding:

43 (a) First-tier subcontractor disclosure under ORS 279C.370; and

44 (b) Reciprocal preference under ORS 279A.120.

45 (5) [*When award of a public improvement contract advertised by the issuance of a request for*

1 *proposals may be made without negotiation,]* The contracting agency may require proposal security
 2 that serves the same function with respect to proposals as bid security serves with respect to bids
 3 under ORS 279C.365 [(4)] (5) and 279C.385, as follows:

4 (a) The contracting agency may require proposal security in a form and amount as may be de-
 5 termined to be reasonably necessary or prudent to protect the interests of the contracting agency.

6 (b) The contracting agency shall retain the proposal security if a proposer who is awarded a
 7 contract fails to promptly and properly execute the contract and provide any required bonds or in-
 8 surance.

9 (c) The contracting agency shall return the proposal security to all proposers upon the exe-
 10 cution of the contract, or earlier in the selection process.

11 (6) In all other respects, and subject to rules adopted under ORS 279A.065, references in this
 12 chapter to invitations to bid, bids or bidders shall, to the extent practicable within the proposal
 13 process, be deemed equally applicable to requests for proposals, proposals or proposers. However,
 14 notwithstanding ORS 279C.375 (1), a contracting agency may not be required to award a contract
 15 advertised under the competitive proposal process based on price, but may award the contract in
 16 accordance with ORS 279C.410 (8).

17 **SECTION 30.** ORS 279C.405 is amended to read:

18 279C.405. (1) **A contracting agency may issue a request for information, a request for in-**
 19 **terest, a request for qualifications or other preliminary documents to obtain information**
 20 **useful in the preparation or distribution of a request for proposals.**

21 (2) In addition to the general requirements of ORS 279C.365, a contracting agency preparing a
 22 request for proposals shall include:

23 [(1)] (a) All required contractual terms and conditions. The request for proposals also may:

24 [(a)] (A) Identify those contractual terms or conditions the contracting agency reserves, in the
 25 request for proposals, for negotiation with proposers;

26 [(b)] (B) Request that proposers propose contractual terms and conditions that relate to subject
 27 matter reasonably identified in the request for proposals; and

28 [(c)] (C) Contain or incorporate the form and content of the contract that the contracting agency
 29 will accept, or suggested contract terms and conditions that nevertheless may be the subject of ne-
 30 gotiations with proposers.

31 [(2)] (b) The method of contractor selection, which may include but is not limited to award
 32 without negotiation, negotiation with the highest ranked proposer, competitive negotiations,
 33 multiple-tiered competition designed either to identify a class of proposers that fall within a com-
 34 petitive range or to otherwise eliminate from consideration a class of lower ranked proposers, or
 35 any combination of methods, as authorized or prescribed by rules adopted under ORS 279A.065.

36 [(3)] (c) All evaluation factors that will be considered by the contracting agency when evaluat-
 37 ing the proposals, including the relative importance of price and any other evaluation factors.

38 **SECTION 31.** ORS 279C.410 is amended to read:

39 279C.410. (1) Notwithstanding the public records law, ORS 192.410 to 192.505:

40 (a) Proposals may be opened so as to avoid disclosure of contents to competing proposers during,
 41 when applicable, the process of negotiation.

42 (b) Proposals are not required to be open for public inspection until after the notice of intent
 43 to award a contract is issued.

44 (2) For each request for proposals, the contracting agency shall prepare a list of proposals.

45 (3) Notwithstanding any requirement to make proposals open to public inspection after the

1 contracting agency's issuance of notice of intent to award a contract, a contracting agency may
 2 withhold from disclosure to the public trade secrets, as defined in ORS 192.501, and information
 3 submitted to a public body in confidence, as described in ORS 192.502, that are contained in a pro-
 4 posal. The fact that proposals are opened at a public meeting as defined in ORS 192.610 does not
 5 make their contents subject to disclosure, regardless of whether the public body opening the pro-
 6 posals fails to give notice of or provide for an executive session for the purpose of opening pro-
 7 posals. If a request for proposals is canceled after proposals are received, the contracting agency
 8 may return a proposal to the proposer that made the proposal. The contracting agency shall keep
 9 a list of returned proposals in the file for the solicitation.

10 (4) As provided in the request for proposals, a contracting agency may conduct discussions with
 11 proposers who submit proposals the agency has determined to be closely competitive or to have a
 12 reasonable chance of being selected for award. The discussions may be conducted for the purpose
 13 of clarification to ensure full understanding of, and responsiveness to, the solicitation requirements.
 14 The contracting agency shall accord proposers fair and equal treatment with respect to any oppor-
 15 tunity for discussion and revision of proposals. Revisions of proposals may be permitted after the
 16 submission of proposals and before award for the purpose of obtaining best and final offers. In con-
 17 ducting discussions, the contracting agency may not disclose information derived from proposals
 18 submitted by competing proposers.

19 (5) When provided for in the request for proposals, the contracting agency may employ methods
 20 of contractor selection including but not limited to award based solely on the ranking of proposals,
 21 negotiation with the highest ranked proposer, competitive negotiations, multiple-tiered competition
 22 designed to identify a class of proposers that fall within a competitive range or to otherwise elimi-
 23 nate from consideration a class of lower ranked proposers, or any combination of methods, as au-
 24 thorized or prescribed by rules adopted under ORS 279A.065. When applicable, in any instance in
 25 which the contracting agency determines that impasse has been reached in negotiations with a
 26 highest ranked proposer, the contracting agency may terminate negotiations with that proposer and
 27 commence negotiations with the next highest ranked proposer.

28 (6) The cancellation of requests for proposals and the rejection of proposals shall be in accord-
 29 ance with ORS 279C.395.

30 (7) At least seven days before the award of a public improvement contract, unless the con-
 31 tracting agency determines that seven days is impractical under rules adopted under ORS 279A.065,
 32 the contracting agency shall issue to each proposer or post, electronically or otherwise, a notice
 33 of intent to award.

34 (8) If a public improvement contract is awarded, the contracting agency shall award a public
 35 improvement contract to the responsible proposer whose proposal is determined in writing to be the
 36 most advantageous to the contracting agency based on the evaluation factors set forth in the re-
 37 quest for proposals and, when applicable, the outcome of any negotiations authorized by the request
 38 for proposals. Other factors may not be used in the evaluation.

39 *[(9) The contracting agency may issue a request for information, a request for interest, a request*
 40 *for qualifications or other preliminary documents to obtain information useful in the preparation or*
 41 *distribution of a request for proposals.]*

42 **SECTION 32.** Section 132, chapter 794, Oregon Laws 2003, is amended to read:

43 **Sec. 132.** (1) A public improvement contract estimated by the contracting agency not to exceed
 44 \$100,000[, or not to exceed \$50,000 in the case of contracts for highways, bridges and other transpor-
 45 tation projects,] may be awarded in accordance with intermediate procurement procedures for com-

1 petitive quotes established by rules adopted under [section 10 of this 2003 Act] **ORS 279A.065**. A
 2 contract awarded under this section may be amended to exceed [the thresholds set forth in this sub-
 3 section] **\$100,000** only in accordance with rules adopted under [section 10 of this 2003 Act] **ORS**
 4 **279A.065**.

5 (2) A procurement may not be artificially divided or fragmented so as to constitute an interme-
 6 diate procurement under this section or to circumvent competitive bidding requirements under
 7 [sections 88 to 179 of this 2003 Act] **this chapter**.

8 (3) Intermediate procurements under this section need not be made through competitive bidding.
 9 However, nothing in this section may be construed as prohibiting a contracting agency from con-
 10 ducting a procurement that does not exceed [the thresholds in subsection (1) of this section] **\$100,000**
 11 under competitive bidding procedures.

12 **SECTION 33.** ORS 279C.460 is amended to read:

13 279C.460. (1) Any bidder or proposer adversely affected or any trade association of construction
 14 contractors acting on behalf of a member of the association to protect interests common to con-
 15 struction contractor members may commence [a suit] **an action** in the circuit court for the county
 16 where the principal offices of a contracting agency are located, for the purpose of requiring com-
 17 pliance with, or prevention of violations of, ORS 279C.300 to 279C.470 or to determine the applica-
 18 bility of ORS 279C.300 to 279C.470 to matters or decisions of the contracting agency.

19 (2) The court may order such equitable relief as the court considers appropriate in the circum-
 20 stances. In addition to or in lieu of any equitable relief, the court may award an aggrieved bidder
 21 or proposer any damages suffered by the bidder or proposer as a result of violations of ORS 279C.300
 22 to 279C.470 for the reasonable cost of preparing and submitting a bid or proposal. A decision of the
 23 contracting agency may not be voided if other equitable relief is available.

24 (3) If the contracting agency is successful in defending the contracting agency's actions against
 25 claims of violation or potential violation of ORS 279C.300 to 279C.470, the court may award to the
 26 aggrieved contracting agency any damages suffered as a result of the [suit] **court action**.

27 (4) The court may order payment of reasonable attorney fees and costs on trial and on appeal
 28 to a successful party in [a suit] **an action** brought under this section.

29 (5) This section does not apply to personal services contracts under ORS 279C.100 to 279C.125.

30 **SECTION 34.** ORS 279C.830 is amended to read:

31 279C.830. (1)(a) The specifications for every contract for public works shall contain a provision
 32 stating the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of
 33 wage required under the Davis-Bacon Act (40 U.S.C. 276a) that may be paid to workers in each trade
 34 or occupation required for the public works employed in the performance of the contract either by
 35 the contractor or subcontractor or other person doing or contracting to do the whole or any part
 36 of the work contemplated by the contract.

37 (b) If a public agency is required under paragraph (a) of this subsection to include the state and
 38 federal prevailing rates of wage in the specifications, the public agency also shall include in the
 39 specifications information showing which prevailing rate of wage is higher for workers in each trade
 40 or occupation in each locality, as determined by the Commissioner of the Bureau of Labor and In-
 41 dustries under ORS 279C.815 (2)(b).

42 (c) Every contract and subcontract shall contain a provision that the workers shall be paid not
 43 less than the specified minimum hourly rate of wage in accordance with ORS 279C.838.

44 (2) The specifications for every contract for public works between a public agency and a con-
 45 tractor shall contain a provision stating that a fee is required to be paid to the Commissioner of the

1 Bureau of Labor and Industries as provided in ORS 279C.825 (1). The contract shall contain a pro-
 2 vision that the fee shall be paid to the commissioner under the administrative rule of the commis-
 3 sioner.

4 (3) The specifications for every contract for public works shall contain a provision stating that
 5 the contractor and every subcontractor must have a public works bond filed with the Construction
 6 Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7)
 7 or (8). Every contract awarded by a contracting agency shall contain a provision requiring the
 8 contractor:

9 (a) To have a public works bond filed with the Construction Contractors Board before starting
 10 work on the project, unless exempt under ORS 279C.836 (4), (7) or (8).

11 (b) To include in every subcontract a provision requiring the subcontractor to have a public
 12 works bond filed with the Construction Contractors Board before starting work on the project, un-
 13 less exempt under ORS 279C.836 (4), (7) or (8).

14 **SECTION 35.** ORS 279C.836 is amended to read:

15 279C.836. (1) Except as provided in subsection (4), (7) or (8) of this section, before starting work
 16 on a contract or subcontract for a public works project, a contractor or subcontractor shall file with
 17 the Construction Contractors Board a public works bond with a corporate surety authorized to do
 18 business in this state in the amount of \$30,000. The bond must provide that the contractor or sub-
 19 contractor will pay claims ordered by the Bureau of Labor and Industries to workers performing
 20 labor upon public works projects. The bond must be a continuing obligation, and the surety's li-
 21 ability for the aggregate of claims that may be payable from the bond may not exceed the penal sum
 22 of the bond. The bond must remain in effect continuously until depleted by claims paid under this
 23 section, unless the surety sooner cancels the bond. The surety may cancel the bond by giving 30
 24 days' written notice to the contractor or subcontractor, to the board and to the Bureau of Labor
 25 and Industries. When the bond is canceled, the surety is relieved of further liability for work per-
 26 formed on contracts entered into after the cancellation. The cancellation does not limit the surety's
 27 liability for work performed on contracts entered into before the cancellation.

28 (2) Before permitting a subcontractor to start work on a public works project, the contractor
 29 shall verify that the subcontractor has filed a public works bond as required under this section,
 30 [or] has elected not to file a public works bond under subsection (7) of this section **or is exempt**
 31 **under subsection (4) or (8) of this section.**

32 (3) A contractor or subcontractor is not required under this section to file a separate public
 33 works bond for each public works project for which the contractor or subcontractor has a contract.

34 (4) A person that is not required under ORS 279C.800 to 279C.870 to pay prevailing rates of
 35 wage on a public works project is not required to file a public works bond under this section.

36 (5) A public works bond required by this section is in addition to any other bond the contractor
 37 or subcontractor is required to obtain.

38 (6) The board may, by rule, require a contractor or subcontractor to obtain a new public works
 39 bond if a surety pays a claim out of an existing public works bond. The new bond must be in the
 40 amount of \$30,000. The board may allow a contractor or subcontractor to obtain, instead of a new
 41 bond, a certification that the surety remains liable for the full penal sum of the existing bond,
 42 notwithstanding payment by the surety on the claim.

43 (7)(a) A disadvantaged, minority, women or emerging small business enterprise certified under
 44 ORS 200.055 may, for up to one year after certification, elect not to file a public works bond as re-
 45 quired under subsection (1) this section. If a business enterprise elects not to file a public works

1 bond, the business enterprise shall give the board written verification of the certification and writ-
2 ten notice that the business enterprise elects not to file the bond.

3 (b) A business enterprise that elects not to file a public works bond under this subsection shall
4 notify the public agency for whose benefit the contract was awarded or, if the business enterprise
5 is a subcontractor, the contractor of the election before starting work on a public works project.
6 When a business enterprise elects not to file a public works bond under this subsection, a claim for
7 unpaid wages may be made against the payment bond of the business enterprise or, if the business
8 enterprise is a subcontractor, the payment bond of the contractor.

9 (c) An election not to file a public works bond expires one year after the date the business en-
10 terprise is certified. After an election has expired and before starting or continuing work on a
11 contract or subcontract for a public works project, the business enterprise shall file a public works
12 bond with the board as required under subsection (1) of this section.

13 (8) In cases of emergency, or when the interest or property of the public agency for whose
14 benefit the contract was awarded probably would suffer material injury by delay or other cause, the
15 requirement for filing a public works bond may be excused, if a declaration of the emergency is
16 made in accordance with rules adopted under ORS 279A.065.

17 (9) The board shall make available on a searchable public website information concerning public
18 works bonds filed with the board, claims made on those bonds, elections made by certified business
19 enterprises not to file those bonds and the expiration date of each election. The board may adopt
20 rules necessary to perform the duties required of the board by this section.

21 (10) The Commissioner of the Bureau of Labor and Industries, with approval of the board, shall
22 adopt rules that establish language for public works bonds.

23 **SECTION 36.** ORS 279C.870 is amended to read:

24 279C.870. (1) The Commissioner of the Bureau of Labor and Industries or any other person may
25 bring a civil action in any court of competent jurisdiction to require a public agency under a public
26 contract with a contractor to withhold twice the wages in dispute if it is shown that the contractor
27 or subcontractor on the contract has intentionally failed or refused to pay the prevailing rate of
28 wage to workers employed on that contract and to require the contractor to pay the prevailing rate
29 of wage and any deficiencies that can be shown to exist because of improper wage payments already
30 made. In addition to other relief, the court may also enjoin the contractor or subcontractor from
31 committing future violations. The contractor or subcontractor involved shall be named as a party
32 in all civil actions brought under this section. In addition to other costs, the court may award the
33 prevailing party reasonable attorney fees at the trial and on appeal. However, attorney fees may
34 not [*may*] be awarded against the commissioner under this section.

35 (2) The court shall require any party, other than the commissioner, that brings a civil action
36 under this section to post a bond sufficient to cover the estimated attorney fees and costs to the
37 public agency and to the contractor or subcontractor of any temporary restraining order, prelimi-
38 nary injunction or permanent injunction awarded in the action, in the event that the party bringing
39 the action does not ultimately prevail.

40 (3) In addition to any other relief, the court in a civil action brought under this section may
41 enjoin the public agency from contracting with the contractor or subcontractor if the court finds
42 that the commissioner would be entitled to place the contractor or subcontractor on the ineligible
43 list established under ORS 279C.860 (1). If the court issues such an injunction, the commissioner
44 shall place the contractor or subcontractor on the list for a period of three years, subject to the
45 provision of ORS 279C.860 (2).

1 **SECTION 37.** Section 38 of this 2007 Act is added to and made a part of ORS 279C.100 to
2 279C.125.

3 **SECTION 38.** (1) Notwithstanding the public records law, ORS 192.410 to 192.505, if a
4 contracting agency solicits a contract for architectural, engineering or land surveying ser-
5 vices or related services by a competitive proposal:

6 (a) Proposals may be opened so as to avoid disclosure of contents to competing proposers
7 during, when applicable, the process of negotiation.

8 (b) Proposals are not required to be open for public inspection until after the notice of
9 intent to award a contract is issued.

10 (2) Notwithstanding any requirement to make proposals open to public inspection after
11 the contracting agency's issuance of notice of intent to award a contract, a contracting
12 agency may withhold from disclosure to the public trade secrets, as defined in ORS 192.501,
13 and information submitted to a public body in confidence, as described in ORS 192.502, that
14 are contained in a proposal. The fact that proposals are opened at a public meeting as defined
15 in ORS 192.610 does not make their contents subject to disclosure, regardless of whether the
16 public body opening the proposals fails to give notice of or provide for an executive session
17 for the purpose of opening proposals. If a request for proposals is canceled after proposals
18 are received, the contracting agency may return a proposal to the proposer that made the
19 proposal. The contracting agency shall keep a list of returned proposals in the file for the
20 solicitation.

21 **SECTION 39.** Section 332a, chapter 794, Oregon Laws 2003, is repealed.

22 **SECTION 40.** Section 38 of this 2007 Act, the amendments to ORS 279A.010, 279A.025,
23 279A.050, 279A.200, 279B.005, 279B.050, 279B.085, 279B.130, 279B.200, 279B.270, 279B.405,
24 279B.415, 279C.320, 279C.335, 279C.345, 279C.350, 279C.355, 279C.365, 279C.375, 279C.390,
25 279C.400, 279C.405, 279C.410, 279C.460, 279C.830, 279C.836 and 279C.870 and sections 105, 105b,
26 110, 113 and 132, chapter 794, Oregon Laws 2003, by sections 1 to 36 of this 2007 Act and the
27 repeal of section 332a, chapter 794, Oregon Laws 2003, by section 39 of this 2007 Act apply
28 only to public contracts first advertised, but if not advertised then entered into, on or after
29 the effective date of this 2007 Act.

30