

B-Engrossed
House Bill 3316

Ordered by the Senate May 31
Including House Amendments dated April 25 and Senate Amendments
dated May 31

Sponsored by COMMITTEE ON BUSINESS AND LABOR

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.

Adds photogrammetric mapping and transportation planning to list of services subject to procurement procedures for contracting with architects, engineers, photogrammetrists, transportation planners and land surveyors.

[Removes ability of state contracting agency and local contract review board to designate certain personal services contracts as contracts for architectural, engineering and land surveying services or related services.]

Requires contracting agency to use procedure to select consultant that is based initially only on qualifications of consultant. Exempts projects for which costs of consultant services do not exceed \$100,000. **Allows direct appointment of consultant in emergency.**

Allows contracting agency to enter into contract with consultant directly if project has been previously described, planned, studied or rendered in previous contract and contract is continuation of project.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to certain professional services procured under the Public Contracting Code; creating new
3 provisions; amending ORS 276.915, 279A.010, 279A.020, 279A.065, 279A.140, 279B.060, 279C.100,
4 279C.105, 279C.107, 279C.110, 279C.115 and 279C.125; and declaring an emergency.

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

6 **SECTION 1.** ORS 279C.100 is amended to read:

7 279C.100. As used in ORS 279C.100 to 279C.125:

8 (1) "Architect" means a person who is registered and holds a valid certificate in the practice
9 of architecture in the State of Oregon, as provided under ORS 671.010 to 671.220, and includes
10 without limitation the terms "architect," "licensed architect" and "registered architect."

11 (2) "Architectural, engineering, **photogrammetric mapping, transportation planning or**
12 **[and] land surveying services**" means professional services that are required to be performed by an
13 architect, engineer, **photogrammetrist, transportation planner** or land surveyor.

14 (3) "Engineer" means a person who is registered and holds a valid certificate in the practice
15 of engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all
16 terms listed in ORS 672.002 (2).

17 (4) "Land surveyor" means a person who is registered and holds a valid certificate in the prac-
18 tice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes
19 all terms listed in ORS 672.002 (5).

20 (5) "Personal services" means the services of a person or persons that are designated by a state
21 contracting agency with procurement authority under ORS 279A.050 or a local *[contract review*

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 board] **contracting agency** as personal services. “Personal services” includes architectural, engi-
2 neering, **photogrammetric mapping, transportation planning or** [and] land surveying services
3 procured under ORS 279C.105 or 279C.110 and related services procured under ORS 279C.120.

4 [(6) “*Related services*” means personal services, other than architectural, engineering and land
5 surveying services, that are related to the planning, design, engineering or oversight of public im-
6 provement projects or components thereof, including but not limited to landscape architectural services,
7 facilities planning services, energy planning services, space planning services, environmental impact
8 studies, hazardous substances or hazardous waste or toxic substances testing services, wetland deline-
9 ation studies, wetland mitigation studies, Native American studies, historical research services, endan-
10 gered species studies, rare plant studies, biological services, archaeological services, cost estimating
11 services, appraising services, material testing services, mechanical system balancing services, commis-
12 sioning services, project management services, construction management services and owner’s repre-
13 sentative services or land-use planning services.]

14 (6) “**Photogrammetric mapping**” has the meaning given that term in ORS 672.002.

15 (7) “**Photogrammetrist**” has the meaning given that term in ORS 672.002.

16 (8) “**Related services**” means personal services, other than architectural, engineering,
17 **photogrammetric mapping, transportation planning or land surveying services, that are re-**
18 **lated to planning, designing, engineering or overseeing public improvement projects or com-**
19 **ponents of public improvement projects, including but not limited to landscape architectural**
20 **services, facilities planning services, energy planning services, space planning services, haz-**
21 **ardous substances or hazardous waste or toxic substances testing services, cost estimating**
22 **services, appraising services, material testing services, mechanical system balancing ser-**
23 **vices, commissioning services, project management services, construction management ser-**
24 **vices and owner’s representation services or land-use planning services.**

25 (9) “**Transportation planning services**” means transportation planning services for
26 projects that require compliance with the National Environmental Policy Act, 42 U.S.C. 4321
27 et seq.

28 **SECTION 2.** ORS 279C.105 is amended to read:

29 279C.105. (1) Except as provided in ORS 279A.140, a contracting [agencies] **agency** may enter
30 into [contracts] a **contract** for architectural, engineering, **photogrammetric mapping, transpor-**
31 **tation planning or** [and] land surveying services and related services. The Oregon Department of
32 Administrative Services shall enter into [contracts] a **contract** for architectural, engineering,
33 **photogrammetric mapping, transportation planning or** [and] land surveying services and related
34 services on behalf of a state contracting [agencies] **agency** that [are] is subject to ORS 279A.140.
35 The provisions of this section do not relieve the contracting agency of the duty to comply with ORS
36 279A.140, [any] other law applicable to **the** state contracting [agencies,] **agency** or [any] applicable
37 city or county charter provisions. [Each] A contracting agency **that is** authorized to enter into
38 [contracts] a **contract** for architectural, engineering, **photogrammetric mapping, transportation**
39 **planning or** [and] land surveying services and related services shall adopt procedures [for the
40 screening and selection of] **to screen and select** persons to perform [those] **architectural, engi-**
41 **neering, photogrammetric mapping, transportation planning or land surveying services and**
42 **related services** under ORS 279C.110 or 279C.120.

43 (2) A state contracting agency with procurement authority under ORS 279A.050 or a local
44 contract review board by ordinance, resolution, administrative rule or other regulation may,
45 consistent with the provisions of ORS 279C.100 to 279C.125, designate certain personal ser-

1 **vices contracts or classes of personal service contracts as contracts for architectural, engi-**
2 **neering, photogrammetric mapping, transportation planning or land surveying services or**
3 **related services.**

4 *[(2) A state contracting agency with procurement authority under ORS 279A.050 or a local contract*
5 *review board by ordinance, resolution, administrative rule or other regulation may designate certain*
6 *personal services contracts or classes of personal services contracts as contracts for architectural, en-*
7 *gineering and land surveying services or related services.]*

8 **SECTION 3.** ORS 279C.107 is amended to read:

9 279C.107. (1) Notwithstanding the public records law, ORS 192.410 to 192.505, if a contracting
10 agency solicits a contract for architectural, engineering, **photogrammetric mapping, transporta-**
11 **tion planning** or land surveying services or related services by a competitive proposal:

12 (a) **The contracting agency may open** proposals [*may be opened*] so as to avoid [*disclosure of*]
13 **disclosing** contents to competing proposers during, when applicable, the process of negotiation.

14 (b) **The contracting agency need not open** proposals [*are not required to be open*] for public
15 inspection until after the [*notice of intent to award a contract is issued*] **contracting agency exe-**
16 **cutes a contract.**

17 (2) Notwithstanding any requirement to [*make*] **open** proposals [*open*] to public inspection after
18 the contracting [*agency's issuance of notice of intent to award*] **agency executes** a contract, a con-
19 tracting agency [*may*] **shall** withhold from disclosure to the public trade secrets, as defined in ORS
20 192.501, and information submitted to a public body in confidence, as described in ORS 192.502, that
21 are contained in a proposal. [*The fact that proposals are opened*] **Opening a proposal** at a public
22 meeting, as defined in ORS 192.610, does not make [*their*] **the contents of the proposal** subject to
23 disclosure, regardless of whether the public body [*opening*] **that opens** the [*proposals*] **proposal** fails
24 to give notice of or provide for an executive session for the purpose of opening proposals. If a re-
25 quest for proposals is canceled after proposals are received, the contracting agency [*may*] **shall,**
26 **subject to ORS 192.501 and 192.502,** return a proposal **and all copies of the proposal** to the
27 proposer that made the proposal. The contracting agency shall keep a list of returned proposals in
28 the file for the solicitation.

29 **SECTION 4.** ORS 279C.110 is amended to read:

30 279C.110. (1) A [*state*] contracting agency shall select consultants to provide architectural, en-
31 gineering, **photogrammetric mapping, transportation planning** or land surveying services on the
32 basis of **the consultant's** qualifications for the type of professional service required. A [*state*] con-
33 tracting agency may solicit or use pricing policies and proposals or other pricing information, **in-**
34 **cluding the number of hours proposed for the service required, expenses, hourly rates and**
35 **overhead,** to determine consultant compensation only after the **contracting** agency has selected a
36 candidate pursuant to subsection [(3)] (2) of this section.

37 [(2) This section applies only if the architectural, engineering or land surveying services contract
38 is issued by a state contracting agency and does not apply to any such contract issued by a local con-
39 tracting agency unless the following conditions apply:]

40 [(a) The local contracting agency receives moneys from the State Highway Fund under ORS
41 366.762 or 366.800 or a grant or loan from the state that will be used to pay for any portion of the
42 design and construction of the project;]

43 [(b) The total amount of any grants, loans or moneys from the State Highway Fund and from the
44 state for the project exceeds 10 percent of the value of the project; and]

45 [(c) The value of the project exceeds \$900,000.]

1 [(3) *Subject to the requirements of subsections (1) and (2) of this section, the procedures that a*
2 *contracting agency creates for the screening and selection of consultants and the selection of a candi-*
3 *date under this section shall be within the sole discretion of the contracting agency and may be ad-*
4 *justed to accommodate the contracting agency's scope, schedule and budget objectives for a particular*
5 *project. Adjustments to accommodate a contracting agency's objectives may include provision for the*
6 *direct appointment of a consultant if the value of the project does not exceed a threshold amount as*
7 *determined by the contracting agency. Screening and selection procedures may include a consideration*
8 *of each candidate's:]*

9 **(2) Subject to the requirements of subsection (1) of this section, the procedures that a**
10 **contracting agency creates to screen and select consultants and to select a candidate under**
11 **this section are at the contracting agency's sole discretion. The contracting agency may**
12 **adjust the procedures to accommodate the contracting agency's scope, schedule or objectives**
13 **for a particular project if the estimated cost of the architectural, engineering,**
14 **photogrammetric mapping, transportation planning or land surveying services for the project**
15 **do not exceed \$250,000.**

16 **(3) A contracting agency's screening and selection procedures under this section, re-**
17 **gardless of the estimated cost of the architectural, engineering, photogrammetric mapping,**
18 **transportation planning or land surveying services for a project, may include considering**
19 **each candidate's:**

20 (a) Specialized experience, capabilities and technical competence, **which the candidate may**
21 **demonstrate** [*that may be demonstrated by*] **with the candidate's** proposed approach and method-
22 ology to meet the project requirements;

23 (b) Resources [*available*] **committed** to perform the work and the proportion of the [*candidate*
24 *staff's*] time that **the candidate's staff** would [*be spent*] **spend** on the project, including [*any*] **time**
25 **for** specialized services, within the applicable time limits;

26 (c) Record of past performance, including but not limited to price and cost data from previous
27 projects, quality of work, ability to meet schedules, cost control and contract administration;

28 (d) Ownership status and employment practices regarding minority, women and emerging small
29 businesses or historically underutilized businesses;

30 (e) Availability to the project locale;

31 (f) Familiarity with the project locale; and

32 (g) Proposed project management techniques.

33 (4) If the screening and selection procedures [*created by*] a contracting agency **creates** under
34 subsection [(3)] **(2)** of this section result in the [*determination by the*] contracting [*agency*] **agency's**
35 **determination** that two or more candidates are equally qualified, the contracting agency may select
36 a candidate through any process [*adopted by*] the contracting agency **adopts that is not based on**
37 **the candidate's pricing policies, proposals or other pricing information.**

38 (5) The contracting agency and the selected candidate shall mutually discuss and refine the
39 scope of services for the project and shall negotiate conditions, including but not limited to com-
40 pensation level and performance schedule, based on the scope of services. The compensation level
41 paid must be reasonable and fair to the contracting agency as determined solely by the contracting
42 agency. Authority to negotiate a contract under this section does not supersede any provision of
43 ORS 279A.140 or 279C.520.

44 (6) If the contracting agency and the selected candidate are unable for any reason to negotiate
45 a contract at a compensation level that is reasonable and fair to the contracting agency, the con-

1 tracting agency shall, either orally or in writing, formally terminate negotiations with the selected
 2 candidate. The contracting agency may then negotiate with *[another candidate]* **the next most**
 3 **qualified candidate**. The negotiation process may continue in this manner through successive can-
 4 didates until an agreement is reached or the contracting agency terminates the consultant con-
 5 tracting process.

6 (7) It is the goal of this state to promote a sustainable economy in the rural areas of the state.
 7 In order to monitor progress toward this goal, a state contracting agency *[to which this section ap-*
 8 *plies]* shall keep a record of the locations *[for]* **in which** *[the]* architectural, engineering,
 9 **photogrammetric mapping, transportation planning or** *[and]* land surveying services contracts
 10 and related services contracts *[to be]* **are** performed throughout the state, the locations of the se-
 11 lected consultants and the direct expenses on each contract. This record *[shall]* **must** include the
 12 total number of contracts *[over a 10-year period for]* **awarded to** each consultant firm **over a**
 13 **10-year period**. The record of direct expenses *[shall]* **must** include all personnel travel expenses as
 14 a separate and identifiable expense on the contract. Upon request, the state contracting agency
 15 shall make these records available to the public.

16 (8) **Notwithstanding the provisions of subsection (1) of this section, a contracting agency**
 17 **may directly appoint a consultant if the estimated cost of the architectural, engineering,**
 18 **photogrammetric mapping, transportation planning or land surveying services for the project**
 19 **do not exceed \$100,000.**

20 (9) **Notwithstanding the provisions of subsections (1) and (8) of this section, a contracting**
 21 **agency may directly appoint a consultant for architectural, engineering, photogrammetric**
 22 **mapping, transportation planning or land surveying services in an emergency.**

23 **SECTION 5.** ORS 279C.115 is amended to read:

24 279C.115. (1) As used in this section, “consultant” means an architect, engineer,
 25 **photogrammetrist, transportation planner** or land surveyor.

26 (2) A *[local]* contracting agency may enter into *[an]* **a contract for** architectural, engineering,
 27 **photogrammetric mapping, transportation planning** or land surveying services *[contract]* **or re-**
 28 **lated services** directly with a consultant if the project described in the contract consists of work
 29 that has been substantially described, planned or otherwise previously studied or rendered in an
 30 earlier contract with the consultant that was awarded under rules adopted under ORS 279A.065 and
 31 the new contract is a continuation of *[that]* **the** project.

32 (3) A *[local]* contracting agency may adopt criteria for determining when this section applies to
 33 *[an]* **a contract for** architectural, engineering, **photogrammetric mapping, transportation plan-**
 34 **ning** or land surveying services *[contract]* **or related services.**

35 **SECTION 6.** ORS 279C.125 is amended to read:

36 279C.125. (1) The Department of Transportation, the Oregon Department of Administrative Ser-
 37 vices or any other state contracting agency shall adopt rules establishing a two-tiered selection
 38 process for contracts with architects, engineers, **photogrammetrists, transportation planners** and
 39 land surveyors to perform personal services contracts. The selection process shall apply only if:

40 (a) A public improvement is owned and maintained by a local government; and

41 (b) The Department of Transportation, the Oregon Department of Administrative Services or
 42 another state contracting agency will serve as the lead state contracting agency and will execute
 43 personal services contracts with architects, engineers, **photogrammetrists, transportation plan-**
 44 **ners** and land surveyors for work on the public improvement project.

45 (2) The selection process required by subsection (1) of this section must require the lead state

1 contracting agency to select no fewer than the three most qualified consultants when feasible in
2 accordance with ORS 279C.110.

3 (3) The local government is responsible for the final selection of the consultant from the list of
4 qualified consultants selected by the lead state contracting agency or through an alternative process
5 adopted by the local government.

6 (4) Nothing in this section applies to the selection process used by a local contracting agency
7 when the contracting agency executes a contract directly with architects, engineers,
8 **photogrammetrists, transportation planners** or land surveyors.

9 **SECTION 7.** ORS 276.915 is amended to read:

10 276.915. (1) An authorized state agency may construct or renovate a facility only if the author-
11 ized state agency determines that the design incorporates all reasonable cost-effective energy con-
12 servation measures and alternative energy systems. The determination by the authorized state
13 agency shall include consideration of indoor air quality issues and operation and maintenance costs.

14 (2) Whenever an authorized state agency determines that a major facility is to be constructed
15 or renovated, the authorized state agency shall cause to be included in the design phase of the
16 construction or renovation a provision that requires an energy consumption analysis to be prepared
17 for the facility under the direction of a professional engineer or licensed architect or under the di-
18 rection of a person that is prequalified in accordance with this section. The authorized state agency
19 and the State Department of Energy shall agree to the list of energy conservation measures and
20 alternative energy systems that the energy consumption analysis will include. The energy consump-
21 tion analysis and facility design shall be delivered to the State Department of Energy during the
22 design development phase of the facility design. The State Department of Energy shall review the
23 energy consumption analysis and forward its findings to the authorized state agency within 10
24 working days after receiving the energy consumption analysis, if practicable.

25 (3) The State Department of Energy, in consultation with authorized state agencies, shall adopt
26 rules to carry out the provisions of ORS 276.900 to 276.915. These rules shall:

27 (a) Include a simplified and usable method for determining which energy conservation measures
28 and alternative energy systems are cost-effective. The method shall reflect the energy costs of the
29 utility serving the facility.

30 (b) Prescribe procedures for determining if a facility design incorporates all reasonable cost-
31 effective energy conservation measures and alternative energy systems.

32 (c) Establish fees through which an authorized state agency will reimburse the State Department
33 of Energy for the department's review of energy consumption analyses and facility designs and the
34 department's reporting tasks. The fees imposed may not exceed 0.2 percent of the capital con-
35 struction cost of the facility and must be included in the energy consumption analysis required in
36 subsection (2) of this section. The State Department of Energy may provide for a waiver of fees and
37 reviews if the authorized state agency demonstrates that the facility will be designed and con-
38 structed in a manner that incorporates only cost-effective energy conservation measures or in a
39 manner that exceeds the energy conservation provisions of the state building code by 20 percent or
40 more.

41 (d) Periodically define highly efficient facilities. A facility constructed or renovated after June
42 30, 2001, shall exceed the energy conservation provisions of the state building code by 20 percent
43 or more, unless otherwise required by rules adopted under this section.

44 (e) Establish guidelines for implementing subsection (4) of this section.

45 (f) Establish guidelines for incorporating energy efficiency requirements into lease agreements

1 of 10 or more years to be phased in as current lease agreements expire or as new lease agreements
2 are entered into, allowing reasonable time for the owner to implement the requirements of this
3 section.

4 (g) Establish criteria by which the State Department of Energy determines that a person is
5 prequalified to perform work in accordance with this section.

6 (4) Before June 30, 2015, an authorized state agency shall reduce the total amount of energy the
7 authorized state agency uses in the authorized state agency's owned facilities by at least 20 percent
8 from a baseline amount the State Department of Energy determines by rule based on usage in cal-
9 endar year 2000.

10 (5) An authorized state agency shall report annually to the State Department of Energy con-
11 cerning energy use in the authorized state agency's facilities. The State Department of Energy shall
12 specify by rule the form and content of and deadlines for the reports.

13 (6) An authorized state agency that fails to achieve and maintain a 20 percent reduction in en-
14 ergy use on and after June 30, 2015, shall submit biennial energy conservation plans to the State
15 Department of Energy. The State Department of Energy shall specify by rule the form and content
16 of and deadlines for the energy conservation plans.

17 (7) The State Department of Energy by rule may require mandatory prequalification as a con-
18 dition for a person to submit a bid or proposal to perform the following work for an authorized state
19 agency:

20 (a) Direct an energy consumption analysis for an authorized state agency under subsection (2)
21 of this section, unless the person is a professional engineer or architect;

22 (b) Enter into an energy savings performance contract; or

23 (c) Perform energy audits, building commissioning, monitoring and verification services and
24 other services related to the operation and management of a facility's energy systems, except for
25 architectural, engineering [*and*], **photogrammetric mapping, transportation planning or** land
26 surveying services as defined in ORS 279C.100.

27 (8) The State Department of Energy may recover from authorized state agencies the costs as-
28 sociated with administering the provisions of this section, including costs associated with adopting
29 rules, maintaining a state energy use database and prequalifying a person under this section.

30 (9) The State Department of Energy, the Oregon Department of Administrative Services and the
31 Oregon University System shall jointly prepare a biennial report summarizing the progress toward
32 achieving the goals of this section. The biennial report shall be made available to the public.

33 **SECTION 8.** ORS 279A.010 is amended to read:

34 279A.010. (1) As used in the Public Contracting Code, unless the context or a specifically ap-
35 plicable definition requires otherwise:

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

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

42 (c) "Days" means calendar days.

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

44 (e) "Director" means the Director of the Oregon Department of Administrative Services or a
45 person designated by the director to carry out the authority of the director under the Public Con-

1 tracting Code.

2 (f) "Emergency" means circumstances that:

3 (A) Could not have been reasonably foreseen;

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

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

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

11 (h) "Executive department" has the meaning given that term in ORS 174.112.

12 (i) "Goods" includes supplies, equipment, materials, personal property, including any tangible,
13 intangible and intellectual property and rights and licenses in relation thereto, and combinations
14 of any of the items identified in this paragraph.

15 (j) "Goods and services" or "goods or services" includes combinations of any of the items iden-
16 tified in the definitions of "goods" and "services."

17 (k)(A) "Grant" means:

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

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

32 (B) "Grant" does not include a public contract for a public improvement, for public works, as
33 defined in ORS 279C.800, or for emergency work, minor alterations or ordinary repair or mainte-
34 nance necessary to preserve a public improvement, when under the public contract a contracting
35 agency pays, in consideration for contract performance intended to realize or to support the real-
36 ization of the purposes for which grant funds were provided to the contracting agency, moneys that
37 the contracting agency has received under a grant.

38 (L) "Industrial oil" means any compressor, turbine or bearing oil, hydraulic oil, metal-working
39 oil or refrigeration oil.

40 (m) "Judicial department" has the meaning given that term in ORS 174.113.

41 (n) "Legislative department" has the meaning given that term in ORS 174.114.

42 (o) "Local contract review board" means a local contract review board described in ORS
43 279A.060.

44 (p) "Local contracting agency" means a local government or special government body authorized
45 by law to conduct a procurement. "Local contracting agency" includes any person authorized by a

1 local contracting agency to conduct a procurement on behalf of the local contracting agency.

2 (q) "Local government" has the meaning given that term in ORS 174.116.

3 (r) "Lowest responsible bidder" means the lowest bidder who:

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

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

7 (C) Has not been debarred or disqualified by the contracting agency under ORS 279B.130 or
8 279C.440; and

9 (D) If the advertised contract is a public improvement contract, is not on the list created by the
10 Construction Contractors Board under ORS 701.227.

11 (s) "Lubricating oil" means any oil intended for use in an internal combustion crankcase,
12 transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equip-
13 ment or machinery powered by an internal combustion engine.

14 (t) "Person" means a natural person capable of being legally bound, a sole proprietorship, a
15 corporation, a partnership, a limited liability company or partnership, a limited partnership, a for-
16 profit or nonprofit unincorporated association, a business trust, two or more persons having a joint
17 or common economic interest, any other person with legal capacity to contract or a public body.

18 (u) "Post-consumer waste" means a finished material that would normally be disposed of as solid
19 waste, having completed its life cycle as a consumer item. "Post-consumer waste" does not include
20 manufacturing waste.

21 (v) "Price agreement" means a public contract for the procurement of goods or services at a set
22 price with:

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

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

27 (w) "Procurement" means the act of purchasing, leasing, renting or otherwise acquiring goods
28 or services. "Procurement" includes each function and procedure undertaken or required to be
29 undertaken by a contracting agency to enter into a public contract, administer a public contract and
30 obtain the performance of a public contract under the Public Contracting Code.

31 (x) "Proposer" means a person that submits a proposal in response to a request for proposals.

32 (y) "Public body" has the meaning given that term in ORS 174.109.

33 (z) "Public contract" means a sale or other disposal, or a purchase, lease, rental or other ac-
34 quisition, by a contracting agency of personal property, services, including personal services, public
35 improvements, public works, minor alterations, or ordinary repair or maintenance necessary to pre-
36 serve a public improvement. "Public contract" does not include grants.

37 (aa) "Public contracting" means procurement activities described in the Public Contracting Code
38 relating to obtaining, modifying or administering public contracts or price agreements.

39 (bb) "Public Contracting Code" or "code" means ORS chapters 279A, 279B and 279C.

40 (cc) "Public improvement" means a project for construction, reconstruction or major renovation
41 on real property by or for a contracting agency. "Public improvement" does not include:

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

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

1 (dd) "Public improvement contract" means a public contract for a public improvement. "Public
2 improvement contract" does not include a public contract for emergency work, minor alterations,
3 or ordinary repair or maintenance necessary to preserve a public improvement.

4 (ee) "Recycled material" means any material that would otherwise be a useless, unwanted or
5 discarded material except for the fact that the material still has useful physical or chemical prop-
6 erties after serving a specific purpose and can, therefore, be reused or recycled.

7 (ff) "Recycled oil" means used oil that has been prepared for reuse as a petroleum product by
8 refining, rerefining, reclaiming, reprocessing or other means, provided that the preparation or use
9 is operationally safe, environmentally sound and complies with all laws and regulations.

10 (gg) "Recycled paper" means a paper product with not less than:

11 (A) Fifty percent of its fiber weight consisting of secondary waste materials; or

12 (B) Twenty-five percent of its fiber weight consisting of post-consumer waste.

13 (hh) "Recycled PETE" means post-consumer polyethylene terephthalate material.

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

19 (jj) "Secondary waste materials" means fragments of products or finished products of a manu-
20 facturing process that has converted a virgin resource into a commodity of real economic value.
21 "Secondary waste materials" includes post-consumer waste. "Secondary waste materials" does not
22 include excess virgin resources of the manufacturing process. For paper, "secondary waste
23 materials" does not include fibrous waste generated during the manufacturing process such as fibers
24 recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips,
25 sawdust or other wood residue from a manufacturing process.

26 (kk) "Services" mean services other than personal services designated under ORS 279A.055, ex-
27 cept that, for state contracting agencies with procurement authority under ORS 279A.050 or
28 279A.140, "services" includes personal services as designated by the state contracting agencies.

29 (LL) "Special government body" has the meaning given that term in ORS 174.117.

30 (mm) "State agency" means the executive department, except the Secretary of State and the
31 State Treasurer in the performance of the duties of their constitutional offices.

32 (nn) "State contracting agency" means an executive department entity authorized by law to
33 conduct a procurement.

34 (oo) "State government" has the meaning given that term in ORS 174.111.

35 (pp) "Used oil" has the meaning given that term in ORS 459A.555.

36 (qq) "Virgin oil" means oil that has been refined from crude oil and that has not been used or
37 contaminated with impurities.

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

40

41 (a) "Adequate"ORS 279C.305

42 (b) "Administering contracting
43 agency"ORS 279A.200

44 (c) "Affirmative action".....ORS 279A.100

45 (d) "Architect"ORS 279C.100

- 1 (e) “Architectural, engineering
- 2 [and], **photogrammetric**
- 3 **mapping, transportation**
- 4 **planning or land**
- 5 surveying services”ORS 279C.100
- 6 (f) “Bid documents”ORS 279C.400
- 7 (g) “Bidder”ORS 279B.415
- 8 (h) “Bids”ORS 279C.400
- 9 (i) “Brand name”ORS 279B.405
- 10 (j) “Brand name or equal
- 11 specification”ORS 279B.200
- 12 (k) “Brand name
- 13 specification”ORS 279B.200
- 14 (L) “Class special
- 15 procurement”ORS 279B.085
- 16 (m) “Consultant”.....ORS 279C.115
- 17 (n) “Contract-specific
- 18 special procurement”ORS 279B.085
- 19 (o) “Cooperative
- 20 procurement”ORS 279A.200
- 21 (p) “Cooperative procurement
- 22 group”ORS 279A.200
- 23 (q) “Donee”ORS 279A.250
- 24 (r) “Engineer”ORS 279C.100
- 25 (s) “Findings”ORS 279C.330
- 26 (t) “Fire protection
- 27 equipment”ORS 279A.190
- 28 (u) “Fringe benefits”ORS 279C.800
- 29 (v) “Funds of a public
- 30 agency”ORS 279C.810
- 31 (w) “Good cause”ORS 279C.585
- 32 (x) “Good faith dispute”ORS 279C.580
- 33 (y) “Goods”ORS 279B.115
- 34 (z) “Housing”ORS 279C.800
- 35 (aa) “Interstate cooperative
- 36 procurement”ORS 279A.200
- 37 (bb) “Invitation to bid”ORS 279B.005
- 38and 279C.400
- 39 (cc) “Joint cooperative
- 40 procurement”ORS 279A.200
- 41 (dd) “Labor dispute”ORS 279C.650
- 42 (ee) “Land surveyor”ORS 279C.100
- 43 (ff) “Legally flawed”ORS 279B.405
- 44 (gg) “Locality”ORS 279C.800
- 45 (hh) “Nonprofit

1 organization”ORS 279C.810

2 (ii) “Nonresident bidder”ORS 279A.120

3 (jj) “Not-for-profit

4 organization”ORS 279A.250

5 (kk) “Original contract”ORS 279A.200

6 (LL) “Permissive cooperative

7 procurement”ORS 279A.200

8 (mm) “Person”ORS 279C.500

9and 279C.815

10 (nn) “Personal services”ORS 279C.100

11 [(oo) “Prevailing rate of

12 wage”ORS 279C.800

13 (pp) “Procurement

14 description”ORS 279B.005

15 (qq) “Property”ORS 279A.250

16 (rr) “Public agency”ORS 279C.800

17 (ss) “Public contract”ORS 279A.190

18 (tt) “Public works”ORS 279C.800

19 (uu) “Purchasing contracting

20 agency”ORS 279A.200

21 (vv) “Regularly organized fire

22 department”ORS 279A.190

23 (ww) “Related services”ORS 279C.100

24 (xx) “Request for proposals”...ORS 279B.005

25 (yy) “Resident bidder”ORS 279A.120

26 (zz) “Responsible bidder”ORS 279A.105

27and 279B.005

28 (aaa) “Responsible proposer”ORS 279B.005

29 (bbb) “Responsive bid”ORS 279B.005

30 (ccc) “Responsive proposal”ORS 279B.005

31 (ddd) “Retainage”ORS 279C.550

32 (eee) “Special procurement”ORS 279B.085

33 (fff) “Specification”ORS 279B.200

34 (ggg) “State agency”ORS 279A.250

35 (hhh) “Substantial

36 completion”ORS 279C.465

37 (iii) “Surplus property”ORS 279A.250

38 (jjj) “Unnecessarily

39 restrictive”ORS 279B.405]

40 (oo) **“Photogrammetric**

41 **mapping”ORS 279C.100**

42 (pp) **“Photogrammetrist”ORS 279C.100**

43 (qq) **“Prevailing rate of**

44 **wage”ORS 279C.800**

45 (rr) **“Procurement**

- 1 **description”ORS 279B.005**
- 2 (ss) **“Property”ORS 279A.250**
- 3 (tt) **“Public agency”ORS 279C.800**
- 4 (uu) **“Public contract”ORS 279A.190**
- 5 (vv) **“Public works”ORS 279C.800**
- 6 (ww) **“Purchasing contracting**
- 7 **agency”ORS 279A.200**
- 8 (xx) **“Regularly organized fire**
- 9 **department”ORS 279A.190**
- 10 (yy) **“Related services”ORS 279C.100**
- 11 (zz) **“Request for**
- 12 **proposals”ORS 279B.005**
- 13 (aaa) **“Resident bidder”ORS 279A.120**
- 14 (bbb) **“Responsible bidder” ...ORS 279A.105**
- 15 **.....and 279B.005**
- 16 (ccc) **“Responsible**
- 17 **proposer”ORS 279B.005**
- 18 (ddd) **“Responsive bid”ORS 279B.005**
- 19 (eee) **“Responsive**
- 20 **proposal”ORS 279B.005**
- 21 (fff) **“Retainage”ORS 279C.550**
- 22 (ggg) **“Special**
- 23 **procurement”ORS 279B.085**
- 24 (hhh) **“Specification”ORS 279B.200**
- 25 (iii) **“State agency”ORS 279A.250**
- 26 (jjj) **“Substantial**
- 27 **completion”ORS 279C.465**
- 28 (kkk) **“Surplus property”ORS 279A.250**
- 29 (LLL) **“Transportation**
- 30 **planning services”ORS 279C.100**
- 31 (mmm) **“Unnecessarily**
- 32 **restrictive”ORS 279B.405**

33 **SECTION 9.** ORS 279A.020 is amended to read:

34 279A.020. (1) Except as otherwise provided in the Public Contracting Code, all public contract-

35 ing by a contracting agency is subject to this chapter.

36 (2) Except as provided in ORS 279C.320, public contracting involving public improvements and

37 other construction services is subject to this chapter and ORS chapter 279C, but not ORS chapter

38 279B.

39 (3) Public contracting involving architects, engineers, **photogrammetrists, transportation**

40 **planners**, land surveyors and related services is subject to this chapter and ORS chapter 279C, but

41 not ORS chapter 279B.

42 (4) Except as provided in ORS 279C.320, all other public contracting is subject to this chapter

43 and ORS 279B, but not ORS chapter 279C.

44 **SECTION 10.** ORS 279A.065 is amended to read:

45 279A.065. (1) The Attorney General shall prepare and maintain model rules of procedure appro-

1 puate for use by all contracting agencies governing public contracting under the Public Contracting
2 Code and may devise and publish forms for use therewith. The Attorney General shall adopt the
3 model rules in the manner provided by ORS chapter 183. Before adopting or amending a model rule,
4 the Attorney General shall consult with the Director of the Oregon Department of Administrative
5 Services, the Director of Transportation, representatives of county governments, representatives of
6 city governments, representatives of school boards and other knowledgeable persons.

7 (2) The Attorney General shall adopt model rules appropriate for use by all contracting agencies
8 to govern the procedures for entering into energy savings performance contracts. Before adopting
9 or amending a rule under this subsection, the Attorney General shall consult with the Oregon De-
10 partment of Administrative Services, the State Department of Energy, the Oregon University Sys-
11 tem, local contracting agencies and other knowledgeable persons. The Attorney General may
12 develop standard contract forms for use with energy savings performance contracts.

13 (3) After each legislative session, the Attorney General shall review all laws passed by the
14 Legislative Assembly that affect public contracting to determine if the model rules prepared under
15 this section should be modified by the adoption of a new rule or by the amendment or repeal of an
16 existing rule. If the Attorney General determines that a modification of the model rules is necessary,
17 the Attorney General shall prepare the modification within such time as to allow the modification
18 to take effect no later than 120 days after the effective date of the legislation that caused the rule
19 to be modified. However, the Attorney General may prepare a modification to take effect 121 or
20 more days after the effective date of the legislation if the Attorney General provides notice desig-
21 nating the time period within which the modification will take effect to the state agencies and per-
22 sons listed in subsection (1) of this section.

23 (4) A contracting agency that has not adopted its own rules of procedure in accordance with
24 subsection (5) of this section is subject to the model rules adopted by the Attorney General under
25 this section, including all modifications to the model rules that the Attorney General may adopt.
26 *[This subsection does not apply to personal services contracts of local contracting agencies except for*
27 *contracts for architectural, engineering and land surveying services and related services.]*

28 (5)(a) A contracting agency may adopt its own rules of procedure for public contracts that:

29 (A) Specifically state that the model rules adopted by the Attorney General under this section
30 do not apply to the contracting agency; and

31 (B) Prescribe the rules of procedure that the contracting agency will use for public contracts,
32 which may include portions of the model rules adopted by the Attorney General.

33 (b) A contracting agency that adopts rules under this section shall review the rules each time
34 the Attorney General modifies the model rules under this section to determine whether the con-
35 tracting agency should modify its rules to ensure compliance with statutory changes.

36 **SECTION 11.** ORS 279A.140 is amended to read:

37 279A.140. (1) The Oregon Department of Administrative Services shall conduct all procurements
38 and administer the contracting for goods, services and personal services, including architectural,
39 engineering *[and]*, **photogrammetric mapping, transportation planning or** land surveying ser-
40 vices and related services, for state agencies unless a state agency is specifically authorized by ORS
41 279A.050 or provisions of law other than the Public Contracting Code to enter into a contract. The
42 authority described in this subsection may be delegated in whole or in part in accordance with ORS
43 279A.075.

44 (2) The following requirements and procedures apply to all contracts of state agencies:

45 (a) A personal services contract is not valid or effective without the written approval of the

1 department unless:

2 (A) The contract is authorized under ORS 279A.050; or

3 (B) The department has delegated authority to the contracting agency under ORS 279A.075 to
4 make the personal services contract.

5 (b) Neither the department nor a state agency may approve a contract before the contract has
6 been reviewed for legal sufficiency and approved by the Attorney General, if the review and ap-
7 proval are required under ORS 291.047 or 291.049.

8 (c) Unless otherwise provided by law, the department or a state agency may enter into a public
9 contract for any period of time, provided that the term of the contract and conditions of renewal
10 or extension are included in the solicitation. Contracting agencies may stipulate in contracts for
11 goods or services that any payment and performance obligations for succeeding fiscal periods are
12 subject to the availability and appropriation of funds for the obligations. A contract for goods or
13 services subject to this section may not be construed as violating any applicable debt limitation or
14 limitation on a contracting agency's expenditure authority.

15 (d) When funds are not appropriated or otherwise made available to support continuation of the
16 department's or a state agency's performance of a contract in a subsequent fiscal period, the de-
17 partment or state agency may cancel the contract and reimburse the contractor for the reasonable
18 value of any nonrecurring costs incurred but not amortized in the price of the goods or services
19 delivered under the contract. The department or state agency may pay the reimbursement only from
20 any appropriations or funds then lawfully available for such purposes.

21 (e) Except as otherwise provided in this chapter, a contract of a state agency will be deemed
22 by the department to have been executed only when all requisite approvals have been obtained.

23 (f) Any procurement or contract by the department for a state agency must, when required by
24 rules adopted by the department under ORS 279A.070, be made on the basis of a requisition by the
25 state agency.

26 (g) The department may use moneys from the Oregon Department of Administrative Services
27 Operating Fund to procure goods, services and personal services for the purpose of supplying re-
28 quirements of state agencies, the cost of which shall be reimbursed to the fund from charges paid
29 by state agencies on the basis of actual usage. Administrative costs incurred in the operation of the
30 fund may be paid from the fund and the amount of such costs shall be added to the cost of the goods,
31 services and personal services as charged to the state agencies.

32 (h) The department shall adopt rules necessary to implement the provisions of this subsection,
33 including but not limited to rules establishing:

34 (A) A reporting system for personal service contracts, including architectural, engineering
35 [and], **photogrammetric mapping, transportation planning or** land surveying services contracts
36 and related services contracts, that includes the following:

37 (i) A state agency shall submit to the department personal services contract information as di-
38 rected by the department. A state agency shall file with the department a copy of each personal
39 services contract entered into by the state agency, including appropriate documentation as required
40 by the department. Whenever a state agency pays more in a calendar year under a personal ser-
41 vices contract for services historically performed by state employees than the agency would have
42 paid to the agency's employees performing the same work, the agency shall so report to the de-
43 partment and include in the report a statement of justification for the greater costs.

44 (ii) The department shall keep the copy of the contract and the department's documentation on
45 file for three years, after which the department may destroy the file. The department shall maintain

1 a system for filing copies of personal services contracts and documentation submitted to the de-
2 partment under this paragraph. The department shall submit a biennial report to the Legislative
3 Assembly concerning the use of personal services contracts by state agencies. The report must
4 specify the name of each state agency, the amount paid under each personal services contract en-
5 tered into by the agency, the name of the contractor, the duration of the contract and the contract's
6 basic purpose. The report must also include the total dollar figure of all personal services contracts
7 for each year of the preceding biennium.

8 (B) Procedures for the evaluation and award of personal services contracts when the department
9 authorizes a state agency to contract directly for personal services, including architectural, engi-
10 neering [*and*], **photogrammetric mapping, transportation planning or** land surveying services
11 and related services, in accordance with ORS 279B.050 or 279C.100 to 279C.125.

12 (3) The department shall notify all state agencies of the requirements of this section.

13 **SECTION 12.** ORS 279B.060 is amended to read:

14 279B.060. (1) A contracting agency may solicit and award a public contract for goods or ser-
15 vices, or may award multiple public contracts for goods or services when specified in the request
16 for proposals, by requesting and evaluating competitive sealed proposals.

17 (2) The request for proposals must:

18 (a) Specify a time and date by which sealed proposals must be received, and a place at which
19 the proposals must be submitted. The contracting agency, in the contracting agency's sole dis-
20 cretion, may receive proposals by electronic means or may direct or permit proposers to submit
21 proposals by electronic means.

22 (b) Specify the name and title of the person designated to receive proposals and the person the
23 contracting agency designates as the contact person for the procurement, if different.

24 (c) Describe the procurement. In the description, the contracting agency shall identify the scope
25 of work included within the procurement, outline the contractor's anticipated duties and set expect-
26 ations for the contractor's performance. Unless the contractor is providing architectural, engi-
27 neering [*and*], **photogrammetric mapping, transportation planning or** land surveying services
28 or related services, [*both*] as defined in ORS 279C.100, or unless the contracting agency for good
29 cause specifies otherwise, the scope of work shall require the contractor to meet the highest stan-
30 dards prevalent in the industry or business most closely involved in providing the appropriate goods
31 or services.

32 (d) Specify a time, date and place for prequalification applications, if any, to be filed and the
33 classes of work, if any, for which proposers must be prequalified in accordance with ORS 279B.120.

34 (e) State that the contracting agency may cancel the procurement or reject any or all proposals
35 in accordance with ORS 279B.100.

36 (f) State that "Contractors shall use recyclable products to the maximum extent economically
37 feasible in the performance of the contract work set forth in this document." if a state contracting
38 agency issues the request for proposals.

39 (g) Require the contractor or subcontractor to possess an asbestos abatement license, if required
40 under ORS 468A.710.

41 (h) Include all contractual terms and conditions applicable to the procurement. The contract
42 terms and conditions shall specify clear consequences for a contractor's failure to perform the scope
43 of work identified in the request for proposals or the contractor's failure to meet established per-
44 formance standards. The consequences may include, but are not limited to:

45 (A) Reducing or withholding payment;

1 (B) Requiring the contractor to perform, at the contractor's expense, additional work necessary
2 to perform the identified scope of work or meet the established performance standards; or

3 (C) Declaring a default, terminating the public contract and seeking damages and other relief
4 available under the terms of the public contract or other applicable law.

5 (3) The request for proposals also may:

6 (a) Identify contractual terms or conditions that the contracting agency reserves, in the request
7 for proposals, for negotiation with proposers;

8 (b) Request that proposers propose contractual terms and conditions that relate to subject mat-
9 ter reasonably identified in the request for proposals;

10 (c) Contain or incorporate the form and content of the contract that the contracting agency will
11 accept, or suggest contract terms and conditions that nevertheless may be the subject of negoti-
12 ations with proposers;

13 (d) Announce the method the contracting agency will use to select the contractor, which may
14 include, but is not limited to, negotiating with the highest ranked proposer, competitive negotiations,
15 a multiple-tiered competition that is designed to identify a class of proposers that fall within a
16 competitive range or to otherwise eliminate from consideration a class of lower ranked proposers
17 or a combination of methods, as authorized or prescribed by rules adopted under ORS 279A.065; and

18 (e) Describe the manner in which the contracting agency will evaluate proposals, identifying the
19 relative importance of price and other factors the contracting agency will use to evaluate and rate
20 the proposals in the first tier of competition. If the contracting agency uses more than one tier of
21 competitive evaluation, the request for proposals must describe the process the contracting agency
22 will use to evaluate proposals in the subsequent tiers.

23 (4)(a) The contracting agency may require proposal security in any form the contracting agency
24 deems prudent. Proposal security shall serve the same function with respect to requests for pro-
25 posals as bid security serves with respect to invitations to bid under ORS 279B.055.

26 (b) The contracting agency shall return the proposal security to all proposers upon the exe-
27 cution of the contract.

28 (c) The contracting agency shall retain the proposal security if a proposer who is awarded a
29 contract fails to promptly and properly execute the contract. For purposes of this paragraph, prompt
30 and proper execution of the contract includes all action by a proposer that is necessary to form a
31 contract in accordance with the request for proposals, including posting performance security and
32 submitting proof of insurance when the request for proposals requires the submission. If contract
33 negotiations or competitive negotiations are conducted, the failure, prior to award, of a contracting
34 agency and a proposer to reach agreement does not constitute grounds for retaining proposal secu-
35 rity.

36 (5) Public notice of the request for proposals must be given in the same manner as provided for
37 public notice of invitations to bid in ORS 279B.055 (4).

38 (6)(a) Notwithstanding ORS 192.410 to 192.505, proposals may be opened in a manner to avoid
39 disclosing contents to competing proposers during, when applicable, the process of negotiation, but
40 the contracting agency shall record and make available the identity of all proposers as part of the
41 contracting agency's public records after the proposals are opened. Notwithstanding ORS 192.410 to
42 192.505, proposals are not required to be open for public inspection until after the notice of intent
43 to award a contract is issued. The fact that proposals are opened at a meeting, as defined in ORS
44 192.610, does not make the contents of the proposals subject to disclosure, regardless of whether the
45 public body opening the proposals fails to give notice of or provide for an executive session for the

1 purpose of opening proposals.

2 (b) Notwithstanding a requirement to make proposals open to public inspection after the con-
3 tracting agency issues notice of intent to award a contract, a contracting agency may withhold from
4 disclosure to the public materials included in a proposal that are exempt or conditionally exempt
5 from disclosure under ORS 192.501 or 192.502.

6 (c) If a request for proposals is canceled under ORS 279B.100 after proposals are received or if
7 a proposal is rejected, the contracting agency may return a proposal to the proposer that made the
8 proposal. The contracting agency shall keep a list of returned proposals in the file for the solicita-
9 tion.

10 (7) As provided in the request for proposals or in written addenda issued thereunder, the con-
11 tracting agency may conduct site tours, demonstrations, individual or group discussions and other
12 informational activities with proposers before or after the opening of proposals for the purpose of
13 clarification to ensure full understanding of, and responsiveness to, the solicitation requirements or
14 to consider and respond to requests for modifications of the proposal requirements. The contracting
15 agency shall use procedures designed to accord proposers fair and equal treatment with respect to
16 any opportunity for discussion and revision of proposals.

17 (8) For purposes of evaluation, when provided for in the request for proposals, the contracting
18 agency may employ methods of contractor selection that include, but are not limited to:

19 (a) An award or awards based solely on the ranking of proposals;

20 (b) Discussions leading to best and final offers, in which the contracting agency may not disclose
21 private discussions leading to best and final offers;

22 (c) Discussions leading to best and final offers, in which the contracting agency may not disclose
23 information derived from proposals submitted by competing proposers;

24 (d) Serial negotiations, beginning with the highest ranked proposer;

25 (e) Competitive simultaneous negotiations;

26 (f) Multiple-tiered competition designed to identify, at each level, a class of proposers that fall
27 within a competitive range or to otherwise eliminate from consideration a class of lower ranked
28 proposers;

29 (g) A multistep request for proposals requesting the submission of unpriced technical submittals,
30 and then later issuing a request for proposals limited to the proposers whose technical submittals
31 the contracting agency had determined to be qualified under the criteria set forth in the initial re-
32 quest for proposals; or

33 (h) A combination of methods described in this subsection, as authorized or prescribed by rules
34 adopted under ORS 279A.065.

35 (9) Revisions of proposals may be permitted after the submission of proposals and before award
36 for the purpose of obtaining best offers or best and final offers.

37 (10) After the opening of proposals, a contracting agency may issue or electronically post an
38 addendum to the request for proposals that modifies the criteria, rating process and procedure for
39 any tier of competition before the start of the tier to which the addendum applies. The contracting
40 agency shall send an addendum that is issued by a method other than electronic posting to all
41 proposers who are eligible to compete under the addendum. The contracting agency shall issue or
42 post the addendum at least five days before the start of the subject tier of competition or as the
43 contracting agency otherwise determines is adequate to allow eligible proposers to prepare for the
44 competition in accordance with rules adopted under ORS 279A.065.

45 (11) The cancellation of requests for proposals and the rejection of proposals must be in ac-

1 cordance with ORS 279B.100.

2 (12) In the request for proposals, the contracting agency shall describe the methods by which
3 the agency will make the results of each tier of competitive evaluation available to the proposers
4 who competed in the tier. The contracting agency shall include a description of the manner in which
5 the proposers who are eliminated from further competition may protest or otherwise object to the
6 contracting agency's decision.

7 (13) The contracting agency shall issue or electronically post the notice of intent to award de-
8 scribed in ORS 279B.135 to each proposer who was evaluated in the final competitive tier.

9 (14) If the contracting agency awards a contract, the contracting agency shall award the con-
10 tract to the responsible proposer whose proposal the contracting agency determines in writing is the
11 most advantageous to the contracting agency based on the evaluation process and evaluation factors
12 described in the request for proposals, applicable preferences described in ORS 279A.120 and
13 279A.125 and, when applicable, the outcome of any negotiations authorized by the request for pro-
14 posals. Other factors may not be used in the evaluation. When the request for proposals specifies
15 or authorizes awarding multiple public contracts, the contracting agency shall award public con-
16 tracts to the responsible proposers who qualify for the award of a contract under the terms of the
17 request for proposals.

18 (15) The contracting agency may issue a request for information, a request for interest, a re-
19 quest for qualifications or other preliminary documents to obtain information useful in preparing a
20 request for proposals.

21 (16) Before executing a contract solicited under this section, a contracting agency shall obtain
22 the proposer's agreement to perform the scope of work and meet the performance standards set forth
23 in the final negotiated scope of work.

24 **SECTION 13. The amendments to ORS 276.915, 279A.010, 279A.020, 279A.065, 279A.140,**
25 **279B.060, 279C.100, 279C.105, 279C.107, 279C.110, 279C.115 and 279C.125 by sections 1 to 12 of**
26 **this 2011 Act apply to contracts that a contracting agency first advertises or otherwise so-**
27 **licits on or after the effective date of this 2011 Act or, if the contracting agency does not**
28 **advertise or solicit the contract, to contracts that the contracting agency first enters into**
29 **on or after the effective date of this 2011 Act.**

30 **SECTION 14. (1) The amendments to ORS 276.915, 279A.010, 279A.020, 279A.065, 279A.140,**
31 **279B.060, 279C.100, 279C.105, 279C.107, 279C.110, 279C.115 and 279C.125 by sections 1 to 12 of**
32 **this 2011 Act become operative on January 1, 2012.**

33 **(2) The Director of the Oregon Department of Administrative Services, the Attorney**
34 **General and a contracting agency that adopts rules under ORS 279A.065 may take any action**
35 **before the operative date specified in subsection (1) of this section that is necessary to enable**
36 **the director, the Attorney General or the contracting agency to exercise, on and after the**
37 **operative date specified in subsection (1) of this section, all the duties, functions and powers**
38 **conferred by the amendments to ORS 276.915, 279A.010, 279A.020, 279A.065, 279A.140, 279B.060,**
39 **279C.100, 279C.105, 279C.107, 279C.110, 279C.115 and 279C.125 by sections 1 to 12 of this 2011**
40 **Act.**

41 **SECTION 15. This 2011 Act being necessary for the immediate preservation of the public**
42 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
43 **on its passage.**

44