

House Bill 2396

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Attorney General Ellen Rosenblum)

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**.

Exempts from Public Contracting Code contracts for goods or services related to existing or potential litigation or legal matters in which public body is or might become interested.

Becomes operative on January 1, 2020.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to exemptions from the Public Contracting Code for procurements connected to legal mat-
3 ters for public bodies; creating new provisions; amending ORS 279A.025; and prescribing an ef-
4 fective date.

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

6 **SECTION 1.** ORS 279A.025 is amended to read:

7 279A.025. (1) Except as provided in subsections (2) to (4) of this section, the Public Contracting
8 Code applies to all public contracting.

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

10 (a) Contracts between a contracting agency and:

11 (A) Another contracting agency;

12 (B) The Oregon Health and Science University;

13 (C) A public university listed in ORS 352.002;

14 (D) The Oregon State Bar;

15 (E) A governmental body of another state;

16 (F) The federal government;

17 (G) An American Indian tribe or an agency of an American Indian tribe;

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

19 (I) An intergovernmental entity formed between or among:

20 (i) Governmental bodies of this or another state;

21 (ii) The federal government;

22 (iii) An American Indian tribe or an agency of an American Indian tribe;

23 (iv) A nation other than the United States; or

24 (v) A governmental body in a nation other than the United States;

25 (b) Agreements authorized by ORS chapter 190 or by a statute, charter provision, ordinance or
26 other authority for establishing agreements between or among governmental bodies or agencies or
27 tribal governing bodies or agencies;

28 (c) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and
29 414.145 for purposes of source selection;

30 (d) Grants;

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 (e) Contracts for *[professional or expert witnesses or consultants to provide services or testimony*
2 *relating to]* **goods or services related to** existing or potential litigation or legal matters in which
3 a public body is or may become interested;

4 (f) Acquisitions or disposals of real property or interest in real property;

5 (g) Sole-source expenditures when rates are set by law or ordinance for purposes of source se-
6 lection;

7 (h) Contracts for the procurement or distribution of textbooks;

8 (i) **A contracting agency's** procurements *[by a contracting agency]* from an Oregon Corrections
9 Enterprises program;

10 (j) The procurement, transportation, sale or distribution of distilled liquor, as defined in ORS
11 471.001, or the appointment of agents under ORS 471.230 or 471.750 by the Oregon Liquor Control
12 Commission;

13 (k) Contracts *[entered into under ORS chapter 180 between]* the Attorney General **enters into**
14 **with** *[and]* private counsel or special legal assistants **under ORS chapter 180**;

15 (L) Contracts for the sale of timber from lands *[owned or managed by]* **that** the State Board of
16 Forestry and the State Forestry Department **own or manage**;

17 (m) Contracts for activities necessary or convenient for the sale of timber under paragraph (L)
18 of this subsection, either separately from or in conjunction with contracts for the sale of timber,
19 including but not limited to activities such as timber harvesting and sorting, transporting, gravel
20 pit development or operation, and road construction, maintenance or improvement;

21 (n) Contracts for forest protection or forest related activities, as described in ORS 477.406, by
22 the State Forester or the State Board of Forestry;

23 (o) Contracts *[entered into by]* the Housing and Community Services Department **enters into** in
24 exercising the department's duties prescribed in ORS chapters 456 and 458, except that the
25 department's public contracting for goods and services is subject to ORS chapter 279B;

26 (p) Contracts *[entered into by]* the State Treasurer **enters into** in exercising the powers of *[that*
27 *office]* **the State Treasurer** prescribed in ORS 178.010 to 178.090 and 276A.242 and ORS chapters
28 286A, 287A, 289, 293, 294 and 295, including but not limited to investment contracts and agreements,
29 banking services, clearing house services and collateralization agreements, bond documents, certif-
30 icates of participation and other debt repayment agreements, and any associated contracts, agree-
31 ments and documents, regardless of whether the obligations that the contracts, agreements or
32 documents establish are general, special or limited, except that the State Treasurer's public con-
33 tracting for goods and services is subject to ORS chapter 279B;

34 (q) Contracts, agreements or other documents entered into, issued or established in connection
35 with:

36 (A) The issuance of obligations, as defined in ORS 286A.100 and 287A.310, of a public body;

37 (B) *[The]* **A public body's** making *[of]* program loans and similar extensions or advances of
38 funds, aid or assistance *[by a public body]* to a public or private body for the purpose of carrying
39 out, promoting or sustaining activities or programs authorized by law; or

40 (C) *[The]* **A public body's** investment of funds *[by a public body]* as authorized by law[,] and **the**
41 **public body's** other financial transactions *[of a public body]* that by their character cannot practi-
42 cally be established under the competitive contractor selection procedures of ORS 279B.050 to
43 279B.085;

44 (r) Contracts for employee benefit plans as provided in ORS 243.105 (1), 243.125 (4), 243.221,
45 243.275, 243.291, 243.303 and 243.565;

1 (s) Contracts for employee benefit plans as provided in ORS 243.860 to 243.886; or

2 (t) Any other public contracting of a public body specifically exempted from the code by another
3 provision of law.

4 (3) The Public Contracting Code does not apply to the contracting activities of:

5 (a) The Oregon State Lottery Commission;

6 (b) The legislative department;

7 (c) The judicial department;

8 (d) Semi-independent state agencies listed in ORS 182.454, except as provided in ORS 279.835 to
9 279.855 and 279A.250 to 279A.290;

10 (e) Oregon Corrections Enterprises;

11 (f) The Oregon Film and Video Office, except as provided in ORS 279A.100 and 279A.250 to
12 279A.290;

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

14 (h) The Oregon 529 Savings Network and the Oregon 529 Savings Board;

15 (i) The Oregon Innovation Council;

16 (j) The Oregon Utility Notification Center; or

17 (k) Any other public body specifically exempted from the code by another provision of law.

18 (4) ORS 279A.200 to 279A.225 and 279B.050 to 279B.085 do not apply to contracts made with
19 qualified nonprofit agencies providing employment opportunities for individuals with disabilities un-
20 der ORS 279.835 to 279.855.

21 **SECTION 2. The amendments to ORS 279A.025 by section 1 of this 2019 Act apply to**
22 **procurements that a contracting agency advertises or otherwise solicits or, if the contract-**
23 **ing agency does not advertise or otherwise solicit the procurement, to public contracts into**
24 **which the contracting agency enters on or after the operative date specified in section 3 of**
25 **this 2019 Act.**

26 **SECTION 3. (1) The amendments to ORS 279A.025 by section 1 of this 2019 Act become**
27 **operative on January 1, 2020.**

28 **(2) The Attorney General, the Director of the Oregon Department of Administrative**
29 **Services, the Director of Transportation and the director or other head of a contracting**
30 **agency that adopts rules under ORS 279A.065 or 279A.070 may adopt rules and take any other**
31 **action before the operative date specified in subsection (1) of this section that is necessary**
32 **to enable the Attorney General or the director or other head of a contracting agency to ex-**
33 **ercise, on and after the operative date specified in subsection (1) of this section, all of the**
34 **duties, functions and powers conferred on the Attorney General or the director or other head**
35 **of a contracting agency by the amendments to ORS 279A.025 by section 1 of this 2019 Act.**

36 **SECTION 4. This 2019 Act takes effect on the 91st day after the date on which the 2019**
37 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

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