

DRAFT

SUMMARY

Updates and streamlines process and procedure for conducting cooperative procurements for public contracts and public improvement contracts.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to procedures for conducting cooperative procurements for public contracts; creating new provisions; amending ORS 276.255, 279A.010 and 279A.025; repealing ORS 279A.200, 279A.205, 279A.210, 279A.215, 279A.220 and 279A.225; and prescribing an effective date.

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

SECTION 1. (1) **As used in this section:**

(a) **“Administering agency” means a contracting agency, or a governmental body in another state, that conducts a cooperative procurement.**

(b)(A) **“Cooperative procurement” means a procurement in which an administering agency solicits and executes an original contract.**

(B) **“Cooperative procurement” does not include an agreement under ORS chapter 190 or under a statute, ordinance or other legislative enactment that permits and governs agreements for exchanging goods or services between or among governmental bodies or agencies or tribal governments or agencies.**

(c) **“Original contract” means a public contract, public improvement contract or price agreement that permits contracting agencies or governmental bodies other than an administering agency to obtain**

1 goods or services, including construction services, from the contractor
2 under the same or similar terms and conditions and at the same or
3 similar prices.

4 (d) “Participating agency” means a contracting agency, or a gov-
5 ernmental body in another state, that procures goods, services or a
6 public improvement under the terms and conditions of an original
7 contract.

8 (e) “Permissive procurement” means a cooperative procurement
9 that does not identify or limit participation to named participating
10 agencies.

11 (2) A contracting agency may solicit, conduct, administer or par-
12 ticipate in a cooperative procurement for goods, services or a public
13 improvement.

14 (3)(a) An administering agency must solicit and conduct a cooper-
15 ative procurement using competitive sealed bids or proposals in a
16 manner that is open, impartial and substantially equivalent to the
17 source selection methods and procedures set forth in ORS 279B.055,
18 279B.060, 279C.110 and 279C.330 to 279C.355. To meet this requirement,
19 at a minimum the procurement:

20 (A) Must award a public contract or public improvement contract
21 to the lowest responsible bidder or, for competitive bids, to the lowest
22 and best bidder or to the proposer that submits the proposal that is
23 most advantageous, based on evaluation factors set forth in the re-
24 quest for proposals;

25 (B) May not apply a geographic preference that favors bidders or
26 proposers who reside in the administering agency’s jurisdiction or lo-
27 cality more than do the preferences set forth in ORS 279A.120 (2); and

28 (C) Must provide reasonably clear and precise specifications that
29 are suitable for the purposes intended and that reasonably encourage
30 competition.

31 (b) If an administering agency is a contracting agency, the admin-

1 **istering agency shall comply with applicable source selection methods**
 2 **and procedures set forth in ORS 279B.055, 279B.060, 279C.110 and**
 3 **279C.330 to 279C.355.**

4 **(4)(a) If a participating agency is a contracting agency and the es-**
 5 **timated contract price for the participating agency's procurement ex-**
 6 **ceeds \$150,000, before entering into a public contract or public**
 7 **improvement contract under a permissive procurement that does not**
 8 **name the participating agency as a party to the original contract, the**
 9 **participating agency shall provide public notice of an intent to enter**
 10 **into a public contract or public improvement contract by means of the**
 11 **permissive procurement. A public notice under this subsection must:**

12 **(A) Describe the procurement in detail sufficient to enable pro-**
 13 **spective bidders or proposers to consider whether the procurement**
 14 **could represent an opportunity to submit a competitive bid or pro-**
 15 **posal;**

16 **(B) Specify the estimated contract price of the procurement;**

17 **(C) Name the administering agency;**

18 **(D) Invite comments concerning the participating agency's intent**
 19 **to enter into the public contract or public improvement contract by**
 20 **means of the permissive procurement; and**

21 **(E) Specify a date and time by which and a street address or elec-**
 22 **tronic address at which the participating agency must receive the**
 23 **comments.**

24 **(b) A participating agency shall provide the notice described in**
 25 **paragraph (a) of this subsection in the manner specified in ORS**
 26 **279B.055 (4)(b) and (c) and must provide the notice at least seven days**
 27 **before the date on which comments are due under paragraph (a)(E)**
 28 **of this subsection, unless the participating agency by rule specifies a**
 29 **longer period.**

30 **(5)(a) If a participating agency receives comments under subsection**
 31 **(4)(a)(D) of this section from prospective bidders or proposers, the**

1 **participating agency shall consider the comments before entering into**
2 **a contract by means of the permissive procurement and:**

3 **(A) Determine whether, in light of the comments, entering into a**
4 **contract by means of the permissive procurement is in the best inter-**
5 **ests of the participating agency.**

6 **(B) Communicate the results of the participating agency's deter-**
7 **mination in writing to persons that submitted comments.**

8 **(b) In making a determination under paragraph (a)(A) of this sub-**
9 **section, the participating agency may consider:**

10 **(A) Whether a prospective bidder or proposer suggested deficiencies**
11 **in the pricing or terms and conditions of the original contract or of-**
12 **fered an alternative that appeared to the participating agency to be**
13 **more advantageous than the original contract while meeting the par-**
14 **ticipating agency's specifications for the procurement;**

15 **(B) Whether the bidder or proposer is likely to be a responsible**
16 **bidder or proposer and is likely to submit a responsive bid or proposal**
17 **if the participating agency did not participate in the permissive pro-**
18 **curement and instead conducted the participating agency's own pro-**
19 **curement; and**

20 **(C) Any other factors the participating agency deems essential to**
21 **the determination.**

22 **SECTION 2. ORS 276.255 is amended to read:**

23 **276.255. (1)(a) A state agency may locate, on premises the state agency**
24 **owns or controls, devices or facilities that the state agency installs, or has**
25 **installed, specifically to deliver electricity to the public for electric motor**
26 **vehicles.**

27 **(b) A state agency may contract with a vendor that will distribute, dis-**
28 **pense or otherwise make available electricity from devices or facilities de-**
29 **scribed in paragraph (a) of this subsection.**

30 **(2)(a) The Oregon Department of Administrative Services may install or**
31 **have installed devices or facilities described in subsection (1)(a) of this sec-**

tion in as many locations as are sufficient to meet demand for the devices or facilities.

(b) The department by rule shall establish criteria by means of which a state agency shall determine an appropriate number of locations at which the state agency may install or have installed devices or facilities described in subsection (1)(a) of this section.

(c) Notwithstanding paragraph (b) of this subsection, a state agency may install or have installed devices or facilities described in subsection (1)(a) of this section at more than the number of locations determined in accordance with the department's rule if the state agency obtains a grant to support the installations at each additional location.

(3)(a) The department may contract or otherwise agree with another entity to acquire, install, maintain or operate devices or facilities described in subsection (1)(a) of this section. The department may also participate in, sponsor, conduct or administer cooperative procurements in accordance with [ORS 279A.200 to 279A.225] **section 1 of this 2023 Act** under which public bodies, as defined in ORS 174.109, and other purchasers the department authorizes by rule may acquire, install, maintain or operate devices or facilities to deliver electricity to the public for electric motor vehicles.

(b) Solely for the purpose of a contracting agency's participating in, sponsoring, conducting or administering a cooperative procurement under paragraph (a) of this subsection and notwithstanding the definition of "public improvement" in ORS 279A.010, a device or facility for delivering electricity to the public for electric motor vehicles is not a public improvement.

(4) A state agency that contracts with a vendor under subsection (1)(b) or (3)(a) of this section shall require in the contract that the vendor:

(a) Indemnify the state agency against any claim related to or arising out of the vendor's operations on premises that the state agency owns or controls;

(b) Obtain a policy of liability insurance in an amount sufficient to pay foreseeable claims that relate to or arise out of the vendor's operations, name

the state agency as an insured party in the policy and maintain coverage under the policy during the term of the contract and for two years after the contract term expires; and

(c) Pay workers that the vendor employs for any work related to installing a device or facility the prevailing rate of wage, as defined in ORS 279C.800.

(5) A state agency may by order establish and adjust prices for using devices or facilities described in subsection (1)(a) of this section that are located on premises the state agency owns or controls. The state agency shall endeavor to set the price for using the devices or facilities at a level that:

(a) Recovers to the maximum extent practicable the cost of operating and administering the devices or facilities described in subsection (1)(a) of this section; and

(b) Does not exceed 110 percent of the average market price for delivering electricity to the public for the purpose described in subsection (1)(a) of this section in the county in which the device or facility is located.

(6) Subject to subsection (5) of this section, a state agency shall set the price for delivering electricity at devices and facilities located on premises that the state agency owns or controls. The state agency shall use criteria and a methodology that the department specifies for calculating the price.

(7) The department shall report to the Legislative Assembly in the manner provided by ORS 192.245 not later than February 1, 2019, February 1, 2021, and February 1, 2023, concerning state agency implementation of the authority granted in subsections (1), (2), (4), (5) and (6) of this section. Each report must, as of the date of the report:

(a) List the number of devices or facilities for delivering electricity to the public for electric motor vehicles that state agencies installed or had installed in the previous two years and the total number of installations that have occurred since June 2, 2018;

(b) List the number of devices or facilities that state agencies have planned for installation in the next two years;

(c) List the cost to the state agency of each installation and calculate:

(A) An average cost for installations that state agencies have completed or had completed; and

(B) An overall trend line for costs that state agencies have incurred;

(d) Specify the current price that each state agency charges under subsection (6) of this section and any changes in the price that occurred in the previous two years;

(e) Specify for each state agency an average rate of utilization for all of the devices or facilities located on premises that the state agency owns or controls, calculated as the ratio of the time each day during which a person is actually using the devices or facilities and the time each day in which the devices and facilities are available for use; and

(f) Specify whether and to what extent using electric motor vehicles and devices or facilities located on premises that state agencies own or control to provide electricity for state agency electric motor vehicles results in a cost savings to the state agency in comparison to using motor vehicles that do not use electricity for propulsion.

SECTION 3. ORS 279A.010 is amended to read:

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

(a) “Bidder” means a person that submits a bid in response to an invitation to bid.

(b) “Contracting agency” means a public body authorized by law to conduct a procurement. “Contracting agency” includes, but is not limited to, the Director of the Oregon Department of Administrative Services and any person authorized by a contracting agency to conduct a procurement on the contracting agency’s behalf. “Contracting agency” does not include the judicial department or the legislative department.

(c) “Days” means calendar days.

(d) “Department” means the Oregon Department of Administrative Services.

1 (e) “Director” means the Director of the Oregon Department of Adminis-
2 trative Services or a person designated by the director to carry out the au-
3 thority of the director under the Public Contracting Code.

4 (f) “Emergency” means circumstances that:

5 (A) Could not have been reasonably foreseen;

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

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

9 (g) “Energy savings performance contract” means a public contract be-
10 tween a contracting agency and a qualified energy service company for the
11 identification, evaluation, recommendation, design and construction of en-
12 ergy conservation measures, including a design-build contract, that guaran-
13 tee energy savings or performance.

14 (h) “Executive department” has the meaning given that term in ORS
15 174.112.

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

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

22 (k)(A) “Grant” means:

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

31 (ii) An agreement under which a contracting agency provides moneys,

property or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the contracting agency is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions.

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

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

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

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

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

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

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

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

(A) Has substantially complied with all prescribed public contracting

1 procedures and requirements;

2 (B) Has met the standards of responsibility set forth in ORS 279B.110 or
3 279C.375;

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

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

8 (s) "Lubricating oil" means any oil intended for use in an internal com-
9 bustion crankcase, transmission, gearbox or differential or an automobile,
10 bus, truck, vessel, plane, train, heavy equipment or machinery powered by
11 an internal combustion engine.

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

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

21 (v) "Price agreement" means a public contract for the procurement of
22 goods or services at a set 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
25 contractor obligation to provide goods or services in which the contracting
26 agency does not guarantee a minimum or maximum additional purchase.

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

1 (x) “Proposer” means a person that submits a proposal in response to a
2 request for proposals.

3 (y) “Public body” has the meaning given that term in ORS 174.109.

4 (z) “Public contract” means a sale or other disposal, or a purchase, lease,
5 rental or other acquisition, by a contracting agency of personal property,
6 services, including personal services, public improvements, public works,
7 minor alterations, or ordinary repair or maintenance necessary to preserve
8 a public improvement. “Public contract” does not include grants.

9 (aa) “Public contracting” means procurement activities described in the
10 Public Contracting Code relating to obtaining, modifying or administering
11 public contracts or price agreements.

12 (bb) “Public Contracting Code” or “code” means ORS chapters 279A, 279B
13 and 279C.

14 (cc) “Public improvement” means a project for construction, recon-
15 struction or major renovation on real property by or for a contracting
16 agency. “Public improvement” does not include:

17 (A) Projects for which no funds of a contracting agency are directly or
18 indirectly used, except for participation that is incidental or related prima-
19 rily to project design or inspection; or

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

22 (dd) “Public improvement contract” means a public contract for a public
23 improvement. “Public improvement contract” does not include a public con-
24 tract for emergency work, minor alterations, or ordinary repair or mainte-
25 nance necessary to preserve a public improvement.

26 (ee) “Recycled material” means any material that would otherwise be a
27 useless, unwanted or discarded material except for the fact that the material
28 still has useful physical or chemical properties after serving a specific pur-
29 pose and can, therefore, be reused or recycled.

30 (ff) “Recycled oil” means used oil that has been prepared for reuse as a
31 petroleum product by refining, rerefining, reclaiming, reprocessing or other

means, provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations.

(gg) “Recycled paper” means a paper product with not less than:

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

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

(hh) “Recycled PETE” means post-consumer polyethylene terephthalate material.

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

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

(kk) “Services” mean services other than personal services designated under ORS 279A.055, except that, for state contracting agencies with procurement authority under ORS 279A.050 or 279A.140, “services” includes personal services as designated by the state contracting agencies.

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

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

(nn) “State contracting agency” means an executive department entity authorized by law to conduct a procurement.

(oo) “State government” has the meaning given that term in ORS 174.111.

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

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

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

- [(a) “Administering contracting agency”ORS 279A.200
- (b) “Affirmative action”ORS 279A.100
- (c) “Architect”ORS 279C.100
- (d) “Architectural, engineering, photogram-metric mapping, transportation planning or land surveying services”ORS 279C.100
- (e) “Bid documents”ORS 279C.400
- (f) “Bidder”ORS 279B.415
- (g) “Bids”ORS 279C.400
- (h) “Brand name”ORS 279B.405
- (i) “Brand name or equal specification”ORS 279B.200
- (j) “Brand name specification”ORS 279B.200
- (k) “Class special

| | | |
|----|------|---|
| 1 | | <i>procurement</i>ORS 279B.085 |
| 2 | (L) | <i>“Consultant”</i>ORS 279C.115 |
| 3 | (m) | <i>“Contract-specific</i> |
| 4 | | <i>special procurement”</i>ORS 279B.085 |
| 5 | (n) | <i>“Cooperative</i> |
| 6 | | <i>procurement”</i>ORS 279A.200 |
| 7 | (o) | <i>“Cooperative procurement</i> |
| 8 | | <i>group”</i>ORS 279A.200 |
| 9 | (p) | <i>“Donee”</i>ORS 279A.250 |
| 10 | (q) | <i>“Engineer”</i>ORS 279C.100 |
| 11 | (r) | <i>“Findings”</i>ORS 279C.330 |
| 12 | (s) | <i>“Fire protection</i> |
| 13 | | <i>equipment”</i>ORS 279A.190 |
| 14 | (t) | <i>“Fringe benefits”</i>ORS 279C.800 |
| 15 | (u) | <i>“Funds of a public</i> |
| 16 | | <i>agency”</i>ORS 279C.810 |
| 17 | (v) | <i>“Good cause”</i>ORS 279C.585 |
| 18 | (w) | <i>“Good faith dispute”</i>ORS 279C.580 |
| 19 | (x) | <i>“Goods”</i>ORS 279B.115 |
| 20 | (y) | <i>“Housing”</i>ORS 279C.800 |
| 21 | (z) | <i>“Interstate cooperative</i> |
| 22 | | <i>procurement”</i>ORS 279A.200 |
| 23 | (aa) | <i>“Invitation to bid”</i>ORS 279B.005 |
| 24 | |and 279C.400 |
| 25 | (bb) | <i>“Joint cooperative</i> |
| 26 | | <i>procurement”</i>ORS 279A.200 |
| 27 | (cc) | <i>“Labor dispute”</i>ORS 279C.650 |
| 28 | (dd) | <i>“Land surveyor”</i>ORS 279C.100 |
| 29 | (ee) | <i>“Legally flawed”</i>ORS 279B.405 |
| 30 | (ff) | <i>“Locality”</i>ORS 279C.800 |
| 31 | (gg) | <i>“Nonprofit</i> |

| | | |
|----|-------|---|
| 1 | | <i>organization”ORS 279C.810</i> |
| 2 | (hh) | <i>“Nonresident bidder”ORS 279A.120</i> |
| 3 | (ii) | <i>“Not-for-profit</i> |
| 4 | | <i>organization”ORS 279A.250</i> |
| 5 | (jj) | <i>“Original contract”ORS 279A.200</i> |
| 6 | (kk) | <i>“Permissive cooperative</i> |
| 7 | | <i>procurement”ORS 279A.200</i> |
| 8 | (LL) | <i>“Person”ORS 279C.500</i> |
| 9 | | <i>.....and 279C.815</i> |
| 10 | (mm) | <i>“Personal services”ORS 279C.100</i> |
| 11 | (nn) | <i>“Photogrammetric</i> |
| 12 | | <i>mapping”ORS 279C.100</i> |
| 13 | (oo) | <i>“Photogrammetrist”ORS 279C.100</i> |
| 14 | (pp) | <i>“Prevailing rate of</i> |
| 15 | | <i>wage”ORS 279C.800</i> |
| 16 | (qq) | <i>“Procurement</i> |
| 17 | | <i>description”ORS 279B.005</i> |
| 18 | (rr) | <i>“Property”ORS 279A.250</i> |
| 19 | (ss) | <i>“Public agency”ORS 279C.800</i> |
| 20 | (tt) | <i>“Public contract”ORS 279A.190</i> |
| 21 | (uu) | <i>“Public works”ORS 279C.800</i> |
| 22 | (vv) | <i>“Purchasing contracting</i> |
| 23 | | <i>agency”ORS 279A.200</i> |
| 24 | (ww) | <i>“Regularly organized fire</i> |
| 25 | | <i>department”ORS 279A.190</i> |
| 26 | (xx) | <i>“Related services”ORS 279C.100</i> |
| 27 | (yy) | <i>“Request for</i> |
| 28 | | <i>proposals”ORS 279B.005</i> |
| 29 | (zz) | <i>“Resident bidder”ORS 279A.120</i> |
| 30 | (aaa) | <i>“Responsible bidder”ORS 279A.105</i> |
| 31 | | <i>.....and 279B.005</i> |

| | | | |
|----|-------|---------------------------------|---------------|
| 1 | (bbb) | <i>“Responsible</i> | |
| 2 | | <i>proposer”</i> | ORS 279B.005 |
| 3 | (ccc) | <i>“Responsive bid”</i> | ORS 279B.005 |
| 4 | (ddd) | <i>“Responsive</i> | |
| 5 | | <i>proposal”</i> | ORS 279B.005 |
| 6 | (eee) | <i>“Retainage”</i> | ORS 279C.550 |
| 7 | (fff) | <i>“Special</i> | |
| 8 | | <i>procurement”</i> | ORS 279B.085 |
| 9 | (ggg) | <i>“Specification”</i> | ORS 279B.200 |
| 10 | (hhh) | <i>“State agency”</i> | ORS 279A.250 |
| 11 | (iii) | <i>“Substantial</i> | |
| 12 | | <i>completion”</i> | ORS 279C.465 |
| 13 | (jjj) | <i>“Surplus property”</i> | ORS 279A.250 |
| 14 | (kkk) | <i>“Transportation</i> | |
| 15 | | <i>planning services”</i> | ORS 279C.100 |
| 16 | (LLL) | <i>“Unnecessarily</i> | |
| 17 | | <i>restrictive”</i> | ORS 279B.405] |
| 18 | | | |
| 19 | (a) | “Administering | |
| 20 | | agency” | Section 1 of |
| 21 | |this 2023 Act | |
| 22 | (b) | “Affirmative action” ... | ORS 279A.100 |
| 23 | (c) | “Architect” | ORS 279C.100 |
| 24 | (d) | “Architectural, | |
| 25 | | engineering, photogram- | |
| 26 | | metric mapping, | |
| 27 | | transportation planning | |
| 28 | | or land surveying | |
| 29 | | services” | ORS 279C.100 |
| 30 | (e) | “Bid documents” | ORS 279C.400 |
| 31 | (f) | “Bidder” | ORS 279B.415 |

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|----|------|---------------------------------|---------------------|
| 1 | (g) | “Bids” | ORS 279C.400 |
| 2 | (h) | “Brand name” | ORS 279B.405 |
| 3 | (i) | “Brand name or equal | |
| 4 | | specification”..... | ORS 279B.200 |
| 5 | (j) | “Brand name | |
| 6 | | specification”..... | ORS 279B.200 |
| 7 | (k) | “Class special | |
| 8 | | procurement” | ORS 279B.085 |
| 9 | (L) | “Consultant”..... | ORS 279C.115 |
| 10 | (m) | “Contract-specific | |
| 11 | | special procurement” .. | ORS 279B.085 |
| 12 | (n) | “Cooperative | |
| 13 | | procurement” | Section 1 of |
| 14 | |this 2023 Act | |
| 15 | (o) | “Donee” | ORS 279A.250 |
| 16 | (p) | “Engineer”..... | ORS 279C.100 |
| 17 | (q) | “Findings” | ORS 279C.330 |
| 18 | (r) | “Fire protection | |
| 19 | | equipment”..... | ORS 279A.190 |
| 20 | (s) | “Fringe benefits”..... | ORS 279C.800 |
| 21 | (t) | “Funds of a public | |
| 22 | | agency”..... | ORS 279C.810 |
| 23 | (u) | “Good cause” | ORS 279C.585 |
| 24 | (v) | “Good faith dispute”.... | ORS 279C.580 |
| 25 | (w) | “Goods” | ORS 279B.115 |
| 26 | (x) | “Housing” | ORS 279C.800 |
| 27 | (y) | “Invitation to bid”..... | ORS 279B.005 |
| 28 | |and | 279C.400 |
| 29 | (z) | “Labor dispute” | ORS 279C.650 |
| 30 | (aa) | “Land surveyor” | ORS 279C.100 |
| 31 | (bb) | “Legally flawed” | ORS 279B.405 |

| | | | |
|----|------|----------------------------------|---------------------|
| 1 | (cc) | “Locality” | ORS 279C.800 |
| 2 | (dd) | “Nonprofit | |
| 3 | | organization” | ORS 279C.810 |
| 4 | (ee) | “Nonresident bidder” .. | ORS 279A.120 |
| 5 | (ff) | “Not-for-profit | |
| 6 | | organization” | ORS 279A.250 |
| 7 | (gg) | “Original contract” | Section 1 of |
| 8 | |this 2023 Act | |
| 9 | (hh) | “Participating | |
| 10 | | agency” | Section 1 of |
| 11 | | this 2023 Act | |
| 12 | (ii) | “Permissive | |
| 13 | | procurement” | Section 1 of |
| 14 | |this 2023 Act | |
| 15 | (jj) | “Person” | ORS 279C.500 |
| 16 | |and 279C.815 | |
| 17 | (kk) | “Personal services” | ORS 279C.100 |
| 18 | (LL) | “Photogrammetric | |
| 19 | | mapping” | ORS 279C.100 |
| 20 | (mm) | “Photogrammetrist” | ORS 279C.100 |
| 21 | (nn) | “Prevailing rate of | |
| 22 | | wage” | ORS 279C.800 |
| 23 | (oo) | “Procurement | |
| 24 | | description” | ORS 279B.005 |
| 25 | (pp) | “Property” | ORS 279A.250 |
| 26 | (qq) | “Public agency” | ORS 279C.800 |
| 27 | (rr) | “Public contract” | ORS 279A.190 |
| 28 | (ss) | “Public works” | ORS 279C.800 |
| 29 | (tt) | “Regularly organized | |
| 30 | | fire department” | ORS 279A.190 |
| 31 | (uu) | “Related services” | ORS 279C.100 |

- 1 (vv) “Request for
- 2 proposals”.....ORS 279B.005
- 3 (ww) “Resident bidder”.....ORS 279A.120
- 4 (xx) “Responsible bidder” ...ORS 279A.105
- 5and 279B.005
- 6 (yy) “Responsible
- 7 proposer”.....ORS 279B.005
- 8 (zz) “Responsive bid”ORS 279B.005
- 9 (aaa) “Responsive
- 10 proposal”ORS 279B.005
- 11 (bbb) “Retainage”ORS 279C.550
- 12 (ccc) “Special
- 13 procurement”.....ORS 279B.085
- 14 (ddd) “Specification”.....ORS 279B.200
- 15 (eee) “State agency”ORS 279A.250
- 16 (fff) “Substantial
- 17 completion”ORS 279C.465
- 18 (ggg) “Surplus property”.....ORS 279A.250
- 19 (hhh) “Transportation
- 20 planning services”ORS 279C.100
- 21 (iii) “Unnecessarily
- 22 restrictive”.....ORS 279B.405

SECTION 4. ORS 279A.025 is amended to read:

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

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

(a) Contracts between a contracting agency and:

(A) Another contracting agency;

(B) The Oregon Health and Science University;

(C) A public university listed in ORS 352.002;

(D) The Oregon State Bar;

1 (E) A governmental body of another state;

2 (F) The federal government;

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

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

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

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

8 (ii) The federal government;

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

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

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

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

16 (c) Insurance and service contracts as provided for under ORS 414.115,
17 414.125, 414.135 and 414.145 for purposes of source selection;

18 (d) Grants;

19 (e) Contracts for professional or expert witnesses or consultants to pro-
20 vide services or testimony relating to existing or potential litigation or legal
21 matters in which a public body is or may become interested;

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

23 (g) Sole-source expenditures when rates are set by law or ordinance for
24 purposes of source selection;

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

26 (i) Procurements by a contracting agency from an Oregon Corrections
27 Enterprises program;

28 (j) The procurement, transportation, sale or distribution of distilled li-
29 quor, as defined in ORS 471.001, or the appointment of agents under ORS
30 471.230 or 471.750 by the Oregon Liquor and Cannabis Commission;

31 (k) Contracts entered into under ORS chapter 180 between the Attorney

General and private counsel or special legal assistants;

(L) Contracts for the sale of timber from lands that the State Board of Forestry, the State Forestry Department, the State Parks and Recreation Commission or the State Parks and Recreation Department owns or manages;

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

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

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

(p) Contracts that the State Treasurer enters into in exercising the powers of that office prescribed in ORS 178.010 to 178.090 and 276A.242 and ORS chapters 286A, 287A, 289, 293, 294 and 295, including but not limited to investment contracts and agreements, banking services, clearing house services and collateralization agreements, bond documents, certificates of participation and other debt repayment agreements, and any associated contracts, agreements and documents, regardless of whether the obligations that the contracts, agreements or documents establish are general, special or limited, except that the State Treasurer's public contracting for goods and services is subject to ORS chapter 279B;

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

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

(B) Program loans and similar extensions or advances of funds, aid or assistance that a public body makes to a public or private body for the pur-

pose of carrying out, promoting or sustaining activities or programs authorized by law; or

(C) The investment of funds by a public body as authorized by law, and other financial transactions of a public body that by their character cannot practically be established under the competitive contractor selection procedures of ORS 279B.050 to 279B.085;

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

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

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

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

(a) The Oregon State Lottery Commission;

(b) The legislative department;

(c) The judicial department;

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

(e) Oregon Corrections Enterprises;

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

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

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

(i) The Oregon Innovation Council;

(j) The Oregon Utility Notification Center; or

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

(4) ORS [279A.200 to 279A.225 and] 279B.050 to 279B.085 **and section 1 of this 2023 Act** do not apply to contracts made with qualified nonprofit

agencies providing employment opportunities for individuals with disabilities under ORS 279.835 to 279.855.

SECTION 5. ORS 279A.200, 279A.205, 279A.210, 279A.215, 279A.220 and 279A.225 are repealed.

SECTION 6. Section 1 of this 2023 Act and the amendments to ORS 276.255, 279A.010 and 279A.025 by sections 2 to 4 of this 2023 Act apply to procurements that a contracting agency advertises or otherwise solicits or, if the contracting agency does not advertise or solicit the procurement, to public contracts and public improvement contracts into which the contracting agency enters on or after the operative date specified in section 7 of this 2023 Act.

SECTION 7. (1) Section 1 of this 2023 Act and the amendments to ORS 276.255, 279A.010 and 279A.025 by sections 2 to 4 of this 2023 Act become operative January 1, 2024.

(2) The Attorney General, the Director of the Oregon Department of Administrative Services, the Director of Transportation and a contracting agency that adopts rules under ORS 279A.065 or 279A.070 may adopt rules and take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the Attorney General, the directors or the contracting agency, on and after the operative date specified in subsection (1) of this section, to undertake and exercise the duties, functions and powers conferred on the Attorney General, the directors or the contracting agency by section 1 of this 2023 Act and the amendments to ORS 276.255, 279A.010 and 279A.025 by sections 2 to 4 of this 2023 Act.

SECTION 8. This 2023 Act takes effect on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.