

House Bill 2055

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Business and Labor for Oregon Public Purchasing Association)

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**.

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

1
2 Relating to procedures for conducting cooperative procurements for public contracts; creating new
3 provisions; amending ORS 276.255, 279A.010 and 279A.025; repealing ORS 279A.200, 279A.205,
4 279A.210, 279A.215, 279A.220 and 279A.225; and prescribing an effective date.

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

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

7 (a) **“Administering agency” means a contracting agency, or a governmental body in an-**
8 **other state, that conducts a cooperative procurement.**

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

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

15 (c) **“Original contract” means a public contract, public improvement contract or price**
16 **agreement that permits contracting agencies or governmental bodies other than an admin-**
17 **istering agency to obtain goods or services, including construction services, from the con-**
18 **tractor under the same or similar terms and conditions and at the same or similar prices.**

19 (d) **“Participating agency” means a contracting agency, or a governmental body in an-**
20 **other state, that procures goods, services or a public improvement under the terms and**
21 **conditions of an original contract.**

22 (e) **“Permissive procurement” means a cooperative procurement that does not identify**
23 **or limit participation to named participating agencies.**

24 (2) **A contracting agency may solicit, conduct, administer or participate in a cooperative**
25 **procurement for goods, services or a public improvement.**

26 (3)(a) **An administering agency must solicit and conduct a cooperative procurement using**
27 **competitive sealed bids or proposals in a manner that is open, impartial and substantially**
28 **equivalent to the source selection methods and procedures set forth in ORS 279B.055,**
29 **279B.060, 279C.110 and 279C.330 to 279C.355. To meet this requirement, at a minimum the**
30 **procurement:**

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 (A) Must award a public contract or public improvement contract to the lowest respon-
2 sible bidder or, for competitive bids, to the lowest and best bidder or to the proposer that
3 submits the proposal that is most advantageous, based on evaluation factors set forth in the
4 request for proposals;

5 (B) May not apply a geographic preference that favors bidders or proposers who reside
6 in the administering agency's jurisdiction or locality more than do the preferences set forth
7 in ORS 279A.120 (2); and

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

10 (b) If an administering agency is a contracting agency, the administering agency shall
11 comply with applicable source selection methods and procedures set forth in ORS 279B.055,
12 279B.060, 279C.110 and 279C.330 to 279C.355.

13 (4)(a) If a participating agency is a contracting agency and the estimated contract price
14 for the participating agency's procurement exceeds \$150,000, before entering into a public
15 contract or public improvement contract under a permissive procurement that does not
16 name the participating agency as a party to the original contract, the participating agency
17 shall provide public notice of an intent to enter into a public contract or public improvement
18 contract by means of the permissive procurement. A public notice under this subsection
19 must:

20 (A) Describe the procurement in detail sufficient to enable prospective bidders or
21 proposers to consider whether the procurement could represent an opportunity to submit a
22 competitive bid or proposal;

23 (B) Specify the estimated contract price of the procurement;

24 (C) Name the administering agency;

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

27 (E) Specify a date and time by which and a street address or electronic address at which
28 the participating agency must receive the comments.

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

33 (5)(a) If a participating agency receives comments under subsection (4)(a)(D) of this
34 section from prospective bidders or proposers, the participating agency shall consider the
35 comments before entering into a contract by means of the permissive procurement and:

36 (A) Determine whether, in light of the comments, entering into a contract by means of
37 the permissive procurement is in the best interests of the participating agency.

38 (B) Communicate the results of the participating agency's determination in writing to
39 persons that submitted comments.

40 (b) In making a determination under paragraph (a)(A) of this subsection, the participat-
41 ing agency may consider:

42 (A) Whether a prospective bidder or proposer suggested deficiencies in the pricing or
43 terms and conditions of the original contract or offered an alternative that appeared to the
44 participating agency to be more advantageous than the original contract while meeting the
45 participating agency's specifications for the procurement;

1 **(B) Whether the bidder or proposer is likely to be a responsible bidder or proposer and**
 2 **is likely to submit a responsive bid or proposal if the participating agency did not participate**
 3 **in the permissive procurement and instead conducted the participating agency’s own pro-**
 4 **urement; and**

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

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

7 276.255. (1)(a) A state agency may locate, on premises the state agency owns or controls, devices
 8 or facilities that the state agency installs, or has installed, specifically to deliver electricity to the
 9 public for electric motor vehicles.

10 (b) A state agency may contract with a vendor that will distribute, dispense or otherwise make
 11 available electricity from devices or facilities described in paragraph (a) of this subsection.

12 (2)(a) The Oregon Department of Administrative Services may install or have installed devices
 13 or facilities described in subsection (1)(a) of this section in as many locations as are sufficient to
 14 meet demand for the devices or facilities.

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

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

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

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

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

35 (a) Indemnify the state agency against any claim related to or arising out of the vendor’s oper-
 36 ations on premises that the state agency owns or controls;

37 (b) Obtain a policy of liability insurance in an amount sufficient to pay foreseeable claims that
 38 relate to or arise out of the vendor’s operations, name the state agency as an insured party in the
 39 policy and maintain coverage under the policy during the term of the contract and for two years
 40 after the contract term expires; and

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

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

1 level that:

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

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

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

11 (7) The department shall report to the Legislative Assembly in the manner provided by ORS
12 192.245 not later than February 1, 2019, February 1, 2021, and February 1, 2023, concerning state
13 agency implementation of the authority granted in subsections (1), (2), (4), (5) and (6) of this section.
14 Each report must, as of the date of the report:

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

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

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

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

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

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

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

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

33 **SECTION 3.** 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) "Administering contracting
42 agency"ORS 279A.200

43 (b) "Affirmative action"ORS 279A.100

44 (c) "Architect"ORS 279C.100

45 (d) "Architectural,

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

1 *organization*ORS 279C.810
2 *(hh)* *“Nonresident bidder”*ORS 279A.120
3 *(ii)* *“Not-for-profit*
4 *organization”*ORS 279A.250
5 *(jj)* *“Original contract”*ORS 279A.200
6 *(kk)* *“Permissive cooperative*
7 *procurement”*ORS 279A.200
8 *(LL)* *“Person”*ORS 279C.500
9 and 279C.815
10 *(mm)* *“Personal services”*ORS 279C.100
11 *(nn)* *“Photogrammetric*
12 *mapping”*ORS 279C.100
13 *(oo)* *“Photogrammetrist”*ORS 279C.100
14 *(pp)* *“Prevailing rate of*
15 *wage”*ORS 279C.800
16 *(qq)* *“Procurement*
17 *description”*ORS 279B.005
18 *(rr)* *“Property”*ORS 279A.250
19 *(ss)* *“Public agency”*ORS 279C.800
20 *(tt)* *“Public contract”*ORS 279A.190
21 *(uu)* *“Public works”*ORS 279C.800
22 *(vv)* *“Purchasing contracting*
23 *agency”*ORS 279A.200
24 *(ww)* *“Regularly organized fire*
25 *department”*ORS 279A.190
26 *(xx)* *“Related services”*ORS 279C.100
27 *(yy)* *“Request for*
28 *proposals”*ORS 279B.005
29 *(zz)* *“Resident bidder”*ORS 279A.120
30 *(aaa)* *“Responsible bidder”*ORS 279A.105
31 and 279B.005
32 *(bbb)* *“Responsible*
33 *proposer”*ORS 279B.005
34 *(ccc)* *“Responsive bid”*ORS 279B.005
35 *(ddd)* *“Responsive*
36 *proposal”*ORS 279B.005
37 *(eee)* *“Retainage”*ORS 279C.550
38 *(fff)* *“Special*
39 *procurement”*ORS 279B.085
40 *(ggg)* *“Specification”*ORS 279B.200
41 *(hhh)* *“State agency”*ORS 279A.250
42 *(iii)* *“Substantial*
43 *completion”*ORS 279C.465
44 *(jii)* *“Surplus property”*ORS 279A.250
45 *(kkk)* *“Transportation*

- 1 *planning services”.....ORS 279C.100*
- 2 (LLL) *“Unnecessarily*
- 3 *restrictive”.....ORS 279B.405]*
- 4
- 5 (a) **“Administering**
- 6 **agency”.....Section 1 of**
- 7 **.....this 2023 Act**
- 8 (b) **“Affirmative action” ..ORS 279A.100**
- 9 (c) **“Architect”ORS 279C.100**
- 10 (d) **“Architectural,**
- 11 **engineering, photogram-**
- 12 **metric mapping,**
- 13 **transportation planning**
- 14 **or land surveying**
- 15 **services”ORS 279C.100**
- 16 (e) **“Bid documents”ORS 279C.400**
- 17 (f) **“Bidder”ORS 279B.415**
- 18 (g) **“Bids”ORS 279C.400**
- 19 (h) **“Brand name”ORS 279B.405**
- 20 (i) **“Brand name or equal**
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- 25 **procurement”ORS 279B.085**
- 26 (L) **“Consultant”.....ORS 279C.115**
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- 29 (n) **“Cooperative**
- 30 **procurement”Section 1 of**
- 31 **.....this 2023 Act**
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- 33 (p) **“Engineer”.....ORS 279C.100**
- 34 (q) **“Findings”ORS 279C.330**
- 35 (r) **“Fire protection**
- 36 **equipment”.....ORS 279A.190**
- 37 (s) **“Fringe benefits”.....ORS 279C.800**
- 38 (t) **“Funds of a public**
- 39 **agency”ORS 279C.810**
- 40 (u) **“Good cause”.....ORS 279C.585**
- 41 (v) **“Good faith dispute”ORS 279C.580**
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- 7 (ee) “Nonresident bidder” ..ORS 279A.120
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- 12 (hh) “Participating
- 13 agency”Section 1 of
- 14 this 2023 Act
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- 24 (nn) “Prevailing rate of
- 25 wage”ORS 279C.800
- 26 (oo) “Procurement
- 27 description”ORS 279B.005
- 28 (pp) “Property”ORS 279A.250
- 29 (qq) “Public agency”ORS 279C.800
- 30 (rr) “Public contract”ORS 279A.190
- 31 (ss) “Public works”ORS 279C.800
- 32 (tt) “Regularly organized
- 33 fire department”ORS 279A.190
- 34 (uu) “Related services”ORS 279C.100
- 35 (vv) “Request for
- 36 proposals”ORS 279B.005
- 37 (ww) “Resident bidder”ORS 279A.120
- 38 (xx) “Responsible bidder” ...ORS 279A.105
- 39and 279B.005
- 40 (yy) “Responsible
- 41 proposer”ORS 279B.005
- 42 (zz) “Responsive bid”ORS 279B.005
- 43 (aaa) “Responsive
- 44 proposal”ORS 279B.005
- 45 (bbb) “Retainage”ORS 279C.550

- 1 (ccc) **“Special**
- 2 **procurement”ORS 279B.085**
- 3 (ddd) **“Specification”.....ORS 279B.200**
- 4 (eee) **“State agency”ORS 279A.250**
- 5 (fff) **“Substantial**
- 6 **completion”ORS 279C.465**
- 7 (ggg) **“Surplus property”ORS 279A.250**
- 8 (hhh) **“Transportation**
- 9 **planning services”ORS 279C.100**
- 10 (iii) **“Unnecessarily**
- 11 **restrictive”ORS 279B.405**

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

12 279A.025. (1) Except as provided in subsections (2) to (4) of this section, the Public Contracting
13 Code applies to all public contracting.

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

15 (a) Contracts between a contracting agency and:

16 (A) Another contracting agency;

17 (B) The Oregon Health and Science University;

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

19 (D) The Oregon State Bar;

20 (E) A governmental body of another state;

21 (F) The federal government;

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

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

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

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

26 (ii) The federal government;

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

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

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

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

33 (c) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and
34 414.145 for purposes of source selection;

35 (d) Grants;

36 (e) Contracts for professional or expert witnesses or consultants to provide services or testimony
37 relating to existing or potential litigation or legal matters in which a public body is or may become
38 interested;

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

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

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

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

44 (j) The procurement, transportation, sale or distribution of distilled liquor, as defined in ORS
45

1 471.001, or the appointment of agents under ORS 471.230 or 471.750 by the Oregon Liquor and
 2 Cannabis Commission;

3 (k) Contracts entered into under ORS chapter 180 between the Attorney General and private
 4 counsel or special legal assistants;

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

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

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

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

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

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

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

28 (B) Program loans and similar extensions or advances of funds, aid or assistance that a public
 29 body makes to a public or private body for the purpose of carrying out, promoting or sustaining
 30 activities or programs authorized by law; or

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

34 (r) Contracts for employee benefit plans as provided in ORS 243.105 (1), 243.125 (4), 243.221,
 35 243.275, 243.291, 243.303 and 243.565;

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

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

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

40 (a) The Oregon State Lottery Commission;

41 (b) The legislative department;

42 (c) The judicial department;

43 (d) Semi-independent state agencies listed in ORS 182.454, except as provided in ORS 279.835 to
 44 279.855 and 279A.250 to 279A.290;

45 (e) Oregon Corrections Enterprises;

1 (f) The Oregon Film and Video Office, except as provided in ORS 279A.100 and 279A.250 to
2 279A.290;

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

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

5 (i) The Oregon Innovation Council;

6 (j) The Oregon Utility Notification Center; or

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

8 (4) ORS [279A.200 to 279A.225 and] 279B.050 to 279B.085 **and section 1 of this 2023 Act** do not
9 apply to contracts made with qualified nonprofit agencies providing employment opportunities for
10 individuals with disabilities under ORS 279.835 to 279.855.

11 **SECTION 5. ORS 279A.200, 279A.205, 279A.210, 279A.215, 279A.220 and 279A.225 are re-**
12 **pealed.**

13 **SECTION 6. Section 1 of this 2023 Act and the amendments to ORS 276.255, 279A.010 and**
14 **279A.025 by sections 2 to 4 of this 2023 Act apply to procurements that a contracting agency**
15 **advertises or otherwise solicits or, if the contracting agency does not advertise or solicit the**
16 **procurement, to public contracts and public improvement contracts into which the con-**
17 **tracting agency enters on or after the operative date specified in section 7 of this 2023 Act.**

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

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

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

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