

**Enrolled**  
**House Bill 3653**

Sponsored by Representatives LEVY E, LEVY B; Senators SMITH DB, WEBER

CHAPTER .....

AN ACT

Relating to energy performance contracts; creating new provisions; amending ORS 276.905, 276.915, 279A.010, 279A.065, 279C.332 and 279C.335; and prescribing an effective date.

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

**SECTION 1.** ORS 276.905 is amended to read:

276.905. As used in ORS 276.900 to 276.915, unless the context requires otherwise:

(1) “Alternative energy system” means an environmentally sound energy system that uses power derived from renewable resources including, but not limited to, the sun, wind, geothermal sources and heat recovery.

(2) “Authorized state agency” means a state agency, board, commission, department or division that is authorized to finance the construction, purchase or renovation of a facility that is or will be used by the State of Oregon.

(3) “Cost-effective” means that an energy resource, facility or conservation measure during its life cycle results in delivered power costs to the ultimate consumer no greater than the comparable incremental cost of the least cost alternative new energy resource, facility or conservation measure. Cost comparison [*shall*] **must** include, but need not be limited to:

- (a) Cost escalations and future availability of fuels;
- (b) Waste disposal and decommissioning costs;
- (c) Transmission and distribution costs;
- (d) Geographic, climatic and other differences in the state; and
- (e) Environmental impact.

(4) “Energy conservation measure” means a measure primarily designed to reduce the use of energy resources in a facility.

(5) “Energy consumption analysis” means the evaluation of all energy systems and components by demand and type of energy including the internal energy load imposed on a major facility by its occupants, equipment and components and the external energy load imposed on a major facility by the climatic conditions of its location. “Energy consumption analysis” includes, but is not limited to:

- (a) The comparison of a range of alternatives that is likely to include all reasonable, cost-effective energy conservation measures and alternative energy systems;
- (b) The simulation of each system over the entire range of operation of a major facility for a year’s operating period;
- (c) The evaluation of energy consumption of component equipment in each system considering the operation of such components at other than full or rated outputs; and
- (d) The consideration of alternative energy systems.

[(6) "Energy savings performance contract" has the meaning given that term in ORS 279A.010.]

**(6) "Energy performance contract" has the meaning given that term in ORS 279A.010.**

(7) "Energy systems" means all utilities, including but not limited to heating, cooling, ventilation, lighting and the supply of domestic hot water.

(8) "Facility" means a building or other structure owned or controlled by an authorized state agency that is used or occupied by employees of the authorized state agency or that is used for conducting public business.

(9) "Major facility" means a facility that has 10,000 square feet or more of usable floor space.

**(10) "Performance guarantee" means an enforceable agreement between an authorized state agency and a qualified energy service company that:**

**(a) Allocates responsibilities between the authorized state agency and the qualified energy service company for achieving the purposes of an energy performance contract;**

**(b) Specifies conditions under which the qualified energy service company will guarantee savings, reductions, benefits or other purposes specified in the energy performance contract;**

**(c) Specifies a term during which the agreement remains valid; and**

**(d) Provides remedies to the authorized state agency, including damages and appropriate equitable relief, if a fixture, furnishing or system that the qualified energy service company recommends, designs and constructs, fabricates, assembles or installs into a facility fails to achieve the savings, reductions, benefits or other purposes specified in the energy performance contract.**

**(11) "Qualified energy service company" means a person that:**

**(a) Has demonstrated a technical, operational, financial and managerial capability for, and a prior record of success in, identifying and assessing needs for and recommending, designing and constructing, fabricating, assembling or installing fixtures, furnishings or systems that meet the requirements of an energy performance contract;**

**(b) Has developed expertise in measuring and verifying energy use and reductions in energy use, expertise in identifying greenhouse gas emissions and methods for reducing greenhouse gas emissions or expertise in methods of providing savings, reductions or other benefits that an authorized state agency may seek through an energy performance contract; and**

**(c) Otherwise meets standards that the State Department of Energy or an authorized state agency specifies for prequalification.**

[(10)] **(12) "Renovation" means an addition to, alteration of or repair of a facility that adds to or alters the facility's energy systems, provided that the affected energy systems account for 50 percent or more of the facility's total energy use.**

**SECTION 2.** ORS 276.915 is amended to read:

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

(2) Whenever an authorized state agency determines that a major facility is to be constructed or renovated, the authorized state agency shall cause to be included in the design phase of the construction or renovation a provision that requires an energy consumption analysis to be prepared for the facility under the direction of a professional engineer or registered architect or under the direction of a person that is prequalified in accordance with this section. The authorized state agency and the State Department of Energy shall agree to the list of energy conservation measures and alternative energy systems that the energy consumption analysis will include. The energy consumption analysis and facility design *[shall]* **must** be delivered to the State Department of Energy during the design development phase of the facility design. The State Department of Energy shall review the energy consumption analysis and forward *[its]* **the department's** findings to the authorized state agency within 10 working days after receiving the energy consumption analysis, if practicable.

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

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

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

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

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

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

(f) Establish guidelines for incorporating energy efficiency requirements into lease agreements of 10 or more years to be phased in as current lease agreements expire or as new lease agreements are entered into, allowing reasonable time for the owner to implement the requirements of this section.

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

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

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

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

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

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

(b) Enter into an energy *[savings]* performance contract **as a qualified energy service company**; or

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

**(8)(a) An authorized state agency may enter into an energy performance contract with a qualified energy service company for the purpose of meeting requirements set forth in this section and for other purposes for which the authorized state agency determines that an energy performance contract is appropriate for constructing or renovating a facility.**

**(b) An authorized state agency may enter into an energy performance contract without conducting a competitive procurement under ORS 279C.335 if:**

**(A) The authorized state agency negotiates a performance guarantee for the benefits that the energy performance contract will provide to the authorized state agency; and**

**(B) The authorized state agency enters into the energy performance contract:**

**(i) In accordance with rules the Attorney General adopts under ORS 279A.065; and**

**(ii) With a qualified energy service company that the State Department of Energy has prequalified under subsection (3)(g) of this section and has listed as an approved contractor.**

~~[(8)]~~ **(9)** The State Department of Energy may recover from authorized state agencies the costs associated with administering the provisions of this section, including costs associated with adopting rules, maintaining a state energy use database and prequalifying a person under this section.

~~[(9)]~~ **(10)** The State Department of Energy and the Oregon Department of Administrative Services shall jointly prepare a biennial report summarizing the progress toward achieving the goals of this section. The biennial report shall be made available to the public.

**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.

(e) “Director” means the Director of the Oregon Department of Administrative Services or a person designated by the director to carry out the authority of the director under the Public Contracting Code.

(f) “Emergency” means circumstances that:

(A) Could not have been reasonably foreseen;

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

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

*[(g) “Energy savings performance contract” means a public contract between a contracting agency and a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures, including a design-build contract, that guarantee energy savings or performance.]*

**(g) “Energy performance contract” means a public contract, including a design-build contract, between a contracting agency and a qualified energy service company, as defined in ORS 276.905, in which the qualified energy service company:**

**(A) Identifies and assesses a need or requirement in a public improvement for:**

**(i) Providing guaranteed energy savings or performance through an energy conservation measure;**

**(ii) Reducing energy consumption, greenhouse gas emissions, waste generation or water consumption;**

**(iii) Reducing costs related to energy usage and storage, water supply or waste disposal;**

**(iv) Reducing labor and materials costs necessary to repair, replace or maintain energy supply and storage systems, water supply systems or plumbing or waste disposal systems; or**

**(v) Increasing renewable energy generation and storage, including renewable energy from thermal energy sources; and**

**(B) Recommends, designs and constructs, fabricates, assembles or installs, as appropriate, a fixture, furnishing or system that meets the need or requirement identified in subparagraph (A) of this paragraph.**

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

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

(j) "Goods and services" or "goods or services" includes combinations of any of the items identified in the definitions of "goods" and "services."

(k)(A) "Grant" means:

(i) An agreement under which a contracting agency receives 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, from a grantor for the purpose of supporting or stimulating a program or activity of the contracting agency and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions; or

(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 procedures and requirements;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ff) "Recycled oil" means used oil that has been prepared for reuse as a 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 procurement” .....ORS 279B.085
- (L) “Consultant” .....ORS 279C.115
- (m) “Contract-specific special procurement” .....ORS 279B.085
- (n) “Cooperative procurement” .....ORS 279A.200
- (o) “Cooperative procurement group” .....ORS 279A.200
- (p) “Donee” .....ORS 279A.250
- (q) “Engineer” .....ORS 279C.100
- (r) “Findings” .....ORS 279C.330
- (s) “Fire protection equipment” .....ORS 279A.190

(t)	"Fringe benefits".....	ORS 279C.800
(u)	"Funds of a public agency" .....	ORS 279C.810
(v)	"Good cause" .....	ORS 279C.585
(w)	"Good faith dispute" .....	ORS 279C.580
(x)	"Goods" .....	ORS 279B.115
(y)	"Housing" .....	ORS 279C.800
(z)	"Interstate cooperative procurement" .....	ORS 279A.200
(aa)	"Invitation to bid" .....	ORS 279B.005
	.....and	279C.400
(bb)	"Joint cooperative procurement" .....	ORS 279A.200
(cc)	"Labor dispute" .....	ORS 279C.650
(dd)	"Land surveyor" .....	ORS 279C.100
(ee)	"Legally flawed" .....	ORS 279B.405
(ff)	"Locality" .....	ORS 279C.800
(gg)	"Nonprofit organization" .....	ORS 279C.810
(hh)	"Nonresident bidder" .....	ORS 279A.120
(ii)	"Not-for-profit organization" .....	ORS 279A.250
(jj)	"Original contract" .....	ORS 279A.200
(kk)	"Permissive cooperative procurement" .....	ORS 279A.200
(LL)	"Person" .....	ORS 279C.500
	.....and	279C.815
(mm)	"Personal services" .....	ORS 279C.100
(nn)	"Photogrammetric mapping" .....	ORS 279C.100
(oo)	"Photogrammetrist" .....	ORS 279C.100
(pp)	"Prevailing rate of wage" .....	ORS 279C.800
(qq)	"Procurement description" .....	ORS 279B.005
(rr)	"Property" .....	ORS 279A.250
(ss)	"Public agency" .....	ORS 279C.800
(tt)	"Public contract" .....	ORS 279A.190
(uu)	"Public works" .....	ORS 279C.800
(vv)	"Purchasing contracting agency" .....	ORS 279A.200
(ww)	"Regularly organized fire department" .....	ORS 279A.190
(xx)	"Related services" .....	ORS 279C.100
(yy)	"Request for proposals" .....	ORS 279B.005
(zz)	"Resident bidder" .....	ORS 279A.120
(aaa)	"Responsible bidder" .....	ORS 279A.105
	.....and	279B.005
(bbb)	"Responsible proposer" .....	ORS 279B.005
(ccc)	"Responsive bid" .....	ORS 279B.005



- (ddd) "Responsive proposal" .....ORS 279B.005
- (eee) "Retainage" .....ORS 279C.550
- (fff) "Special procurement" .....ORS 279B.085
- (ggg) "Specification" .....ORS 279B.200
- (hhh) "State agency" .....ORS 279A.250
- (iii) "Substantial completion" .....ORS 279C.465
- (jjj) "Surplus property" .....ORS 279A.250
- (kkk) "Transportation planning services" .....ORS 279C.100
- (LLL) "Unnecessarily restrictive" .....ORS 279B.405

**SECTION 4.** ORS 279A.065 is amended to read:

279A.065. (1) The Attorney General shall prepare and maintain model rules that specify procedures for public contracting under the Public Contracting Code and that are appropriate for all contracting agencies to use. The Attorney General may devise and publish forms for use with the model rules. The Attorney General shall adopt the model rules in accordance with ORS chapter 183. Before adopting or amending a model rule, the Attorney General shall consult with the Director of the Oregon Department of Administrative Services, the Director of Transportation, representatives of county governments, representatives of city governments, representatives of school boards and other knowledgeable persons.

(2) The Attorney General shall adopt model rules that specify procedures for all contracting agencies to use to enter into energy [*savings*] performance contracts. Before adopting or amending a rule under this subsection, the Attorney General shall consult with the Oregon Department of Administrative Services, the State Department of Energy, local contracting agencies and other knowledgeable persons. The Attorney General may develop standard contract forms for use with energy [*savings*] performance contracts.

(3)(a) The Attorney General shall adopt model rules that specify procedures for all contracting agencies to use to procure construction manager/general contractor services. Before adopting or amending a rule under this subsection, the Attorney General shall consult with the Director of the Oregon Department of Administrative Services, the Director of Transportation, local contracting agencies, construction contractors, construction subcontractors and other knowledgeable persons.

(b) Notwithstanding subsection (6) of this section, a contracting agency may not adopt the contracting agency's own rules for procuring construction manager/general contractor services.

(4) After each legislative session, the Attorney General shall review all laws the Legislative Assembly passed that affect public contracting to determine if the Attorney General should amend or repeal a model rule prepared under this section or adopt a new rule. If the Attorney General determines that a modification of the model rules is necessary, the Attorney General shall prepare the modification within such time as to allow the modification to take effect no later than 120 days after the effective date of the legislation that caused the Attorney General to modify the rule. The Attorney General may prepare a modification to take effect 121 or more days after the effective date of the legislation if the Attorney General, in a notice to the state agencies and persons listed in subsection (1) of this section, specifies when the modification will take effect.

(5) A contracting agency that has not adopted the contracting agency's own rules of procedure in accordance with subsection (6) of this section is subject to the model rules the Attorney General adopts under this section, including all modifications to the model rules that the Attorney General may adopt.

(6)(a) A contracting agency may adopt the contracting agency's own rules of procedure for public contracts that:

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

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

(b) A contracting agency that adopts rules under this subsection shall review the rules each time the Attorney General modifies the model rules under this section to determine whether the contracting agency should modify the contracting agency's rules to ensure compliance with statutory changes.

**SECTION 5.** ORS 279C.335 is amended to read:

279C.335. (1) A contracting agency may award a public improvement contract only in response to competitive bids, except for:

(a) A public improvement contract with a qualified nonprofit agency that provides employment opportunities for individuals with disabilities under ORS 279.835 to 279.855.

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

(c) A public improvement contract with a value of less than \$25,000. A state contracting agency that awards a public improvement contract with a contract price of \$10,000 or more under this paragraph shall document in the state contracting agency's procurement file the actions the state contracting agency takes to:

(A) Comply with ORS 200.035; and

(B) Invite to participate in the procurement qualified businesses or enterprises that the Certification Office for Business Inclusion and Diversity certifies under ORS 200.055.

(d) A public improvement contract with a contract price that does not exceed \$100,000 made under procedures for competitive quotes in ORS 279C.412 and 279C.414.

(e) A contract to repair, maintain, improve or protect property the Department of Veterans' Affairs obtains under ORS 407.135 and 407.145 (1).

(f) An energy [*savings*] performance contract that a contracting agency enters into in accordance with rules of procedure adopted under ORS 279A.065.

(g) A public improvement contract with an estimated contract price of \$250,000 or less that a contracting agency awards to an emerging small business certified under ORS 200.055 and funds with moneys from the Emerging Small Business Account established under ORS 200.180. A contracting agency that awards a public contract exempted from competitive bidding under this paragraph shall solicit competitive quotes as provided in ORS 279C.414 before making the award.

(h) A public improvement contract that the Department of Transportation awards to a qualified small business under the small business development program described in ORS 184.906. The department may choose to award a public improvement contract described in this paragraph competitively or using other selection methods that comply with the policies set forth in ORS 279A.015.

(2) Subject to subsection (4)(b) and (c) of this section, the Director of the Oregon Department of Administrative Services, a local contract review board or, for contracts described in ORS 279A.050 (3)(b), the Director of Transportation may exempt a public improvement contract or a class of public improvement contracts from the competitive bidding requirement of subsection (1) of this section after the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board approves the following findings that the contracting agency submits or, if a state agency is not the contracting agency, that the state agency that is seeking the exemption submits:

(a) The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.

(b) Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency or the state agency that seeks the exemption or, if the contract is for a public improvement described in ORS 279A.050 (3)(b), to the contracting agency or the public. In approving a finding under this paragraph, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local

contract review board shall consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract or class of public improvement contracts, the following:

- (A) How many persons are available to bid;
- (B) The construction budget and the projected operating costs for the completed public improvement;
- (C) Public benefits that may result from granting the exemption;
- (D) Whether value engineering techniques may decrease the cost of the public improvement;
- (E) The cost and availability of specialized expertise that is necessary for the public improvement;
- (F) Any likely increases in public safety;
- (G) Whether granting the exemption may reduce risks to the contracting agency, the state agency or the public that are related to the public improvement;
- (H) Whether granting the exemption will affect the sources of funding for the public improvement;
- (I) Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;
- (J) Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;
- (K) Whether the public improvement involves new construction or renovates or remodels an existing structure;
- (L) Whether the public improvement will be occupied or unoccupied during construction;
- (M) Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and
- (N) Whether the contracting agency or state agency has, or has retained under contract, and will use contracting agency or state agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency or state agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.

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

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

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

(a) If appropriate, direct the use of alternative contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.

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

(c) Require a contracting agency or state agency that procures construction manager/general contractor services to conduct the procurement in accordance with model rules the Attorney General adopts under ORS 279A.065 (3).

(5)(a) A contracting agency or state agency may hold a public hearing before approving the findings required by subsection (2) of this section and before the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board grants an exemption from the competitive bidding requirement for a public improvement contract or a class of public improvement contracts.

(b) Notification of a proposed exemption under subsection (2) of this section must be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the date on which the contracting agency intends to take action to approve or disapprove the exemption.

(c) The notice must state that in response to a written request, the contracting agency or state agency will hold a public hearing for the purpose of taking comments on the draft findings for an exemption from the competitive bidding requirement.

(d) If the contracting agency or state agency conducts a public hearing, the contracting agency or state agency shall offer an opportunity for any interested party to appear and comment.

(e) If a contracting agency or state agency must act promptly because of circumstances beyond the agency's control that do not constitute an emergency, notification of the proposed exemption may be published simultaneously with the agency's solicitation of contractors for the alternative public contracting method, as long as responses to the solicitation are due at least five days after the agency intends to take action to approve or disapprove the proposed exemption.

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

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

(8) A public improvement contract that is excepted from the competitive bidding requirement under subsection (1)(a), (c), (d), (e), (f) or (g) of this section is not subject to the exemption requirements of subsection (2) of this section.

**SECTION 6.** ORS 279C.332 is amended to read:

279C.332. As used in this section and ORS 279A.065, 279C.307, 279C.335, 279C.337 and 279C.380:

(1) "Affiliate" means a person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.

(2) "Construction manager/general contractor" means a person that provides construction manager/general contractor services to a contracting agency under a public improvement contract.

(3)(a) "Construction manager/general contractor services" means construction-related services that a contracting agency procures by means of an alternative contracting method under ORS 279C.335 and that:

(A) Include a construction manager/general contractor's:

(i) Functioning as a member of a project team that includes the contracting agency, the architect or engineer that designs the public improvement under a separate contract with the contracting agency and other contractors and consultants; and

(ii) Reviewing and analyzing a design for a public improvement in order to:

(I) Suggest changes in the design that minimize potential errors, delays, unexpected costs and other problems during construction;

(II) Recommend means by which the contracting agency may achieve the functions of the public improvement or a component of the public improvement safely, reliably, efficiently and at the lowest overall cost;

(III) Improve the value and quality of the public improvement; and

(IV) Reduce the time necessary to complete the public improvement; and

(B) May include, depending on the specific terms of the public improvement contract and on whether the contracting agency decides to proceed with construction, a construction manager/general contractor's:

(i) Devising a schedule for constructing the public improvement;

(ii) Estimating construction, materials, labor and other costs for the public improvement;

(iii) Establishing a fixed price, a guaranteed maximum price or other maximum price;

(iv) Constructing portions of the public improvement and subcontracting portions to other contractors;

(v) Coordinating and overseeing the construction process; or

(vi) Performing other services related to constructing a public improvement in accordance with the terms of the public improvement contract.

(b) "Construction manager/general contractor services" does not include services related to constructing a public improvement under the terms of:

(A) A public improvement contract that a contracting agency awards on the basis of a competitive bidding process that does not require an exemption under ORS 279C.335;

(B) A public improvement contract that results from a design-build procurement, as defined in rules the Attorney General or a contracting agency adopts under ORS 279A.065, and that is exempt from the competitive bidding requirement under ORS 279C.335;

(C) An energy *[savings]* performance contract;

(D) A public improvement contract for a transportation project that:

(i) Is exempt from the competitive bidding requirement under ORS 279C.335;

(ii) Requires the contractor to construct the project according to plans and specifications that a design professional provides under a separate contract with the contracting agency and without significant participation from the contractor; and

(iii) The contracting agency awards on the basis of the contracting agency's evaluation of:

(I) The contractor's qualifications, the price to perform the work on the project and the amount of time the contractor will take to perform the work; or

(II) The contractor's qualifications, past experience with similar projects, the price to perform the work on the project and the contractor's planned approach to the project; or

(E) A public improvement contract that is otherwise exempt or excepted from the competitive bidding requirement under ORS 279C.335.

(4) "Guaranteed maximum price" means the total price at which a construction manager/general contractor agrees to provide construction manager/general contractor services to a contracting agency in accordance with the terms and conditions and scope of work for a specific public improvement contract and within which are:

(a) All costs the contracting agency agrees to reimburse and all fees the contracting agency agrees to pay for completing the public improvement; and

(b) Any contingent costs, fees or other charges specifically identified in the public improvement contract.

**SECTION 7. The amendments to ORS 276.905, 276.915, 279A.010, 279A.065, 279C.332 and 279C.335 by sections 1 to 6 of this 2025 Act apply to procurements for energy performance**

contracts that an authorized state agency or contracting agency enters into on and after the operative date specified in section 8 of this 2025 Act.

**SECTION 8.** (1) The amendments to ORS 276.905, 276.915, 279A.010, 279A.065, 279C.332 and 279C.335 by sections 1 to 6 of this 2025 Act become operative on January 1, 2026.

(2) The Attorney General, the Director of the Oregon Department of Administrative Services, the Director of Transportation and the Director of the State Department of Energy 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 director or the contracting agency to undertake and exercise all of the duties, functions and powers conferred on the Attorney General, the director or the contracting agency by the amendments to ORS 276.905, 276.915, 279A.010, 279A.065, 279C.332 and 279C.335 by sections 1 to 6 of this 2025 Act.

**SECTION 9.** This 2025 Act takes effect on the 91st day after the date on which the 2025 regular session of the Eighty-third Legislative Assembly adjourns sine die.

Passed by House April 17, 2025

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Timothy G. Sekerak, Chief Clerk of House

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Julie Fahey, Speaker of House

Passed by Senate May 15, 2025

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Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2025

Approved:

.....M.,....., 2025

.....  
Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2025

.....  
Tobias Read, Secretary of State