

Chapter 279A

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GENERAL PROVISIONS

279A.005 Short title. ORS chapters 279A, 279B and 279C may be cited as the Public Contracting Code. [2003 c.794 §1]

279A.010 Definitions for Public Contracting Code. (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.

(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, photogrammetric 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

[2003 c.794 §2; 2003 c.794 §2a; 2005 c.22 §199; 2005 c.103 §1a; 2005 c.153 §2; 2005 c.360 §13; 2007 c.764 §1; 2011 c.458 §8; 2017 c.715 §4]

279A.015 Policy. It is the policy of the State of Oregon, in enacting the Public Contracting Code, that a sound and responsive public contracting system should:

(1) Simplify, clarify and modernize procurement practices so that they reflect the marketplace and industry standards.

(2) Instill public confidence through ethical and fair dealing, honesty and good faith on the part of government officials and those who do business with the government.

(3) Promote efficient use of state and local government resources, maximizing the economic investment in public contracting within this state.

(4) Clearly identify rules and policies that implement each of the legislatively mandated socioeconomic programs that overlay public contracting and accompany the expenditure of public funds.

(5) Allow impartial and open competition, protecting both the integrity of the public contracting process and the competitive nature of public procurement. In public procurement, as set out in ORS chapter 279B, meaningful competition may be obtained by evaluation of performance factors and other aspects of service and product quality, as well as pricing, in arriving at best value.

(6) Provide a public contracting structure that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competitive bidding as the standard for public improvement contracts unless otherwise exempted. [2003 c.794 §3]

279A.020 Organization of Public Contracting Code. (1) Except as otherwise provided in the Public Contracting Code, all public contracting by a contracting agency is subject to this chapter.

(2) Except as provided in ORS 279C.320, public contracting involving public improvements and other construction services is subject to this chapter and ORS chapter 279C, but not ORS chapter 279B.

(3) Public contracting involving architects, engineers, photogrammetrists, transportation planners, land surveyors and related services is subject to this chapter and ORS chapter 279C, but not ORS chapter 279B.

(4) Except as provided in ORS 279C.320, all other public contracting is subject to this chapter and ORS chapter 279B, but not ORS chapter 279C. [2003 c.794 §4; 2005 c.103 §2; 2011 c.458 §9]

279A.025 Application of Public Contracting Code. (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;

(E) A governmental body of another state;

(F) The federal government;

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

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

(I) An intergovernmental entity formed between or among:

(i) Governmental bodies of this or another state;

(ii) The federal government;

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

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

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

(b) Agreements authorized by ORS chapter 190 or by a statute, charter provision, ordinance or other authority for establishing agreements between or among governmental

bodies or agencies or tribal governing bodies or agencies;

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

(d) Grants;

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

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

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

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

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

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

(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 owned or managed by the State Board of Forestry and the State Forestry Department;

(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 entered into by the Housing and Community Services Department 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 entered into by the State Treasurer 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) The making of program loans and similar extensions or advances of funds, aid or assistance by a public body to a public or private body for the purpose 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 do not apply to contracts made with qualified nonprofit agencies providing employment opportunities for individuals with disabilities under ORS 279.835 to 279.855. [2003 c.794 §5; 2003 c.794 §5a; 2005 c.22 §200; 2005 c.103 §3; 2005 c.109 §3; 2005 c.297 §3; 2005 c.748 §12; 2005 c.777 §15; 2007 c.7 §19; 2007 c.70 §67; 2007 c.71 §81; 2007 c.764 §2; 2007 c.783 §91; 2011 c.637 §88; 2013 c.492 §28; 2013 c.768 §123; 2015 c.447 §3; 2015 c.843 §19; 2017 c.183 §94; 2017 c.533 §3]

279A.030 Federal law prevails in case of conflict. Except as otherwise expressly provided in ORS 279C.800 to 279C.870, and notwithstanding ORS 279C.005 to 279C.670 and this chapter and ORS chapter 279B, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of ORS 279C.005 to 279C.670 or this chapter or ORS chapter 279B, or require additional conditions in public contracts not authorized by ORS 279C.005 to 279C.670 or this chapter or ORS chapter 279B. [2003 c.794 §6]

AUTHORITY

279A.050 Procurement authority. (1)(a) Except as otherwise provided in the Public Contracting Code, a contracting agency shall exercise all of the contracting agency's procurement authority in accordance with the provisions of the Public Contracting Code.

(b) If a contracting agency has authority under this section to carry out functions described in this section, or has authority to make procurements under a provision of law other than the Public Contracting Code, the contracting agency need not exercise the contracting agency's authority in accordance with the provisions of the code if, under ORS 279A.025, the code does not apply to the contract or contracting agency.

(2)(a) Except as otherwise provided in paragraph (b) of this subsection and the Public Contracting Code, for state agencies the Director of the Oregon Department of Administrative Services has all the authority available to carry out the provisions of the Public Contracting Code.

(b) Except as otherwise provided in the Public Contracting Code, for state agencies the director may delegate to the State Chief Information Officer the authority to procure or supervise the procurement of all goods, services and personal services related to information technology and telecommunications for state contracting agencies. This paragraph does not apply to contracts under which the contractor delivers to the state

agency information technology products or services incidentally in performing a personal services contract described in ORS chapter 279C or a construction contract described in ORS chapter 279C.

(3) Except as otherwise provided in the Public Contracting Code, the Director of Transportation has all the authority available to:

(a) Procure or supervise the procurement of all services and personal services to construct, acquire, plan, design, maintain and operate passenger terminal facilities and motor vehicle parking facilities in connection with any public transportation system in accordance with ORS 184.689 (5);

(b) Procure or supervise the procurement of all goods, services, public improvements and personal services that relate to operating, maintaining or constructing highways, bridges and other transportation facilities that are subject to the authority of the Department of Transportation; and

(c) Establish standards for, prescribe forms for and conduct the prequalification of prospective bidders on public improvement contracts that relate to operating, maintaining or constructing highways, bridges and other transportation facilities that are subject to the authority of the Department of Transportation.

(4) Except as otherwise provided in the Public Contracting Code, the Secretary of State has all the authority to procure or supervise the procurement of goods, services and personal services related to programs under the authority of the Secretary of State.

(5) Except as otherwise provided in the Public Contracting Code, the State Treasurer has all the authority to procure or supervise the procurement of goods, services and personal services related to programs under the authority of the State Treasurer.

(6) The state agencies listed in this subsection have all the authority to do the following in accordance with the Public Contracting Code:

(a) The Department of Human Services to procure or supervise the procurement of goods, services and personal services under ORS 179.040 for the department's institutions and the procurement of goods, services and personal services for constructing, demolishing, exchanging, maintaining, operating and equipping housing for the purpose of providing care to individuals with intellectual disabilities or other developmental disabilities, subject to applicable provisions of ORS 427.335;

(b) The Oregon Health Authority to procure or supervise the procurement of goods, services and personal services under ORS

179.040 and construction materials, equipment and supplies for the authority's institutions and the procurement of goods, services, personal services, construction materials, equipment and supplies for constructing, demolishing, exchanging, maintaining, operating and equipping housing for individuals with chronic mental illness, subject to applicable provisions of ORS 426.504;

(c) The State Department of Fish and Wildlife to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the State Department of Fish and Wildlife;

(d) The State Parks and Recreation Department to procure or supervise the procurement of all goods, services, public improvements and personal services related to state parks;

(e) The Oregon Department of Aviation to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the Oregon Department of Aviation;

(f) The Oregon Business Development Department to procure or supervise the procurement of all goods, services, personal services and public improvements related to its foreign trade offices operating outside the state;

(g) The Housing and Community Services Department to procure or supervise the procurement of goods, services and personal services as provided in ORS 279A.025 (2)(o);

(h) The Department of Corrections to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the Department of Corrections;

(i) The Department of Corrections, subject to any applicable provisions of ORS 279A.120, 279A.125, 279A.145 and 283.110 to 283.395, to procure or supervise the procurement of goods, services and personal services under ORS 179.040 for its institutions;

(j) The Department of Veterans' Affairs to procure or supervise the procurement of real estate broker and principal real estate broker services related to programs under the department's authority;

(k) The Oregon Military Department to procure or supervise the procurement of

construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the Oregon Military Department;

(L) The Department of Education, subject to any applicable provisions of ORS 329.075, 329.085 and 329.485 and the federal Every Student Succeeds Act (P.L. 114-95, 129 Stat. 1802), to procure or supervise the procurement of goods, services, personal services and information technology related to student assessment; and

(m) Any state agency to conduct a procurement when the agency is specifically authorized by any provision of law other than the Public Contracting Code to enter into a contract.

(7)(a) Notwithstanding this section and ORS 279A.140 (1), the Director of the Oregon Department of Administrative Services has exclusive authority, unless the director delegates the authority, to procure or supervise the procurement of all price agreements on behalf of the state agencies identified in subsection (6) of this section under which more than one state agency may order goods, services or personal services.

(b) The director may delegate to the State Chief Information Officer the exclusive authority to procure or supervise the procurement of all price agreements related to information technology and telecommunications on behalf of the state agencies identified in subsection (6) of this section. Notwithstanding any authority that a state agency may have under subsection (3) or (6) of this section, the state agency may not establish a price agreement or enter into a contract for goods, services or personal services without the approval of the director or the State Chief Information Officer if the director or the State Chief Information Officer has established a price agreement for the goods, services or personal services.

(c) The State Chief Information Officer may review any solicitation document for procuring information technology or telecommunications that a state agency intends to issue before the state agency issues the solicitation document and may require the state agency to name the State Chief Information Officer as a third-party beneficiary with full authority to enforce the terms and conditions of any public contract for information technology or telecommunications. The State Chief Information Officer must approve a state agency's procurement for information technology or telecommunications if the procurement has an anticipated contract price of \$1 million or more. The State Chief Information Officer may require the

state agency to name the State Chief Information Officer as the contracting party on behalf of the State of Oregon in a procurement for information technology or telecommunications that has an anticipated contract price of \$1 million or more. [2003 c.794 §7; 2005 c.625 §61; 2007 c.70 §68; 2007 c.197 §1; 2007 c.764 §3; 2009 c.397 §2; 2009 c.828 §13; 2011 c.658 §36; 2011 c.720 §73a; 2013 c.492 §29; 2015 c.167 §1; 2015 c. 243 §7; 2015 c.447 §4; 2015 c.807 §22; 2017 c.726 §1]

279A.055 Personal services contracts.

(1) Except as provided in ORS 279A.140, a contracting agency may enter into personal services contracts. The provisions of this section do not relieve a contracting agency of the duty to comply with ORS 279A.140, any other law applicable to state agencies or applicable city or county charter provisions.

(2) A state contracting agency with procurement authority under ORS 279A.050 or a local contract review board by ordinance, resolution, administrative rule or other regulation may designate certain service contracts or classes of service contracts as personal services contracts. [2003 c.794 §8; 2005 c.103 §4]

279A.060 Local contract review boards. If the governing body of a local contracting agency takes no action to provide otherwise, the governing body is the local contract review board of that local contracting agency. However, the governing body of a local contracting agency may, by charter, ordinance or other local legislation, authorize a body, board or commission other than the governing body to serve as the local contract review board of the local contracting agency. The governing body of a local contracting agency also may enter into intergovernmental agreements under ORS chapter 190 to permit the local contract review board of another local contracting agency or the Director of the Oregon Department of Administrative Services to exercise authority under ORS 279B.085. [2003 c.794 §9]

279A.065 Model rules generally; applicability to contracting agencies. (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 sec-

tion 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. [2003 c.794 §10; 2003 c.794 §10a; 2011 c.458 §10; 2013 c.522 §4; 2015 c.767 §80]

279A.070 Rules. In addition to rules adopted under ORS 279A.065 (6), a contracting agency may, in exercising authority granted under ORS 279A.050, adopt rules necessary to carry out the provisions of the Public Contracting Code, including but not limited to rules for procuring, managing, disposing of and controlling goods, services, personal services and public improvements under the Public Contracting Code. Each contracting agency authorized to enter into personal services contracts shall create procedures to screen and select persons to perform personal services. [2003 c.794 §11; 2003 c.794 §11a; 2013 c.522 §5]

279A.075 Delegation. (1) Unless otherwise provided in the Public Contracting Code, a person or agency that has an authority under the code may delegate and subdelegate the exercise of the authority in whole or in part. Notwithstanding delegations of authority under this section, the code and rules adopted under the code govern a person's or agency's exercise of the delegated authority.

(2) The Secretary of State, State Treasurer, Director of the Oregon Department of Administrative Services, State Chief Information Officer and Director of Transportation and other heads of state agencies with specific limited authority identified in ORS 279A.050 (6) may delegate authority to contract for and manage public contracts for their offices or agencies. The State Chief Information Officer may require the Director of the Oregon Department of Administrative Services to obtain the State Chief Information Officer's review and approval before the director delegates authority to a state contracting agency to conduct a procurement for information technology or telecommunications. [2003 c.794 §12; 2015 c.807 §23]

DISADVANTAGED BUSINESS ENTERPRISES, MINORITY-OWNED BUSINESSES, WOMAN-OWNED BUSINESSES, BUSINESSES THAT SERVICE-DISABLED VETERANS OWN AND EMERGING SMALL BUSINESSES

279A.100 Affirmative action; limited competition permitted. (1) As used in this section:

(a) "Affirmative action" means a program designed to ensure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability or a policy to give a preference in awarding public contracts to disabled veterans.

(b) "Disabled veteran" has the meaning given that term in ORS 408.225.

(2) The provisions of the Public Contracting Code may not be construed to prohibit a contracting agency from engaging in public contracting practices designed to promote affirmative action goals, policies or programs for disadvantaged or minority groups or to give a preference in awarding public contracts to disabled veterans.

(3) In carrying out an affirmative action goal, policy or program, a contracting agency by appropriate ordinance, resolution or rule may limit competition for a public contract for goods and services, or for any other public contract estimated to cost \$50,000 or less, to contracting entities owned or controlled by persons described in subsection (1) of this section. [2003 c.794 §13; 2009 c.235 §1]

279A.105 Subcontracting to emerging small businesses or businesses that service-disabled veterans own. (1) A contracting agency may require a contractor to subcontract some part of a contract to, or to obtain materials for use in performing the contract from, a business that is certified under ORS 200.055 as an emerging small business or as a business that a service-disabled veteran owns.

(2) A contracting agency may require a contractor to subcontract some part of a contract to, or to obtain materials to be used in performing the contract from, a business that is certified under ORS 200.055 as an emerging small business and that, as identified by the contracting agency, is located in or draws the business's workforce from economically distressed areas, as designated by the Oregon Business Development Department.

(3) A contracting agency may require that a public contract be awarded to a responsible bidder or proposer, as defined in ORS 200.005, that the contracting agency determines has made good faith efforts as pre-

scribed in ORS 200.045. [2003 c.794 §14; 2005 c.103 §5; 2009 c.235 §2; 2015 c.565 §12]

279A.107 Certification as disadvantaged business enterprise, minority-owned business, woman-owned business, business that service-disabled veteran owns or emerging small business during term of public contract; exceptions. (1) A contracting agency that under ORS 279A.105 awards a public contract to a responsible bidder, as defined in ORS 200.005, that has made good faith efforts, as described in ORS 200.045 (3), or that awards a public contract in the course of carrying out an affirmative action goal, policy or program under ORS 279A.100 shall:

(a) Provide as a material condition of the public contract that a contractor remain certified as a disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or emerging small business under ORS 200.055 for the entire term of the public contract, if the contracting agency awarded the public contract, in whole or in part, on the basis of the contractor's certification.

(b) Require a contractor to provide in the contractor's subcontracts that a subcontractor remain certified as a disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or emerging small business under ORS 200.055 for the entire term of the subcontract, if the contractor awards the subcontract, in whole or in part, on the basis of the subcontractor's certification.

(c) Verify the contractor's or subcontractor's compliance with the requirements set forth in paragraphs (a) and (b) of this subsection.

(d) Verify that a contractor is paying a subcontractor that is certified under ORS 200.055 promptly as provided in ORS 279B.220 or 279C.570, as appropriate.

(2)(a) If a contracting agency determines at any time during the term of a public contract that a contractor to which the contracting agency awarded the public contract on the basis described in subsection (1) of this section, or a subcontractor to which the contractor awarded a subcontract in connection with the public contract on the basis described in subsection (1) of this section, is no longer certified, the contracting agency may:

(A) Terminate the public contract;

(B) Require the contractor to terminate the subcontract; or

(C) Exercise any of the remedies for breach of contract that are reserved in the public contract.

(b) The actions a contracting agency may take under paragraph (a) of this subsection are in addition to and not in lieu of any other action the Oregon Business Development Department may take with respect to the contractor or subcontractor under ORS 200.065.

(c) Paragraph (a) of this subsection does not apply to an emerging small business as defined in ORS 200.005 that, because of growth in the number of full-time equivalent employees or average annual gross receipts that occurs during the term of the public contract, no longer qualifies as a tier one firm or tier two firm, as those terms are defined in ORS 200.005, or for which a certification under ORS 200.055 expires during the term of the public contract. [2015 c.325 §2; 2015 c.565 §26]

279A.110 Discrimination in subcontracting prohibited; remedies. (1) A bidder or proposer that competes for or is awarded a public contract may not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is certified under ORS 200.055.

(2) A contracting agency may debar or disqualify, under ORS 279B.130 or 279C.440, as appropriate, a bidder or proposer if the contracting agency finds that the bidder or proposer has violated subsection (1) of this section in awarding a subcontract in connection with a contract the contracting agency advertised or otherwise solicited or a contract between the contracting agency and the bidder or proposer. A debarred or disqualified bidder or proposer may appeal the debarment or disqualification under ORS 279B.425 or ORS 279C.445 and 279C.450, as appropriate.

(3) A contracting agency may not allege an occurrence of discrimination in subcontracting as a basis for debarring or disqualifying a bidder or proposer under subsection (2) of this section more than three years after the alleged discriminatory conduct occurred or more than three years after the contracting agency, in the exercise of reasonable diligence, should have discovered the conduct, whichever is later.

(4) A bidder or proposer shall certify in the bid or proposal that the bidder or proposer has not discriminated and will not discriminate, in violation of subsection (1) of this section, against a disadvantaged business enterprise, a minority-owned business,

a woman-owned business, a business that a service-disabled veteran owns or an emerging small business in awarding a subcontract.

(5) If a contracting agency awards a public contract to a contractor and the contractor violates the contractor's certification under subsection (4) of this section, the contracting agency may regard the violation as a breach of contract that permits the contracting agency to:

(a) Terminate the contract; or

(b) Exercise any of the remedies for breach of contract that are reserved in the contract. [2003 c.794 §15; 2009 c.235 §3; 2015 c.565 §13]

279A.112 Requirement to certify that contractor has policy and practice of preventing sexual harassment, sexual assault and discrimination against employees who are members of protected class; required elements of certification; exceptions. (1) As used in this section:

(a) "Discrimination" means conduct that has the purpose or effect of creating employment conditions for an individual that are intimidating, hostile or offensive or that evince animosity, resentment, anger, prejudice or ill will in others primarily because of the individual's identification with or membership in a protected class.

(b) "Protected class" means a group of people that state or federal law protects from employment discrimination including, but not limited to, a group in which membership depends on an ascribed association or identification, or an individual's voluntary association or identification with other individuals, on the basis of one or more of these characteristics:

(A) Race, color or ethnicity;

(B) National origin;

(C) Sex;

(D) Gender, including actual or perceived gender identity;

(E) Sexual orientation;

(F) Disability;

(G) Age;

(H) Marital status; or

(I) Religion.

(c) "Sexual assault" means any unwanted sexual contact, as defined in ORS 163.305.

(d) "Sexual harassment" means:

(A) A request or demand for sexual favors in an implicit or explicit exchange for an employment-related benefit or as a means of avoiding an employment-related detriment; or

(B) Unwelcome conduct of a sexual nature that has the purpose or effect of inter-

fering with a person's ability to perform job duties or that creates an intimidating, offensive or hostile work environment.

(2)(a) Except as provided in subsection (4) of this section, a state contracting agency may not enter into a public contract with an anticipated contract price of \$150,000 or more with a prospective contractor that does not certify in a signed writing that the prospective contractor has a policy and practice of preventing sexual harassment, sexual assault and discrimination against employees who are members of a protected class.

(b) A prospective contractor may not certify under paragraph (a) of this subsection that the prospective contractor has a policy and practice of preventing sexual harassment, sexual assault or discrimination against employees who are members of a protected class unless the policy and practice includes, at a minimum:

(A) A written notice to each employee that clearly prohibits and specifies disciplinary measures for conduct that constitutes sexual harassment, sexual assault or discrimination against a member of a protected class.

(B) A clear process that:

(i) Enables an employee that experiences or witnesses conduct that constitutes sexual harassment, sexual assault or discrimination against a member of a protected class to report and stop the conduct; and

(ii) Guides the prospective contractor in responding to a report under subparagraph (i) of this subparagraph, resolving the issues identified in the report and disciplining employees who engage in prohibited conduct.

(C) A regular written procedure for submitting a report under subparagraph (B)(i) of this paragraph that identifies the specific individuals to whom an employee may submit the report and the individuals who have responsibility for resolving issues identified in the report.

(D) A practice of treating as confidential, to the extent permitted by law, any report that an employee makes under subparagraph (B)(i) of this paragraph.

(E) A prohibition against retaliating against an employee who experiences or witnesses, and reports, conduct that constitutes sexual harassment, sexual assault or discrimination against a member of a protected class.

(F) A prohibition against discrimination in providing benefits to an employee or a dependent of the employee based on the employee's membership in a protected class

or the membership of the employee's dependent in a protected class.

(G) A prohibition on denying benefits to an employee or a dependent of the employee based solely on the employee's gender identity or the gender identity of the employee's dependent, if the prospective contractor provides health insurance or health care benefits.

(c) A prospective contractor may provide the written notice described in paragraph (b)(A) of this subsection by means of a printed or electronic employee handbook. The Oregon Department of Administrative Services may develop and make available on the department's website an electronic template to guide prospective contractors in meeting the notice requirements set forth in paragraph (b)(A) of this subsection and may provide other guidance to prospective contractors in meeting the requirements set forth in paragraph (b) of this subsection.

(3) Every public contract described in subsection (2)(a) of this section that a state contracting agency awards must require as a material term of the public contract that a contractor certify that the contractor has a policy and practice that meets the requirements described in subsection (2) of this section and will maintain the policy and practice in force during the entire term of the public contract.

(4) A state contracting agency may enter into a public contract described in subsection (2)(a) of this section with a prospective contractor that has not provided the certification described in subsection (2) of this section if:

(a) The state contracting agency conducted the procurement under ORS 279B.075, 279B.080 or 279B.085; or

(b) Only one prospective contractor submitted a bid or proposal in response to the state contracting agency's solicitation. [2017 c.212 §2]

CONTRACT PREFERENCES

279A.120 Preference for Oregon goods and services; nonresident bidders. (1) As used in this section:

(a) "Nonresident bidder" means a bidder who is not a resident bidder.

(b) "Resident bidder" means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid whether the bidder is a "resident bidder" under this paragraph.

(2) For the purposes of awarding a public contract, a contracting agency shall:

(a) Give preference to goods or services that have been manufactured or produced in this state if price, fitness, availability and quality are otherwise equal; and

(b) Add a percent increase to the bid of a nonresident bidder equal to the percent, if any, of the preference given to the bidder in the state in which the bidder resides.

(3) When a public contract is awarded to a nonresident bidder and the contract price exceeds \$10,000, the bidder shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. The contracting agency shall satisfy itself that the requirement of this subsection has been complied with before the contracting agency issues a final payment on a public contract.

(4) The Oregon Department of Administrative Services on or before January 1 of each year shall publish a list of states that give preference to in-state bidders with the percent increase applied in each state. A contracting agency may rely on the names of states and percentages so published in determining the lowest responsible bidder without incurring any liability to any bidder. [2003 c.794 §16]

279A.125 Preference for recycled materials. (1) Notwithstanding provisions of law requiring a contracting agency to award a contract to the lowest responsible bidder or best proposer or provider of a quotation and subject to subsection (2) of this section, a contracting agency charged with the procurement of goods for any public use shall give preference to the procurement of goods manufactured from recycled materials.

(2) A contracting agency shall give preference to goods that are certified to be made from recycled materials if:

(a) The recycled product is available;

(b) The recycled product meets applicable standards;

(c) The recycled product can be substituted for a comparable nonrecycled product; and

(d) The recycled product's costs do not exceed the costs of nonrecycled products by more than five percent, or a higher percentage if a written determination is made by the contracting agency. [2003 c.794 §17]

279A.128 Preference for goods fabricated or processed within state or services performed within state. (1) As used in this section, "services" means services as

defined in ORS 279A.010 (1)(kk) and personal services designated under ORS 279A.055.

(2)(a) Notwithstanding provisions of law requiring a contracting agency to award a contract to the lowest responsible bidder or best proposer or provider of a quotation, a contracting agency that uses public funds to procure goods or services for a public use under ORS chapter 279B may give preference to procuring goods that are fabricated or processed, or services that are performed, entirely within this state if the goods or services cost not more than 10 percent more than goods that are not fabricated or processed, or services that are not performed, entirely within this state. If more than one bidder or proposer qualifies for the preference described in this subsection, the contracting agency may give a further preference to a qualifying bidder or proposer that resides in or is headquartered in this state.

(b) The contracting agency by order may set a higher percentage than the percentage set forth in paragraph (a) of this subsection if the contracting agency, in a written determination to support the order, finds good cause to set the higher percentage and explains the contracting agency's reasons and evidence for the finding.

(3) Notwithstanding ORS 279C.320 (1), subsection (2) of this section does not apply to emergency work, minor alterations, ordinary repairs or maintenance work for public improvements or to other construction contracts described in ORS 279C.320 (1). [2009 c.214 §2; 2011 c.237 §1]

279A.130 Preference for exceeding Buy America requirements for transit projects; rules. (1) Notwithstanding provisions of law that require a contracting agency to award a contract to the lowest responsible bidder or best proposer or provider of a quotation, a contracting agency that receives and uses funds from the federal government or an agency of the federal government for a transit project may give preference to a bidder or proposer that exceeds federal Buy America requirements that apply to federally funded transit projects, as permitted under 49 C.F.R. 661.21 as that regulation existed on March 16, 2012.

(2) The Department of Transportation, the Oregon Department of Administrative Services and the Attorney General may adopt rules under ORS 279A.065 and establish policies and procedures to implement subsection (1) of this section. [2012 c.58 §2]

STATE PROCUREMENT

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

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

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

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

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

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

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

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

or funds then lawfully available for such purposes.

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

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

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

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

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

(i) A state agency shall submit to the department personal services contract information as directed by the department. A state agency shall file with the department a copy of each personal services contract entered into by the state agency, including appropriate documentation as required by the department. Whenever a state agency pays more in a calendar year under a personal services contract for services historically performed by state employees than the agency would have paid to the agency's employees performing the same work, the agency shall so report to the department and include in the report a statement of justification for the greater costs.

(ii) The department shall keep the copy of the contract and the department's documentation on file for three years, after which the department may destroy the file. The department shall maintain a system for filing copies of personal services contracts and documentation submitted to the department under this paragraph. The department shall submit a biennial report to the Legislative Assembly concerning the use of personal services contracts by state agencies. The re-

port must specify the name of each state agency, the amount paid under each personal services contract entered into by the agency, the name of the contractor, the duration of the contract and the contract's basic purpose. The report must also include the total dollar figure of all personal services contracts for each year of the preceding biennium.

(B) Procedures for the evaluation and award of personal services contracts when the department authorizes a state agency to contract directly for personal services, including architectural, engineering, photogrammetric mapping, transportation planning or land surveying services and related services, in accordance with ORS 279B.050 or 279C.100 to 279C.125.

(3) The department shall notify all state agencies of the requirements of this section. [2003 c.794 §18; 2011 c.458 §11]

279A.142 Limitation of competition. A contracting agency may, by appropriate ordinance, resolution or rule, limit competition for a public contract to emerging small businesses certified under ORS 200.055 if the contract price is estimated at \$100,000 or less and is funded by the Emerging Small Business Account established under ORS 200.180. [2007 c.344 §2; 2015 c.565 §14]

279A.145 Recycled product purchasing information. The Oregon Department of Administrative Services shall include recycled product purchasing information within publications and training programs provided to local governments requesting state government purchasing assistance. [2003 c.794 §19]

279A.150 Procurement of goods containing recycled polyethylene material. (1) The Oregon Department of Administrative Services shall provide guidelines to state agencies and contractors on the availability of necessary goods that contain recycled PETE, as well as other recycled plastic resin supplies and materials.

(2) The department shall identify suppliers able to provide necessary goods containing recycled PETE, as well as other recycled plastic resin supplies and materials. [2003 c.794 §20]

279A.155 State procurement of paper. No less than 35 percent of state agency procurements of paper products may be from recycled paper products. [2003 c.794 §21]

279A.157 State contracting agency use of contract form, contract template or solicitation template; exceptions and exemptions; rules. (1) As used in this section:

(a)(A) "Contract form" means a document with terms and conditions that the Attorney General and the Oregon Department of Administrative Services develop, approve and

make available for state contracting agencies to use without alteration, except as provided in subparagraph (B) of this paragraph, as the terms and conditions of a public contract.

(B) "Contract form" does not include specifications for a procurement, a scope of work, pricing information, information that identifies parties to the public contract or similar or related portions of a public contract that a state contracting agency necessarily develops or must alter, with approval from the Attorney General or the Oregon Department of Administrative Services, as a means of achieving the results the state contracting agency intends for the procurement.

(b)(A) "Contract template" means a document with terms and conditions that the Attorney General and the department develop, approve and make available for state contracting agencies to use, with appropriate alterations, as the basis for the terms and conditions of a public contract.

(B) "Contract template" does not include specifications for a procurement, a scope of work, pricing information, information that identifies parties to the public contract or similar or related portions of a public contract that a state contracting agency necessarily develops or must alter as a means of achieving the results the state contracting agency intends for the procurement.

(c) "Solicitation template" means a request for information, a request for a quotation, an invitation to bid, a request for proposals or other document for soliciting a procurement under the Public Contracting Code in which the Attorney General and the department develop, approve and make available standardized language that a state contracting agency must use, with appropriate alterations, for a solicitation.

(2)(a) Except as provided in paragraph (c) of this subsection, a state contracting agency shall use a solicitation template in advertising and soliciting all procurements under the Public Contracting Code and, as provided in paragraph (b) of this subsection, shall use a contract form or a contract template, as appropriate, as the basis for all public contracts into which the state contracting agency enters. A state contracting agency, in accordance with the Public Contracting Code, may negotiate the terms and conditions set forth in a contract form or contract template but may not vary the terms and conditions without the advice of the Attorney General or legal counsel that the Attorney General approves if the state contracting agency anticipates that the contract form or contract template will be the basis for a public contract with a contract price that exceeds \$150,000.

(b) A state contracting agency shall use a contract form or contract template for all price agreements, cooperative procurements or procurements for which the Attorney General or the Director of the Oregon Department of Administrative Services determines that the specifications for goods or services, the terms and conditions, the scope of work or other aspects of a procurement or a class of procurements do not vary significantly among state contracting agencies, or for procurements or classes of procurements in which the Attorney General or the director determines that using a contract form or contract template is necessary for the state contracting agency to avoid unreasonable liabilities or other risks or would promote best practices in public contracting. A state contracting agency, in accordance with the Public Contracting Code, may negotiate the terms and conditions set forth in a contract form or contract template but may not vary the terms and conditions without the advice of the Attorney General or legal counsel that the Attorney General approves if the state contracting agency anticipates that the contract form or contract template will be the basis for a public contract with a contract price that exceeds \$150,000.

(c) A state contracting agency may base a public contract on terms and conditions other than the terms and conditions set forth in a contract form or contract template only if:

(A) The state contracting agency receives approval from the Attorney General or, if the state contracting agency is subject to ORS 279A.140, from the Director of the Oregon Department of Administrative Services, unless the state contracting agency determines that the contract price for the public contract is unlikely to exceed \$150,000;

(B) The nature of the procurement is unique and the public contract requires specific terms and conditions to accommodate the unique nature of the procurement or the state contracting agency, in accordance with provisions in the solicitation documents for the procurement, negotiated terms and conditions for the public contract that differ from the terms and conditions in a contract form or contract template;

(C) The state contracting agency consults the Attorney General, or legal counsel that the Attorney General approves, to develop appropriate terms and conditions for the public contract and for legal advice during all phases of the procurement for which the Attorney General determines that legal advice is necessary and relevant; and

(D) The state contracting agency submits the public contract to the Attorney General for approval for legal sufficiency, if the pro-

visions of ORS 291.047 require the submission.

(d) This subsection does not apply to a procurement that a state contracting agency conducts under ORS 279B.065, 279B.080 or 279C.110 (9).

(3) Notwithstanding provisions of this section that require a state contracting agency to use a solicitation template, contract form or contract template that the Attorney General and the department develop, the office of the Secretary of State and the office of the State Treasurer shall use standardized forms and templates that each office develops for each office's own use in conducting procurements or entering into public contracts. The Secretary of State and the State Treasurer may elect to use solicitation templates, contract forms or contract templates that the Attorney General and the department develop.

(4) The Attorney General and the Director of the Oregon Department of Administrative Services shall cooperate to:

(a) Develop and make available solicitation templates, contract forms and contract templates for procurements or classes of procurements that state contracting agencies require; and

(b) Adopt rules under ORS 279A.065 to implement the provisions of this section. [2015 c.646 §2]

279A.159 Education and training or experience requirements for persons that conduct procurements or administer contracts for state contracting agencies; deadlines; rules. (1) A person that conducts a procurement or administers a public contract for a state contracting agency shall complete a course of education and training or have professional experience that, at a minimum and in accordance with standards established under subsection (2) of this section, adequately prepares the person to:

(a) Develop specifications and develop or adapt solicitation documents for a procurement;

(b) Read critically, understand, interpret and apply terms and conditions set forth in public contracts of the scope and nature that the person administers or will administer;

(c) Draft scopes of work, statements of work, contract amendments, change orders, insurance requirements, notices and other documents and communications that are necessary to conduct a procurement or administer a public contract of the scope and nature for which the person is or will be responsible;

(d) Monitor a contractor's performance under a public contract to ensure that the

contractor performs services, provides goods or supplies materials according to the schedule, pricing, specifications and terms and conditions set forth in the public contract;

(e) Manage relations between a state contracting agency and contractors so that contractors meet obligations to the state contracting agency and the state contracting agency meets obligations to contractors;

(f) Recognize and investigate emerging disputes or other risks, unique requirements, unusual situations or other issues that arise in connection with a procurement and formulate appropriate responses and resolutions, seeking advice from legal counsel, risk management personnel or other persons when necessary;

(g) Understand auditing requirements and procedures that apply to procurements of the scope and nature for which the person is or will be responsible and organize and maintain appropriate documentation and administrative practices that meet the auditing requirements; and

(h) Follow regular business and office procedures, implement applicable state contracting agency policies and procedures and otherwise conduct procurements or administer public contracts for a state contracting agency in accordance with best practices.

(2)(a) The Oregon Department of Administrative Services by rule shall establish standards for the education and training or experience a person must have to conduct a procurement or administer a public contract for a state contracting agency other than the Secretary of State or State Treasurer and may specify requirements in addition to the requirements set forth in subsection (1) of this section. The standards must describe the contents and quality of a curriculum for an appropriate education or training program, fix a passing score for an examination or assessment, if appropriate, specify requirements for obtaining a certificate or other evidence of having completed the education or training program and otherwise determine the skills and the level and depth of knowledge a person must have obtained from the education or training program. The standards must also describe the length of service or other evidence of adequate experience that a person must have in order to conduct a procurement or administer a public contract for a state contracting agency.

(b) The department may establish levels or classifications of education and training or experience that are necessary for a person to conduct a procurement or administer a public contract for a state contracting agency, according to:

(A) The complexity, scope or category of procurements a state contracting agency conducts;

(B) The degree of responsibility a person will have for conducting a procurement or administering a public contract; or

(C) Other appropriate criteria.

(c) The department may provide an education or training program that meets the standards the department establishes under this subsection or may approve an education or training program that meets the standards.

(d) The department by rule shall set a date, not later than December 31, 2017, by which an education or training program must meet the standards the department establishes under this subsection and a date, not later than December 31, 2018, after which all persons that conduct procurements or administer public contracts for state contracting agencies must meet the requirements specified in this section. In setting dates under this paragraph, the department shall take into account the fiscal impact of the standards and requirements on state contracting agencies and may phase in or specify incremental steps for meeting the standards and requirements.

(3) The office of the Secretary of State and the office of the State Treasurer, not later than December 31, 2017, shall each establish standards for the education and training or experience a person must have to conduct a procurement or administer a public contract for the Secretary of State or the State Treasurer. The standards for education and training or experience must meet the requirements set forth in subsection (1) of this section. The Secretary of State and the State Treasurer may specify requirements in addition to the requirements set forth in subsection (1) of this section and may elect to meet the standards that the department establishes under subsection (2) of this section. Not later than December 31, 2018, a person that conducts a procurement or administers a public contract for the office of the Secretary of State or the office of the State Treasurer shall meet the standards that the office of the Secretary of State or the office of the State Treasurer, as appropriate, establishes under this subsection. [2015 c.646 §3]

279A.161 Review and verification of advice and recommendations concerning procurements; delegation. (1) Before a state contracting agency executes a public contract with a contract price that exceeds \$150,000, the director or other head of the state contracting agency shall review, and shall verify that the person that will administer the public contract for the state con-

tracting agency has read and understands, all advice and recommendations that the Oregon Department of Administrative Services, the Department of Justice or other legal counsel gave to the state contracting agency with respect to the public contract and the procurement that resulted in the public contract. The director or other head of the state contracting agency shall sign and retain in the state contracting agency's records a statement that acknowledges that the director or other head of the state contracting agency reviewed the advice and recommendations and made the verification described in this subsection.

(2) The director or other head of a state contracting agency that enters into more than 12 public contracts during a calendar year may delegate to a qualified employee of the state contracting agency all or a portion of the duties the director or other head of the state contracting agency has under subsection (1) of this section. [2015 c.646 §4]

279A.165 Report concerning special procurements; requirement to maintain records. (1) The Oregon Department of Administrative Services, before the beginning of each odd-numbered year regular legislative session, shall provide to an appropriate committee of the Legislative Assembly that considers questions related to public contracting a report that contains information about special procurements conducted under the provisions of ORS 279B.085 by state contracting agencies that are subject to the authority of the department under ORS 279A.050 (2) and (7). The information must include, at a minimum:

(a) The name of each state contracting agency that conducted a procurement under the provisions;

(b) The number of procurements the state contracting agency conducted under the provisions and the number of contracts the state contracting agency awarded under the provisions;

(c) A summary of the reasons that the state contracting agency decided to conduct the procurement under the provisions;

(d) A descriptive summary of the procurement procedure the state contracting agency used to conduct the procurement, noting whether the procedure was competitive or not and listing the number of bids or proposals the state contracting agency received if the procedure was competitive;

(e) The contract price or estimated contract price for each contract the state contracting agency awarded under the provisions; and

(f) A summary of the protests or other responses the state contracting agency re-

ceived in response to the decision to conduct the procurement under the provisions, and a summary of the disposition of the protests or other responses.

(2) A state contracting agency subject to the authority of the department under ORS 279A.050 (2) and (7) shall maintain records that enable the state contracting agency to calculate or otherwise determine and provide to the department the information described in subsection (1) of this section. The state contracting agency shall maintain the records for the purposes described under this section and may not use the information for evaluating proposals or invitations to bid that the state contracting agency receives in response to a solicitation for a procurement.

(3) This section does not apply to the Secretary of State or the State Treasurer. [2012 c.53 §4]

279A.167 Certification program for training in pay equity provisions of state law; rules. (1) The Oregon Department of Administrative Services shall establish a program to certify that a person that intends to submit a bid or proposal for a public contract understands the prohibition set forth in ORS 652.220 and in other laws or rules that prohibit discrimination in compensation or wage payments. The program must include, but is not limited to, all of these elements:

(a) A curriculum for training prospective bidders and proposers in complying with the prohibition described in this subsection. The curriculum must include hypothetical situations, case studies and other examples that show conduct that would violate the prohibition and other conduct that would constitute correct and best practices.

(b) Criteria for assessing whether prospective bidders and proposers understand the prohibition and can successfully apply best practices to a hypothetical situation that involves discrimination in compensation or wage payments.

(c) Standards for successful completion of the curriculum and assessment that will result in the department issuing the certificate.

(2) The department may conduct the training and assessment for the program described in subsection (1) of this section or may enter into an interagency agreement with the Bureau of Labor and Industries or a contract with a private entity to conduct the training and assessment.

(3) The department may by rule specify a period of time during which a certificate the department issues under this section is valid and may adopt other rules that are necessary to implement the provisions of this section. [2015 c.454 §2]

INTERGOVERNMENTAL RELATIONS

(Generally)

279A.180 Purchases through federal programs. Notwithstanding any other provision of the Public Contracting Code, a procurement may be made without competitive sealed bidding, competitive sealed proposals or other competition required under ORS 279B.050 to 279B.085 provided that:

(1) The procurement is made in accordance with rules adopted by the contracting agency for procurements under this section; and

(2) The procurement is made under 10 U.S.C. 381, the Electronic Government Act of 2002 (P.L. 107-347) or other federal law that is, as determined by the Director of the Oregon Department of Administrative Services or a local contract review board, similar to 10 U.S.C. 381 or section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to contracting agencies. [2003 c.794 §22]

279A.185 Local contracting agency arrangements for use or disposition of personal property authorized. (1) Notwithstanding the competitive procurement requirements of ORS chapters 279B and 279C, a local contracting agency may sell, transfer or dispose of personal property in accordance with rules adopted under ORS 279A.070.

(2) Notwithstanding the competitive procurement requirements of ORS chapters 279B and 279C, a local contracting agency may negotiate with one or more private or public entities to establish contracts, agreements and other cooperative arrangements for the use, operation, maintenance or ultimate lawful disposition of personal property owned by or under the control of the local contracting agency, including property acquired under ORS 279A.260. Before approving such a contract, agreement or arrangement, the governing body of the local contracting agency must make a finding that the contract, agreement or arrangement will promote the economic development of the local contracting agency, of the geographical area in which the local contracting agency is situated or of other public bodies that perform similar functions. [2003 c.794 §23]

279A.190 Transfers of fire protection equipment between fire departments. (1) As used in this section:

(a) "Fire protection equipment" has the meaning given that term in ORS 476.005.

(b) "Public contract" includes a sale at no cost.

(c) “Regularly organized fire department” has the meaning given that term in ORS 652.050.

(2) Notwithstanding any other provision of the Public Contracting Code, transfers of fire protection equipment under public contracts between regularly organized fire departments may be made without competitive sealed bidding, competitive sealed proposals or other competition required in ORS 279B.050 to 279B.085, provided:

(a) The recipient regularly organized fire department makes a written request for the fire protection equipment to the transferor regularly organized fire department;

(b) The fire protection equipment is surplus to or unusable by the transferor;

(c) The total fair market value of fire protection equipment received by the recipient does not exceed \$50,000 per calendar year; and

(d) The transferor holds a public hearing, with hearing notice published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing, and finds that the public contract is in the public’s interest. [2003 c.794 §24]

(Cooperative Procurement)

279A.200 Definitions for ORS 279A.200 to 279A.225. (1) As used in ORS 279A.200 to 279A.225:

(a) “Administering contracting agency” means a governmental body in this state or in another jurisdiction that solicits and establishes the original contract for the procurement of goods, services or public improvements in a cooperative procurement.

(b) “Cooperative procurement” means a procurement conducted on behalf of more than one governmental body. “Cooperative procurement” includes but is not limited to multiagency contracts and price agreements. “Cooperative procurement” does not include an agreement formed among only governmental bodies under ORS chapter 190 or by a statute, charter provision, ordinance or other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies.

(c) “Cooperative procurement group” means a group of governmental bodies joined through an intergovernmental agreement for the purpose of facilitating cooperative procurements.

(d) “Interstate cooperative procurement” means a permissive cooperative procurement in which the administering contracting agency is a governmental body, domestic or foreign, that is authorized under the govern-

mental body’s laws, rules or regulations to enter into public contracts and in which one or more of the participating governmental bodies are located outside this state.

(e) “Joint cooperative procurement” means a cooperative procurement in which the participating governmental bodies or the cooperative procurement group and the bodies’ or group’s contract requirements or estimated contract requirements for price agreements are identified.

(f) “Original contract” means the initial contract or price agreement solicited and awarded during a cooperative procurement by an administering contracting agency.

(g) “Permissive cooperative procurement” means a cooperative procurement in which the purchasing contracting agencies are not identified.

(h) “Purchasing contracting agency” means a governmental body that procures goods, services or public improvements from a contractor based on the original contract established by an administering contracting agency.

(2) As used in ORS 279A.210 (1)(a), 279A.215 (1)(a) and 279A.220 (1)(a), an administering contracting agency’s solicitation and award process uses source selection methods “substantially equivalent” to those identified in ORS 279B.055, 279B.060 or 279B.085 if the solicitation and award process:

(a) Calls for award of a contract on the basis of a lowest responsible bidder or a lowest and best bidder determination in the case of competitive bids, or on the basis of a determination of the proposer whose proposal is most advantageous based on evaluation factors set forth in the request for proposals in the case of competitive proposals;

(b) Does not permit the application of any geographic preference that is more favorable to bidders or proposers who reside in the jurisdiction or locality favored by the preference than the preferences provided in ORS 279A.120 (2); and

(c) Uses reasonably clear and precise specifications that promote suitability for the purposes intended and that reasonably encourage competition. [2003 c.794 §25; 2007 c.764 §4]

279A.205 Cooperative procurements authorized. (1) A contracting agency may participate in, sponsor, conduct or administer a joint cooperative procurement for the procurement of any goods, services or public improvements.

(2) A contracting agency may participate in, sponsor, conduct or administer a permissive or interstate cooperative procurement

for the procurement of any goods or services, but not public improvements. [2003 c.794 §26; 2005 c.103 §6]

279A.210 Joint cooperative procurements. (1) A joint cooperative procurement is valid only if:

(a) The administering contracting agency's solicitation and award process for the original contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified in ORS 279B.055, 279B.060 or 279B.085 or uses a competitive bidding process substantially equivalent to the competitive bidding process in ORS chapter 279C;

(b) The administering contracting agency's solicitation and the original contract or price agreement identifies the cooperative procurement group or each participating purchasing contracting agency and specifies the estimated contract requirements; and

(c) No material change is made in the terms, conditions or prices of the contract between the contractor and the purchasing contracting agency from the terms, conditions and prices of the original contract between the contractor and the administering contracting agency.

(2) A joint cooperative procurement may not be a permissive cooperative procurement. [2003 c.794 §27]

279A.215 Permissive cooperative procurements. (1) A contracting agency may establish a contract or price agreement through a permissive cooperative procurement only if:

(a) The administering contracting agency's solicitation and award process for the original contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified in ORS 279B.055 or 279B.060;

(b) The administering contracting agency's solicitation and the original contract allow other contracting agencies to establish contracts or price agreements under the terms, conditions and prices of the original contract;

(c) The contractor agrees to extend the terms, conditions and prices of the original contract to the purchasing contracting agency; and

(d) No material change is made in the terms, conditions or prices of the contract or price agreement between the contractor and the purchasing contracting agency from the terms, conditions and prices of the original contract between the contractor and the administering contracting agency.

(2)(a) A purchasing contracting agency shall provide public notice of intent to establish a contract or price agreement through a permissive cooperative procurement if the estimated amount of the procurement exceeds \$250,000.

(b) The notice of intent must include:

(A) A description of the procurement;

(B) An estimated amount of the procurement;

(C) The name of the administering contracting agency; and

(D) A time, place and date by which comments must be submitted to the purchasing contracting agency regarding the intent to establish a contract or price agreement through a permissive cooperative procurement.

(c) Public notice of the intent to establish a contract or price agreement through a permissive cooperative procurement must be given in the same manner as provided in ORS 279B.055 (4)(b) and (c).

(d) Unless otherwise specified in rules adopted under ORS 279A.070, the purchasing contracting agency shall give public notice at least seven days before the deadline for submission of comments regarding the intent to establish a contract or price agreement through a permissive cooperative procurement.

(3) If a purchasing contracting agency is required to provide notice of intent to establish a contract or price agreement through a permissive cooperative procurement under subsection (2) of this section:

(a) The purchasing contracting agency shall provide vendors who would otherwise be prospective bidders or proposers on the contract or price agreement, if the procurement were competitively procured under ORS chapter 279B, an opportunity to comment on the intent to establish a contract or price agreement through a permissive cooperative procurement.

(b) Vendors must submit comments within seven days after the notice of intent is published.

(c) And if the purchasing contracting agency receives comments on the intent to establish a contract or price agreement through a permissive cooperative procurement, before the purchasing contracting agency may establish a contract or price agreement through the permissive cooperative procurement, the purchasing contracting agency shall make a written determination that establishing a contract or price agreement through a permissive cooperative procurement is in the best interest of the purchasing contracting agency. The

purchasing contracting agency shall provide a copy of the written determination to any vendor that submitted comments. [2003 c.794 §28]

279A.220 Interstate cooperative procurements. (1) A contracting agency may establish a contract or price agreement through an interstate cooperative procurement only if:

(a) The administering contracting agency's solicitation and award process for the original contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified in ORS 279B.055 or 279B.060;

(b) The administering contracting agency's solicitation and the original contract allows other governmental bodies to establish contracts or price agreements under the terms, conditions and prices of the original contract; and

(c) The administering contracting agency permits the contractor to extend the use of the terms, conditions and prices of the original contract to the purchasing contracting agency.

(2) In addition to the requirements in subsection (1) of this section:

(a) The purchasing contracting agency, or the cooperative procurement group of which the purchasing contracting agency is a member, must be listed in the solicitation of the administering contracting agency as a party that may establish contracts or price agreements under the terms, conditions and prices of the original contract, and the solicitation must be advertised in Oregon; or

(b)(A) The purchasing contracting agency, or the cooperative procurement group of which the purchasing contracting agency is a member, shall advertise a notice of intent to establish a contract or price agreement through an interstate cooperative procurement.

(B) The notice of intent must include:

(i) A description of the procurement;

(ii) An estimated amount of the procurement;

(iii) The name of the administering contracting agency; and

(iv) A time, place and date by which comments must be submitted to the purchasing contracting agency regarding the intent to establish a contract or price agreement through an interstate cooperative procurement.

(C) Public notice of the intent to establish a contract or price agreement through an interstate cooperative procurement must

be given in the same manner as provided in ORS 279B.055 (4)(b) and (c).

(D) Unless otherwise specified in rules adopted under ORS 279A.070, the purchasing contracting agency shall give public notice at least seven days before the deadline for submission of comments regarding the intent to establish a contract or price agreement through an interstate cooperative procurement.

(3) If a purchasing contracting agency is required to provide notice of intent to establish a contract or price agreement through an interstate cooperative procurement under subsection (2) of this section:

(a) The purchasing contracting agency shall provide vendors who would otherwise be prospective bidders or proposers on the contract or price agreement, if the procurement were competitively procured under ORS chapter 279B, an opportunity to comment on the intent to establish a contract or price agreement through an interstate cooperative procurement.

(b) Vendors must submit comments within seven days after the notice of intent is published.

(c) And if the purchasing contracting agency receives comments on the intent to establish a contract or price agreement through an interstate cooperative procurement, before the purchasing contracting agency may establish a contract or price agreement through the interstate cooperative procurement, the purchasing contracting agency shall make a written determination that establishing a contract or price agreement through an interstate cooperative procurement is in the best interest of the purchasing contracting agency. The purchasing contracting agency shall provide a copy of the written determination to any vendor that submitted comments.

(4) For purposes of this section, an administering contracting agency may be any governmental body, domestic or foreign, authorized under its laws, rules or regulations to enter into contracts for the procurement of goods and services for use by a governmental body. [2003 c.794 §29]

279A.225 Protests and disputes. (1) A protest regarding the procurement process, the contents of solicitation documents or the award or proposed award of an original contract may be directed only to the administering contracting agency. The protest must be in accordance with the provisions of ORS 279B.400 to 279B.425.

(2) A protest regarding the use of a cooperative procurement by a purchasing contracting agency after the execution of an original contract may be directed only to the

purchasing contracting agency. The protest must be in accordance with the provisions of ORS 279B.400 to 279B.425 and is limited in scope to the purchasing contracting agency's authority to enter into a cooperative procurement contract.

(3) The decision of a local contracting agency to use a cooperative procurement is reviewable in the circuit court of the county where the principal offices of the local contracting agency are located. The decision of a state contracting agency to use a cooperative procurement shall be reviewable by the Circuit Court for Marion County or the circuit court of the county where the principal offices of the state contracting agency are located.

(4) Disputes regarding contract performance between a purchasing contracting agency and a contractor may be resolved solely by the purchasing contracting agency and the contractor. [2003 c.794 §30]

STATE SURPLUS PROPERTY

279A.250 Definitions for ORS 279A.250 to 279A.290. As used in ORS 279A.250 to 279A.290, unless the context requires otherwise:

(1) "Donee" means an entity eligible to acquire federal donation property based upon federal regulations or eligible to acquire surplus property in accordance with rules adopted by the Oregon Department of Administrative Services. Entities eligible to acquire federal donation property may also acquire surplus property other than federal donation property.

(2) "Not-for-profit organization" means a nonprofit corporation as defined in ORS 307.130.

(3) "Property" means personal property.

(4) "State agency" means every state officer, board, commission, department, institution, branch or agency of state government whose costs are paid wholly or in part from funds held in the State Treasury, and includes the Legislative Assembly and the courts, including the officers and committees of both, and the Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices.

(5) "Surplus property" means property received by the Oregon Department of Administrative Services or a state agency as surplus from federal government units, state agencies, local governments, special government bodies, not-for-profit organizations, other states and private entities. [2003 c.794 §36]

279A.255 Inspection, appraisal and inventory of state property; reports by state agencies. The Oregon Department of Administrative Services may:

(1) Provide for the periodic inspection and appraisal of state property;

(2) Provide for the maintenance of current and perpetual inventories of state property; and

(3) Require any state agency to make reports of the property in the agency's custody at such intervals and in such form as the department deems necessary. [2003 c.794 §37]

279A.260 Powers and duties of department; acquisitions by qualified donees; rules. (1) Subject to the power of the Governor to terminate the functions listed in this section, the Oregon Department of Administrative Services may:

(a) Accept surplus property;

(b) Distribute surplus property to donees;

(c) Provide suitable facilities for the storage and distribution of surplus property;

(d) Enter into reciprocal agreements and contracts with federal government units, state agencies, local governments, special government bodies, not-for-profit organizations, other states and private entities, with respect to the utilization and exchange of property, facilities, personnel and services, for the administration of the provisions of this section in accordance with federal and state laws governing the acquisition, distribution, utilization, disposal or sale of surplus property;

(e) Expend funds in connection with the provisions of this section;

(f) Adopt rules for the acquisition, distribution, utilization, disposal or sale of surplus property in accordance with federal and state laws;

(g) Set charges, subject to federal and state laws, necessary to recover all direct and indirect costs associated with acquiring, purchasing, shipping, handling, warehousing, storing and distributing surplus property;

(h) Cooperate with donees in locating, obtaining or warehousing surplus property; and

(i) Obtain surplus property on behalf of donees.

(2) The department shall deposit all fees or charges collected or received under this section in the Oregon Department of Administrative Services Operating Fund.

(3) The governing board or the executive head of a donee may, by order or resolution, confer upon any officer or employee thereof authority to secure the acquisition of surplus property through the department in accor-

dance with federal and state laws governing the acquisition, distribution, utilization, disposal or sale of surplus property. [2003 c.794 §38]

279A.265 Use of Oregon Department of Administrative Services Operating Fund; cash dividends. (1) In addition to the other purposes for which the Oregon Department of Administrative Services Operating Fund established under ORS 283.076 may be used, the fund hereby is appropriated continuously for and may be used for the purposes of this section and ORS 279A.260. All claims approved by the Oregon Department of Administrative Services for the purposes of this section and ORS 279A.260 shall be paid as provided in ORS 293.295 to 293.462. The department shall draw warrants on the State Treasurer for the payment thereof payable out of the fund. All moneys received under ORS 279A.260 shall be paid by the department to the State Treasurer for credit to the fund.

(2) The Director of the Oregon Department of Administrative Services may distribute in the form of cash dividends accumulated surpluses in the fund that arise because the charges collected from donees are in excess of the amount necessary to keep the activities under this section and ORS 279A.260 on a self-sustaining basis. The director shall pay the cash dividends to the donees referred to in ORS 279A.260 (1). Any dividend paid under this subsection shall be based on the ratio of the charges collected from each donee during the preceding fiscal year to the total charges collected from all donees for the fiscal year immediately preceding the fiscal year in which the dividend is authorized to be paid.

(3) Upon termination by the Governor of the functions of the department under ORS 279A.260, any balance remaining in the fund that is attributable to the activities under this section and ORS 279A.260 shall be refunded pro rata to the donees referred to in ORS 279A.260 (1) upon the basis of the total charges collected from each donee during the preceding fiscal year, unless the director determines that the cost of making the refund is excessive, in which case the unrefunded moneys shall be paid to the Treasurer of the United States. [2003 c.794 §39]

279A.270 Contracts with federal government for accepting gifts and acquiring surplus property; bids not required. The Oregon Department of Administrative Services may enter into contracts with any federal government unit for the purpose of accepting gifts and for the acquisition of surplus property upon such terms and conditions as may be agreed upon, without regard to the provisions of law requiring the posting

of notices or public advertising for bids or the soliciting or receiving of competitive bids. [2003 c.794 §40]

279A.275 Leasing of state property. The Oregon Department of Administrative Services may lease any state property not needed for public use, provided the law does not prohibit the leasing and the authority to lease is not vested in any other state agency. [2003 c.794 §41]

279A.280 Disposal of surplus property; costs of disposal. (1)(a) Without requiring competitive bidding:

(A) The Oregon Department of Administrative Services may sell or transfer surplus property to or transfer surplus property between donees. Donees may be given preference to acquire surplus property. Property acquired shall be used for public purpose or benefit and not for resale to a private purchaser.

(B) The department, or a public or private person or entity designated by the department, may transfer computers and related hardware that are surplus, obsolete or unused to a common or union high school district or education service district. The department, or its designee, may not charge the school district a fee for the transfer.

(C) The department, or a public or private person or entity designated by the department, may recycle or otherwise dispose of property when the department determines the value and condition of the property does not warrant the cost of a sale.

(b) Authorized transfers under this subsection include those made with or without consideration.

(2) In accordance with ORS 279B.055 or 279B.060, the department may sell surplus property.

(3) All proceeds derived from the disposal of property under this section, except proceeds that may not under federal laws or regulations be deposited in the manner provided by this section, shall be deposited in the State Treasury to the credit of the Oregon Department of Administrative Services Operating Fund.

(4) In addition to the other purposes for which the fund may be used, the fund is appropriated continuously for and may be used for paying the administrative costs incurred in the transfer or disposal of property under subsections (1) and (2) of this section, and for paying the amount due to the state agency whose property has been sold. The total amount payable to the agency whose property has been sold shall be the amount derived from the disposal of the property less the amount of the administrative costs incurred in disposing of the property. Such

total amount may be deposited in the State Treasury to the credit of the miscellaneous receipts account established under ORS 279A.290 for the agency whose property has been sold.

(5) The cost of services for disposal of property under this section that is not recoverable from the proceeds of a sale of the property shall be charged to the state agency served and paid to the department in the same manner as other claims against the agency are paid. [2003 c.794 §42]

279A.285 Disposition of moneys received as payment for repair or replacement of damaged, destroyed, lost or stolen property. All moneys received from insurers and other sources as payment for the cost and expense of repair and replacement of property of state agencies that has been damaged, destroyed, lost or stolen, except the particular moneys as may not under federal law or regulations be deposited in the manner provided by this section, may be deposited in the State Treasury to the credit of the miscellaneous receipts account established under ORS 279A.290 for the state agency whose property has been damaged, destroyed, lost or stolen. [2003 c.794 §43]

279A.290 Miscellaneous receipts accounts. (1) The State Treasurer may establish a miscellaneous receipts account for any state agency and shall credit to the account any amounts paid into the State Treasury under ORS 190.240 (1), 279A.280, 279A.285, 283.110 or 357.885 for the state agency for

which the account was established. The moneys credited to the miscellaneous receipts account of a state agency established under this section are appropriated continuously for the payment of the expenses of the state agency, subject to the allotment system provided by ORS 291.234 to 291.260.

(2) Laws enacted by the Legislative Assembly limiting expenditures do not limit expenditures from miscellaneous receipts accounts established under this section except when the law limiting expenditures of a state agency specifically establishes a limit for expenditures from the miscellaneous receipts account of the agency. [2003 c.794 §44; 2003 c.794 §44a]

PENALTIES

279A.990 Penalties. (1) The provisions of ORS 291.990 apply to ORS 279A.140, 279A.280 and 279B.270. Any violation of ORS 279A.140, 279A.280 or 279B.270 shall be punished as described in ORS 291.990.

(2) Any contractor, subcontractor, agent or person in authority or in charge who violates any provision of ORS 279C.520 or 279C.540 as to hours of labor commits a Class A misdemeanor.

(3) Any contractor or subcontractor subject to ORS 279C.840 who fails to pay the prevailing rate of wage as required by ORS 279C.840 commits a Class B misdemeanor. [2003 c.794 §46; 2011 c.597 §176]