

# Chapter 279A

2007 EDITION

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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) "Adequate" .....ORS 279C.305
- (b) "Administering contracting agency" .....ORS 279A.200
- (c) "Affirmative action" .....ORS 279A.100

- (d) "Architect" .....ORS 279C.100
- (e) "Architectural, engineering and land surveying services" .....ORS 279C.100
- (f) "Bid documents" .....ORS 279C.400
- (g) "Bidder" .....ORS 279B.415
- (h) "Bids" .....ORS 279C.400
- (i) "Brand name" .....ORS 279B.405
- (j) "Brand name or equal specification" .....ORS 279B.200
- (k) "Brand name specification" .....ORS 279B.200
- (L) "Class special procurement" .....ORS 279B.085
- (m) "Consultant" .....ORS 279C.115
- (n) "Contract-specific special procurement" .....ORS 279B.085
- (o) "Cooperative procurement" .....ORS 279A.200
- (p) "Cooperative procurement group" .....ORS 279A.200
- (q) "Donee" .....ORS 279A.250
- (r) "Engineer" .....ORS 279C.100
- (s) "Findings" .....ORS 279C.330
- (t) "Fire protection equipment" .....ORS 279A.190
- (u) "Fringe benefits" .....ORS 279C.800
- (v) "Funds of a public agency" .....ORS 279C.810
- (w) "Good cause" .....ORS 279C.585
- (x) "Good faith dispute" .....ORS 279C.580
- (y) "Goods" .....ORS 279B.115
- (z) "Housing" .....ORS 279C.800
- (aa) "Interstate cooperative procurement" .....ORS 279A.200
- (bb) "Invitation to bid" .....ORS 279B.005  
.....and 279C.400
- (cc) "Joint cooperative procurement" .....ORS 279A.200
- (dd) "Labor dispute" .....ORS 279C.650
- (ee) "Land surveyor" .....ORS 279C.100
- (ff) "Legally flawed" .....ORS 279B.405
- (gg) "Locality" .....ORS 279C.800
- (hh) "Nonprofit organization" .....ORS 279C.810
- (ii) "Nonresident bidder" .....ORS 279A.120
- (jj) "Not-for-profit organization" .....ORS 279A.250
- (kk) "Original contract" .....ORS 279A.200
- (LL) "Permissive cooperative procurement" .....ORS 279A.200
- (mm) "Person" .....ORS 279C.500  
.....and 279C.815
- (nn) "Personal services" .....ORS 279C.100
- (oo) "Prevailing rate of wage" .....ORS 279C.800
- (pp) "Procurement description" .....ORS 279B.005
- (qq) "Property" .....ORS 279A.250
- (rr) "Public agency" .....ORS 279C.800
- (ss) "Public contract" .....ORS 279A.190
- (tt) "Public works" .....ORS 279C.800
- (uu) "Purchasing contracting agency" .....ORS 279A.200
- (vv) "Regularly organized fire department" .....ORS 279A.190
- (ww) "Related services" .....ORS 279C.100
- (xx) "Request for proposals" .....ORS 279B.005
- (yy) "Resident bidder" .....ORS 279A.120
- (zz) "Responsible bidder" .....ORS 279A.105  
.....and 279B.005

(aaa)	“Responsible proposer”.....	ORS 279B.005
(bbb)	“Responsive bid”.....	ORS 279B.005
(ccc)	“Responsive proposal”.....	ORS 279B.005
(ddd)	“Retainage”.....	ORS 279C.550
(eee)	“Special procurement”.....	ORS 279B.085
(fff)	“Specification”.....	ORS 279B.200
(ggg)	“State agency”.....	ORS 279A.250
(hhh)	“Substantial completion”.....	ORS 279C.465
(iii)	“Surplus property”.....	ORS 279A.250
(jjj)	“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]

**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, 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 279B, but not ORS chapter 279C. [2003 c.794 §4; 2005 c.103 §2]

**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) The Oregon State Bar;
- (D) A governmental body of another state;
- (E) The federal government;
- (F) An American Indian tribe or an agency of an American Indian tribe;
- (G) A nation, or a governmental body in a nation, other than the United States; or
- (H) 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 or distribution of distilled liquor, as defined in ORS 471.001, or the appointment of agents under ORS 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 forest protection or forest related activities, as described in ORS 477.406, by the State Forester or the State Board of Forestry;

(n) Sponsorship agreements entered into by the State Parks and Recreation Director in accordance with ORS 565.080 (4);

(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 chapters 178, 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 Oregon University System and member institutions, except as provided in ORS 351.086;

(c) The legislative department;

(d) The judicial department;

(e) 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;

(f) Oregon Corrections Enterprises;

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

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

(i) The Oregon 529 College Savings Network and the Oregon 529 College Savings Board;

(j) The Oregon Innovation Council;

(k) The Oregon Utility Notification Center; or

(L) 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]

**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, ap-

plicable 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 procurement authority in accordance with the provisions of the Public Contracting Code.

(b) When 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 is not required to exercise that authority in accordance with the provisions of the code if, under ORS 279A.025, the code does not apply to the contract or contracting authority.

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

(3) Except as otherwise provided in the Public Contracting Code, the Director of Transportation has all the authority 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 relating to the operation, maintenance or construction of 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 related to the operation, maintenance or construction of 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 for the construction, demolition, exchange, maintenance, operation and equipping of housing:

(A) For persons with chronic mental illness, subject to applicable provisions of ORS 426.504; and

(B) For the purpose of providing care to individuals with mental retardation or other developmental disabilities, subject to applicable provisions of ORS 427.335;

(b) 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;

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

(d) 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;

(e) The Economic and Community 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;

(f) 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);

(g) 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;

(h) 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 for its institutions;

(i) 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;

(j) 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;

(k) The Department of Education, subject to any applicable provisions of ORS 329.075, 329.085 and 329.485 and the federal No Child Left Behind Act of 2001 (P.L. 107-110, 115 Stat. 1425), to procure or supervise the procurement of goods, services, personal services and information technology relating to student assessment; and

(L) 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) Notwithstanding this section and ORS 279A.140 (1), the Director of the Oregon Department of Administrative Services has exclusive authority to procure or supervise the procurement of all state agency information technology contracts and all price agreements on behalf of the state agencies identified in subsection (6)(a) to (j) of this section under which more than one state agency may order goods, services or personal services unless the director delegates this authority. This subsection does not apply to contracts under which the contractor delivers to the state agency information technology products or services incidental to the performance of personal services contracts described in ORS chapter 279C or construction contracts described in ORS chapter 279C. A state agency identified in subsection (3) or (6)(a) to (j) of this section may not establish a price agreement or enter into a contract for goods, services or personal services without the approval of the director if the director has established a price agreement for the goods, services or personal services. [2003 c.794 §7; 2005 c.625 §61; 2007 c.70 §68; 2007 c.197 §1; 2007 c.764 §3]

#### **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 of procedure appropriate for use by all contracting agencies governing public contracting under the Public Contracting Code and may devise and publish forms for use therewith. The Attorney General shall adopt the model rules in the manner provided by 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 appropriate for use by all contracting agencies to govern the procedures for entering 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, the Oregon University System, local contracting agencies and other knowledgeable persons. The Attorney General may develop standard con-

tract forms for use with energy savings performance contracts.

(3) After each legislative session, the Attorney General shall review all laws passed by the Legislative Assembly that affect public contracting to determine if the model rules prepared under this section should be modified by the adoption of a new rule or by the amendment or repeal of an existing 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 rule to be modified. However, 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 provides notice designating the time period within which the modification will take effect to the state agencies and persons listed in subsection (1) of this section.

(4) A contracting agency that has not adopted its own rules of procedure in accordance with subsection (5) of this section is subject to the model rules adopted by the Attorney General under this section, including all modifications to the model rules that the Attorney General may adopt. This subsection does not apply to personal services contracts of local contracting agencies except for contracts for architectural, engineering and land surveying services and related services.

(5)(a) A contracting agency may adopt its own rules of procedure for public contracts that:

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

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

(b) A contracting agency that adopts rules under this section shall review the rules each time the Attorney General modifies the model rules under this section to determine whether the contracting agency should modify its rules to ensure compliance with statutory changes. [2003 c.794 §10; 2003 c.794 §10a]

**279A.070 Rules.** In addition to rules adopted under ORS 279A.065 (5), a contracting agency may, in the exercise of 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 the procurement, management, disposal and control of 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 for the screening and selection of persons to perform personal services. [2003 c.794 §11; 2003 c.794 §11a]

**279A.075 Delegation.** (1) Unless otherwise provided in the Public Contracting Code, the exercise of all authorities in the code may be delegated and subdelegated in whole or in part. Notwithstanding delegations of authority under this section, a person's or agency's exercise of the delegated authority is governed by the code and rules adopted under the code.

(2) The Secretary of State, State Treasurer, Director of the Oregon Department of Administrative Services and Director of Transportation and other heads of state agencies with specific limited authority identified in ORS 279A.050 (6) may delegate their authority to contract for and manage public contracts for their offices or agencies. [2003 c.794 §12]

#### MINORITIES, WOMEN AND EMERGING SMALL BUSINESSES

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

(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.

(3) In carrying out the policy of affirmative action, by appropriate ordinance, resolution or rule, a contracting agency 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]

**279A.105 Subcontracting to emerging small businesses.** (1) 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 enterprise that is certified under ORS 200.055 as an emerging small business.

(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 enterprise 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 its workforce from economically distressed areas, as designated by the Economic and Community Development Department.

(3) A contracting agency may require that a public contract be awarded to a responsible bidder, as defined in ORS 200.005, who the contracting agency determines has made good faith efforts as prescribed in ORS 200.045 (3). For purposes of this subsection, "responsible bidder" includes a responsible proposer that has made good faith efforts as prescribed in ORS 200.045 (3). [2003 c.794 §14; 2005 c.103 §5]

**279A.110 Discrimination in subcontracting prohibited; remedies.** (1) A bidder or proposer who competes for or is awarded a public contract may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise 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 the awarding of a subcontract in connection with a contract advertised by the contracting agency 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 documents accompanying the bidder's or proposer's offer to enter into a public contract that the bidder or proposer has not discriminated and will not discriminate, in violation of subsection (1) of this section, against any minority, women or emerging small business enterprise in obtaining any required subcontract.

(5) After a contractor is awarded a public contract, if the contractor violates the certi-

fication made under subsection (4) of this section, the contracting agency may regard the violation as a breach of contract that permits:

- (a) Termination of the contract; or
- (b) The contracting agency to exercise any remedies for breach of contract that are reserved in the contract. [2003 c.794 §15]

## 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]

### 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 and 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 and 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 report 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 and 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]

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

**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]

**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 situ-

ated 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 governmental 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 accordance 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 fed-

eral 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 shall be fined not less than \$50 nor more than \$1,000 or imprisoned in the county jail for not less than five days nor more than one year, or both.

(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 shall be punished by a fine of not more than \$1,000 or by imprisonment in the county jail for not more than six months, or both. [2003 c.794 §46]

