

## HOUSE AMENDMENTS TO A-ENGROSSED SENATE BILL 477

By COMMITTEE ON BUSINESS, LABOR AND CONSUMER AFFAIRS

June 7

1 On page 1 of the printed A-engrossed bill, line 2, after "ORS" insert "279A.010, 279C.600,  
2 279C.605, 279C.610, 279C.810, 279C.815,".

3 Delete lines 5 through 16 and insert:

4 **"SECTION 1. Section 2 of this 2005 Act is added to and made a part of ORS 279C.800 to**  
5 **279C.870.**

6 **"SECTION 2. (1) Except as provided in subsection (7) or (8) of this section, before starting**  
7 **work on a contract or subcontract for a public works project, a contractor or subcontractor**  
8 **shall file with the Construction Contractors Board a public works bond with a corporate**  
9 **surety authorized to do business in this state in the amount of \$30,000. The bond must pro-**  
10 **vide that the contractor or subcontractor will pay claims ordered by the Bureau of Labor**  
11 **and Industries to workers performing labor upon public works projects. The bond must be a**  
12 **continuing obligation, and the surety's liability for the aggregate of claims that may be pay-**  
13 **able from the bond may not exceed the penal sum or the bond. The bond must remain in**  
14 **effect continuously until depleted by claims paid under this section, unless the surety sooner**  
15 **cancels the bond. The surety may cancel the bond by giving 30 days' written notice to the**  
16 **contractor or subcontractor, to the board and to the Bureau of Labor and Industries. When**  
17 **the bond is canceled, the surety is relieved of further liability for work performed on con-**  
18 **tracts entered into after the cancellation. The cancellation does not limit the surety's li-**  
19 **ability for work performed on contracts entered into before the cancellation.**

20 **"(2) Before permitting a subcontractor to start work on a public works project, the**  
21 **contractor shall verify that the subcontractor has filed a public works bond as required un-**  
22 **der this section or has elected not to file a public works bond under subsection (7) of this**  
23 **section.**

24 **"(3) A contractor or subcontractor is not required under this section to file a separate**  
25 **public works bond for each public works project for which the contractor or subcontractor**  
26 **has a contract.**

27 **"(4) A person that is not required under ORS 279C.800 to 279C.870 to pay prevailing rates**  
28 **of wage on a public works project is not required to file a public works bond under this sec-**  
29 **tion.**

30 **"(5) A public works bond required by this section is in addition to any other bond the**  
31 **contractor or subcontractor is required to obtain.**

32 **"(6) The board may, by rule, require a contractor or subcontractor to obtain a new public**  
33 **works bond if a surety pays a claim out of an existing public works bond. The new bond must**  
34 **be in the amount of \$30,000. The board may allow a contractor or subcontractor to obtain,**  
35 **instead of a new bond, a certification that the surety remains liable for the full penal sum**

1 of the existing bond, notwithstanding payment by the surety on the claim.

2 “(7)(a) A disadvantaged, minority, women or emerging small business enterprise certified  
3 under ORS 200.055 may, for up to one year after certification, elect not to file a public works  
4 bond as required under subsection (1) this section. If a business enterprise elects not to file  
5 a public works bond, the business enterprise shall give the board written verification of the  
6 certification and written notice that the business enterprise elects not to file the bond.

7 “(b) A business enterprise that elects not to file a public works bond under this sub-  
8 section shall notify the public agency for whose benefit the contract was awarded or, if the  
9 business enterprise is a subcontractor, the contractor of the election before starting work  
10 on a public works project. When a business enterprise elects not to file a public works bond  
11 under this subsection, a claim for unpaid wages may be made against the payment bond of  
12 the business enterprise or, if the business enterprise is a subcontractor, the payment bond  
13 of the contractor.

14 “(c) An election not to file a public works bond expires one year after the date the busi-  
15 ness enterprise is certified. After an election has expired and before starting or continuing  
16 work on a contract or subcontract for a public works project, the business enterprise shall  
17 file a public works bond with the board as required under subsection (1) of this section.

18 “(8) In cases of emergency, or when the interest or property of the public agency for  
19 whose benefit the contract was awarded probably would suffer material injury by delay or  
20 other cause, the requirement for filing a public works bond may be excused, if a declaration  
21 of the emergency is made in accordance with rules adopted under ORS 279A.065.

22 “(9) The board shall make available on a searchable public website information concern-  
23 ing public works bonds filed with the board, claims made on those bonds, elections made by  
24 certified business enterprises not to file those bonds and the expiration date of each election.  
25 The board may adopt rules necessary to perform the duties required of the board by this  
26 section.

27 “(10) The Commissioner of the Bureau of Labor and Industries, with approval of the  
28 board, shall adopt rules that establish language for public works bonds.

29 “**SECTION 3.** ORS 279C.600 is amended to read:

30 “279C.600. (1) A person claiming to have supplied labor or materials for the performance of the  
31 work provided for in a public contract, including any person having a direct contractual relationship  
32 with the contractor furnishing the payment bond or a direct contractual relationship with any sub-  
33 contractor, or an assignee of such person, or a person claiming moneys due the State Accident In-  
34 surance Fund Corporation, the Unemployment Compensation Trust Fund or the Department of  
35 Revenue in connection with the performance of the contract, has a right of action on the contrac-  
36 tor’s payment bond as provided for in ORS 279C.380 and 279C.400 only if:

37 “(a) The person or the assignee of the person has not been paid in full; and

38 “(b) The person gives written notice of claim, as prescribed in ORS 279C.605, to the contractor  
39 and the contracting agency.

40 “(2) When, upon investigation, the Commissioner of the Bureau of Labor and Industries has re-  
41 ceived information indicating that one or more workers providing labor on a public works have not  
42 been paid in full at the prevailing rate of wage or overtime wages, the commissioner has a right of  
43 action **first** on the **contractor’s public works bond required under section 2 of this 2005 Act**  
44 **and then, for any amount of a claim not satisfied by the public works bond, on the contrac-**  
45 **tor’s payment bond, as provided in ORS 279C.380 and 279C.400. When an investigation indicates**

1 that a subcontractor's workers have not been paid in full at the prevailing rate of wage or  
2 overtime wages, the commissioner has a right of action first on the subcontractor's public  
3 works bond and then, for any amount of a claim not satisfied by the subcontractor's public  
4 works bond, on the contractor's payment bond. The commissioner's right of action exists without  
5 necessity of an assignment and extends to workers on the project who are not identified when the  
6 written notice of claim is given, but for whom the commissioner has received information indicating  
7 that the workers have provided labor on the public works and have not been paid in full. The com-  
8 missioner shall give written notice of the claim, as prescribed in ORS 279C.605, to [*the contractor*  
9 *and*] the contracting agency, **the Construction Contractors Board, the contractor and, if ap-**  
10 **licable, the subcontractor. The commissioner may not make a claim for the same unpaid**  
11 **wages against more than one bond under this section.**

12 **"SECTION 4.** ORS 279C.605 is amended to read:

13 "279C.605. (1) The notice of claim required by ORS 279C.600 must be sent by registered or cer-  
14 tified mail or hand delivered no later than 120 days after the day the person last provided labor or  
15 furnished materials or 120 days after the worker listed in the notice of claim by the Commissioner  
16 of the Bureau of Labor and Industries last provided labor. The notice may be sent or delivered to  
17 the contractor **or subcontractor** at any place the contractor **or subcontractor** maintains an office  
18 or conducts business or at the residence of the contractor **or subcontractor**.

19 "(2) Notwithstanding subsection (1) of this section, if the claim is for a required contribution to  
20 a fund of any employee benefit plan, the notice required by ORS 279C.600 must be sent or delivered  
21 within 150 days after the employee last provided labor or materials.

22 "(3) The notice must be in writing substantially as follows:

23 "  
24

25 To (here insert the name of the contractor **or subcontractor** and the name of the public body):

26 Notice hereby is given that the undersigned (here insert the name of the claimant) has a claim  
27 for (here insert a brief description of the labor or materials performed or furnished and the person  
28 by whom performed or furnished; if the claim is for other than labor or materials, insert a brief  
29 description of the claim) in the sum of (here insert the amount) dollars against the (**here insert**  
30 **public works bond or** payment bond, **as applicable**) taken from (here insert the name of the prin-  
31 cipal and, if known, the surety or sureties upon the **public works bond or** payment bond) for the  
32 work of (here insert a brief description of the work concerning which the **public works bond or**  
33 payment bond was taken). Such material or labor was supplied to (here insert the name of the  
34 contractor or subcontractor).

35 \_\_\_\_\_  
36 (here to be signed)

37 "  
38

39 "(4) When notice of claim is given by the commissioner and if the claim includes a worker who  
40 is then unidentified, the commissioner shall include in the notice a statement that the claim includes  
41 an unidentified worker for whom the commissioner has received information indicating that the  
42 worker has not been paid in full at the prevailing rate of wage required by ORS 279C.840 or over-  
43 time wages required by ORS 279C.540.

44 "(5) [*The notice shall be signed by*] The person making the claim or giving the notice **shall sign**  
45 **the notice.**

1       “**SECTION 5.** ORS 279C.610 is amended to read:

2       “279C.610. (1) The Commissioner of the Bureau of Labor and Industries or a person who has a  
3 right of action on the **public works bond or the** payment bond under ORS 279C.600 and, where  
4 required, who has filed and served the notice or notices of claim, as required under ORS 279C.600  
5 and 279C.605, or that person’s assignee, may institute an action on the contractor’s **public works**  
6 **bond or** payment bond in a circuit court of this state or the federal district court of the district.

7       “(2) The action shall be on the relation of the commissioner, the claimant, or that person’s  
8 assignee, as the case may be, and shall be in the name of the contracting agency that let the con-  
9 tract or, when applicable, the public agency or agencies for whose benefit the contract was let. It  
10 may be prosecuted to final judgment and execution for the use and benefit of the commissioner or  
11 the claimant, or that person’s assignee, as the fact may appear.

12       “(3) The action shall be instituted no later than two years after the person last provided labor  
13 or materials or two years after the worker listed in the commissioner’s notice of claim last provided  
14 labor.

15       “**SECTION 6.** Section 7 of this 2005 Act is added to and made a part of ORS 279C.800 to  
16 **279C.870.**

17       “**SECTION 7.** When a public works project is subject to ORS 279C.800 to 279C.870 and the  
18 **Davis-Bacon Act (40 U.S.C. 276a):**

19       “(1) If the state prevailing rate of wage is higher than the federal prevailing rate of wage,  
20 the contractor and every subcontractor on the project shall pay at least the state prevailing  
21 rate of wage as required by ORS 279C.800 to 279C.870; and

22       “(2) If the federal prevailing rate of wage is higher than the state prevailing rate of wage,  
23 the contractor and every subcontractor on the project shall pay at least the federal prevail-  
24 ing rate of wage as required by the Davis-Bacon Act.

25       “**SECTION 8.** ORS 279C.810 is amended to read:

26       “279C.810. (1) **As used in this section:**

27       “(a) **‘Funds of a public agency’ does not include:**

28       “(A) Funds provided in the form of a government grant to a nonprofit organization, un-  
29 less the government grant is issued for the purpose of construction;

30       “(B) Building and development permit fees paid or waived by the public agency;

31       “(C) Staff resources of the public agency used to manage a project or to provide a prin-  
32 cipal source of supervision, coordination or oversight of a project; or

33       “(D) Staff resources of the public agency used to design or inspect one or more compo-  
34 nents of a project.

35       “(b) **‘Nonprofit organization’ means an organization or group of organizations described**  
36 **in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under**  
37 **section 501(a) of the Internal Revenue Code.**

38       “[(1)] (2) ORS 279C.800 to 279C.870 do not apply to:

39       “(a) Projects for which the contract price does not exceed [\$25,000] **\$50,000. In determining**  
40 **the price of a project, a public agency:**

41       “(A) **May not include the value of donated materials or work performed on the project**  
42 **by individuals volunteering to the public agency without pay; and**

43       “(B) **Shall include the value of work performed by every person paid by a contractor or**  
44 **subcontractor in any manner for the person’s work on the project.**

45       “[(b) *Projects regulated under the Davis-Bacon Act (40 U.S.C. 276a). Notwithstanding such regu-*

1 *lation, contractors and subcontractors shall pay individuals employed as flaggers on the projects not*  
2 *less than the prevailing rate of wage as determined by the Commissioner of the Bureau of Labor and*  
3 *Industries for that classification of work. As used in this paragraph, 'flagger' means a person who*  
4 *controls the movement of vehicular traffic through construction projects using sign, hand or flag*  
5 *signals.]*

6 “[(c)(A)] **(b)** Projects for which no funds of a public agency are directly or indirectly used. In  
7 accordance with ORS chapter 183, the commissioner shall adopt rules to carry out the provisions  
8 of this paragraph.

9 “[*(B) As used in this paragraph:*]

10 “[*(i) ‘Funds of a public agency’ does not include funds provided in the form of a government grant*  
11 *to a nonprofit organization, unless the government grant is issued for the purpose of construction.]*

12 “[*(ii) ‘Nonprofit organization’ means an organization or group of organizations described in sec-*  
13 *tion 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the*  
14 *Internal Revenue Code.]*

15 “[*(2)(a)*] **(3)(a)** A public agency may not divide a public works project into more than one con-  
16 tract for the purpose of avoiding compliance with ORS 279C.800 to 279C.870.

17 “(b) When the commissioner determines that a public agency has divided a public works project  
18 for the purpose of avoiding compliance with ORS 279C.800 to 279C.870, the commissioner shall issue  
19 an order compelling compliance.

20 “(c) In making determinations under this subsection, the commissioner shall consider:

21 “(A) The physical separation of the project structures;

22 “(B) The timing of the work on project phases or structures;

23 “(C) The continuity of project contractors and subcontractors working on project parts or  
24 phases; and

25 “(D) The manner in which the public agency and the contractors administer and implement the  
26 project.

27 “**SECTION 9.** ORS 279C.815 is amended to read:

28 “279C.815. (1) As used in this section, ‘person’ includes any employer, labor organization or any  
29 official representative of an employee or employer association.

30 “(2)(a) The Commissioner of the Bureau of Labor and Industries shall determine the prevailing  
31 rate of wage for workers in each trade or occupation in each locality described in ORS 279C.800  
32 at least once each year by means of an independent wage survey and make this information avail-  
33 able at least twice each year. The commissioner may amend the rate at any time.

34 “**(b) The commissioner shall compare the prevailing rate of wage determined under par-**  
35 **agraph (a) of this subsection with the federal prevailing rate of wage required under the**  
36 **Davis-Bacon Act (40 U.S.C. 276a) and determine which rate is higher for workers in each**  
37 **trade or occupation in each locality. The commissioner shall make this information, showing**  
38 **which prevailing rate of wage is higher for workers in each trade or occupation in each lo-**  
39 **cality, available at the same time as the commissioner makes information available under**  
40 **paragraph (a) of this subsection.**

41 “(3) A person shall make such reports and returns to the Bureau of Labor and Industries as the  
42 commissioner may require to determine the prevailing rates of wage. The reports and returns shall  
43 be made upon forms furnished by the bureau and within the time prescribed [*therefor*] by the com-  
44 missioner. The person or an authorized representative of the person shall certify to the accuracy  
45 of the reports and returns.

1 “(4) Notwithstanding ORS 192.410 to 192.505, all reports and returns or other information pro-  
2 vided to the commissioner under this section are confidential and not available for inspection by the  
3 public.

4 “(5) In order to assist the commissioner in making determinations of the prevailing rates of  
5 wage, the commissioner may enter into contracts with public or private parties to obtain relevant  
6 data and information. Any such contract may include provisions for the manner and extent of the  
7 market review of affected trades and occupations and such other requirements regarding timelines  
8 of reports, accuracy of data and information and supervision and review as the commissioner may  
9 prescribe.

10 “**SECTION 10.** ORS 279C.830 is amended to read:

11 “279C.830. (1)(a) The specifications for every contract for public works shall contain a provision  
12 stating the existing **state** prevailing rate of wage **and, if applicable, the federal prevailing rate**  
13 **of wage required under the Davis-Bacon Act (40 U.S.C. 276a)** that may be paid to workers in  
14 each trade or occupation required for the public works employed in the performance of the contract  
15 either by the contractor or subcontractor or other person doing or contracting to do the whole or  
16 any part of the work contemplated by the contract.

17 “(b) **If a public agency is required under paragraph (a) of this subsection to include the**  
18 **state and federal prevailing rates of wage in the specifications, the public agency also shall**  
19 **include in the specifications information showing which prevailing rate of wage is higher for**  
20 **workers in each trade or occupation in each locality, as determined by the Commissioner of**  
21 **the Bureau of Labor and Industries under ORS 279C.815 (2)(b).**

22 “(c) [The] **Every contract and subcontract** shall contain a provision that the workers shall be  
23 paid not less than the specified minimum hourly rate of wage **in accordance with section 7 of this**  
24 **2005 Act.**

25 “(2) The specifications for every contract for public works **between a public agency and a**  
26 **contractor** shall contain a provision stating that a fee is required to be paid to the Commissioner  
27 of the Bureau of Labor and Industries as provided in ORS 279C.825 (1). The contract shall contain  
28 a provision that the fee shall be paid to the commissioner under the administrative rule of the  
29 commissioner.

30 “(3) **The specifications for every contract for public works shall contain a provision**  
31 **stating that the contractor and every subcontractor must have a public works bond filed**  
32 **with the Construction Contractors Board before starting work on the project, unless exempt**  
33 **under section 2 (7) or (8) of this 2005 Act. Every contract awarded by a contracting agency**  
34 **shall contain a provision requiring the contractor:**

35 “(a) **To have a public works bond filed with the Construction Contractors Board before**  
36 **starting work on the project, unless exempt under section 2 (7) or (8) of this 2005 Act.**

37 “(b) **To include in every subcontract a provision requiring the subcontractor to have a**  
38 **public works bond filed with the Construction Contractors Board before starting work on the**  
39 **project, unless exempt under section 2 (7) or (8) of this 2005 Act.”.**

40 In line 17, delete “2” and insert “11”.

41 On page 2, line 21, after the period insert “The public agency shall pay the contractor the  
42 amount retained under this subsection within 14 days after the contractor files the certified state-  
43 ments as required by this section, regardless of whether a subcontractor has failed to file certified  
44 statements as required by this section. The public agency is not required to verify the truth of the  
45 contents of certified statements filed by the contractor under this section.”.

1 In line 26, after the period insert "The contractor shall pay the first-tier subcontractor the  
2 amount retained under this subsection within 14 days after the subcontractor files the certified  
3 statements as required by this section. Neither the public agency nor the contractor is required to  
4 verify the truth of the contents of certified statements filed by a first-tier subcontractor under this  
5 section."

6 Delete lines 27 through 29 and insert:

7 **"SECTION 12. Sections 2 and 7 of this 2005 Act and the amendments to ORS 279C.600,**  
8 **279C.605, 279C.610, 279C.810, 279C.815, 279C.830 and 279C.845 by sections 3 to 5 and 8 to 11 of**  
9 **this 2005 Act apply only to public contracts for public works first advertised or solicited on**  
10 **or after the effective date of this 2005 Act.**

11 **"SECTION 13.** ORS 279A.010 is amended to read:

12 "279A.010. (1) As used in the Public Contracting Code, unless the context or a specifically ap-  
13 plicable definition requires otherwise:

14 "(a) 'Bidder' means a person that submits a bid in response to an invitation to bid.

15 "(b) 'Contracting agency' means a public body authorized by law to conduct a procurement.  
16 'Contracting agency' includes, but is not limited to, the Director of the Oregon Department of Ad-  
17 ministrative Services and any person authorized by a contracting agency to conduct a procurement  
18 on the contracting agency's behalf. 'Contracting agency' does not include the judicial department  
19 or the legislative department.

20 "(c) 'Days' means calendar days.

21 "(d) 'Department' means the Oregon Department of Administrative Services.

22 "(e) 'Director' means the Director of the Oregon Department of Administrative Services or a  
23 person designated by the director to carry out the authority of the director under the Public Con-  
24 tracting Code.

25 "(f) 'Emergency' means circumstances that:

26 "(A) Could not have been reasonably foreseen;

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

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

30 "(g) 'Energy savings performance contract' means a public contract between a contracting  
31 agency and a qualified energy service company for the identification, evaluation, recommendation,  
32 design and construction of energy conservation measures, including a design-build contract, that  
33 guarantee energy savings or performance.

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

35 "(i)(A) 'Grant' means:

36 "(i) An agreement under which a contracting agency receives moneys, property or other assist-  
37 ance, including but not limited to federal assistance that is characterized as a grant by federal law  
38 or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other  
39 assets, from a grantor for the purpose of supporting or stimulating a program or activity of the  
40 contracting agency and in which no substantial involvement by the grantor is anticipated in the  
41 program or activity other than involvement associated with monitoring compliance with the grant  
42 conditions; or

43 "(ii) An agreement under which a contracting agency provides moneys, property or other as-  
44 sistance, including but not limited to federal assistance that is characterized as a grant by federal  
45 law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or

1 other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the  
2 recipient and in which no substantial involvement by the contracting agency is anticipated in the  
3 program or activity other than involvement associated with monitoring compliance with the grant  
4 conditions.

5 “(B) ‘Grant’ does not include a public contract for a public improvement, for public works, as  
6 defined in ORS 279C.800, or for emergency work, minor alterations or ordinary repair or mainte-  
7 nance necessary to preserve a public improvement, when under the public contract a contracting  
8 agency pays, in consideration for contract performance intended to realize or to support the real-  
9 ization of the purposes for which grant funds were provided to the contracting agency, moneys that  
10 the contracting agency has received under a grant.

11 “(j) ‘Industrial oil’ means any compressor, turbine or bearing oil, hydraulic oil, metal-working  
12 oil or refrigeration oil.

13 “(k) ‘Judicial department’ has the meaning given that term in ORS 174.113.

14 “(L) ‘Legislative department’ has the meaning given that term in ORS 174.114.

15 “(m) ‘Local contract review board’ means a local contract review board described in ORS  
16 279A.060.

17 “(n) ‘Local contracting agency’ means a local government or special government body authorized  
18 by law to conduct a procurement. ‘Local contracting agency’ includes any person authorized by a  
19 local contracting agency to conduct a procurement on behalf of the local contracting agency.

20 “(o) ‘Local government’ has the meaning given that term in ORS 174.116.

21 “(p) ‘Lowest responsible bidder’ means the lowest bidder who:

22 “(A) Has substantially complied with all prescribed public contracting procedures and require-  
23 ments;

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

25 “(C) Has not been debarred or disqualified by the contracting agency under ORS 279B.130 or  
26 279C.440; and

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

29 “(q) ‘Lubricating oil’ means any oil intended for use in an internal combustion crankcase,  
30 transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equip-  
31 ment or machinery powered by an internal combustion engine.

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

36 “(s) ‘Post-consumer waste’ means a finished material that would normally be disposed of as solid  
37 waste, having completed its life cycle as a consumer item. ‘Post-consumer waste’ does not include  
38 manufacturing waste.

39 “(t) ‘Price agreement’ means a public contract for the procurement of goods or services at a set  
40 price with:

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

42 “(B) An initial order or minimum purchase combined with a continuing contractor obligation to  
43 provide goods or services in which the contracting agency does not guarantee a minimum or maxi-  
44 mum additional purchase.

45 “(u) ‘Procurement’ means the act of purchasing, leasing, renting or otherwise acquiring goods



1 or services. 'Procurement' includes each function and procedure undertaken or required to be  
2 undertaken by a contracting agency to enter into a public contract, administer a public contract and  
3 obtain the performance of a public contract under the Public Contracting Code.

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

5 "(w) 'Public body' has the meaning given that term in ORS 174.109.

6 "(x) 'Public contract' means a sale or other disposal, or a purchase, lease, rental or other ac-  
7 quisition, by a contracting agency of personal property, services, including personal services, public  
8 improvements, public works, minor alterations, or ordinary repair or maintenance necessary to pre-  
9 serve a public improvement. 'Public contract' does not include grants.

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

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

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

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

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

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

22 "(cc) 'Recycled material' means any material that would otherwise be a useless, unwanted or  
23 discarded material except for the fact that the material still has useful physical or chemical prop-  
24 erties after serving a specific purpose and can, therefore, be reused or recycled.

25 "(dd) 'Recycled oil' means used oil that has been prepared for reuse as a petroleum product by  
26 refining, rerefining, reclaiming, reprocessing or other means, provided that the preparation or use  
27 is operationally safe, environmentally sound and complies with all laws and regulations.

28 "(ee) 'Recycled paper' means a paper product with not less than:

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

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

31 "(ff) 'Recycled PETE' means post-consumer polyethylene terephthalate material.

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

37 "(hh) 'Secondary waste materials' means fragments of products or finished products of a manu-  
38 facturing process that has converted a virgin resource into a commodity of real economic value.  
39 'Secondary waste materials' includes post-consumer waste. 'Secondary waste materials' does not  
40 include excess virgin resources of the manufacturing process. For paper, 'secondary waste  
41 materials' does not include fibrous waste generated during the manufacturing process such as fibers  
42 recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips,  
43 sawdust or other wood residue from a manufacturing process.

44 "(ii) 'Special government body' has the meaning given that term in ORS 174.117.

45 "(jj) 'State agency' means the executive department, except the Secretary of State and the State

1 Treasurer in the performance of the duties of their constitutional offices.

2 “(kk) ‘State contracting agency’ means an executive department entity authorized by law to  
3 conduct a procurement.

4 “(LL) ‘State government’ has the meaning given that term in ORS 174.111.

5 “(mm) ‘Used oil’ has the meaning given that term in ORS 459A.555.

6 “(nn) ‘Virgin oil’ means oil that has been refined from crude oil and that has not been used or  
7 contaminated with impurities.

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

10  
11 ‘Adequate’ ORS 279C.305

12 ‘Administering contracting  
13 agency’ ORS 279A.200

14 ‘Affirmative action’ ORS 279A.100

15 ‘Architect’ ORS 279C.100

16 ‘Architectural, engineering and  
17 land surveying services’ ORS 279C.100

18 ‘Bid documents’ ORS 279C.400

19 ‘Bidder’ ORS 279B.415

20 ‘Bids’ ORS 279C.400

21 ‘Brand name’ ORS 279B.405

22 ‘Brand name or equal  
23 specification’ ORS 279B.200

24 ‘Brand name specification’ ORS 279B.200

25 ‘Class special procurement’ ORS 279B.085

26 ‘Consultant’ ORS 279C.115

27 ‘Contract-specific  
28 special procurement’ ORS 279B.085

29 ‘Cooperative procurement’ ORS 279A.200

30 ‘Cooperative procurement group’ ORS 279A.200

31 ‘Donee’ ORS 279A.250

32 ‘Engineer’ ORS 279C.100

33 ‘Established catalog price’ ORS 279B.005

34 ‘Findings’ ORS 279C.330

35 ‘Fire protection equipment’ ORS 279A.190

36 [*Flagger*] ORS 279C.810]

37 ‘Fringe benefits’ ORS 279C.800

38 ‘Funds of a public agency’ ORS 279C.810

39 ‘Good cause’ ORS 279C.585

40 ‘Good faith dispute’ ORS 279C.580

41 ‘Goods’ ORS 279B.115

42 ‘Goods and services’ or  
43 ‘goods or services’ ORS 279B.005

44 ‘Interstate cooperative  
45 procurement’ ORS 279A.200

|    |                                 |                |
|----|---------------------------------|----------------|
| 1  | 'Invitation to bid'             | ORS 279B.005   |
| 2  |                                 | and 279C.400   |
| 3  | 'Joint cooperative procurement' | ORS 279A.200   |
| 4  | 'Labor dispute'                 | ORS 279C.650   |
| 5  | 'Land surveyor'                 | ORS 279C.100   |
| 6  | 'Legally flawed'                | ORS 279B.405   |
| 7  | 'Locality'                      | ORS 279C.800   |
| 8  | 'Nonprofit organization'        | ORS 279C.810   |
| 9  | 'Nonresident bidder'            | ORS 279A.120   |
| 10 | 'Not-for-profit organization'   | ORS 279A.250   |
| 11 | 'Original contract'             | ORS 279A.200   |
| 12 | 'Permissive cooperative         |                |
| 13 | procurement'                    | ORS 279A.200   |
| 14 | 'Person'                        | ORS 279C.500   |
| 15 |                                 | and 279C.815   |
| 16 | 'Personal services'             | ORS 279C.100   |
| 17 | 'Prevailing rate of wage'       | ORS 279C.800   |
| 18 | 'Procurement description'       | ORS 279B.005   |
| 19 | 'Property'                      | ORS 279A.250   |
| 20 | 'Public agency'                 | ORS 279C.800   |
| 21 | 'Public contract'               | ORS 279A.190   |
| 22 | 'Public contract for            |                |
| 23 | goods or services'              | ORS 279B.005   |
| 24 | 'Public works'                  | ORS 279C.800   |
| 25 | 'Purchasing contracting agency' | ORS 279A.200   |
| 26 | 'Regularly organized fire       |                |
| 27 | department'                     | ORS 279A.190   |
| 28 | 'Related services'              | ORS 279C.100   |
| 29 | 'Request for proposals'         | ORS 279B.005   |
| 30 | 'Resident bidder'               | ORS 279A.120   |
| 31 | 'Responsible bidder'            | ORS 279A.105   |
| 32 |                                 | and 279B.005   |
| 33 | 'Responsible proposer'          | ORS 279B.005   |
| 34 | 'Responsive bid'                | ORS 279B.005   |
| 35 | 'Responsive proposal'           | ORS 279B.005   |
| 36 | 'Retainage'                     | ORS 279C.550   |
| 37 | 'Special procurement'           | ORS 279B.085   |
| 38 | 'Specification'                 | ORS 279B.200   |
| 39 | 'State agency'                  | ORS 279A.250   |
| 40 | 'Substantial completion'        | ORS 279C.465   |
| 41 | 'Surplus property'              | ORS 279A.250   |
| 42 | 'Unnecessarily restrictive'     | ORS 279B.405". |
| 43 |                                 |                |