

C-Engrossed
House Bill 3203

Ordered by the House July 5
Including House Amendments dated April 21 and June 26 and July 5

Sponsored by Representative CLEM (at the request of Northwest Utility Contractors Association, Oregon Building Trades Council, Oregon Pavement Association, Associated General Contractors, Oregon Concrete and Asphalt Producers Association, Associated Builders and Contractors)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires contracting agency to perform analysis to determine whether constructing public improvement with contracting agency's own equipment and personnel will result in least cost to contracting agency. Specifies elements of cost analysis. Requires contracting agency to file analysis with Commissioner of Bureau of Labor and Industries. Specifies threshold at which estimated cost of constructing public improvement triggers requirement to perform analysis *[and escalates threshold in biennial increments until July 1, 2025]*.

Requires Bureau of Labor and Industries every four years beginning in 2021 to review methodology for calculating costs and threshold amount at which contracting agency must prepare specifications and cost estimates for public improvement.

[Permits] **Requires** commissioner to investigate contracting agency's alleged violation of Act in response to complaint from construction contractor or trade association that represents construction contractors or if commissioner discovers or has reason to believe that violation of Act has occurred **unless commissioner reasonably concludes that facts alleged do not constitute violation or that complaint was frivolous or was filed to harass contracting agency or for purposes other than to enforce requirements of law.** Requires contractor or trade association to pay filing fee of \$250 to submit complaint. Permits commissioner to require contracting agency to negotiate and enter into agreement to comply with requirements of Act if commissioner finds that contracting agency has violated Act within previous five years and to enter final order that sets forth terms of agreement between contracting agency and construction contractor or trade association.

Permits party to agreement with contracting agency made in accordance with order of commissioner to submit complaint asking commissioner to enforce agreement. Requires commissioner to investigate complaint and, if commissioner finds substantial evidence of violation, to issue order to cease and desist from violation or conduct contested case hearing. Permits commissioner to impose civil penalty of not more than \$5,000 on local contracting agency that commissioner finds has violated Act or breached agreement, or civil penalty of \$20,000 if commissioner finds that violation was willful. **Permits contractor or trade association to bring action to enforce cease and desist order.**

Becomes operative January 1, 2018.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to an analysis required before a contracting agency constructs a public improvement with
3 the agency's own equipment and personnel; creating new provisions; amending ORS 279A.010
4 and 279C.305; and prescribing an effective date.

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

6 **SECTION 1.** ORS 279C.305 is amended to read:

7 279C.305. *[(1) It is the policy of the State of Oregon that contracting agencies shall make every*
8 *effort to construct public improvements at the least cost to the contracting agency.]*

9 *[(2) Not less than 30 days prior to adoption of the contracting agency's budget for the subsequent*
10 *budget period, each contracting agency shall prepare and file with the Commissioner of the Bureau of*
11 *Labor and Industries a list of every public improvement known to the contracting agency that the*

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 *contracting agency plans to fund in the budget period, identifying each improvement by name and es-*
2 *timating the total on-site construction costs. The list shall also contain a statement as to whether the*
3 *contracting agency intends to perform the construction through a private contractor. If the contracting*
4 *agency intends to perform construction work using the contracting agency's own equipment and per-*
5 *sonnel on a project estimated to cost more than \$125,000, the contracting agency shall also show that*
6 *the contracting agency's decision conforms to the policy stated in subsection (1) of this section. The list*
7 *is a public record and may be revised periodically by the agency.]*

8 *[(3) Before a contracting agency constructs a public improvement with its own equipment or per-*
9 *sonnel:]*

10 *[(a) If the estimated cost exceeds \$125,000, the contracting agency shall prepare adequate plans and*
11 *specifications and the estimated unit cost of each classification of work. The estimated cost of the work*
12 *must include a reasonable allowance for the cost, including investment cost, of any equipment used.*
13 *As used in this paragraph, "adequate" means sufficient to control the performance of the work and to*
14 *ensure satisfactory quality of construction by the contracting agency personnel.]*

15 *[(b) The contracting agency shall cause to be kept and preserved a full, true and accurate account*
16 *of the costs of performing the work, including all engineering and administrative expenses and the cost,*
17 *including investment costs, of any equipment used. The final account of the costs is a public record.]*

18 *[(4) Subsections (2) and (3) of this section do not apply to a contracting agency when the public*
19 *improvement is to be used for the distribution or transmission of electric power.]*

20 *[(5) For purposes of this section, resurfacing of highways, roads or streets at a depth of two or*
21 *more inches and at an estimated cost that exceeds \$125,000 is a public improvement.]*

22 **(1) The policy of the State of Oregon is that contracting agencies shall make every effort**
23 **to construct public improvements at the least cost to the contracting agency.**

24 **(2)(a) Not less than 30 days before adopting a budget for the subsequent budget period**
25 **or before starting to construct a public improvement, each contracting agency shall prepare**
26 **and file with the Commissioner of the Bureau of Labor and Industries a list of every public**
27 **improvement that the contracting agency plans to fund in the budget period, identifying each**
28 **improvement by name and estimating the total on-site construction costs. The list must also**
29 **state whether the contracting agency intends to perform the construction through a private**
30 **contractor.**

31 **(b) If the contracting agency intends to use the contracting agency's own equipment or**
32 **personnel to perform construction work on a public improvement, and the estimated value**
33 **of the construction work that the contracting agency intends to perform with the contract-**
34 **ing agency's own equipment or personnel exceeds \$200,000, the contracting agency shall file**
35 **with the commissioner not later than 180 days before construction begins on the public im-**
36 **provement an analysis that shows that the contracting agency's decision conforms to the**
37 **policy stated in subsection (1) of this section. The list and the analysis are public records and**
38 **the contracting agency may periodically revise the list or analysis.**

39 **(3) As part of the analysis required under subsection (2)(b) of this section, a contracting**
40 **agency shall:**

41 **(a) Estimate the cost of contracting with a private contractor to construct the public**
42 **improvement, including in the estimate all necessary and related costs that the private**
43 **contractor would incur to construct the public improvement;**

44 **(b) Estimate the costs the contracting agency would incur in constructing the public**
45 **improvement with the contracting agency's own equipment or personnel and include in the**

1 estimate:

2 (A) The cost of labor, including all benefits the contracting agency pays to or on behalf
3 of employees of the contracting agency who will work on the public improvement, workers'
4 compensation insurance premiums and the cost of traveling to and from the site of the
5 public improvement;

6 (B) The cost of equipment, including costs associated with leasing, renting or acquiring
7 and owning the equipment, costs for transporting the equipment to and from the site of the
8 public improvement, costs for depreciation and costs for insuring, operating, storing, re-
9 pairing and maintaining the equipment;

10 (C) The costs of administration and overhead the contracting agency will incur, including
11 insurance, shop and office costs that are allocable to the public improvement;

12 (D) The cost of tools and materials;

13 (E) The costs associated with any contracts into which the contracting agency must en-
14 ter;

15 (F) The commercially reasonable value of quality control testing if the contracting
16 agency would require quality control testing for the work that a private contractor per-
17 formed on the public improvement; and

18 (G) Any other necessary and related costs that the contracting agency will incur to
19 construct the public improvement with the contracting agency's own equipment or person-
20 nel; and

21 (c) Compare the cost the contracting agency estimates under paragraph (a) of this sub-
22 section with the cost the contracting agency estimates under paragraph (b) of this sub-
23 section.

24 (4) Before a contracting agency constructs a public improvement with the contracting
25 agency's own equipment or personnel, the contracting agency shall:

26 (a) Prepare plans, specifications and estimates of the unit cost of each classification of
27 construction work that are sufficient to control the performance of the construction work
28 and ensure satisfactory construction quality, if the estimated cost of the public improvement
29 exceeds \$200,000; and

30 (b) Prepare and preserve a full, true and accurate account of the actual costs of per-
31 forming the work, including all categories of costs described in subsection (3)(b) of this sec-
32 tion. The final account of the costs is a public record.

33 (5) Subsections (2) to (4) of this section do not apply to a contracting agency if:

34 (a) The public improvement is for distributing or transmitting electric power; or

35 (b) The contracting agency did not receive a responsive bid or proposal for constructing
36 the public improvement from a responsible bidder or proposer after soliciting bids or pro-
37 posals for constructing the public improvement, if the solicitation:

38 (A) Occurred within one year before the date on which construction began; and

39 (B) Allowed a commercially reasonable time in which to perform the construction.

40 (6)(a) Except as provided in paragraph (b) of this subsection, for purposes of this section,
41 resurfacing highways, roads or streets at a depth of two or more inches and at an estimated
42 cost that exceeds \$125,000 is a public improvement that is subject to the listing, analysis and
43 accounting provisions of subsections (2) to (4) of this section.

44 (b) A public improvement does not include placing maintenance patching, chip seals or
45 other seals as a maintenance treatment on highways, roads, streets or bridges.

1 (c) A contracting agency shall prepare and preserve a full, true and accurate account of
2 the actual costs of performing road or street resurfacing if the actual or estimated cost of
3 the highway, road or street resurfacing exceeds \$125,000.

4 (7)(a) The Bureau of Labor and Industries shall conduct a review of:

5 (A) The costs described in subsection (3) of this section to determine whether contracting
6 agencies must adjust the methodology for calculating the costs;

7 (B) The threshold amounts specified for conducting the analysis described in subsection
8 (2)(b) of this section and preparing the specifications and cost estimates described in sub-
9 section (4) of this section to determine whether to adjust the threshold amounts; and

10 (C) Other aspects of the implementation of the policy set forth in subsection (1) of this
11 section.

12 (b) The bureau shall conduct the review described in paragraph (a) of this subsection
13 every four years, beginning in the last calendar quarter of 2021, and in consultation with
14 affected contracting agencies, contractors and trade associations. The bureau shall com-
15 municate the results of the review to all contracting agencies, shall make the results avail-
16 able to interested persons upon request and shall report the results to the Legislative
17 Assembly not later than January 1 of the calendar year that follows the year in which the
18 bureau conducted the review.

19 **SECTION 2.** Section 3 of this 2017 Act is added to and made a part of ORS chapter 279C.

20 **SECTION 3.** (1)(a) A contractor, or a trade association of contractors acting on behalf
21 of a member of the trade association, may allege in a complaint to the Commissioner of the
22 Bureau of Labor and Industries that a contracting agency has violated ORS 279C.305 with
23 respect to a public improvement that a contractor was eligible to construct.

24 (b) A complaint under paragraph (a) of this subsection must set forth the acts or omis-
25 sions that constitute the alleged violation. The contractor or trade association must file the
26 complaint with the commissioner within one year after the contractor or trade association
27 discovered or should have known that the violation occurred.

28 (c) The contractor or trade association must submit along with a complaint under para-
29 graph (a) of this subsection a filing fee of \$250. If the commissioner finds substantial evidence
30 of a violation, the commissioner shall refund the filing fee. The commissioner by rule may
31 specify other circumstances in which the commissioner will refund the filing fee.

32 (d) The commissioner shall dismiss a complaint under this subsection if the contractor
33 or trade association brings an action in a court of this state or initiates another proceeding
34 that alleges an act or omission that is the same or substantially similar to an act or omission
35 the contractor or trade association alleged in the complaint.

36 (2)(a) The commissioner shall investigate a violation of ORS 279C.305 that is alleged in a
37 complaint under subsection (1) of this section or that the commissioner discovers or other-
38 wise has reason to believe occurred unless the commissioner reasonably concludes that the
39 facts alleged do not constitute a violation or that the complaint is frivolous or was filed to
40 harass the contracting agency or for purposes other than to enforce the requirements of
41 ORS 279C.305.

42 (b) In the course of an investigation under this subsection, to the extent reasonably
43 necessary, the commissioner may:

44 (A) Compel attendance from witnesses, receive testimony and examine the witnesses
45 under oath;

1 **(B) Require a contracting agency or an employee of a contracting agency to produce**
2 **books, records, files and other documents; and**

3 **(C) Take any other action the commissioner deems necessary to conduct the investi-**
4 **gation.**

5 **(3)(a) The commissioner must conclude an investigation under subsection (2) of this**
6 **section within 60 days after beginning the investigation and must either find substantial evi-**
7 **dence of a violation of ORS 279C.305 or end the investigation and dismiss any complaint. If**
8 **the commissioner finds substantial evidence of a violation, the commissioner shall:**

9 **(A) Notify the contracting agency in writing that the commissioner has found substantial**
10 **evidence of a violation of ORS 279C.305, describe the nature of the violation and, if the**
11 **commissioner has not found substantial evidence of a violation in the five years preceding**
12 **the date on which the commissioner began the investigation, state that for future violations,**
13 **the commissioner will require the contracting agency to negotiate an agreement under par-**
14 **agraph (b) of this subsection.**

15 **(B) Provide a copy of any notice the commissioner issued under subparagraph (A) of this**
16 **paragraph to any contractor or trade association that filed a complaint concerning the vio-**
17 **lation under subsection (1) of this section.**

18 **(b) If the commissioner in the course of an investigation under subsection (2) of this**
19 **section finds substantial evidence that the contracting agency violated ORS 279C.305 within**
20 **the five years preceding the date on which the commissioner began the investigation, the**
21 **commissioner shall specify a period of time within which the contracting agency must ne-**
22 **gotiate an agreement with the contractor or the trade association to remedy the violation**
23 **and prevent future violations.**

24 **(c) If the contracting agency and the contractor or trade association enter into an**
25 **agreement within the specified period, the commissioner in an order shall set forth, and di-**
26 **rect the contracting agency to comply with, the terms of the agreement.**

27 **(d) If negotiations between the contracting agency and the contractor or trade associ-**
28 **ation do not result in an agreement within the time the commissioner specifies, the com-**
29 **missioner may:**

30 **(A) Extend the time period for negotiations;**

31 **(B) End negotiations and dismiss the complaint, provided that the commissioner states**
32 **the commissioner's reasons for the dismissal in an order to dismiss the complaint; or**

33 **(C) End negotiations and initiate a contested case hearing against the contracting agency**
34 **under ORS chapter 183.**

35 **(4)(a) If a contracting agency that is a party to an agreement set forth in accordance**
36 **with an order of the commissioner under subsection (3)(c) of this section breaches the**
37 **agreement, a contractor or trade association that is a party to the agreement may submit**
38 **a complaint to the commissioner that asks the commissioner to enforce the agreement. The**
39 **contractor or trade association must file the complaint within 180 days after the date the**
40 **contractor or trade association discovered or should have known of the breach.**

41 **(b) The commissioner shall investigate a complaint that a contractor or trade association**
42 **files under paragraph (a) of this subsection as provided in subsection (2) of this section. If**
43 **the commissioner finds substantial evidence that the contracting agency materially breached**
44 **the agreement, the commissioner may:**

45 **(A) Issue an order to cease and desist from the contracting agency's material breach and**

1 to perform actions that the commissioner determines will carry out the purposes of ORS
2 279C.305 and remedy the effects of the breach; or

3 (B) Conduct a contested case hearing in accordance with ORS chapter 183.

4 (c) An order to cease and desist that the commissioner issues under paragraph (b)(A) of
5 this subsection may not include an award of attorney fees. The remedy that the commis-
6 sioner orders may include requiring the contracting agency to enter into a contract with a
7 contractor to perform any remaining construction on the public improvement that is the
8 subject of the contracting agency's violation.

9 (5)(a) If the commissioner finds by a preponderance of the evidence in a contested case
10 hearing under subsection (3)(d)(C) of this section that a local contracting agency violated the
11 least cost policy set forth in ORS 279C.305 (1), or in a contested case hearing under sub-
12 section (4)(b)(B) of this section that a local contracting agency materially breached the
13 agreement described in subsection (3)(c) of this section, the commissioner shall order the
14 contracting agency to cease and desist from the conduct that constitutes the breach and
15 may impose a civil penalty of not more than \$5,000 for the violation or breach or a civil
16 penalty of not more than \$20,000 if the commissioner determines that the local contracting
17 agency willfully engaged in a violation of the least cost policy set forth in ORS 279C.305 (1).

18 (b) The commissioner shall impose a civil penalty under paragraph (a) of this subsection
19 in accordance with ORS 183.745 and shall apply the proceeds of the civil penalty first to the
20 costs of the commissioner's investigation and any administrative proceedings that result
21 from the investigation. The commissioner shall deposit any remaining proceeds in the State
22 Treasury to the credit of the General Fund.

23 (6) In addition to other available remedies for violations of orders of the commissioner,
24 a contractor or trade association may bring a civil action to enforce a cease and desist order
25 issued under subsection (5)(a) of this section through writ of mandamus or specific per-
26 formance.

27 **SECTION 4.** ORS 279A.010 is amended to read:

28 279A.010. (1) As used in the Public Contracting Code, unless the context or a specifically ap-
29 plicable definition requires otherwise:

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

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

36 (c) "Days" means calendar days.

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

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

41 (f) "Emergency" means circumstances that:

42 (A) Could not have been reasonably foreseen;

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

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

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

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

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

9 (j) "Goods and services" or "goods or services" includes combinations of any of the items iden-
10 tified in the definitions of "goods" and "services."

11 (k)(A) "Grant" means:

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

19 (ii) An agreement under which a contracting agency provides moneys, property or other assist-
20 ance, including but not limited to federal assistance that is characterized as a grant by federal law
21 or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other
22 assets, to a recipient for the purpose of supporting or stimulating a program or activity of the re-
23 cipient and in which no substantial involvement by the contracting agency is anticipated in the
24 program or activity other than involvement associated with monitoring compliance with the grant
25 conditions.

26 (B) "Grant" does not include a public contract for a public improvement, for public works, as
27 defined in ORS 279C.800, or for emergency work, minor alterations or ordinary repair or mainte-
28 nance necessary to preserve a public improvement, when under the public contract a contracting
29 agency pays, in consideration for contract performance intended to realize or to support the real-
30 ization of the purposes for which grant funds were provided to the contracting agency, moneys that
31 the contracting agency has received under a grant.

32 (L) "Industrial oil" means any compressor, turbine or bearing oil, hydraulic oil, metal-working
33 oil or refrigeration oil.

34 (m) "Judicial department" has the meaning given that term in ORS 174.113.

35 (n) "Legislative department" has the meaning given that term in ORS 174.114.

36 (o) "Local contract review board" means a local contract review board described in ORS
37 279A.060.

38 (p) "Local contracting agency" means a local government or special government body authorized
39 by law to conduct a procurement. "Local contracting agency" includes any person authorized by a
40 local contracting agency to conduct a procurement on behalf of the local contracting agency.

41 (q) "Local government" has the meaning given that term in ORS 174.116.

42 (r) "Lowest responsible bidder" means the lowest bidder who:

43 (A) Has substantially complied with all prescribed public contracting procedures and require-
44 ments;

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

1 (C) Has not been debarred or disqualified by the contracting agency under ORS 279B.130 or
2 279C.440; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (gg) "Recycled paper" means a paper product with not less than:

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

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

7 (hh) "Recycled PETE" means post-consumer polyethylene terephthalate material.

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

13 (jj) "Secondary waste materials" means fragments of products or finished products of a manu-
14 facturing process that has converted a virgin resource into a commodity of real economic value.
15 "Secondary waste materials" includes post-consumer waste. "Secondary waste materials" does not
16 include excess virgin resources of the manufacturing process. For paper, "secondary waste
17 materials" does not include fibrous waste generated during the manufacturing process such as fibers
18 recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips,
19 sawdust or other wood residue from a manufacturing process.

20 (kk) "Services" mean services other than personal services designated under ORS 279A.055, ex-
21 cept that, for state contracting agencies with procurement authority under ORS 279A.050 or
22 279A.140, "services" includes personal services as designated by the state contracting agencies.

23 (LL) "Special government body" has the meaning given that term in ORS 174.117.

24 (mm) "State agency" means the executive department, except the Secretary of State and the
25 State Treasurer in the performance of the duties of their constitutional offices.

26 (nn) "State contracting agency" means an executive department entity authorized by law to
27 conduct a procurement.

28 (oo) "State government" has the meaning given that term in ORS 174.111.

29 (pp) "Used oil" has the meaning given that term in ORS 459A.555.

30 (qq) "Virgin oil" means oil that has been refined from crude oil and that has not been used or
31 contaminated with impurities.

32 (2) Other definitions appearing in the Public Contracting Code and the sections in which they
33 appear are:

- 34
- 35 [(a) "Adequate"ORS 279C.305]
- 36 [(b) (a) "Administering contracting
- 37 agency"ORS 279A.200
- 38 [(c) (b) "Affirmative action"ORS 279A.100
- 39 [(d) (c) "Architect"ORS 279C.100
- 40 [(e) (d) "Architectural,
- 41 engineering, photogram-
- 42 metric mapping,
- 43 transportation planning
- 44 or land surveying
- 45 services"ORS 279C.100

1	[(f)] (e)	“Bid documents”.....ORS 279C.400
2	[(g)] (f)	“Bidder”.....ORS 279B.415
3	[(h)] (g)	“Bids”.....ORS 279C.400
4	[(i)] (h)	“Brand name” .....ORS 279B.405
5	[(j)] (i)	“Brand name or equal
6		specification”.....ORS 279B.200
7	[(k)] (j)	“Brand name
8		specification”.....ORS 279B.200
9	[(L)] (k)	“Class special
10		procurement”.....ORS 279B.085
11	[(m)] (L)	“Consultant” .....ORS 279C.115
12	[(n)] (m)	“Contract-specific
13		special procurement”.....ORS 279B.085
14	[(o)] (n)	“Cooperative
15		procurement” .....ORS 279A.200
16	[(p)] (o)	“Cooperative procurement
17		group” .....ORS 279A.200
18	[(q)] (p)	“Donee” .....ORS 279A.250
19	[(r)] (q)	“Engineer” .....ORS 279C.100
20	[(s)] (r)	“Findings” .....ORS 279C.330
21	[(t)] (s)	“Fire protection
22		equipment”.....ORS 279A.190
23	[(u)] (t)	“Fringe benefits” .....ORS 279C.800
24	[(v)] (u)	“Funds of a public
25		agency” .....ORS 279C.810
26	[(w)] (v)	“Good cause” .....ORS 279C.585
27	[(x)] (w)	“Good faith dispute”.....ORS 279C.580
28	[(y)] (x)	“Goods” .....ORS 279B.115
29	[(z)] (y)	“Housing” .....ORS 279C.800
30	[(aa)] (z)	“Interstate cooperative
31		procurement” .....ORS 279A.200
32	[(bb)] (aa)	“Invitation to bid” .....ORS 279B.005
33		.....and 279C.400
34	[(cc)] (bb)	“Joint cooperative
35		procurement” .....ORS 279A.200
36	[(dd)] (cc)	“Labor dispute” .....ORS 279C.650
37	[(ee)] (dd)	“Land surveyor” .....ORS 279C.100
38	[(ff)] (ee)	“Legally flawed”.....ORS 279B.405
39	[(gg)] (ff)	“Locality” .....ORS 279C.800
40	[(hh)] (gg)	“Nonprofit
41		organization” .....ORS 279C.810
42	[(ii)] (hh)	“Nonresident bidder” .....ORS 279A.120
43	[(jj)] (ii)	“Not-for-profit
44		organization” .....ORS 279A.250
45	[(kk)] (jj)	“Original contract” .....ORS 279A.200

1	[(LL)]	(kk)	“Permissive cooperative	
2			procurement”	.....ORS 279A.200
3	[(mm)]	(LL)	“Person”	.....ORS 279C.500
4			.....and	279C.815
5	[(nn)]	(mm)	“Personal services”	.....ORS 279C.100
6	[(oo)]	(nn)	“Photogrammetric	
7			mapping”	.....ORS 279C.100
8	[(pp)]	(oo)	“Photogrammetrist”	.....ORS 279C.100
9	[(qq)]	(pp)	“Prevailing rate of	
10			wage”	.....ORS 279C.800
11	[(rr)]	(qq)	“Procurement	
12			description”	.....ORS 279B.005
13	[(ss)]	(rr)	“Property”	.....ORS 279A.250
14	[(tt)]	(ss)	“Public agency”	.....ORS 279C.800
15	[(uu)]	(tt)	“Public contract”	.....ORS 279A.190
16	[(vv)]	(uu)	“Public works”	.....ORS 279C.800
17	[(ww)]	(vv)	“Purchasing contracting	
18			agency”	.....ORS 279A.200
19	[(xx)]	(ww)	“Regularly organized fire	
20			department”	.....ORS 279A.190
21	[(yy)]	(xx)	“Related services”	.....ORS 279C.100
22	[(zz)]	(yy)	“Request for	
23			proposals”	.....ORS 279B.005
24	[(aaa)]	(zz)	“Resident bidder”	.....ORS 279A.120
25	[(bbb)]	(aaa)	“Responsible bidder”	.....ORS 279A.105
26			.....and	279B.005
27	[(ccc)]	(bbb)	“Responsible	
28			proposer”	.....ORS 279B.005
29	[(ddd)]	(ccc)	“Responsive bid”	.....ORS 279B.005
30	[(eee)]	(ddd)	“Responsive	
31			proposal”	.....ORS 279B.005
32	[(fff)]	(eee)	“Retainage”	.....ORS 279C.550
33	[(ggg)]	(fff)	“Special	
34			procurement”	.....ORS 279B.085
35	[(hhh)]	(ggg)	“Specification”	.....ORS 279B.200
36	[(iii)]	(hhh)	“State agency”	.....ORS 279A.250
37	[(jjj)]	(iii)	“Substantial	
38			completion”	.....ORS 279C.465
39	[(kkk)]	(jjj)	“Surplus property”	.....ORS 279A.250
40	[(LLL)]	(kkk)	“Transportation	
41			planning services”	.....ORS 279C.100
42	[(mmm)]	(LLL)	“Unnecessarily	
43			restrictive”	.....ORS 279B.405

44 **SECTION 5. Section 3 of this 2017 Act and the amendments to ORS 279A.010 and 279C.305**
 45 **by sections 1 and 4 of this 2017 Act apply to procurements that a contracting agency first**

1 **advertises or otherwise solicits or, if the contracting agency does not advertise or solicit the**
2 **procurement, to a public contract that a contracting agency enters into on or after the op-**
3 **erative date specified in section 6 of this 2017 Act.**

4 **SECTION 6. (1) Section 3 of this 2017 Act and the amendments to ORS 279A.010 and**
5 **279C.305 by sections 1 and 4 of this 2017 Act become operative on January 1, 2018.**

6 **(2) The Commissioner of the Bureau of Labor and Industries, the Attorney General, the**
7 **Director of the Oregon Department of Administrative Services, the Director of Transporta-**
8 **tion or a contracting agency that adopts rules under ORS 279A.065 may adopt rules and take**
9 **any other action before the operative date specified in subsection (1) of this section that is**
10 **necessary to enable the commissioner, the Attorney General, the director or the contracting**
11 **agency to exercise all of the duties, functions and powers conferred on the commissioner,**
12 **the Attorney General, the director or the contracting agency by section 3 of this 2017 Act**
13 **and the amendments to ORS 279A.010 and 279C.305 by sections 1 and 4 of this 2017 Act.**

14 **SECTION 7. This 2017 Act takes effect on the 91st day after the date on which the 2017**
15 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**

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