

Enrolled House Bill 3203

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)

CHAPTER

AN ACT

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

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

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

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

[(2) Not less than 30 days prior to adoption of the contracting agency’s budget for the subsequent budget period, each contracting agency shall prepare and file with the Commissioner of the Bureau of Labor and Industries a list of every public improvement known to the contracting agency that the contracting agency plans to fund in the budget period, identifying each improvement by name and estimating the total on-site construction costs. The list shall also contain a statement as to whether the contracting agency intends to perform the construction through a private contractor. If the contracting agency intends to perform construction work using the contracting agency’s own equipment and personnel on a project estimated to cost more than \$125,000, the contracting agency shall also show that the contracting agency’s decision conforms to the policy stated in subsection (1) of this section. The list is a public record and may be revised periodically by the agency.]

[(3) Before a contracting agency constructs a public improvement with its own equipment or personnel:]

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) The cost of tools and materials;

(E) The costs associated with any contracts into which the contracting agency must enter;

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

(G) Any other necessary and related costs that the contracting agency will incur to construct the public improvement with the contracting agency's own equipment or personnel; and

(c) Compare the cost the contracting agency estimates under paragraph (a) of this subsection with the cost the contracting agency estimates under paragraph (b) of this subsection.

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

(a) Prepare plans, specifications and estimates of the unit cost of each classification of construction work that are sufficient to control the performance of the construction work

and ensure satisfactory construction quality, if the estimated cost of the public improvement exceeds \$200,000; and

(b) Prepare and preserve a full, true and accurate account of the actual costs of performing the work, including all categories of costs described in subsection (3)(b) of this section. The final account of the costs is a public record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The commissioner shall dismiss a complaint under this subsection if the contractor or trade association brings an action in a court of this state or initiates another proceeding

that alleges an act or omission that is the same or substantially similar to an act or omission the contractor or trade association alleged in the complaint.

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

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

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

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

(C) Take any other action the commissioner deems necessary to conduct the investigation.

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

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

(B) Provide a copy of any notice the commissioner issued under subparagraph (A) of this paragraph to any contractor or trade association that filed a complaint concerning the violation under subsection (1) of this section.

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

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

(d) If negotiations between the contracting agency and the contractor or trade association do not result in an agreement within the time the commissioner specifies, the commissioner may:

(A) Extend the time period for negotiations;

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

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

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

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

(A) Issue an order to cease and desist from the contracting agency's material breach and to perform actions that the commissioner determines will carry out the purposes of ORS 279C.305 and remedy the effects of the breach; or

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

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

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

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

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

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

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

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

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

(c) "Days" means calendar days.

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

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

(f) "Emergency" means circumstances that:

(A) Could not have been reasonably foreseen;

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

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

(g) "Energy savings performance contract" means a public contract between a contracting agency and a qualified energy service company for the identification, evaluation, recommendation,

design and construction of energy conservation measures, including a design-build contract, that guarantee energy savings or performance.

(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)] (a)	“Administering contracting agency”	ORS 279A.200
[(c)] (b)	“Affirmative action”	ORS 279A.100
[(d)] (c)	“Architect”	ORS 279C.100
[(e)] (d)	“Architectural, engineering, photogram-metric mapping, transportation planning or land surveying services”	ORS 279C.100
[(f)] (e)	“Bid documents”	ORS 279C.400
[(g)] (f)	“Bidder”	ORS 279B.415
[(h)] (g)	“Bids”	ORS 279C.400
[(i)] (h)	“Brand name”	ORS 279B.405
[(j)] (i)	“Brand name or equal specification”	ORS 279B.200
[(k)] (j)	“Brand name specification”	ORS 279B.200
[(L)] (k)	“Class special procurement”	ORS 279B.085
[(m)] (L)	“Consultant”	ORS 279C.115
[(n)] (m)	“Contract-specific special procurement”	ORS 279B.085
[(o)] (n)	“Cooperative procurement”	ORS 279A.200
[(p)] (o)	“Cooperative procurement group”	ORS 279A.200
[(q)] (p)	“Donee”	ORS 279A.250
[(r)] (q)	“Engineer”	ORS 279C.100
[(s)] (r)	“Findings”	ORS 279C.330
[(t)] (s)	“Fire protection equipment”	ORS 279A.190
[(u)] (t)	“Fringe benefits”	ORS 279C.800

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

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

SECTION 5. Section 3 of this 2017 Act and the amendments to ORS 279A.010 and 279C.305 by sections 1 and 4 of this 2017 Act apply to procurements that a contracting agency first advertises or otherwise solicits or, if the contracting agency does not advertise or solicit the procurement, to a public contract that a contracting agency enters into on or after the operative date specified in section 6 of this 2017 Act.

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

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

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

Passed by House July 6, 2017

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate July 7, 2017

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2017

Approved:

.....M,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2017

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Dennis Richardson, Secretary of State