Chapter 279

1973 REPLACEMENT PART

Public Contracts and Purchasing

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PURCHASING AND BIDS AND BIDDING IN GENERAL

279.008 ORS 279.010 to 279.090 not affected by certain provisions. Nothing in ORS 279.710 to 279.746, 282.050, 283.110, 283.130 to 283.160, 283.210 to 283.230 or 283.305 to 283.350 is intended to affect the provisions of ORS 279.010 to 279.090.

279.010 Definitions. When used in ORS 279.010 to 279.028 and 279.060 to 279.090, unless the context otherwise requires:

(1) "Person" means and includes individuals, copartnerships, associations, corporations and joint stock companies, and lessees, trustees or receivers appointed by any court.

(2) "Public officer" includes public officers, commissions, boards, committees, departments or other public representatives of the state, county, city, town, district or other public body charged by law with the duty of either receiving bids for or awarding contracts for the construction of any public improvements.

(3) "Public improvement" means an improvement upon any real estate belonging to or in anywise to be used by the state, county, city, town, district or other municipal subdivision of the state.

(4) "Public contract" means any contract for public improvements, proposals for the construction of which are required to be advertised for by law.

(5) "Form for bid proposals" means the printed, typewritten or written form which is officially sanctioned by the public officer for the submission of bids for a public improvement under public contract.

(6) "Prospective bidder" means a person who makes an application for any plans for any public improvements for the purpose of bidding on such work.

279.012 Qualification of bidders. Subject to subsection (2) of ORS 279.014, bids for all contracts for public improvement, estimated at a total cost of $10,000 or over, by the state, county, city, town, district, board or other public body, shall be received only from persons who have been qualified by the public officer as prescribed in ORS 279.014 to 279.018 or by the appeal board as prescribed in ORS 279.024.

279.014 Statement or qualification by bidder required before delivery of bid proposals. (1) Every public officer charged with the duty of receiving bids for and of awarding any public contract for public improvement, estimated at a total cost of $10,000 or over, shall, before delivering any form for bid proposals pertaining thereto to any person, require such person to submit a full and complete statement as described in ORS 279.016. The statement, with any subsequent amendments, shall be filed with the public officer not later than 10 days prior to the time set for opening bids.

(2) No bid shall be received from any person who has not submitted the sworn statement described in ORS 279.016; however,

(a) A prospective bidder who has once qualified to the satisfaction of the public officer and wishes to become a bidder on subsequent public improvements under the jurisdiction of the public officer to whose satisfaction the prospective bidder has qualified under ORS 279.010 to 279.026 and 279.060 to 279.090 need not separately qualify for each public contract for public improvement unless the public officer so requires.

(b) Any person who submits evidence that he is currently qualified by the Department of Transportation to bid on contracts for highway improvements may be qualified, within the limits set by the department, to submit bids to other public officers for highway improvement contracts without submitting the statement described by ORS 279.016.

(3) A prospective bidder applying for a bid proposal less than 10 days prior to the time set for opening bids shall, before being furnished with a bid proposal blank, be required to qualify under ORS 279.016 and 279.018 to the satisfaction of the public officer. In such case the decision of the public officer with respect to the qualifications of the prospective bidder is final.

[Amended by 1967 c.202 §1; 1973 c.42 §1]

279.016 Execution and contents of statement; restriction on disclosure of statement. (1) The statement required by ORS 279.014 shall fully and completely state:

(a) The address within this state of the prospective bidder.

(b) His financial ability.

(c) His equipment.

(d) His experience in construction of public improvements.

(e) Such other matters as the public officer may require for determination for the benefit of the public in the performance of any contemplated public improvement.

(2) The statement and amendments thereof shall be in writing on a standard form of questionnaire prescribed by the Department of Commerce, and furnished by the public officer. The statement shall be sworn to before an officer authorized by law to administer oaths.

(3) No statements shall be disclosed except upon written order of the person furnishing the same or an appropriate order of a court of competent jurisdiction.
[Amended by 1971 c.481 §1]

279.018 Examination of statement; investigation of bidders; notice of determination. At least eight days prior to the time set for opening bids, the public officer in charge of letting the public contract shall:

(1) Examine all statements submitted pursuant to ORS 279.014.

(2) Make such investigation by personal interview with the prospective bidders or in such other manner as in the discretion of the public officer appears necessary.

(3) Notify each person submitting a statement, by registered mail at the address within this state designated by such person in the statement, whether or not such person is qualified for the public improvement required and whether or not a bid will be received from such person.

279.020 Notice of intention to appeal; notification of board of appeal. Subject to subsection (3) of ORS 279.014, a disqualified prospective bidder may, within 24 hours after delivery of the notice required by ORS 279.018 at such address, notify the public officer in writing or by telegraph that the disqualified prospective bidder desires to appeal from the findings of the public officer with respect to his disqualification. Immediately on receipt of such notice the public officer shall notify the board of appeal.

279.022 Board of appeal. (1) The board of appeal shall consist of:

(a) The State Treasurer, Secretary of State and Commissioner of Labor, if the public work contemplated is state work.

(b) A circuit judge of the district, the county treasurer and the county sheriff of the county in which the proposed public work is to be done, if the public work is work of a county, city, town, district or other municipality; but in cities with a population of over 100,000, an appeal from the decision of the public officer in connection with qualifications for bidding on improvements to be made by such city shall be referred to an appeal board consisting of the city attorney, city auditor and the city treasurer.

(2) The officials constituting such appeal boards shall discharge the duties imposed upon them as members of the board of appeal.

(3) The absence of a member of the appeal board shall not disqualify the other two members from passing upon the matters submitted to them.

279.024 Proceedings of appeal board. When notified under ORS 279.020, the board of appeal shall forthwith, and at least three days prior to the day set for opening bids for the public improvement, hold a hearing on the appeal. The appeal shall place at issue before the board anew the responsibility and qualifications of all persons who have filed statements. At the hearing any prospective bidder who has filed a statement shall be entitled to be heard and submit any additional information to the board upon the matters and subjects covered by the sworn statement. Thereafter the board shall review the matter of the responsibility of all disqualified prospective bidders who have filed statements, considering both the statements and the additional information given at the hearing, and shall prepare and certify to the public officer a list of those of the disqualified prospective bidders who are found qualified to perform the work by the board or a majority of the board. The determination of the board shall be final. The board of appeal shall immediately notify all disqualified prospective bidders of the action of the board by registered mail as required by subsection (3) of ORS 279.018.

279.026 Rejection of part of bids. When any person is low bidder on two or more public contracts for the construction of public improvements and none of such public contracts has been awarded, the public officer charged with the duty of awarding such contracts may award to such person one or more of such contracts and may reject such person's bid or bids for the other public improvements for which such person was low bidder if such person, in the opinion of the public officer, is not qualified to undertake and to perform fully in a satisfactory

manner the public improvements contemplated under all such public contracts bid upon by such person.

279.028 Emergency work excepted. ORS 279.010 to 279.026 and 279.060 to 279.090 do not apply to work deemed by the public officer as an emergency.

279.030 Option as to security to be furnished with bid. (1) If a person, copartnership or corporation is bidding for a contract to do work or furnish material or supplies for the state, county, school district or municipality and is required to furnish and file security with the bid, the bidder may, at his option, file either a certified check or a surety bond as such security to such an amount as may be specified in the notice or advertisement calling for such bids. The certified check or bidders' bond shall not exceed 10 percent of the amount bid for contract.

(2) If the bidder is required to furnish and file security with the bid, the provisions of ORS 279.080 shall apply.
[Amended by 1971 c.659 §1]

279.032 Conspiracy or collusion tending to lessen competition in letting public contracts and paying or offering to pay to obtain public contracts prohibited. (1) It shall be unlawful for any person bidding upon or entering into a public contract, or agent of such person, to enter into any conspiracy or collusion with any person which tends to or does lessen or destroy free competition in the letting of such contract, or to pay or agree to pay to any other bidder or to any public officer, directly or indirectly, any money or thing of value in order to obtain such contract; provided that any one or more of such persons shall have done any act to effect the object of the conspiracy or collusion.

(2) As used in this section, "public contract" means any contract with the state, or with a county, city, town, school district, road district or other public corporation, or quasi-public corporation, or with a public officer in this state.

279.034 Witnesses' privileges withheld; exemption from prosecution except for perjury. In any action in any court wherein the violation of ORS 279.032 is at issue, no witness shall be privileged from testifying to any matter, or from producing any books, papers, or letters on the ground that the same might or would tend to render such witness criminally liable, but such witness shall not be prosecuted for any offense whatever growing out of or connected with the matters and things so testified to or produced by him. Such witness shall not be exempt from prosecution for perjury committed in so testifying.

279.036 Mandatory preference of state products in purchase of materials and supplies. (1) Any person, committee, board, officer or any other person charged with the purchase, or permitted or authorized to purchase supplies, goods, wares, merchandise, manufactures or produce for the use of the state or any of its institutions or offices, or for the use of any county, city, town or school district, or of any of their institutions or offices, or any contractor executing a project for the state or any other of the aforementioned governmental entities, shall always, price, fitness and quality being equal, prefer supplies, goods, wares, merchandise, manufactures or produce that has been grown, manufactured or produced in this state and shall next prefer such as have been partially manufactured, grown or produced in this state.

(2) All state, county, city, town or school district officers, all boards, commissions or other persons charged with advertising for any such supplies shall state in their advertisements that such preferences will be made.
[Amended by 1969 c.607 §1]

279.038 Use of Oregon construction products mandatory; limitation on extra price. (1) Any board, commission, officer, employe or other person or persons acting for the state or for any county, municipality or taxing district, whose duty it is or may be to purchase or contract for the use of any nonmetallic mineral construction material or materials, except cement, sand, gravel, crushed rock and plaster, to be used in the construction of public buildings or other structures on behalf of the state, county, municipality or taxing district, shall select, purchase or contract for the use of such materials as are produced or manufactured in Oregon when the prices quoted for the same are not more than five percent in excess of the lowest bids or prices quoted for the same materials produced or manufactured elsewhere, quality and service considered.

(2) With respect to such common building materials as cement, sand, crushed rock, gravel, plaster, etc., for such buildings and structures, the contractor shall be required to use Oregon produced or manufactured materials in all cases where the bid prices of such materials are no greater than those of similar materials produced or manufactured outside of Oregon.

279.040 Specifications to require alternate bids. If the building or construction materials referred to in subsection (1) of ORS 279.038 are or can be produced in Oregon, the architect or other person preparing the specifications shall require that all bidders shall submit alternate bids covering the use of such Oregon materials and the use of materials from outside the state.

279.042 Limitation on application of ORS 279.038 and 279.040. ORS 279.038 and 279.040 do not apply in any case where the provisions of those sections interfere or conflict with federal statutes or regulations.

279.044 Discretionary preference to Oregon persons, concerns, materials and supplies. (1) Subject to subsections (2) and (3) of this section, all county courts, boards of county commissioners, school boards, city councils, and all other public officers, boards and commissions that are charged with the letting of contracts for public work, with the construction of public bridges, buildings and other structures, or with the purchase of materials and supplies for any public use may, in their discretion, give such contracts and employment to, and purchase such materials and supplies from, persons and concerns manufacturing such materials and supplies in Oregon.

(2) The officers, boards, councils and commissions may give preference under subsection (1) of this section only if:

(a) The bids of the persons or concerns, or the prices quoted by them, do not exceed by more than five percent the lowest bid or prices quoted by persons and concerns manufacturing the same elsewhere; and

(b) In their opinion the public good will in any way be served thereby.

(3) No goods and material shall be entitled to preference under subsection (1) of this section in which the major portion of the work of manufacturing such goods and material was done outside Oregon.

279.046 Advertisements for bids for specific brands or patented appliances regulated. In any advertisement for supplies, goods, wares, merchandise, manufactures or produce for the use of the state or any of its institutions or offices, or for the use of any county, city, town or school district, or of any of their institutions or offices, no bid shall be asked for any articles of a specific brand or mark, nor any patent apparatus or appliances, when such requirement would prevent proper competition on the part of dealers in other articles of equal value, utility, or merit.

279.048 Definitions for ORS 279.050 to 279.054. As used in ORS 279.050 to 279.054, unless the context otherwise requires:

(1) "Subdivision" means any county, municipal corporation, quasi-municipal corporation, or civil or political subdivision of this state.

(2) "Property" means equipment, supplies, merchandise, materials or other property, real or personal.

279.050 Purchase of property from Federal Government or certain sheltered workshops. The state and any subdivision, through the officer, board, department or commission authorized to make purchases in its behalf, may contract with the United States or with any agency thereof or with any sheltered workshop or its marketing organization certified by the Vocational Rehabilitation Division for the purchase of any property without soliciting or receiving competitive offers thereof by or pursuant to public advertisement therefor or otherwise and without delivery of such property prior to payment therefor.

[Amended by 1969 c.349 §1; 1971 c.180 §1]

279.052 Designation of agent of subdivision to enter bids; authorization to make payment. The governing body of any subdivision, by appropriate resolution or order, may designate its duly appointed or elected purchasing agent or representative to enter a bid or bids in its behalf at any sale of property owned and offered for sale by the United States or by any agency thereof, and may authorize its agent or representative to make such payment as is required in connection with the bidding.

279.054 Provisions superseded by ORS 279.048 to 279.054. The provisions of all laws, charters, ordinances, resolutions, rules and regulations applying to the state or to any subdivision, appertaining to purchases of property by the state or by any subdivision, are superseded in so far as they conflict with ORS 279.048 to 279.054.

279.060 Requirements when estimated cost of improvement exceeds $50,000. Whenever the estimated cost of any proposed public improvement exceeds $50,000:

(1) The public officer shall advertise for bids therefor as prescribed by ORS 279.065 and may enter into a contract with the lowest responsible bidder for the construction of such public improvement; or the public officer may reject any or all bids and further advertise for bids in the same manner as the original advertisement for bids if no satisfactory bids are received; however, if in its judgment the improvement can be constructed by the public body at less cost than the lowest bid submitted, it may do so without further advertising for bids or awarding any contract therefor.

(2) If the public officer determines that it is necessary and advisable that a public improvement be constructed by any means or method other than under contract, the plans, specifications and an estimate of the cost of the work shall be prepared by the public body and filed as part of the records of the public body.

(3) Estimates shall show in detail the estimated cost of the work, the estimated quantities of each class of work, the estimated unit cost of each class, the time limit allowed for the completion of the work and the estimated date of completion.

(4) The public officer 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 incurred in the work.

(5) All plans, specifications, estimates and accounts are, when filed, public records and shall at all reasonable times be open to public inspection.

[1969 c.522 §2]

279.065 Advertisement of bids required. (1) An advertisement for bids, stating the date after which bids may not be received, the character of the work to be done or the material or things to be purchased, and the office where the specifications for the work may be seen, shall be published in at least one newspaper of general circulation in the area where the contract is to be performed.

(2) All advertisements for bids shall state that no bid will be received or considered by the public body or any officer of the public body unless the bid contains a statement by the bidder as a part of his bid that the provisions required by ORS 279.350 shall be included in his contract.

(3) The advertisement shall be published not less than once and there shall be as many additional publications as the public body may determine. The time within which bids shall be received shall be not less than five days after the last publication.

[1969 c.522 §3]

279.070 Requirements for bids. (1) All bids made to the public body pursuant to ORS 279.060 and 279.065 shall be:

(a) In writing.

(b) Filed with the designated officer of the public body.

(c) Opened publicly at the time designated in the advertisement, by the public officer.

(2) After having been opened the bids shall be filed for public inspection.

(3) A surety bond, cashier's check or certified check of the bidder shall be attached to all bids as bid security. Such security shall not exceed 10 percent of the amount bid for the contract.

[1969 c.522 §4; 1971 c.659 §2]

279.075 Award of contract; bond; waiver of bond in case of emergency. (1) After the bids are opened as required by ORS 279.070, and after a determination is made that a contract is to be awarded, the public officer shall award the contract to the lowest responsible bidder. "Lowest responsible bidder" means the lowest responsible bidder whose bid includes the provisions required by ORS 279.350.

(2) The successful bidder shall:

(a) Promptly execute a formal contract, to be approved as to its form, terms and conditions by the attorney for the public body.

(b) Execute and deliver to the public officer a good and sufficient bond, to be approved by the public body, in a sum equal to not less than 50 percent of the contract price for the faithful performance of the contract.

(3) In cases of emergency, or where the interest or property of the public body probably would suffer material injury by delay or

other cause, the requirement of furnishing a good and sufficient bond for the faithful performance of any public contract may be excused, if a declaration of such emergency is made and concurred in by all members of the governing board of the public body.
[1969 c.522 §5]

279.080 Return or retention of bid security. Upon the execution of the contract and bond by the successful bidder, his bid security shall be returned to him. The bidder who has a contract awarded to him and who fails promptly and properly to execute the contract or bond shall forfeit the bid security that accompanied his bid. The bid security shall be taken and considered as liquidated damages and not as a penalty for failure of the bidder to execute the contract and bond. The bid security of unsuccessful bidders may be returned to them when the bids have been opened and the contract has been awarded, and shall not be retained by the public body after the contract has been duly signed.
[1969 c.522 §6]

279.085 Effect of ORS 279.010 to 279.028 and 279.060 to 279.090. All laws, charters, ordinances, resolutions, rules and regulations of any public body applying to bidding requirements for contracts for public improvements are superseded in so far as they conflict with ORS 279.010 to 279.028 and 279.060 to 279.090. It is discretionary with a public body whether work for the maintenance or minor betterment of a public improvement shall be done by contract or with the public body's own forces, and if done by the public body's own forces it is not necessary to call for competitive bids.
[1969 c.522 §7]

279.090 Exceptions to certain requirements of ORS 279.060. Subsection (1) of ORS 279.060 does not apply to a people's utility district organized under ORS chapter 261, any port district, any county with a population of less than 100,000 as determined by the last preceding census of the State Board of Higher Education or any city or school district in such a county, an electric or water utility owned by a city and managed through a board or commission established by the city charter, or any public body when constructing a public improvement to be used to supply agricultural, domestic, municipal or industrial water.
[1969 c.522 §8]

PUBLIC CONTRACTS GENERALLY

279.310 Definitions for ORS 279.310 to 279.320. When used in ORS 279.310 to 279.320, unless the context otherwise requires:

(1) "Public contract" means a contract made with the state, county, school district, municipality, municipal corporation or subdivision thereof.

(2) "Person" includes the State Accident Insurance Fund and the Department of Revenue.

(3) "Public improvement" has the meaning given that term by ORS 279.010.
[Amended by 1953 c.131 §3; 1973 c.523 §1]

279.312 Conditions of public contracts concerning payment of laborers and materialmen, contributions to Industrial Accident Fund, liens, and withholding taxes. Every public contract shall contain a condition that the contractor shall:

(1) Make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in such contract.

(2) Pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract.

(3) Not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

(4) Pay to the Department of Revenue all sums withheld from employes pursuant to ORS 316.167.
[Amended by 1953 c.131 §3; 1957 c.586 §14; 1965 c.26 §1; 1969 c.493 §76]

279.314 Condition concerning payment of claims by public officers. (1) Every public contract shall also contain a clause or condition that, if the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the proper officer or officers representing the state, county, school district, municipality, municipal corporation or subdivision thereof, as the case may be, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of his contract.

(2) The payment of a claim in the manner authorized in this section shall not relieve the contractor or his surety from his or its obligation with respect to any unpaid claims.

279.316 Condition concerning hours of labor. Every public contract shall also contain a condition that no person shall be employed for more than eight hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases the laborer shall be paid at least time and a half pay for all overtime in excess of eight hours a day and for work performed on Saturday and on any legal holiday specified in ORS 187.010, except Veterans Day. However, when specifically agreed to under a written labor-management negotiated labor agreement, a laborer may be paid at least time and a half pay for work performed on Veterans Day or on any legal holiday specified in ORS 187.020.
[Amended by 1967 c.167 §1]

279.318 Condition concerning forfeiture of contract; provisions relating to environmental and natural resources laws and rules; change orders. (1) Every public contract shall also contain a condition that the contract may be canceled at the election of the state, county, school district, municipality, municipal corporation, or other subdivision concerned, for any wilful failure or refusal on the part of the contractor to faithfully perform the contract according to its terms.

(2) A public contract for a public improvement shall make specific reference to the provisions of federal, state and local statutes, ordinances and regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the project. If the successful bidder must undertake additional work due to the enactment of new or the amendment of existing statutes, ordinances or regulations occurring after the submission of the successful bid, the awarding agency shall issue a change order setting forth the additional work that must be undertaken. The change order shall not invalidate the contract and there shall be, in addition to a reasonable extension of the contract time, a reasonable adjustment in the contract price to compensate the successful bidder for all costs and expenses incurred, including overhead and profits, as a result of the additional work.
[Amended by 1973 c.523 §2]

279.320 Condition concerning payment for medical care and attention to employes. Every public contract shall also contain a condition that the contractor shall promptly, as due, make payment to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employes of such contractor, of all sums which the contractor agrees to pay for such services and all moneys and sums which the contractor collected or deducted from the wages of his employes pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
[Amended by 1967 c.359 §687]

279.324 Definitions for ORS 279.324 to 279.332. As used in ORS 279.324 to 279.332:

(1) "Public agency" means any department or agency of the Federal Government or the State of Oregon or any of its subdivisions.

(2) "Public contract" means any contract for the construction of public works to which the state or any of its subdivisions is a party.

(3) "Third party" means a public or private entity that is not a party to the public contract.

(4) "Labor dispute" means a labor dispute as defined in ORS 662.010.
[Amended by 1973 c.738 §1]

279.326 Agreement to terminate contract. The public body and the contractor that are parties to a public contract may agree to terminate the contract:

(1) If work under the contract is suspended by an order of a public agency for any reason considered to be in the public interest other than by a labor dispute or by reason of any third party judicial proceeding relating to the work other than a suit or action filed in regards to a labor dispute; and

(2) If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the public works.
[Amended by 1973 c.738 §2]

279.328 Extension and compensation when work suspended in certain cases. If work under a contract is suspended pursuant to subsection (1) of ORS 279.326, and is not the result of a labor dispute but the contract is not terminated, the contractor is entitled

to a reasonable extension of the contract time and reasonable compensation for all costs resulting from the suspension plus a reasonable allowance for overhead with respect to such costs.
[Amended by 1973 c.738 §3]

279.330 Compensation when contract terminated. In the event of termination of a public contract pursuant to ORS 279.326, provision shall be made for the payment of compensation to the contractor. In addition to a reasonable amount of compensation for preparatory work and for all costs and expenses arising out of termination, the amount to be paid to the contractor:

(1) Shall be determined on the basis of the contract price in the case of any fully completed separate item or portion of the work for which there is a separate or unit contract price; and

(2) May, with respect to any other work, be a percent of the contract price equal to the percentage of the work completed.
[Amended by 1973 c.738 §4]

279.332 Contractual provisions for compensation when contract terminated due to public interest. Any public body may provide in any public works contract detailed provisions under which the contractor shall be entitled, as a matter of right, to compensation upon termination of the contract on account of any reason considered to be in the public interest.
[Amended by 1973 c.738 §5]

279.333 Application of ORS 279.324 to 279.330. ORS 279.324 to 279.330 shall not apply to suspension of the work or termination of the contract which occur as a result of the contractor's violation of federal, state or local statutes, ordinances, rules or regulations in existence at the time the contract was executed or as a result of violations of the terms of the contract.
[1973 c.738 §6]

279.334 Maximum hours of labor on public contracts. In all cases where labor is employed by the state, county, school district, municipality, municipal corporation, or subdivision, through a contractor, no person shall be required or permitted to labor more than eight hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, in which event, the person or persons so employed for excessive hours shall receive at least time and a half pay for all overtime in excess of eight hours a day, and for work performed on Saturday and on any legal holiday specified in ORS 187.010, except Veterans Day. However, when specifically agreed to under a written labor-management negotiated labor agreement, a laborer may be paid at least time and a half pay for work performed on Veterans Day or on any legal holiday specified in ORS 187.020. This section shall not apply to labor performed in the prevention or suppression of fire under contracts and agreements made pursuant to the authority of the State Forester or State Board of Forestry, under ORS 477.406.
[Amended by 1963 c.241 §1; 1967 c.167 §2]

279.336 Time limitation on claim for overtime; posting of circular by contractor. Where labor is employed by the state, county, school district, municipality, municipal corporation or subdivision, through another as a contractor, any workman employed by the contractor shall be foreclosed from the right to collect for any overtime provided in ORS 279.334 unless a claim for payment is filed with the contractor within 90 days from the completion of the contract, providing the contractor has:

(1) Caused a circular clearly printed in blackface pica type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all men employed on the work.

(2) Maintained such circular continuously posted from the inception to the completion of the contract on which workmen are or have been employed.

279.338 Length of day's labor on public works. (1) Eight hours shall constitute a day's labor in all cases where the state, county, school district, or any municipality, municipal corporation or subdivision is the employer of labor, either directly or indirectly, by contract with another.

(2) This section does not apply to the employment by any contractor of work for the state, county, school district, or any municipality, municipal corporation, or subdivision thereof, of foremen, watchmen and timekeepers paid on monthly rate.

279.340 Overtime for labor directly employed by counties, municipalities, municipal corporations, school districts and subdivisions. Labor directly employed by a county, municipality, municipal corporation,

school district or subdivision shall be allowed overtime as follows:

(1) Overtime shall be compensated, if budgeted funds for such purpose are available, for overtime worked in excess of eight hours in any one day or 40 hours in any one week, at not less than one and one-half times the regular rate of such employment. If budgeted funds are not available for the payment of overtime, such overtime shall be allowed in compensatory time off at not less than time and a half for employment in excess of eight hours in any one day or 40 hours in any one week.

(2) Notwithstanding the provisions of subsection (1) of this section, if a county, municipality, municipal corporation, school district or subdivision adopts a 10-hour day and a four-day week for any of its laborers, such laborers shall be allowed overtime compensation for employment in excess of 10 hours in any one day.

[Amended by 1973 c.418 §1]

279.342 Exceptions to ORS 279.340. The provisions of ORS 279.340 relating to pay for overtime shall not apply to:

(1) Labor employed in forest fire fighting.

(2) Employes of any irrigation system district actually engaged in the distribution of water for irrigation or domestic use.

(3) Fire or police protection personnel employed by any fire or police department of any municipal corporation.

(4) Employes of school districts with less than 200 children according to the latest school census or employes of county school districts operating under the provisions of ORS chapter 333.

(5) Employment less than 10 hours in any one day where labor is directly employed on a four-day work week.

[Amended by 1953 c.579 §3; 1955 c.510 §1; 1967 c.67 §1; 1973 c.460 §1]

279.344 [Repealed by 1953 c.577 §2]

279.346 [Repealed by 1953 c.577 §2]

279.348 Definitions for ORS 279.348 to 279.356. As used in ORS 279.348 to 279.356, unless the context requires otherwise:

(1) "Prevailing rate of wage" means the rate of hourly wage and overtime, including all fringe benefits under subsection (4) of this section, paid in the locality to the majority of workmen in the same trade or occupation, as determined by the Commissioner of the Bureau of Labor in cooperation with the Secretary of Labor of the United States. If there is not a majority in the same trade or occupation paid at the same rate, the average rate of hourly wage and overtime, including all fringe benefits under subsection (4) of this section, paid in the locality to workmen in the same trade or occupation shall be the prevailing rate. If the wage paid by any contractor or subcontractor to workmen on any public work is based on some period of time other than an hour, the hourly wage shall be mathematically determined by the number of hours worked in that period of time.

(2) "Locality" means the largest city and its immediate vicinity in the county or counties in which the public work is to be performed.

(3) "Public works" includes all public works of the state or of any county, city, district, authority, public corporations or entity and any of their instrumentalities organized and existing under law or charter.

(4) For the purposes of ORS 279.348 to 279.356, except as provided in subsection (5) of this section, "fringe benefits" means the amount for (a) medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; (b) unemployment benefits, life insurance, disability and sickness insurance or accident insurance; (c) vacation and holiday pay; (d) defraying costs of apprenticeship or other similar programs; or (e) other bona fide fringe benefits, of the following:

(a) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan or program; and

(b) The rate of costs to the contractor or subcontractor that reasonably may be anticipated in providing benefits to workmen pursuant to an enforceable commitment to carry out a financially responsible plan or program that was communicated in writing to the workmen affected.

(5) Notwithstanding subsection (4) of this section, an amount thereunder is a fringe benefit only if the contractor or subcontractor is not required by federal, state or local law to provide any of such benefits.

[1959 c.627 §1; 1969 c.369 §1; subsection (4) enacted as 1969 c.369 §3; subsection (5) enacted as 1969 c.369 §4]

279.350 Workmen on public works to be paid not less than prevailing rate of wage. The hourly rate of wage to be paid by any contractor or subcontractor to workmen

upon all public works shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality where such labor is performed. When a contractor or subcontractor is a party to a state-wide agreement in effect with any labor organization, the rate of wages as established in the agreement shall be considered to be the prevailing rate in the locality. ORS 279.348 to 279.356 shall not apply to workmen or other persons regularly employed on monthly or per diem salary.
[1959 c.627 §2]

279.352 Provision in contract for minimum hourly rate of wage; determination of prevailing rate of wages. (1) The specifications for every contract for the construction, reconstruction, maintenance or repair of any public work, shall contain a provision stating the minimum hourly rate of wage as determined by the Commissioner of the Bureau of Labor, not less than the prevailing rate of wage, which may be paid to workmen in each trade or occupation required for such public work employed in the performance of the contract either by the contractor or subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract, and the contract shall contain a provision that such workmen shall be paid not less than such specified minimum hourly rate of wage.

(2) On July 1 of each year the Commissioner of the Bureau of Labor shall determine the prevailing rate of wage for workmen in each trade or occupation in each locality pursuant to ORS 279.348 and make this information available. The commissioner may amend such rates at any time.
[1959 c.627 §§3, 4; 1965 c.449 §1]

279.354 Certification of rate of wage by contractor or subcontractor. Once before the first payment and each time the prevailing wage rate changes, and once before final payment is made of any sum due on account of a contract for a public work, the State Treasurer or the treasurer of the county, city, district, authority, public corporation or entity or of any of their instrumentalities organized and existing under charter or law, or other officer charged with the disbursement of funds applicable to the contract under and pursuant to which payment is made, shall require the contractor or his surety and every subcontractor or his surety to file a statement in writing in form prescribed by the State Labor Commissioner, certifying the hourly rate of wage paid each classification of workmen employed by him upon such public work, and further certifying that no workman employed by him upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract, which certificate and statement shall be verified by the oath of the contractor or his surety or subcontractor or his surety that he has read such statement and certificate and knows the contents thereof and that the same is true to his knowledge.
[1959 c.627 §5; 1967 c.207 §1]

279.355 Inspection to determine whether prevailing rate of wage being paid. (1) At any reasonable time the Commissioner of the Bureau of Labor may enter the office or business establishment of any contractor or subcontractor performing public works, and gather facts and information necessary to determine if the prevailing rate of wage is actually being paid by such contractor or subcontractor to workmen upon public works.

(2) Every contractor or subcontractor performing work on public works shall make available to the commissioner for inspection during normal business hours and, upon request made a reasonable time in advance, any payroll or other records in the possession or under the control of the contractor or subcontractor that are deemed necessary by the commissioner to determine if the prevailing rate of wage is actually being paid by such contractor or subcontractor to workmen upon public works.

(3) Notwithstanding ORS 192.005 to 192.170, any record obtained or made by the commissioner under this section shall not be open to inspection by the public.
[1969 c.369 §5]

279.356 Liability to workmen for violations. (1) Any contractor or subcontractor or his surety who violates the provisions of ORS 279.350 shall be liable to the workmen affected in the amount of their unpaid minimum wages, including all fringe benefits under subsection (4) of ORS 279.348, and in an additional amount equal to said unpaid wages as liquidated damages.

(2) Actions to enforce liability to workmen under subsection (1) of this section may be brought as actions on contractors' bonds to enforce labor liens under ORS 279.502 to 279.544.
[1959 c.627 §§6, 7; 1969 c.369 §6]

279.360 Interest of public officer or employe in certain public contracts prohibited; exception. Except as otherwise provided by law, no officer, agent or employe of the state or of any political subdivision of the state shall have any interest in any contract made by him in his official capacity or by any public committee, board, commission or department of which he is a member, agent or employe, except that the employment of the officer, agent or employe shall not be considered a contract for the purposes of this section, and except that the governing body of a city with a population of less than 5,000 may, notwithstanding the provisions of ORS 162.405 and 279.362, by unanimous vote contract for goods and services with an interested officer of the city, provided the consideration to be paid the officer for the goods and services does not exceed $500 during any fiscal year.
[1955 c.563 §1; 1963 c.136 §2; 1963 c.482 §1; 1971 c.743 §349]

279.362 When public officer or employe may contract with state or political subdivision. (1) Except as otherwise provided by Constitution or statute, including ORS 279.360, an officer, agent or employe of the state or of any political subdivision may contract with the state, any political subdivision or any agency of either for the sale and purchase of supplies, material or equipment amounting to $250 or more, or for the construction of public improvements if:

(a) He is not authorized by law to participate, on behalf of the state, the political subdivision or any agency of either, in the awarding of the contract; and

(b) The contract is made upon a competitive bid in writing, publicly invited and publicly opened; and

(c) All bids received and all documents pertaining to the award of the contract are held available for public inspection for at least three months next following the date of such award.

(2) Except as otherwise provided by Constitution or statute, including ORS 279.360, an officer, agent or employe of the state or of any political subdivision may contract with the state, any political subdivision or any agency of either for other than the sale and purchase of supplies, materials or equipment amounting to $250 or more, or for the construction of public improvements, if he is not authorized by law to participate, on behalf of the state, the political subdivision or any agency of either, in the awarding of the contract.
[1955 c.563 §2; 1959 c.414 §1]

BONDS; ACTIONS ON BOND

279.502 Definitions for ORS 279.502 to 279.544. As used in ORS 279.502 to 279.544:

(1) "Contract for which a bond is required" means a contract which calls for the supplying of labor or materials, or both, but does not include a contract where:

(a) The total contract price is $2,500 or less; or

(b) The contract calls only for supplying goods sold by the contractor in the ordinary course of his business, including the delivery of such goods, or services rendered by the contractor in the repair and maintenance of public property.

(2) "Public body" means the state, a county, city, school district, special district, municipal corporation or political subdivision of the state.
[1957 c.650 §1; 1969 c.607 §2]

279.510 Faithful performance bond for public contract. (1) For every contract for which a bond is required made with a public body, a bond with good and sufficient sureties shall be required of the contractor. The bond shall be to the effect that:

(a) The obligations of the contract, including the conditions listed in ORS 279.310 to 279.320, shall be faithfully performed;

(b) Payment shall promptly be made to all persons supplying labor or materials to the contractor or his subcontractor for prosecution of the work provided in the contract;

(c) All contributions due the Industrial Accident Fund and the State Unemployment Compensation Fund from the contractor or his subcontractor in connection with the performance of the contract shall promptly be made; and

(d) All sums required to be deducted and retained from the wages of employes of the contractor and his subcontractor pursuant to the Personal Income Tax Act of 1969, shall be paid over to the Department of Revenue.

(2) A public body may in its discretion require the contractor on a contract other than a contract for which a bond is required to provide a bond of the type referred to in subsection (1) of this section. If such a bond is actually supplied on such a contract, the

provisions of ORS 279.512 to 279.544 apply to such contract.
[Amended by 1955 c.526 §1; 1957 c.650 §2; 1965 c.26 §2; 1969 c.493 §77]

279.512 Supplying copy of contract and bond upon application. Any person on making application to the proper officer in charge of the contract referred to in ORS 279.510 and furnishing to him an affidavit as prescribed in ORS 279.515, shall receive a certified copy of the contract and bond.
[Amended by 1957 c.650 §3]

279.514 Assignment of claim or account; supplying assignee copy of contract and bond. All claims and accounts for the furnishing or supplying of labor and material, or either, to any contractor or subcontractor for the prosecution of the work provided for in the contract referred to in ORS 279.510 shall be assignable by instrument in writing and subscribed by the person furnishing or supplying such labor or material. The claim or account may be assigned either before or after the presentation of notice of claim as provided in ORS 279.526 and 279.528. Upon making application to the proper officer in charge of such contract and furnishing to him an affidavit as prescribed in ORS 279.515, the assignee shall receive a certified copy of the contract and bond.
[Amended by 1957 c.650 §4]

279.515 Affidavit of person requesting copy of contract and bond. The affidavit referred to in ORS 279.512 and 279.514 shall state that the claim has not been paid and:

(1) If in connection with a claim for labor or materials, that the applicant, or his assignor, has supplied labor or materials for the prosecution of the work provided in the contract. If the applicant is an assignee, the affidavit shall also state the fact of the assignment.

(2) If in connection with a claim other than for labor or materials, the nature of the claim.
[1957 c.650 §5]

279.516 [Repealed by 1957 c.650 §15]

279.518 [Amended by 1957 c.650 §9; renumbered 279.538]

279.520 [Amended by 1953 c.131 §3; 1955 c.526 §2; repealed by 1957 c.650 §15]

279.522 [Repealed by 1957 c.650 §15]

279.524 [Repealed by 1957 c.650 §15]

279.526 Notice of claim must be filed. (1) A person claiming to have supplied labor or materials for the prosecution of the work provided for in the contract, or an assignee of such person, or a person claiming moneys due the State Accident Insurance Fund, the State Department of Employment Trust Fund or the Department of Revenue in connection with the performance of the contract, has a right of action on the contractor's bond if he or his assignor has presented and filed a notice of claim, as prescribed in ORS 279.528, prior to the expiration of six months immediately following the acceptance of the work by the affirmative action of the public body which let the contract.

(2) Any person having direct contractual relationship with a subcontractor but no direct contractual relationship with the contractor furnishing the bond shall have a right of action on the bond only if the person also gives written notice to the contractor within 90 days from the date on which such person performed labor or furnished or supplied material with respect to the performance of the contract. The notice shall state the name of the party to whom the material was or is to be furnished or supplied or for whom the labor was or is to be done or performed. A single written notice shall suffice for a given claimant and shall be deemed to cover any labor or material supplied or furnished by the claimant after a date which is 90 days before the notice was delivered and for which he has not been paid for purposes of a right of action on the contractor's bond. The written notice shall be served on the contractor personally or by certified or registered mail, postage prepaid, in an envelope addressed to the contractor at his principal office, or at his address as posted on the job site or as given to the Secretary of State, clerk or auditor of the public body letting the contract.

(3) The requirements of subsection (2) of this section do not apply to a person claiming moneys due the State Accident Insurance Fund, the State Department of Employment Trust Fund or the Department of Revenue.
[Amended by 1953 c.131 §3; 1957 c.650 §6; 1969 c.689 §1]

279.528 Execution and contents of notice of claim; notice a public record. (1) The notice of claim required by ORS 279.526 to be filed prior to the expiration of six months immediately following the acceptance of the work by the affirmative action of the public body which let the contract shall be presented to and filed with the Secretary of State or

the clerk or auditor of the public body which let the contract.

(2) The notice shall be in writing substantially as follows:

To (here insert the name of the public body):

Notice hereby is given that the undersigned (here insert the name of the claimant) has a claim for (here insert a brief description of the labor or materials performed or furnished and the person by whom performed or furnished; if the claim is for other than labor or materials, insert a brief description of the claim) in the sum of (here insert the amount) dollars against the bond taken from (here insert the name of the principal and surety or sureties upon the bond) for the work of (here insert a brief description of the work concerning which the bond was taken).

————————(here to be signed)

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(3) The notice shall be signed by the person making the claim or giving the notice.

(4) The notice, after being presented and filed, shall be a public record open to inspection by any person.

[Amended by 1957 c.650 §7; 1969 c.689 §2]

279.530 [Amended by 1957 c.650 §10; renumbered 279.540]

279.532 [Amended by 1953 c.131 §3; 1955 c.526 §3; 1957 c.650 §11; renumbered 279.542]

279.534 [Amended by 1953 c.131 §3; 1957 c.650 §12; renumbered 279.544]

279.536 Action by claimant on contractor's bond. (1) A person who has filed or served the notice or notices of claim, as required under ORS 279.526 and 279.528, or his assignee, may institute an action on the contractor's bond in the circuit court of this state or the federal district court of this district.

(2) The action shall be on the relation of the claimant, or his assignee, as the case may be, and shall be in the name of the public body which let the contract. It may be prosecuted to final judgment and execution for the use and benefit of the claimant, or his assignee, as the fact may appear.

(3) The action must be instituted no later than two years after the acceptance of the work by the affirmative action of the public body which let the contract.

[1957 c.650 §8; 1969 c.689 §3]

279.538 Preference of labor and material liens. All labor and material liens shall have preference and be superior to all other liens and claims of whatsoever kind or nature created by ORS 279.310 to 279.318 and 279.510 to 279.536.

[Formerly 279.518]

279.540 Rights of persons furnishing medical care and attention to employes of contractor. A person furnishing or providing medical, surgical or hospital care or other needed care and attention, incident to sickness or injury, to the employes of a contractor of a contract made with a public body, or to the employes of his subcontractor, shall be deemed to have performed labor for prosecution of the work provided in the contract for the purposes of ORS 279.502 to 279.544.

[Formerly 279.530]

279.542 Joint liability where bond not executed. If the contract is one for which a bond is required and the contractor fails to pay for labor or materials or to pay claims due the State Industrial Accident Fund, the State Unemployment Compensation Trust Fund or the Department of Revenue and the officers of the public body which let the contract fail or neglect to require the person entering into the contract to execute the bond:

(1) The State of Oregon and the officers authorizing the contract shall be jointly liable for the labor and materials used in the prosecution of any work under the contract, and for claims due the State Industrial Accident Fund, the State Unemployment Compensation Trust Fund and the Department of Revenue, if the contract was entered into with the State of Oregon.

(2) The public body and the officers authorizing the contract shall be jointly liable for the labor and materials used in the prosecution of any work under the contract and for claims due the State Industrial Accident Fund, the State Unemployment Compensation Trust Fund and the Department of Revenue, if the contract was entered into on behalf of a public body other than the state.

[Formerly 279.532]

279.544 Certain commissions considered persons. For the purposes of ORS 279.502 to 279.542 the State Accident Insurance Fund, the Administrator of the Employment Division and the Department of Revenue shall each be considered a person.

[Formerly 279.534]

279.575 Partial payment on public contracts; retainage; interest; exception. (1) Partial payment shall be allowed and made on public contracts for public improvements, based upon estimates prepared and certified to by the public body. An amount equal to not more than five percent of the contract price of the work completed may be withheld as retainage. No such partial payment shall be construed as acceptance or approval of some of such work or waiver of any defects therein.

(2) Notwithstanding subsection (1) of this section:

(a) A public body may reduce the amount of the retainage on the public contract to less than five percent of the contract price of the work completed, if the resulting retainage will be not less than 200 percent of the estimated value of the work that has not been completed; or

(b) If the contractor deposits bonds and securities with the public body or in any bank or trust company in a manner authorized by the State Treasurer for the benefit of and without extra cost to the public body, to be held in lieu of the retainage, the public body shall reduce the retainage in an amount equal to the value of the bonds and securities.

(3) Bonds and securities deposited in lieu of retainages shall be of a character approved by the State Treasurer, including but not limited to:

(a) Bills, certificates, notes or bonds of the United States.

(b) Other obligations of the United States or its agencies.

(c) Obligations of any corporation wholly owned by the Federal Government.

(d) Indebtedness of the Federal National Mortgage Association.

(4) Subsections (1) and (2) of this section do not apply to a public body if the charter of the public body contains conflicting provisions.

(5) The public body shall pay to the contractor interest at the rate of one percent per month on the final payment due the contractor, interest to commence 30 days after the work under the contract has been completed and accepted and to run until the date when the final payment is tendered to the contractor. The contractor shall notify the public body when he considers the work complete and the public body shall, within 15 days after receiving the notice, either accept the work or notify the contractor of work yet to be performed on the contract. If the public body does not within the time allowed notify the contractor of work yet to be performed, the interest provided by this subsection shall commence to run 30 days after the end of the 15-day period.

(6) As used in this section:

(a) "Public body" means the state, a county, city, school district, special district, municipal corporation or political subdivision of the state.

(b) "Public contract" means a contract to perform work or to furnish material or supplies to a public body.

(c) "Retainage" means the difference between the amount earned by the contractor on a public contract and the amount paid on the contract by the public body.

[1969 c.423 §1; 1971 c.746 §1; 1973 c.384 §1]

CONTRACTS FOR PUBLIC WORK AND MATERIALS IN COUNTIES

279.610 Definitions for ORS 279.610 to 279.626. As used in ORS 279.610 to 279.626:

(1) "County" means a county of 50,000 or more population.

(2) "Court or board" means the county court or board of county commissioners.

[Amended by 1957 c.418 §1]

279.612 Bids required for contracts for work and supplies in counties of 50,000 or more population; exceptions. (1) In counties of 50,000 or more population no contract shall be entered into by the county court or by the board of county commissioners, or by any officer of such county for any public works, or the purchase of any supplies or materials, or for work to be performed, until after bids have been submitted to the court or board, upon specifications therefor.

(2) In the letting of any contract or contracts involving $5,000 or less, advertisement and competitive bidding shall be dispensed with, unless ordered by the court or board.

(3) In cases of emergency and where the interest or property of the county probably would suffer material injury by delay, or would in the discretion of the court or board be materially benefited by immediate purchase, or contract, the court or board may purchase supplies required for such immediate use, or contract for work immediately necessary, without first advertising therefor, even though such contract involves

a sum in excess of $5,000, if the declaration of such emergency is concurred in by all members of the court or board.
[Amended by 1957 c.418 §2; 1969 c.415 §1]

279.614 Specifications. The specifications required by ORS 279.612 shall be in writing and shall be filed with the county clerk or the clerk of the county court for public inspection.

279.616 Advertisement for bids. (1) An advertisement for bids, stating the date after which bids will not be received, the character of the work to be done or material or things to be purchased, and that specifications therefor may be seen at the office of the county clerk or clerk of the county court, shall be published in the county official newspaper, if there be one, and, if not, then in a newspaper of general circulation in the county interested.

(2) All advertisements for bids shall state clearly that no bid will be received or considered by the court or board or any officer of the county unless the bid contains a statement by the bidder as a part of his bid that the provisions required by subsection (4) of ORS 279.620 shall be included in his contract.

(3) The advertisement shall be published not less than one week and there shall be as many additional publications as shall be determined by the court or board. The time within which bids shall be received shall not be less than five days after the last publication.

279.618 Bids; opening of bids; bids open to public inspection. (1) All bids made to the county pursuant to ORS 279.612 and 279.616 shall be:

(a) In writing.

(b) Filed with the county clerk or the clerk of the county court.

(c) Opened in the presence of bidders on the date named therefor in the advertisement, by each public officer entitled to let contracts for the county or by the court or board.

(2) After having been opened the bids shall be filed for public inspection.
[Amended by 1971 c.659 §3]

279.620 Award of contract; faithful performance bond; covenant to pay prevailing wage. (1) The public officer entitled to let contracts for the county or the court or board, or a majority of them, shall, after opening the bids as required by ORS 279.618, award the contract to the lowest responsible bidder. "Lowest responsible bidder" means the lowest responsible bidder whose bid includes the provisions required by subsection (4) of this section.

(2) The successful bidder shall:

(a) Promptly execute a formal contract, to be approved as to its form, terms and conditions by the district attorney of the district in which the county is situated.

(b) Execute and deliver to the county clerk or the clerk of the county court a good and sufficient bond, to be approved by the county judge, in the amount of the contract price for the faithful performance of the contract.

(3) In cases of emergency, or where the interest or property of the county probably would suffer material injury by delay or other cause, the requirement of furnishing a good and sufficient bond for the faithful performance of any contract for the purchase or sale of personal property, or any interest therein, may be excused, if a declaration of such emergency is made and concurred in by all members of the court or board.

(4) The contract made pursuant to subsection (2) of this section shall include a covenant by the contractor, and his bond shall include a condition, unless the requirement of a bond is excused as provided in subsection (3) of this section, that in performing his contract the contractor will pay and cause to be paid not less than the prevailing rate of wages as of the date of his bid in such county per hour, per day and per week for and to each and every workman who may be employed in and about the performance of his contract. If the public officers who make the contract determine at any time that the prevailing rate of wages has not or is not being paid as required by the contract, they may retain from the moneys due to the contractor an amount sufficient to make up the difference between the wages actually paid and the prevailing rate of wages, and they may also cancel the contract.
[Amended by 1955 c.693 §1]

279.622 Disposition of checks accompanying bids. Upon the execution of the contract and bond by the successful bidder, the check that accompanied his bid shall be

returned to him. The bidder who has a contract awarded to him and who fails promptly and properly to execute the contract or bond shall forfeit the check that accompanied his bid. The check shall be taken and considered as liquidated damages and not as a penalty for failure of the bidder to execute the contract and bond. The checks of unsuccessful bidders may be returned to them when the bids have been opened and the contract has been awarded, and shall not be retained by the county after the contract has been duly signed.
[Amended by 1963 c.28 §1]

279.624 Interest of members of court or board in contracts and purchases prohibited. No member of the court or board shall be interested in any way, directly or indirectly, in any contract or purchase made for or on behalf of the county.

279.626 Warrants invalid unless public bidding. Any warrants drawn in pursuance of any contract for public work or the purchase of any supplies or material, unless upon public bidding therefor as required by ORS 279.610 to 279.624, shall be void and unenforceable, whether in the hands of innocent third parties or otherwise.

279.628 Source of sand, gravel and rock to be used in public work by political subdivision in counties of more than 100,000 population. Except as required by contracts existing on February 19, 1937, all sand, gravel and rock furnished to or used upon public construction or improvement work by any municipal corporation or political subdivision of this state in counties having more than 100,000 population, shall be obtained from the sources of supply owned by such municipal corporation or political subdivision, when the sand, gravel and rock are available in the kind and quality required therefor at a cost equal to or less than that of obtaining it from other sources of supply, taking into consideration the distance of hauling it from sources of supply owned by the municipal corporation or political subdivision.

STATE PURCHASING

279.710 Definitions for ORS 279.710 to 279.746. As used in ORS 279.710 to 279.746, unless the context otherwise requires:

(1) "Department" means the Department of General Services.

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

(3) "Purchase" includes acquisition of personal property by lease or rental agreement.

(4) "Services other than personal" include insurance, fidelity bonds, services (including but not limited to personal services and professional services) rendered by independent contractors with the state and utility services.
[Amended by 1957 c.660 §1]

279.711 Title to property acquired by state agency to be taken in name of state. Notwithstanding any other provisions of law to the contrary, any state agency, including the constitutional state officers and the courts, authorized by law to acquire real or personal property or interest therein, shall take title to the same in the name of the State of Oregon.
[Formerly 273.005]

279.712 Department of General Services to purchase or provide for supplies, materials, equipment and services other than personal. (1) Except as otherwise provided in subsection (2) of this section, the Department of General Services shall purchase or otherwise provide for the acquisition or furnishing of all supplies, materials, equipment and services other than personal required by state agencies, excepting the purchase of alcoholic liquor by the Oregon Liquor Control Commission, and agreements for the purchase or distribution of school textbooks by the State Board of Education.

(2) Upon request of a state agency (including the constitutional state officers and the courts), the department may purchase or otherwise provide for the furnishing to such agency of architectural or engineering professional services rendered by independent contractors with the state.
[Amended by 1957 c.660 §2; 1973 c.84 §3]

279.714 Bids required for certain purchases, contracts, sales and rentals; exceptions. (1) In so far as practicable, and except as otherwise provided by subsections (2) and

(3) of this section and ORS 279.720, 279.730, 279.738 and 279.824, all purchases of and all contracts for supplies, materials, equipment, and services other than personal, and all sales of personal property or rentals of property, shall be based on competitive bids.

(2) Competitive bids shall not be required for utility services where no competition exists or where rates are fixed by law or ordinance and shall not be required in any proposed purchase for which there is only one vendor or supplier.

(3) Competitive bids shall not be required for purchases by one state agency of goods produced or services rendered by another state agency, under an interagency agreement. For purposes of this subsection, the Legislative Assembly, the courts, and officers and committees thereof, and sheltered workshops and their marketing organization certified by the Vocational Rehabilitation Division shall be considered state agencies.
[Amended by 1969 c.349 §2; 1969 c.607 §3; 1971 c.180 §2]

279.716 Securing bids. Competitive bids may be secured formally or informally; but if a proposed purchase exceeds $2,500 in estimated amount, formal bid procedure shall be followed. Formal bids may be secured through public advertising or the circularization of mailing lists, or both. Copies of all notices of calls for bids shall be publicly posted in the office of the department reasonably in advance of the last date for receiving bids. The department shall keep lists of interested bidders for circularization and shall take other reasonable measures to assure that calls for bids are adequately advertised. All formal bids shall be sealed when submitted and received and shall be opened in public at the hour stated in the notice. In securing informal bids the department shall take reasonable measures to assure that calls for bids are adequately advertised and that prospective bidders have a reasonable opportunity to submit their bids.
[Amended by 1969 c.607 §4]

279.718 Contracts and purchases to be based on standard specifications. Contracts and purchases shall be based on the standard specifications prescribed by the department in accordance with ORS 279.740, except to the extent that the department where such procedure is impracticable, for a particular contract or purchase, may otherwise provide.

279.720 Purchases in open market; when Governor's consent required. The department may authorize supplies, materials, equipment, or services other than personal, to be purchased in the open market if competitive bids cannot be secured therefor; but if such purchases exceed $5,000 in estimated amount, the approval of the Governor is required.
[Amended by 1969 c.607 §5]

279.722 Department may require that bids be accompanied by check or bond. (1) In its discretion, the department may require that bids be accompanied either by a certified check, or by a bond in favor of the state furnished by a surety company authorized to do business in this state, in a sum not less than five percent of the total amount of the bid. However, at the time of submitting any bid, a bidder may, at his option, furnish a bond covering any and all bids submitted by him during one calendar year.

(2) Notwithstanding the provisions of ORS 293.265 or any other provision of law, when bid security is in the form of a certified check, the department may retain the check for 60 days before depositing it with the State Treasurer and, at any time within the 60-day period, the department may return to an unsuccessful bidder the check submitted by him.
[Amended by 1955 c.57 §1; 1971 c.743 §350]

279.724 Rejection of bids; effect of alterations or erasures. (1) Any or all bids may be rejected. The department may reject the bid of any bidder who has failed to perform a previous contract with the state. In any case where competitive bids are required and all bids are rejected, and the proposed purchase is not abandoned, new bids shall be called for as in the first instance, unless otherwise expressly provided by law.

(2) A bid shall be rejected if it contains any material alteration or erasure, unless, before the bid is submitted, each such alteration and erasure is initialed in ink or indelible pencil by the person signing the bid and a certificate in substantially the following form is signed by the person signing the bid and attached to the bid:

I certify that I made and initialed, before I submitted the within bid, the following alterations and erasures in the within bid: (Here set out each alteration and erasure, giving the page and line on which it is made, for example: "On line 10, page 3, '$38,000' was changed to '$28,000.' ")

(3) For the purpose of this section, where award of bids is made by items, each item shall be considered a separate bid.
[Amended by 1953 c.11 §3; 1955 c.194 §1]

279.726 Awarding contract, purchase, sale or rental. All contracts and purchases for which competitive bids are required under ORS 279.714 shall be awarded to the lowest responsible bidder taking into consideration quality, probability of performance, and, in the case of lease and rental agreements, condition and location of premises. All sales or rentals of state property for which competitive bids are required under ORS 279.714 shall be awarded to the highest responsible bidder.

279.728 Bids and other documents to be retained and open to public inspection. All original bids, together with all documents pertaining to the award of a purchase or contract shall be retained for a period of six years and made a part of a file or record which shall be open to public inspection.
[Amended by 1955 c.45 §1]

279.730 ORS 279.710 to 279.746 not applicable to advertising and letting of certain contracts. Notwithstanding anything in ORS 279.710 to 279.746 to the contrary, all contracts for the acquisition, repair, improvement, maintenance or construction of highways or highway bridges and buildings incident thereto, park improvements and ferry services by the Department of Transportation and building construction contracts of the Corrections Division, Mental Health Division, State Board of Education, State Board of Higher Education, Board of Forestry, State Wildlife Commission and Fish Commission, shall be advertised and let as now or hereafter provided by law therefor.
[Amended by 1969 c.597 §56]

279.732 Requisitions. The department shall prescribe the time, manner, authentication and form of making requisitions by state agencies for supplies, materials, equipment and services other than personal.

279.734 Agency purchase contracts and orders. Except as otherwise provided in ORS 279.712, 279.730 and 279.738, no purchase contract or order shall be valid or effective without the written approval of the department.
[Amended by 1953 c.11 §3]

279.736 Interest in contract or purchase order and rebates, gifts and other practices by officers and employes of department prohibited. (1) No officer or employe of the department shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in any contract or purchase order for any supplies, materials, equipment, or services other than personal used by or furnished to any state agency.

(2) No officer or employe of the department shall accept or receive, directly or indirectly, by rebate, gift, ,or otherwise, from any person to whom any contract or purchase order is awarded, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation.

279.738 State agency may be authorized to purchase directly; procedure. Under rules and regulations prescribed by it, the department may authorize any state agency to purchase directly, specified supplies, materials, equipment and services other than personal. In making such purchases, the authorized agency shall call for bids and proceed otherwise in like manner as required in case of purchases by the department, except that in conditions constituting an emergency, as defined by regulations of the department, purchases for immediate use may be made without calling for bids by the department or agency.

279.740 Establishing and enforcing standard specifications. The department may:

(1) Establish and enforce standards for all supplies, materials and equipment in common use by state agencies.

(2) Make or cause to be made any test, examination or analysis necessary therefor.

(3) Require the assistance of any and all officers and agencies therefor.

(4) Prepare or cause to be prepared proper and uniform specifications.

(5) Classify the requirements of the various agencies of the state government for

the purpose of the use and application of such standard specifications.

279.742 General Services Revolving Fund; advances and charges; classified list of estimated needs. (1) There is established in the General Fund an account to be known as the General Services Revolving Fund, which fund hereby is appropriated continuously for and shall be used for the purposes authorized by law. It is the legislative intent that all activities using the General Services Revolving Fund shall be self-sustaining and the department shall keep the necessary records to show the status of each activity.

(2) The cost to the Department of General Services of providing services (including labor), facilities and materials to any state agency, including itself, the cost of which is to be charged, in part or whole, to the agency or unit served pursuant to ORS 283.110, 283.120, 283.140, 283.150, 283.160 and subsection (4) of 283.230, may be advanced out of the General Services Revolving Fund. The costs advanced from the fund shall be reimbursed to the fund from the charges paid to the department by the agency or unit served.

(3) The department may purchase supplies, materials and equipment from the General Services Revolving Fund for the purpose of supplying current requirements of state agencies, the cost of which shall be reimbursed to the fund from charges paid by state agencies on the basis of actual usage. Administrative costs incurred in the operation of the General Services Revolving Fund may be paid from the fund and the amount of such costs attributable to the purposes of subsections (3) and (4) of this section shall be added to the cost of the supplies, materials and equipment as charged to the agencies supplied.

(4) At the time specified by the department, each state agency shall submit to the department a classified list of its estimated needs for supplies, materials and equipment for a period designated by the department. The department shall consolidate the estimates and, on the authority thereof, may, out of the General Services Revolving Fund, purchase either the entire amount or only a part thereof at one time.

[Amended by 1959 c.662 §1; 1965 c.365 §6; 1967 c.419 §41]

279.744 Purchase or contract by department for individual state agency. Any purchase or contract by the department for the account of any individual state agency shall be made on the basis of a requisition by the agency.

279.746 Storage facilities. (1) The department shall establish and have charge of any central storerooms and supply rooms serving more than one state agency.

(2) The department may acquire and maintain storage facilities and make such rules and regulations as are necessary for the proper and economical handling of state purchases.

279.748 Federal laws and rules govern where federal granted funds. Notwithstanding any provision in ORS 279.710 to 279.746 to the contrary, in all cases where federal granted funds are involved, the federal laws, rules and regulations applicable thereto shall govern.

279.791 State flags for display on public buildings to be purchased by department. (1) The Department of General Services shall purchase or otherwise provide for the acquisition of Oregon State flags of suitable size in sufficient quantity to meet the requirements of the state, counties and school districts under ORS 186.110. At the times specified by the department, the person or body having custody of the public building or public school building shall submit to the department its estimated needs for Oregon State flags for a period designated by the department. The department shall consolidate the estimates. Based on the consolidated estimates, the department may provide for the purchase of the entire flag requirements or only a part thereof at one time; or on the authority of the consolidated estimates, the department may, out of the revolving fund provided for in ORS 279.742, purchase the entire amount or only a part thereof at one time; and if the revolving fund is used, the person or body having custody of the public building or public school building shall requisition Oregon State flags as needed and shall pay the department the cost of such flags.

(2) The department may authorize the purchase directly by the person or body having custody of the public building or public school building of the required Oregon State flags.

[1953 c.474 §5]

279.795 State flags for Armed Forces to be purchased by Secretary of State. Upon written request and at his discretion, the

Secretary of State is authorized to purchase and furnish an Oregon State Flag to units or to individual Oregon members of the Armed Forces of the United States serving at home or abroad. The cost of furnishing such flags shall be paid out of funds appropriated or made available from other sources to the Secretary of State to carry out the purpose of this section.
[1969 c.263 §1]

SURPLUS PROPERTY; STATE AGENCY FOR SURPLUS PROPERTY

279.810 State Agency for Surplus Property; members. There is created a commission known as the State Agency for Surplus Property. The commission shall consist of the Superintendent of Public Instruction as chairman, the State Health Officer, the Chancellor of the State System of Higher Education and two members to be appointed by the Governor representing nonprofit institutions.
[Amended by 1955 c.47 §1]

279.812 Terms of office; filling vacancies. The term of office for the appointive members of the commission shall be for two years from the date of appointment. Any vacancy caused by the death or resignation of an appointive member shall be filled by the Governor to complete the unexpired term.

279.814 Meetings; quorum; executive committee. Meetings of the commission shall be held in the Capitol on call of the chairman or on request of three members of the commission. Three members shall constitute a quorum to transact business. The commission may appoint an executive committee of three members to act when it is not in session.
[Amended by 1955 c.47 §2]

279.816 Commission to advise Department of General Services. The State Agency for Surplus Property shall act solely in an advisory capacity to the Department of General Services in the matters related to the functions listed in ORS 279.820.
[Amended by 1967 c.419 §28]

279.818 Abolition and termination of commission. The Governor may abolish and terminate the State Agency for Surplus Property at any time he determines that it has served its purpose.

279.820 Powers and duties of Department of General Services with respect to surplus property; acquisition by state agencies, institutions and political subdivisions. (1) Subject to the power of the Governor to abolish the functions listed in this section when he determines that it is no longer necessary or desirable for the department to continue such functions, the Department of General Services shall have the following duties and powers:

(a) To accept and distribute surplus properties which may be available to tax-supported medical institutions, hospitals, clinics, health centers, school systems, schools, colleges and universities, to other nonprofit medical institutions, hospitals, clinics, health centers, schools, colleges and universities, to civil defense organizations, to state institutions and agencies, to political subdivisions of the state and to other organizations or institutions as are eligible under federal law to acquire surplus property, referred to in this section as eligible recipients.

(b) To provide suitable facilities which may be needed for storage.

(c) To cooperate with other state agencies for surplus property and the Federal Government, and any agencies thereof; and enter into reciprocal agreements and contracts with such other state agencies and the Federal Government with respect to the utilization and exchange of property, facilities, personnel and services of each by the other as the department may deem necessary or proper for the administration of the provisions of this section in accordance with the federal law governing the acquisition of surplus property; and expend funds in connection therewith.

(d) To adopt policies for the distribution of surplus properties to eligible recipients and to make rules and regulations necessary or proper for the administration and enforcement of the provisions of this section in accordance with the federal law governing the acquisition of surplus property.

(e) To fix charges to cover costs of acquiring, purchasing, shipping, handling, warehousing, storing and distributing surplus properties obtained by donations or purchase, subject to federal laws and rules and regulations adopted pursuant thereto and for the payment of necessary administrative expenses. All fees or charges collected or received shall be deposited in the General Services Revolving Fund.

(f) To act for eligible recipients in the procurement by sale or donation of surplus real and personal property.

(g) To cooperate with eligible recipients in locating, obtaining and warehousing surplus properties and state purchases which may be available to them by purchase or donation.

(2) The governing board or the executive head of state institutions and agencies and political subdivisions of the state, eligible under federal law to acquire surplus property, may by order or resolution confer upon any officer or employe thereof continuing authority from time to time to secure the transfer to it of surplus property through the Department of General Services in accordance with the federal law governing the acquisition of surplus property.

[Amended by 1957 c.42 §1; 1959 c.662 §15; 1961 c.128 §1]

279.822 Use of General Services Revolving Fund; cash dividends. (1) In addition to the other purposes for which the General Services Revolving Fund created by ORS 279.742 may be used, the General Services Revolving Fund hereby is appropriated continuously for and may be used for the purposes of ORS 279.820 and this section. The Secretary of State shall audit all claims approved by the Department of General Services for the purposes of ORS 279.820 and this section and shall draw his warrants on the State Treasurer for the payment thereof payable out of the General Services Revolving Fund. All moneys received under ORS 279.820 shall be paid by the department to the State Treasurer for credit to the General Services Revolving Fund.

(2) The Director of the Department of General Services, with the approval of the State Agency for Surplus Property, may distribute in the form of cash dividends accumulated surpluses in the General Services Revolving Fund that arise because the charges collected from eligible recipients are in excess of the amount necessary to keep the activities under ORS 279.810 to 279.822 on a self-sustaining basis. The cash dividends shall be paid to the eligible recipients referred to in subsection (1) of ORS 279.820. Any dividend paid pursuant to this subsection shall be based on the ratio of the charges collected from each eligible recipient during the preceding fiscal year to the total charges collected from all eligible recipients for the fiscal year immediately preceding the fiscal year in which the dividend is authorized to be paid.

(3) Upon termination by the Governor of the functions of the department under ORS 279.820, any balance remaining in the General Services Revolving Fund which is attributable to the activities under ORS 279.810 to 279.822 shall be refunded pro rata to the eligible recipients referred to in subsection (1) of ORS 279.820 upon the basis of the total charges collected from each such eligible recipient during the preceding fiscal year, unless the Director of the Department of General Services determines that the cost of making any such refund is excessive in which case the unrefunded money shall be paid to the Treasurer of the United States.

[Amended by 1957 c.42 §2; 1959 c.662 §14]

279.824 Contracts with Federal Government for accepting gifts and acquiring surplus war materials; bids not required. The Department of General Services may enter into any contract with the United States or with any agency thereof for the purpose of accepting gifts and for the acquisition of surplus war materials or property upon such terms and conditions as may be agreed upon, without regard to the provisions of ORS 279.714 and 279.716, requiring the posting of notices or public advertising for bids or the soliciting or receiving of competitive bids.

PENALTIES

279.990 Penalties. (1) Violation of ORS 279.032 is punishable, upon conviction, by a fine not exceeding $5,000 or imprisonment for not more than six months in the county jail, or both.

(2) Any contractor, subcontractor, agent or person in authority or in charge who violates any of the provisions of ORS 279.310 to 279.318, 279.338, 279.512 to 279.515 or 279.538, as to hours of employment of labor shall, upon conviction, be fined not less than $50 nor more than $1,000, or imprisoned in the county jail for not less than five days nor more than one year, or both.

(3) The provisions of ORS 291.990 apply to ORS 279.008, 279.710 to 279.746 and 279.824. Any violation of ORS 279.008, 279.710 to 279.746 or 279.824 shall, upon conviction, be punished as prescribed in ORS 291.990.

(4) Violation of ORS 279.360 is abuse of a public trust, and any officer, agent or

employe convicted thereof shall be subject to the punishment prescribed by ORS 162.405.

(5) Any contractor or subcontractor subject to ORS 279.350 who fails to pay the prevailing rate of wage as required by ORS 279.350 shall be punished, upon conviction, by a fine of not more than $1,000, or by imprisonment in the county jail for not more than six months, or both.

[Amended by 1953 c.577 §2; subsection (4) enacted as 1955 c.563 §3; 1969 c.369 §7; 1971 c.743 §351]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on November 1, 1973.

Thomas G. Clifford
Legislative Counsel