

Chapter 279

1975 REPLACEMENT PART

Public Contracts and Purchasing

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PURCHASING AND BIDS AND BIDDING IN GENERAL

279.008[Repealed by 1975 c.771 s.33]

279.010[Repealed by 1975 c.771 s.33]

279.011 General definitions. As used in chapter 771, Oregon Laws 1975:

(1) "Public contract" means any purchase, lease or sale by a public agency of personal property, public improvements or services other than agreements which are exclusively for personal service.

(2) "Public agency" or "public contracting agency" means any agency of the State of Oregon or any political subdivision thereof authorized by law to enter into public contracts.

(3) "Public improvement" means any construction of improvements on real property by or for a public agency.

(4) "Board" means the Public Contract Review Board or the local contract review board of a city or county as provided for in ORS 279.055.
[1975 c.771 s.1]

Note: The Legislative Counsel has not, pursuant to 173.160, undertaken to substitute specific ORS references for the words "this Act" in 279.011. Chapter 771, Oregon Laws 1975, enacted into law and amended the ORS sections which may be found by referring to the 1975 Comparative Section Table located following the Index in volume 6 of Oregon Revised Statutes (1975 Replacement Parts).

279.012[Repealed by 1975 c.771 s.33]

279.013 Public Contract Review Board; members' qualifications, terms, compensation and expenses; recording minutes of meetings. (1) The Public Contract Review Board shall consist of:

(a) The Secretary of State or, if the secretary so designates, the Assistant Secretary of State;

(b) The State Treasurer or, if the treasurer so designates, the Chief Deputy State Treasurer;

(c) The Attorney General or, if the Attorney General so designates, the Deputy Attorney General;

(d) The Labor Commissioner or, if the Labor Commissioner so designates, the Assistant Labor Commissioner; and

(e) Five members appointed by the Governor. The term of office of each member appointed by the Governor shall be four years. Such members shall be appointed by the Governor with terms commencing July 1, 1975. The Governor shall appoint one member who is engaged in the construction industry and who has been so engaged for at least five years prior to such appointment,

one member from a list of nominees jointly submitted by the League of Oregon Cities, the Association of Oregon Counties and the Oregon School Boards Association. Of the members first appointed, two shall be appointed for a two-year term and three shall be appointed for a four-year term. Before the expiration of the term of a member, the Governor shall appoint a successor whose term shall begin on July 1 next following. A member shall be eligible for reappointment, but no person shall be eligible to serve more than two consecutive terms. In case of a vacancy for any cause, the Governor shall appoint a person to fill the office for the remainder of the unexpired term.

(2) A member of the board who is appointed by the Governor is entitled to compensation and expenses as provided by ORS 292.495.

(3) The Governor shall appoint one of the members of the board as chairman to serve as such at the pleasure of the Governor.

(4) The board shall provide for the taking of written minutes in accordance with ORS 192.650, and shall also provide for the tape recording of all its proceedings.
[1975 c.771 s.2]

279.014[Amended by 1967 c.202 s.1; 1973 c.42 s.1; repealed by 1975 c.771 s.33]

279.015 Competitive bidding; exemptions. (1) All public contracts shall be based upon competitive bids except:

(a) Contracts made with, or the cost of which is provided by, other public agencies or the Federal Government, and

(b) A public contract exempt under subsection (2) of this section.

(2) The board may exempt certain public contracts or classes of public contracts from the requirements of subsection (1) of this section upon the following findings:

(a) It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and

(b) The awarding of public contracts pursuant to the exemption will result in substantial cost savings to the public contracting agency. In making such finding, the board may consider the type, cost, amount of the contract, number of persons available to bid and such other factors the board may deem appropriate.

(3) A public contract also may be exempted from the requirements of subsection (1) of this section if emergency conditions require prompt execution of the contract.

The board shall adopt regulations allowing the governing body of a public agency to declare that an emergency exists.

(4) In granting exemptions pursuant to paragraphs (a) and (b) of subsection (2) of this section, the board shall, where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern or innovative contracting and purchasing methods, which are also consistent with the public policy of encouraging competition.

[1975 c.771 s.3]

279.016 [Amended by 1971 c.481 s.1; repealed by 1975 c.771 s.33]

279.017 Specifications for contracts; products. (1) Specifications for public contracts shall not expressly or implicitly require any product by any brand name or mark, nor the product of any particular manufacturer or seller unless the product is exempt under subsection (2) of this section.

(2) The board may exempt certain products or classes of products from subsection (1) of this section upon any of the following findings:

(a) It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts,

(b) The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to the public agency,

(c) There is only one manufacturer or seller of the product of the quality required, or

(d) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

[1975 c.771 s.4]

279.018[Repealed by 1975 c.771 s.33]

279.019 Petition to test validity of rule. (1) Exemptions granted pursuant to subsection (2) of ORS 279.015 or subsection (2) of ORS 279.017 constitute rulemaking and not contested cases under ORS chapter 183.

(2) Any person except the public contracting agency or anyone representing it may bring a petition for a declaratory judgment to test the validity of any rule adopted under ORS 279.015 and 279.017 in the manner provided in ORS 183.400.

[1975 c.771 s.6]

279.020[Repealed by 1975 c.771 s.33]

279.021 Preferences; foreign contractor. (1) In all public contracts, the public contracting agency shall prefer goods or services that have been manufactured or produced in this state if price, fitness, availability and quality are otherwise equal.

(2) (a) Where a public contract is awarded to a foreign contractor and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the Department of Revenue the total contract price, terms of payment, length of contract and such other information as the Department of Revenue may require before final payment can be received on the public contract. The public contracting agency shall satisfy itself that the requirement of this subsection has been complied with before it issues a final payment on a public contract.

(b) For purposes of this subsection, a foreign contractor is one who is not domiciled in or registered to do business in the State of Oregon.

[1975 c.771 s.5]

279.022[Repealed by 1975 c.771 s.33]

279.023 Use of private contractors; procedure for contracts exceeding \$50,000. (1) It is the intent of the Legislative Assembly that public agencies should make every effort to construct public improvements at the least cost and to not engage in public improvement work by use of the agency's own equipment and personnel where such work can be performed at less cost by private contractors.

(2) Whenever a public agency intends to perform or construct a public improvement with its own equipment and personnel and the estimated cost exceeds \$50,000, the public agency shall:

(a) Make a determination whether the work could be performed with the equipment and personnel of the public agency at less cost than by a private contractor. The public records of the agency shall contain a written record of the determination and the reasons therefor.

(b) Prepare the plans, specifications and estimated cost of the work. The 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 completion of the work and the estimated date of completion. The estimated cost of the work shall include a reasonable allowance for the cost, including investment cost, of any equipment used.

(c) Cause to be kept and preserved a full, true and accurate account of the costs of performing the work including all engineering and administrative expenses and a reasonable estimate of the cost, including investment cost, of equipment used.
[1975 c.771 s.7]

279.024[Repealed by 1975 c.771 s.33]

279.025 Advertisement for bids. (1) An advertisement for bids, stating the date after which bids may not be received, the date that disqualification or prequalification statements must be filed under subsection (1) of ORS 279.037 or subsection (1) of ORS 279.039, the character of the work to be done or the material or things to be purchased, the office where the specifications for the work may be seen, and the person designated for receipt of bids and notices shall be published in at least one newspaper of general circulation in the area where the contract is to be performed. If the contract is for a public improvement with an estimated cost in excess of \$50,000, the name of the person designated for receipt of the bids and the notices shall be published in at least one trade newspaper of general state-wide circulation. The board may, by rule, require publication in one or more additional publications.

(2) All advertisements for bids shall state that no bid will be received or considered by the public contracting agency unless the bid contains a statement by the bidder as a part of his bid that the provisions of ORS 279.350 shall be complied with.

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

[Formerly 279.065]

279.026[Repealed by 1975 c.771 s.33]

279.027 Requirements for bids. (1) All bids made to the public contracting agency pursuant to ORS 279.015 and 279.025 shall be:

(a) In writing.

(b) Filed with the person designated for receipt of bids by the public contracting agency.

(c) Opened publicly by the public contracting agency at the time designated in the advertisement.

(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 unless the contract for which the bid is submitted has been exempted from this requirement pursuant to ORS 279.033. Such security shall not exceed 10 percent of the amount bid for the contract.

[Formerly 279.070]

279.028[Repealed by 1975 c.771 s.33]

279.029 Award of contract; bond; waiver of bond in case of emergency. (1) After the bids are opened as required by ORS 279.027, and after a determination is made that a contract is to be awarded, the public contracting agency shall award the contract to the lowest responsible bidder. "Lowest responsible bidder" means the lowest bidder who has substantially complied with all prescribed public bidding procedures and requirements and who has not been disqualified by the public contracting agency under ORS 279.037.

(2) The successful bidder shall:

(a) Promptly execute a formal contract.

(b) If the contract is for a public improvement, execute and deliver to the public contracting agency a good and sufficient bond, to be approved by the public contracting agency, in a sum equal to the contract price for the faithful performance of the contract. In lieu of a surety bond, the successful bidder may submit a cashier's check or certified check if approved by the board.

(3) In cases of emergency, or where the interest or property of the public contracting agency 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 contracting agency.

[Formerly 279.075]

279.030[Amended by 1971 c.659 s.1; repealed by 1975 c.771 s.33]

279.031 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.

[Formerly 279.080]

279.032[Repealed by 1975 c.771 s.33]

279.033 Exemption of contracts from bid security and bond. The board may exempt certain contracts or classes of contracts for public improvements from the requirement for bid security and from the requirement that a good and sufficient bond be furnished to assure performance of the contract and payment of obligations incurred in the performance; provided, however, the public contracting agency may require bid security and a good and sufficient performance and payment bond even though the contract for a public improvement is of a class exempted by the board.

[1975 c.771 s.11]

279.034[Repealed by 1975 c.771 s.33]

279.035 Rejection of bids. The public contracting agency may reject any bid not in compliance with all prescribed public bidding procedures and requirements, and may reject all bids if in the judgment of the agency it is in the public interest to do so. In any case where competitive bids are required and all bids are rejected, and the proposed contract is not abandoned, new bids may be called for as in the first instance.

[1975 c.771 s.12]

279.036[Amended by 1969 c.607 s.1; repealed by 1975 c.771 s.33]

279.037 Disqualification of bidder.

(1) A public contracting agency may disqualify any person as a bidder on a public contract if the agency finds:

(a) The person does not have sufficient financial ability to perform the contract. If a bond is required to insure performance of a contract, evidence that the person can acquire a surety bond in the amount and type required shall be sufficient to establish financial ability;

(b) The person does not have equipment available to perform the contract;

(c) The person does not have key personnel of sufficient experience to perform the contract; or

(d) The person has repeatedly breached contractual obligations to public and private contracting agencies.

(2) The public contracting agency may make such investigation as is necessary to determine whether a person is qualified. If a bidder or prospective bidder fails to supply promptly information as requested by the public contracting agency pursuant to such investigation, such failure is grounds for disqualification.

(3) Any information voluntarily submitted by a bidder or prospective bidder pursuant to an investigation under subsection (2) of this section or in a prequalification statement required by ORS 279.039 or in a prequalification request submitted pursuant to ORS 279.041 shall be deemed a trade secret pursuant to paragraphs (b) and (e) of subsection (1) of ORS 192.500 if requested by the person submitting the information.

[1975 c.771 s.13]

279.038[Repealed by 1975 c.771 s.33]

279.039 Prequalification of bidders where contract let by agency; notification.

(1) Any public contracting agency may adopt a rule requiring mandatory prequalification for all persons desiring to bid for public improvements that are to be let by the agency. The rule shall include the time for submitting prequalification statements and a general description of the type and nature of the contracts that may be let. The prequalification statement shall be in writing on a standard form prescribed by the board. No such rule shall be effective until a copy thereof has been received by the board.

(2) The public contracting agency shall within 30 days of the receipt of the prequalification statement submitted pursuant to subsection (1) of this section, notify the prospective bidder if he is qualified or not, the nature and type of contracts that he is qualified to bid on and the time period for which the prequalification is valid. If the public contracting agency disqualifies the prospective bidder as to any contracts covered by the rule, the notice shall specify which subsections of ORS 279.037 the prospective bidder failed to comply with.

(3) A person prequalified to bid under this section is conclusively deemed qualified under ORS 279.037.

(4) If a public contracting agency subsequently discovers that a person heretofore prequalified under subsections (1) and (2) of this section is no longer qualified under ORS 279.037, the agency may revoke the prequalification upon reasonable notice to the prospective bidder; provided, however, that such revocation shall be invalid as to any

contract for which an advertisement for bids has already been made under ORS 279.025.

[1975 c.771 s.14]

279.040[Repealed by 1975 c.771 s.33]

279.041 Prequalification of bidders not subject to ORS 279.039; notification; investigation. (1) On public contracts not subject to ORS 279.039, a prospective bidder may submit a request for prequalification to the public contracting agency within the time specified by the public contracting agency in the advertisement for bids as required by ORS 279.025, which time shall not be more than 45 days prior to the opening of bids. The prequalification request shall be in writing on a standard form prescribed by the board. After investigation the public contracting officer shall promptly notify the prospective bidder whether or not he is qualified to perform the contract and if not qualified what subsections of ORS 279.037 he has failed to comply with. Such notice shall be given within a reasonable time for the prospective bidder to prepare a bid.

(2) In all other cases the public contracting agency shall make such investigation of bids as it deems necessary to determine whether they are qualified under ORS 279.037. If the investigation is completed prior to the time set for opening of the bids, the public contracting agency shall notify each bidder who is not qualified to perform the contract and identify in the notice the subsections of ORS 279.037 he failed to comply with. If the investigation is not completed until after the time set for opening the bids, the public contracting agency shall notify any bidder who appears to be the lowest bidder if he is not qualified to perform the contract and identify in the notice the subsections of ORS 279.037 the bidder failed to comply with.

[1975 c.771 s.15]

279.042[Repealed by 1975 c.771 s.33]

279.043 Appeal of disqualification. Any person intending to appeal his disqualification as a bidder under ORS 279.039 or 279.041 shall, within three business days after receipt of notice of disqualification, notify the public contracting agency that he appeals the disqualification. Immediately upon receipt of such notice of appeal, the public contracting agency shall notify the board.

[1975 c.771 s.17]

279.044[Repealed by 1975 c.771 s.33]

279.045 Appeal procedure; hearing; judicial review. (1) The procedure for appeal from a disqualification by a public contracting agency under ORS 279.037 or 279.039 shall be in accordance with this section and ORS 279.043, and is not subject to the provisions of ORS chapter 183 except where specifically provided herein.

(2) Promptly upon receipt of notice of appeal from a public contracting agency as provided for in ORS 279.043, the board shall notify the person appealing and the public contracting agency of the time and place of the hearing. The board shall conduct the hearing and decide the appeal within 10 days after receiving the notification from the public contracting agency as provided in ORS 279.043 and shall set forth in writing the reasons for its decision.

(3) In the hearing the board shall consider de novo the notice of disqualification, the record of the investigation made by the public contracting agency and any evidence provided by the parties. In all other matters, the hearings shall be conducted in the same manner as a contested case under subsections (3), (4), (5), (6) and (8) of ORS 183.415, ORS 183.425, 183.440 and 183.450.

(4) The board may adopt a rule permitting the hearing to be conducted and decided by three or more members of the board. The board may determine the manner in which members are to be selected to conduct and decide the appeal.

(5) The decision of the board may be reviewed only upon a petition in the circuit court of the county in which the board has its principal office filed within 15 days of the decision of the board. The circuit court shall reverse or modify the decision of the board only if it finds:

(a) The decision was procured by corruption, fraud or undue means.

(b) There was evident partiality or corruption on the part of the board or any of its members.

(c) There was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the decision.

(6) The procedure herein provided shall be the exclusive means of judicial review of the decision of the board. The judicial review provisions of ORS 183.480 and writs of review and mandamus as provided in ORS chapter 34, and other legal, declaratory and injunctive remedies are not available.

(7) The circuit court may, in its discretion, stay the letting of the contract which is the subject of the petition in the same

manner as a suit in equity. In the event the court determines that there has been an improper disqualification and the contract has been let, the court may proceed to take evidence to determine the damages, if any, suffered by the petitioner and award such damages as the court may find as a judgment against the board.

[1975 c.771 s.18]

279.046[Repealed by 1975 c.771 s.33]

279.047 Effect of prequalification by Highway Division or Department of General Services. If a person has been prequalified pursuant to ORS 279.039 by the Highway Division of the Department of Transportation to perform contracts for the construction, maintenance, or improvement of highways or roads, or by the Department of General Services to perform contracts for the construction of other public improvements, he may submit proof of such prequalification in lieu of a prequalification statement as required by subsection (1) of ORS 279.039 or as a request for prequalification under subsection (1) of ORS 279.041. If a person submits proof of such prequalification, then he is rebuttably presumed qualified under ORS 279.037.

[1975 c.771 s.16]

279.048[Repealed by 1975 c.771 s.33]

279.049 Preparation of model rules. The Attorney General shall prepare model rules of procedure appropriate for use by all public contracting agencies governing bid procedures, advertisements, the awarding of bids, retainage, claims, liens, bid security, payment and performance bonds and other matters involving public contracts, and may devise and publish forms for use therewith. Before adopting or amending any such rule, the Attorney General shall consult with the board, the Department of General Services, the Highway Division of the Department of Transportation, representatives of county governments, representatives of city governments, representatives of school boards and other knowledgeable persons.

[1975 c.771 s.26]

279.050[Amended by 1969 c.349 s.1; 1971 c.180 s.1; repealed by 1975 c.771 s.33]

279.051 Personal services contracts; procedures; investigation by board. (1) Public agencies may enter into contracts for personal services. The provisions of this section do not relieve the agency of the duty to comply with ORS 291.021 or applicable city or county charter provisions. Each public

agency shall create procedures for the screening and selection of persons to perform personal services.

(2) The board, either upon complaint or on its own motion, may investigate the screening and selection procedures of any state agency as defined in subsection (7) of ORS 291.002. The board may, for good cause shown, order a state agency to cease and desist and to adopt and follow screening and selection procedures which may be prescribed by the board.

[1975 c.771 s.27]

279.052[Repealed by 1975 c.771 s.33]

279.053 Laws not to prohibit participation in affirmative action projects. (1) No provision contained in chapter 771, Oregon Laws 1975, shall be construed to prohibit any public contracting body from engaging in bidding and contracting practices designed to accomplish affirmative action goals for disadvantaged or minority groups.

(2) As used in this section "affirmative action" is a program designed to ensure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental handicap, by taking positive steps with respect to recruitment, hiring, advancement training, promotion and other personnel practices.

[1975 c.771 s.32]

Note: See note under 279.011.

279.054[Repealed by 1975 c.771 s.33]

279.055 Local contract review board; creation; power. Any city and any county may adopt an ordinance, and any peoples' utility district organized under ORS chapter 261 or the elected governing body of any utility authorized under ORS chapter 225 may adopt a resolution, creating its governing body as a local contract review board for that city, county or board. The local contract review board shall have all the powers of the Public Contract Review Board.

[1975 c.771 s.34(2)]

279.060[1969 c.522 s.2; repealed by 1975 c.771 s.33]

279.065[1969 c.522 s.3; 1975 c.771 s.8; renumbered 279.025]

279.070[1969 c.522 s.4; 1971 c.659 s.2; 1975 c.771 s.9; renumbered 279.027]

279.075[1969 c.522 s.5; 1975 c.771 s.10; renumbered 279.029]

279.080[1969 c.522 s.6; renumbered 279.031]

279.085[1969 c.522 s.7; repealed by 1975 c.771 s.33]

279.090[1969 c.522 s.8; repealed by 1975 c.771 s.33]

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 (1973 Replacement Part).

[Amended by 1953 c.131 s.3; 1973 c.523 s.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 s.3; 1957 c.586 s.14; 1965 c.26 s.1; 1969 c.493 s.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 s.1]

279.318 Provisions relating to environmental and natural resources laws and rules; change orders. A public contract for a public improvement shall make specific reference to federal, state and local agencies that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the contract. If the successful bidder is delayed or must undertake additional work by reason of existing regulations or ordinances of agencies not cited in the public contract or due to the enactment of new or the amendment of existing statutes, ordinances or regulations relating to the prevention of environmental pollution and the preservation of natural resources occurring after the submission of the successful bid, the awarding agency shall grant a time extension and 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 such delay or additional work.

[Amended by 1973 c.523 s.2; 1975 c.771 s.19]

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 s.687]

279.324 Definitions for ORS 279.324 to 279.332. As used in ORS 279.324 to 279.332 "labor dispute" means a labor dispute as defined in ORS 662.010.

[Amended by 1973 c.738 s.1; 1975 c.771 s.20]

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 s.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 s.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 s.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 s.5]

Note: Section 2, chapter 32, Oregon Laws 1974 s.s. provides:

Sec. 2. (1) Whenever the actual cost to a contractor for procuring any petroleum product required in the performance of a public contract increases by more than 10 percent over the price of the product paid by the contractor on the date the contract was awarded, a state agency at its option may modify the provisions of the public contract to increase the contract price so that the petroleum product cost increase is apportioned between the contracting parties in such manner as they may agree.

(2) As used in this section:

(a) "Contractor" means any person engaged in the performance of a public contract.

(b) "Petroleum product" means crude oil or any refined or unrefined derivative thereof.

(c) "State agency" means any elected or appointed officer, board, commission, department, institution, branch or other agency of the state government.

(3) When the Legislative Assembly is not in session, a state agency that seeks to modify the contract provisions of a public contract under this section must obtain approval of the Emergency Board for the proposed modification if costs incurred as a result of negotiations concerning modification of contract price will necessitate additional budgetary appropriation for a state agency.

(4) This section shall not apply to any public contract awarded after January 15, 1974.

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 s.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 s.1; 1967 c.167 s.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 s.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) Employment less than 10 hours in any one day where labor is directly employed on a four-day workweek.

[Amended by 1953 c.579 s.3; 1955 c.510 s.1; 1967 c.67 s.1; 1973 c.460 s.1; 1975 c.770 s.1]

279.344[Repealed by 1953 c.577 s.2]

279.346[Repealed by 1953 c.577 s.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 s.1; 1969 c.369 s.1; subsection (4) enacted as 1969 c.369 s.3; subsection (5) enacted as 1969 c.369 s.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 s.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 ss.3, 4; 1965 c.449 s.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 corpo-

ration 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 s.5; 1967 c.207 s.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 s.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 ss.6, 7; 1969 c. 369 s.6]

279.358 Withholding of retainage. (1) The withholding of retainage by a contractor or subcontractor on public contracts for public improvements shall be in accordance with ORS 701.420 and 701.430 except when the charter of the public agency that is a party to a public contract contains provisions requiring retainage by the public agency of more than five percent of the contract price of the work completed.

(2) As used in this section:

(a) "Public contract" means any purchase, lease or sale by a public agency of personal property, public improvements or services other than agreements which are exclusively for personal service.

(b) "Public agency" or "public contracting agency" means any agency of the State of Oregon or any political subdivision thereof authorized by law to enter into public contracts.

(c) "Public improvement" means any construction of improvements on real property by or for a public agency.

[1975 c.772 s.5]

279.360[1955 c.563 s.1; 1963 c.136 s.2; 1963 c.482 s.1; 1971 c.743 s.349; repealed by 1975 c.771 s.33]

279.362[1955 c.563 s.2; 1959 c.414 s.1; repealed by 1975 c.773 s.1]

BONDS; ACTIONS ON BOND

279.502[1957 c.650 s.1; 1969 c.607 s.2; repealed by 1975 c.771 s.33]

279.510 [Amended by 1955 c.526 s.1; 1957 c.650 s.2; 1965 c.26 s.2; 1969 c.493 s.77; repealed by 1975 c.771 s.33]

279.512[Amended by 1957 c.650 s.3; repealed by 1975 c.771 s.33]

279.514[Amended by 1957 c.650 s.4; repealed by 1975 c.771 s.33]

279.515[1957 c.650 s.5; repealed by 1975 c.771 s.33]

279.516[Repealed by 1957 c.650 s.15]

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

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

279.522[Repealed by 1957 c.650 s.15]

279.524[Repealed by 1957 c.650 s.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, including any person having direct contractual relationship with a subcontractor, 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, cashier's check or certified check as provided for in ORS 279.029 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, cashier's check or certified check shall have a right of action on the security only if the person gives written notice to the contractor prior to acceptance of the work by the affirmative action of the public body which lets the contract.

[Amended by 1953 c.131 s.3; 1957 c.650 s.6; 1969 c.689 s.1; 1975 c.771 s.21]

279.528 Execution and contents of notice of claim. (1) The notices of claim required by ORS 279.526 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)

(3) The notice shall be signed by the

person making the claim or giving the notice.

[Amended by 1957 c.650 s.7; 1969 c.689 s.2; 1975 c.771 s.22]

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

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

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

279.536 Action by claimant on contractor's bond. (1) A person who has filed and 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, cashier's check or certified check as provided for in ORS 279.029 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 s.8; 1969 c.689 s.3; 1975 c.771 s.23]

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 employees 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, cashier's check or certified check as provided for in ORS 279.029 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, cashier's check or certified check:

(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; 1975 c.771 s.23a]

279.544[Formerly 279.534; repealed by 1975 c.771 s.33]

279.575 Partial payment on public contracts; retainage; interest; exception; settlement of compensation disputes. (1) Partial payment shall be allowed and made on public contracts for public improvements based upon estimates prepared and certified to by the public contracting agency. 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 contracting agency may reduce the amount of the retainage on the public contract to less than five percent of the contract price of the work completed; or

(b) If the contractor deposits bonds and securities with the public contracting agency or in any bank or trust company in a manner authorized by the board for the benefit of and without extra cost to the public contracting agency, to be held in lieu of the retainage, the public contracting agency 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 board, 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 contracting agency if the charter of the public contracting agency contains conflicting provisions.

(5) The public contracting agency 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 contracting agency when he considers the work complete and the public contracting agency 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 contracting agency 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) The public contracting agency shall pay, upon settlement in favor of the contractor of any dispute as to the compensation due a contractor for work performed under the terms of a public contract, the amount due plus interest at the rate of six percent per annum on such amount accruing from 30 days after the date on which the claim for the payment under dispute was lawfully presented by the contractor and the work under the contract was completed and accepted by the public contracting agency.

(7) As used in this section "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 s.1; 1971 c.746 s.1; 1973 c.384 s.1; 1975 c.771 s.28; 1975 c.772 s.8]

279.610[Amended by 1957 c.418 s.1; repealed by 1975 c.771 s.33]

279.612[Amended by 1957 c.418 s.2; 1969 c.415 s.1; repealed by 1975 c.771 s.33]

279.614[Repealed by 1975 c.771 s.33]

279.616[Repealed by 1975 c.771 s.33]

279.618[Amended by 1971 c.659 s.3; repealed by 1975 c.771 s.33]

279.620[Amended by 1955 c.693 s.1; repealed by 1975 c.771 s.33]

279.622[Amended by 1963 c.28 s.1; repealed by 1975 c.771 s.33]

279.624[Repealed by 1975 c.771 s.33]

279.626[Repealed by 1975 c.771 s.33]

279.628[Repealed by 1975 c.771 s.33]

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 s.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 s.2; 1973 c.84 s.3]

279.714[Amended by 1969 c.349 s.2; 1969 c.607 s.3; 1971 c.180 s.2; repealed by 1975 c.771 s.33]

279.716[Amended by 1969 c.607 s.4; repealed by 1975 c.771 s.33]

279.718[Repealed by 1975 c.771 s.33]

279.720[Amended by 1969 c.607 s.5; repealed by 1975 c.771 s.33]

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 s.1; 1971 c.743 s.350]

279.723 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.

[Formerly 279.732]

279.724[Amended by 1953 c.11 s.3; 1955 c.194 s.1; repealed by 1975 c.771 s.33]

279.725 Agency purchase contracts and orders. Except as otherwise provided in ORS 279.712 and 279.727, no purchase

contract or order shall be valid or effective without the written approval of the department.

[Formerly 279.734]

279.726[Repealed by 1975 c.771 s.33]

279.727 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.

[Formerly 279.738]

279.728[Amended by 1955 c.45 s.1; repealed by 1975 c.771 s.33]

279.729 Establishing and enforcing specifications. (1) The department may:

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

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

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

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

(e) Classify the requirements of the various agencies of the state government for the purpose of the use and application of such standard specifications.

(2) The department shall prescribe standards and specifications for paper used by state agencies that shall require the highest percentage possible of the total of the paper purchased by the department in any fiscal year be recycled paper or paper in the same grade most nearly meeting the definition of recycled paper. The department shall make available, through its purchasing procedure, in all grades where it can be obtained, recycled paper or that paper in the same grade most nearly meeting the definition of recycled paper.

(3) As used in this section, "recycled paper" has the meaning given that term by ORS 279.731.

[Formerly 279.740]

279.730[Amended by 1969 c.597 s.56; repealed by 1975 c.771 s.33]

279.731 Definitions for ORS 279.731 to 279.739. As used in ORS 279.731 to 279.739, unless the context otherwise requires:

(1) "Post-consumer waste" means a finished material which would normally be disposed of as solid waste.

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

(a) Fifty percent of its total weight consisting of secondary waste materials; or

(b) Twenty-five percent of its total weight consisting of post-consumer waste.

(3) "Secondary waste materials" means fragments of products or finished products of a manufacturing process which has converted a virgin resource into a commodity of real economic value, and includes post-consumer waste, but does not include mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

(4) "State agency" includes the Legislative Assembly, the courts and their officers and committees and the constitutional state officers.

[1975 c.240 s.2]

279.732[Renumbered 279.723]

279.733 State agency purchasing; use of recovered resources and recycled material. All state agencies purchasing supplies, materials, equipment or personal services shall:

(1) Review their procurement specifications currently utilized in order to eliminate, wherever economically feasible, discrimination against the procurement of recovered resources or recycled materials.

(2) Provide incentives, wherever economically feasible, in all procurement specifications issued by them for the maximum possible use of recovered resources and recycled materials.

(3) Develop purchasing practices which, to the maximum extent economically feasible, assure purchase of materials which are recycled or which may be recycled or reused when discarded.

(4) Establish management practices which minimize the volume of solid waste generated by them by limiting the amount of materials consumed and discarded.

(5) Use and require persons with whom they contract to use, in the performance of the contract work, to the maximum extent economically feasible, recycled paper.

[1975 c.240 s.3]

279.734[Amended by 1953 c.11 s.3; renumbered 279.725]

279.735 Rules for recycling and reusing solid waste; exemption. (1) Notwithstanding subsection (5) of ORS 183.335 the department shall adopt rules pursuant to ORS 183.310 to 183.500 that:

(a) Establish procedures for the separation of solid waste generated by state agencies which can be recycled or reused.

(b) Establish a system for the collection of solid waste generated by state agencies which can be recycled or reused. The system shall assure that the material is made available to appropriate agencies or private industries for reuse or recycling at the greatest economic value and to the greatest extent feasible for recycling.

(2) All state agencies shall comply with the procedures and systems established pursuant to subsection (1) of this section.

(3) The Governor may exempt any single activity or facility of any state agency from compliance under this section if he determines it to be in the paramount interest of the state. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year. The Governor shall make public all exemptions together with his reasons for granting such exemptions.
[1975 c.240 s.4]

279.736[Repealed by 1975 c.771 s.33]

279.737 Guidelines and procedures to encourage paper conservation. (1) The department shall encourage paper conservation.

(2) The department shall provide guidelines to state agencies and state contractors on the availability of recycled paper and paper products, including the sources of supply and the potential uses of various grades of recycled paper.

(3) The department shall review the total paper purchases and utilization of each state agency.

(4) The department shall, in conjunction with the administrative heads of state agencies, develop procedures to eliminate excessive or unnecessary paper use, including but not limited to overpurchase of paper, overprinting of materials, purchase of too high a grade of paper, purchase of paper which is not recyclable and purchase of virgin paper when recycled paper is available in the same grade.
[1975 c.240 s.5]

279.738[Renumbered 279.727]

279.739 Preference to recycled materials. (1) Notwithstanding provisions of law

requiring a public agency to enter into contracts with the lowest responsible bidder and subject to subsection (2) of this section, any public agency charged with the purchase of materials and supplies for any public use may, in its discretion, give preference to the purchase of materials and supplies manufactured from recycled materials.

(2) A public agency may give preference to materials and supplies manufactured from recycled materials only if:

(a) The bids of the persons or manufacturing concerns supplying the recycled materials, or the prices quoted by them, do not exceed by more than five percent the lowest bid or prices quoted by persons and manufacturing concerns offering nonrecycled materials; and

(b) The public agency finds that the public good will be served thereby.

(3) As used in this section:

(a) "Public agency" means a county, city, special district, or other public and municipal corporations, and any instrumentality thereof.

(b) "Recycled material" means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.
[1975 c.240 s.6]

279.740[Amended by 1975 c.240 s.7; renumbered 279.729]

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 s.1; 1965 c.365 s.6; 1967 c.419 s.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 s.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 s.1]

SURPLUS OR EXCESS PROPERTY

279.810[Amended by 1955 c.47 s.1; repealed by 1975 c.771 s.33]

279.812[Repealed by 1975 c.771 s.33]

279.814[Amended by 1955 c.47 s.2; repealed by 1975 c.771 s.33]

279.816[Amended by 1967 c.419 s.28; repealed by 1975 c.771 s.33]

279.818[Repealed by 1975 c.771 s.33]

279.820 Powers and duties of Department of General Services with respect to surplus or excess 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 or excess 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 or excess 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 or excess 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 or excess property; and expend funds in connection therewith.

(d) To adopt policies for the distribution of surplus or excess 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 or excess property.

(e) To fix charges to cover costs of acquiring, purchasing, shipping, handling, warehousing, storing and distributing surplus or excess 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 or excess real and personal property.

(g) To cooperate with eligible recipients in locating, obtaining and warehousing surplus or excess 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 or excess 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 or excess property through the Department of General Services in accordance with the federal law governing the acquisition of surplus or excess property.

[Amended by 1957 c.42 s.1; 1959 c.662 s.15; 1961 c.128 s. 1; 1975 c.771 s.29]

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 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 279.820 and this section 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 279.820 and this section 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 s.2; 1959 c.662 s.14; 1975 c.771 s.30]

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 or excess materials or property upon such terms and conditions as may be agreed upon, without regard to the provisions of law, requiring the posting of notices or public advertising for bids or the soliciting or receiving of competitive bids.

[Amended by 1975 c.771 s.31]

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 s.2; subsection (4) enacted as 1955 c.563 s.3; 1969 c.369 s.7; 1971 c.743 s.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,
October 1, 1975.

Thomas G. Clifford
Legislative Counsel

