

# Chapter 279

## 1987 REPLACEMENT PART

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## PURCHASING AND BIDS AND BIDDING IN GENERAL

**279.008** [Repealed by 1975 c.771 §33]

**279.010** [Repealed by 1975 c.771 §33]

**279.011 Definitions for ORS 279.011 to 279.063.** As used in ORS 279.011 to 279.063:

(1) "Board" means a local contract review board created pursuant to ORS 279.055.

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

(3) "Director" means the Director of the Department of General Services.

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

(5) "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 and any public body created by intergovernmental agreement.

(6) "Public improvement" means projects for construction, reconstruction or major renovation on real property by or for a public agency. "Public improvement" does not include emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve a public improvement. [1975 c.771 §1; 1979 c 196 §1, 1979 c 869 §1a, 1981 c.54 §1, 1983 c 690 §2]

**279.012** [Repealed by 1975 c.771 §33]

**279.013** [1975 c.771 §2, 1977 c 456 §1; 1979 c 195 §1, 1981 c 466 §1, 1981 c 528 §5; 1981 c.712 §1, repealed by 1983 c 690 §28]

**279.014** [Amended by 1967 c 202 §1, 1973 c 42 §1, repealed by 1975 c 771 §33]

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

(a) Contracts made with other public agencies or the Federal Government;

(b) Contracts made with qualified nonprofit agencies providing employment opportunities for the handicapped;

(c) A public contract exempt under subsection (2) of this section;

(d) A contract for supplies, at the option of the contracting agency, may be excluded from the competitive bidding requirement if the value of the contract is less than \$2,500;

(e) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145; and

(f) Contracts for repair, maintenance, improvement or protection of property obtained by the Director of Veterans' Affairs under ORS 407.135 and 407.145 (1).

(2) The director or 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 director or board may consider the type, cost, amount of the contract, number of persons available to bid and such other factors as may be deemed appropriate.

(3) A public contract also may be exempted from the requirements of subsection (1) of this section if:

(a) Emergency conditions require prompt execution of the contract; or

(b) In case of sale of surplus property by a public agency, the number, value and nature of the items to be sold make it probable that the cost of conducting a sale by competitive bid will be such that a liquidation sale will result in substantially greater net revenue to the public agency.

(4) The director or board shall adopt rules allowing the governing body of a public agency and the officer of a public agency for contracts under \$25,000 to declare that an emergency exists and establishing procedures for determining when the conditions in paragraph (b) of subsection (3) of this section are present. The rules shall prescribe that if an emergency is declared, any contract awarded under this subsection and paragraph (a) of subsection (3) of this section must be awarded within 60 days following declaration of the emergency, unless the director or board grants an extension.

(5) In granting exemptions pursuant to paragraphs (a) and (b) of subsection (2) of this section, the director or 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 §3, 1977 c.304 §6, 1983 c.244 §1, 1983 c 590 §10, 1983 c 690 §3a, 1987 c 538 §1, 1987 c.777 §1]

**279.016** [Amended by 1971 c 481 §1, repealed by 1975 c 771 §33]

**279.017 Specifications for contracts; exemptions.** (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 director or 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 §4, 1983 c 690 §4]

**279.018** [Repealed by 1975 c 771 §33]

**279.019 Exemption procedure; appeal.**

(1) Exemptions granted by the director pursuant to ORS 279.015 (2) or 279.017 (2) constitute rulemaking and not contested cases under ORS 183.310 to 183.550. However, an exemption granted with regard to a specific contract shall be granted by order of the director, which order shall set forth findings supporting the decision of the director to grant or deny the request for exemption. Such order shall be reviewable pursuant to ORS 183.484 and shall not constitute a contested case order. Jurisdiction for review of the order shall be with the Circuit Court of Marion County. The court may award costs and attorney fees to the prevailing party.

(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 by the director under ORS 279.015 and 279.017 in the manner provided in ORS 183.400.

(3) Any person except the public contracting agency or anyone representing it may bring an action for writ of review pursuant to ORS chapter 34 to test the validity of any exemption granted pursuant to ORS 279.015, 279.017 and 279.055 by a board. [1975 c 771 §6, 1983 c 690 §5]

**279.020** [Repealed by 1975 c.771 §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 §5]

**279.022** [Repealed by 1975 c 771 §33]

**279.023 Least cost policy for public improvements; costs estimates in budget process; record of costs.** (1) It is the policy of the State of Oregon that public agencies shall make every effort to construct public improvements at the least cost to the public agency.

(2) Not less than 30 days prior to adoption of its budget for the subsequent budget period, each public agency shall prepare and file with the Commissioner of the Bureau of Labor and Industries a list of every public improvement known to the agency that the agency plans to fund in the budget period, identifying each improvement by name and estimating the total onsite construction costs. The list shall also contain a statement as to whether the agency intends to perform the construction by a private contractor. If the agency intends to perform construction work using the agency's own equipment and personnel on a project estimated to cost more than \$50,000, then the agency shall also show that its decision conforms to the policy stated in subsection (1) of this section. The list is a public record and may be revised periodically by the agency.

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

(a) If the estimated cost exceeds \$50,000, the public agency shall prepare adequate plans and specifications and the estimated unit cost of each classification of work. The estimated cost of the

work shall include a reasonable allowance for the cost, including investment cost, of any equipment used. As used in this paragraph, "adequate" means sufficient to control the performance of the work and to assure satisfactory quality of construction by the public agency personnel.

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

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

(5) For purposes of this section, resurfacing of highways, roads or streets at a depth of two or more inches and at an estimated cost that exceeds \$50,000 is a public improvement. [1975 c.771 §7; 1979 c.869 §2; 1981 c.281 §1; 1987 c.776 §2]

**279.024** [Repealed by 1975 c.771 §33]

**279.025 Requirements for advertisement for bids.** (1) An advertisement for bids shall be published at least once in at least one newspaper of general circulation in the area where the contract is to be performed and in as many additional issues and publications as the public contracting agency may determine. If the contract is for a public improvement with an estimated cost in excess of \$50,000, the advertisement for bids shall be published in at least one trade newspaper of general state-wide circulation. The director or board may, by rule, require an advertisement for bids to be published more than once or in one or more additional publications.

(2) All advertisements for bids shall state:

(a) If the contract is for a public work subject to ORS 279.348 to 279.363 or the Davis-Bacon Act (40 U.S.C. 276a), 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 its bid that the provisions of ORS 279.350 or 40 U.S.C. 276a are to be complied with;

(b) The date after which bids will not be received, which date shall be not less than five days after the date of the last publication of the advertisement;

(c) The date that prequalification applications must be filed under ORS 279.039 (1) and the class or classes of work for which bidders must be prequalified if prequalification is a requirement;

(d) The character of the work to be done or the material or things to be purchased;

(e) The office where the specifications for the work, material or things may be seen;

(f) The name and title of the person designated for receipt of bids;

(g) The date, time and place that the public contracting agency will publicly open the bids;

(h) That each bid must contain a statement as to whether the bidder is a resident bidder, as defined in ORS 279.029;

(i) That the public contracting agency may reject any bid not in compliance with all prescribed public bidding procedures and requirements, and may reject for good cause any or all bids upon a finding of the agency it is in the public interest to do so; and

(j) Whether or not a contractor or subcontractor must be licensed under ORS 468.883. [Formerly 279.065; 1977 c.289 §1; 1979 c.282 §1, 1983 c.690 §6; 1985 c.724 §1; 1987 c.741 §18; 1987 c.776 §1; 1987 c.865 §2]

**279.026** [Repealed by 1975 c.771 §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 §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.

(2) In determining the lowest responsible bidder, a public contracting agency shall, for the purpose of awarding the contract, add a percent increase on the bid of a nonresident bidder equal to the percent, if any, of the preference given to

that bidder in the state in which the bidder resides.

(3) The Department of General Services on or before January 1 of each year shall publish a list of states that give preference to in-state bidders with the percent increase applied in each such state. The public contracting agency may rely on the names of states and percentages so published in determining the lowest responsible bidder without incurring any liability to any bidder.

(4) 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 public contracting agency may permit the successful bidder to submit a cashier's check or certified check in an amount equal to 100 percent of the contract price.

(5) 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.

(6) As used in this section:

(a) "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.

(b) "Resident bidder" means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid whether the bidder is a "resident bidder" pursuant to this subsection.

(c) "Nonresident bidder" means a bidder who is not a "resident bidder" as defined by paragraph (b) of this subsection. [Formerly 279.075, 1981 c 466 §2, 1987 c 865 §1]

**279.030** [Amended by 1971 c 659 §1; repealed by 1975 c 771 §33]

**279.031 Return or retention of bid security.** Upon the execution of the contract and

bond by the successful bidder, the bid security of the successful bidder shall be returned to the bidder. The bidder who is awarded a contract and who fails promptly and properly to execute the contract or bond shall forfeit the bid security that accompanied the successful 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, 1981 c 712 §2]

**279.032** [Repealed by 1975 c 771 §33]

**279.033 Exemption of contracts from bid security and bond.** The director or board may exempt certain contracts or classes of contracts 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 is of a class exempted by the director or board. [1975 c 771 §11, 1983 c.690 §7]

**279.034** [Repealed by 1975 c 771 §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, for good cause, reject any or all bids upon a finding 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 §12, 1985 c 724 §2]

**279.036** [Amended by 1969 c 607 §1; repealed by 1975 c 771 §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 available 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 ORS 192.501 to 192.505 if requested by the person submitting the information. [1975 c.771 §13, 1977 c.289 §7]

**279.038** [Repealed by 1975 c.771 §33]

**279.039 Prequalification of bidders; notification.** (1) Any public contracting agency may adopt a rule, resolution, ordinance or other regulation requiring mandatory prequalification for all persons desiring to bid for public contracts that are to be let by the agency. The rule, resolution, ordinance or other regulation authorized by this section shall include the time for submitting prequalification applications and a general description of the type and nature of the contracts that may be let. The prequalification application shall be in writing on a standard form prescribed by the director.

(2) The public contracting agency shall within 30 days of the receipt of the prequalification application submitted pursuant to subsection (1) of this section, notify the prospective bidder if the prospective bidder is qualified or not, the nature and type of contracts that the prospective bidder 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, resolution, ordinance or other regulation, the notice shall specify which subsections of ORS 279.037 the prospective bidder failed to comply with. Unless the reasons are specified, the bidder shall be deemed to have been prequalified in accordance with the application.

(3) If a public contracting agency subsequently discovers that a person heretofore prequalified under subsections (1) and (2) of this section is no longer qualified, 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 §14; 1977 c.289 §2, 1981 c.712 §3; 1983 c.690 §8]

**279.040** [Repealed by 1975 c.771 §33]

**279.041 Application for prequalification; notification; investigation, revocation or revision.** (1) When a public contracting agency permits or requires prequalification of bidders, a person who wishes to prequalify shall submit a prequalification application to the agency on a standard form prescribed by the director. Within 30 days after receipt of a prequalification application, the public contracting officer shall investigate the prospective bidder as necessary to determine if the prospective bidder is qualified. The determination shall be made in less than 30 days, if practical, if the prospective bidder requests an early decision to allow the bidder as much time as possible to prepare a bid on a contract that has been advertised. In making its determination, the agency shall only disqualify a person in accordance with ORS 279.037. It shall promptly notify the person whether or not that person is qualified.

(2) If the agency finds that a prospective bidder is qualified, the notice shall state the nature and type of contracts that the person is qualified to bid on and the period of time for which the qualification is valid under the rule, resolution, ordinance or other regulation. If the agency disqualifies a prospective bidder as to any contracts covered by the rule, resolution, ordinance or other regulation, the notice shall specify the reasons found under ORS 279.037 for the disqualification and inform the person of the right to a hearing under ORS 279.043 and 279.045.

(3) If a public contracting agency has reasonable cause to believe that there has been a substantial change in the conditions of a prequalified person and that the person is no longer qualified or is less qualified, the agency may revoke or may revise and reissue the prequalification after reasonable notice to the prequalified person. The notice shall state the reasons found under ORS 279.037 for revocation or revision of the prequalification of the person and inform the person of the right to a hearing under ORS 279.043 and 279.045. A revocation or revision does not apply to any contract for which publication of advertisement for bids, in accordance with ORS 279.025, commenced prior to the date the notice of revocation or revision was received by the prequalified person. [1975 c.771 §15, 1977 c.289 §3; 1981 c.712 §4; 1983 c.690 §9]

**279.042** [Repealed by 1975 c.771 §33]

**279.043 Appeal of disqualification.** Any person who wishes to appeal disqualification as a bidder shall, within three business days after receipt of notice of disqualification, notify the public contracting agency that the person appeals the disqualification. Immediately upon receipt of such notice of appeal, a public contracting agency which is an agency of the State of Oregon shall notify the director. If the public contracting agency is a political subdivision of the state or a public body created by intergovernmental agreement, it shall notify the appropriate board. [1975 c 771 §17, 1977 c 289 §4; 1983 c 690 §10]

**279.044** [Repealed by 1975 c 771 §33]

**279.045 Appeal procedure; hearing; costs; judicial review.** (1) The procedure for appeal from a disqualification by a public contracting agency shall be in accordance with this section and is not subject to ORS 183.310 to 183.550 except where specifically provided by this section.

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

(3) In the hearing the director or 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 respects, hearings before the director shall be conducted in the same manner as a contested case under ORS 183.415 (3) to (6) and (9), 183.425, 183.440 and 183.450. Hearings before a board shall be conducted under rules of procedure adopted by the board.

(4) The director may allocate the director's cost for the hearing between the person appealing the disqualification and the public contracting agency whose disqualification decision is being appealed. The allocation shall be based upon facts found by the director and stated in the final order which, in the director's opinion, warrant such allocation of the costs. If the final order does not allocate the director's costs for the hearing, such costs shall be paid as follows:

(a) If the decision to disqualify a person as a bidder is upheld, the director's costs shall be paid by the person appealing the disqualification.

(b) If the decision to disqualify a person as a bidder is reversed by the director, the director's

costs shall be paid by the public contracting agency whose disqualification decision is the subject of the appeal.

(5) The decision of the director or board may be reviewed only upon a petition in the circuit court of the county in which the director or board has its principal office filed within 15 days after the date of the decision. The circuit court shall reverse or modify the decision 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 director or 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 provided in this section is the exclusive means of judicial review of the decision of the director or 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 director or board. The court may award costs and attorney fees to the prevailing party. [1975 c.771 §18, 1977 c 289 §5; 1983 c.690 §11; 1985 c 757 §6]

**279.046** [Repealed by 1975 c.771 §33]

**279.047 Effect of prequalification by Department of Transportation or General Services.** If a person is prequalified with the Department of Transportation to perform contracts, or with the Department of General Services to perform contracts, that person is rebuttably presumed qualified with any other public contracting agency for the same kind of work. When qualifying for the same kind of work with another public contracting agency, that person may submit proof of such prequalification in lieu of a prequalification application as required by ORS 279.039 (1) or as a request for prequalification under ORS 279.041 (1). [1975 c.771 §16, 1977 c.289 §6]

**279.048** [Repealed by 1975 c.771 §33]

**279.049 Model rules.** The Attorney General shall prepare and maintain 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 director, the Director of Transportation, representatives of county governments, representatives of city governments, representatives of school boards and other knowledgeable persons. [1975 c 771 §26, 1983 c 690 §12]

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

**279.051 Personal services contracts; procedures.** (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 director or board by ordinance, resolution, administrative rule or other regulation may designate certain service contracts or classes of service contracts as personal service contracts. [1975 c.771 §27, 1979 c 196 §2, 1981 c.766 §1, 1983 c 690 §13]

**279.052** [Repealed by 1975 c 771 §33]

**279.053 Laws not to prohibit participation in affirmative action projects; authority to limit bidding for affirmative action purposes.** (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) In carrying out the policy of affirmative action, by appropriate ordinance, resolution or administrative rule, a public contracting body may limit competitive bidding on any public contract for procurement of goods and services or on any other public contract estimated to cost \$50,000 or less to contracting entities owned or controlled by persons described in subsection (3) of this section.

(3) As used in this section "affirmative action" is a program designed to insure 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. [1975 c 771 §32, 1981 c.325 §4, 1985 c 724 §3]

**279.054** [Repealed by 1975 c 771 §33]

**279.055 Local contract review board; creation; power.** (1) Every county by ordinance may create a local contract review board for the county. The board so created may consist of the governing body of the county or at least three persons appointed by and serving at the pleasure of that governing body.

(2) Any other local public agency having a governing body may adopt a resolution or ordinance creating its governing body as a local contract review board for that public agency. The local public agency shall file a copy of the resolution or ordinance with the county governing body. The board created by the local public agency shall not exercise its powers under subsection (4) of this section until the resolution or ordinance has been filed pursuant to this subsection.

(3) A county board created pursuant to subsection (1) of this section shall serve as the local contract review board for local public agencies that do not create their own boards pursuant to subsection (2) of this section, and that have their principal administrative offices within the county. The county board may impose fees on local public agencies that it serves under this subsection if the ordinance creating the county board authorized such fees. The fees shall be prescribed by rule adopted under subsection (5) of this section and shall be calculated to reimburse the county for its costs in serving the local public agencies.

(4) Except as provided in ORS 279.019 (1) and (2) and the authority to prescribe the standard prequalification application forms in ORS 279.039 (1), boards created under this section shall have all the powers granted the department and director under ORS 279.011 to 279.063. The board shall exercise such powers only after it has adopted rules pursuant to the requirements of subsection (5) of this section.

(5) Each board created under this section shall have rulemaking authority to carry out the powers and duties of the board under ORS 279.011 to 279.063. The rules shall be adopted in the manner prescribed in the resolution or ordinance creating the board.

(6) A local public agency, other than a county, by resolution or ordinance may rescind its action to create a local contract review board. The rescission shall take effect on the date a copy of the resolution or ordinance is filed with the county governing body or on the date stated therein, whichever is the later date. After the date of filing or the date specified, the county board,

created pursuant to subsection (1) of this section, shall serve as the local contract review board for the public agency.

(7) Notwithstanding subsection (3) of this section, a local public agency may contract with another public agency to serve as its local contract review board with the powers and duties the local board has over contracts of its own local public agency. Notice of the contract and of its termination shall be given to the county in the same manner as notice is given to the county under subsections (2) and (6) of this section. [1975 c 771 §34(2), 1979 c 647 §1; 1979 c 804 §6; 1983 c.690 §14]

**279.056 When federal law and rules prevail over ORS 279.011 to 279.063.** Notwithstanding any provision of ORS 279.011 to 279.063, the applicable federal laws, rules and regulations shall govern in any case where federal funds are involved and the federal laws, rules and regulations conflict with any of the provisions of ORS 279.011 to 279.063 or require additional conditions in public contracts not authorized by ORS 279.011 to 279.063. [1979 c.504 §2]

**279.059 Subcontracting to disadvantaged, minority or women business enterprise; good faith effort.** (1) Whenever a public contracting agency requires a bidder to subcontract some part of the contract or obtain materials to be used in performing the contract to a business enterprise that is a certified disadvantaged, certified minority or certified women business enterprise, as defined in ORS 200.005, the agency shall award the contract, if one is awarded, to the lowest qualified bidder who has met the disadvantaged business enterprise, minority business enterprise or women business enterprise goal established by the public contracting agency or who has made a good faith effort prior to the time bids are opened to comply with the subcontracting or material supplied requirement.

(2) If a bidder has not met the disadvantaged, minority business enterprise or women business enterprise goal established by the public contracting agency, the agency shall evaluate the good faith effort of the bidder consistent with ORS 200.045. It shall be a rebuttable presumption that a bidder has made a good faith effort to comply with the requirement for subcontracting or material supply described in subsection (1) of this section if the bidder has acted consistently with the actions described in ORS 200.045. It shall be a rebuttable presumption that the bidder did not make a good faith effort if the bidder has not acted consistently with such actions. [1985 c.769 §§2, 3; 1987 c 893 §6]

**279.060** [1969 c.522 §2, repealed by 1975 c.771 §33]

**279.061 Limitation on public agency constructing public improvement.** If a public agency fails to adopt and apply a cost accounting system that substantially complies with the model cost accounting guidelines developed by the Executive Department pursuant to section 3, chapter 869, Oregon Laws 1979, as determined by an accountant qualified to perform audits required by ORS 297.210 and 297.405 to 297.555 (Municipal Audit Law), the public agency shall not construct a public improvement with its own equipment or personnel if the cost is in excess of \$5,000. [1981 c 281 §2]

**279.063 Waiver of unreasonable delay of public agency against public policy.** (1) Any clause in a public contract for a public improvement that purports to waive, release or extinguish the rights of a contractor to damages or an equitable adjustment arising out of unreasonable delay in performing the contract, if the delay is caused by acts or omissions of the public contracting agency or persons acting therefor, is against public policy and is void and unenforceable.

(2) Subsection (1) of this section is not intended to render void any contract provision that:

- (a) Requires notice of any delay;
- (b) Provides for arbitration or other procedures for settlement of contract disputes; or
- (c) Provides for reasonable liquidated damages. [1985 c.285 §2]

**279.065** [1969 c.522 §3; 1975 c.771 §8; renumbered 279 025]

**279.067 Suit by adversely affected bidder.** Any bidder adversely affected may commence a suit in the circuit court for the county in which are located the principal offices of the local contract review board or the local government agency, for the purpose of requiring compliance with, or prevention of violations of, ORS 279.011 to 279.063, or to determine the applicability of ORS 279.011 to 279.063 to matters or decisions of the board or agency. The court may order such equitable relief as it considers appropriate in the circumstances. A decision of the local contract review board or the local government agency shall not be voided if other equitable relief is available. The court may order payment of reasonable attorney fees and costs to a successful party in a suit brought under this section. [1983 c 690 §27]

**279.070** [1969 c.522 §4; 1971 c.659 §2, 1975 c 771 §9; renumbered 279 027]

**279.075** [1969 c.522 §5, 1975 c.771 §10; renumbered 279 029]

**279.080** [1969 c 522 §6, renumbered 279 031]

**279.085** [1969 c 522 §7, repealed by 1975 c 771 §33]

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

**279.095 Arrangements for use, operation, maintenance or disposition of personal property allowed.** (1) Notwithstanding the public bidding requirements of this chapter, a local public body may negotiate with one or more private or public entities to establish contracts, agreements and other cooperative arrangements for the use, operation, maintenance or ultimate lawful disposition of personal property owned by or under the control of the local public body, including property acquired under ORS 279.820. Prior to approving such a contract, agreement or cooperative arrangement, the governing body of the public body must make a finding that the contract, agreement or arrangement will promote the economic development of the public body, of the geographical area in which the public body is situated or of other public bodies that perform similar functions.

(2) For the purposes of this section, "local public body" includes any city, county, port district, school district, special district or other political subdivision or municipal or public corporation and any instrumentality thereof, and any public body created by an intergovernmental agreement to which a local public body is a party. [1987 c.777 §2]

**Note:** 279 095 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 279 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## PUBLIC CONTRACTS GENERALLY

### (Conditions)

**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 Corporation and the Department of Revenue.

(3) "Public improvement" has the meaning given that term by ORS 279.011. [Amended by 1953 c 131 §3, 1973 c 523 §1, 1983 c 740 §76]

**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 such contract.

(2) The payment of a claim in the manner authorized in this section shall not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims. [Amended by 1981 c.712 §5]

**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 279.334. [Amended by 1967 c.167 §1; 1979 c 5 §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 §2; 1975 c.771 §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 employes pursuant to any law, contract or agreement for the purpose of providing or paying for such service. [Amended by 1967 c.359 §687, 1981 c.712 §6]

### (Labor Disputes)

**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 §1, 1975 c.771 §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 §2]

**279.328 Extension and compensation when work suspended in certain cases.** If work under a contract is suspended pursuant to ORS 279.326 (1), 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]

### (Hours)

**279.334 Maximum hours of labor on public contracts; holidays; exceptions; lia-**

**bility to workers.** (1) 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 the following legal holidays:

- (a) Each Sunday.
- (b) New Year's Day on January 1.
- (c) Memorial Day on the last Monday in May.
- (d) Independence Day on July 4.
- (e) Labor Day on the first Monday in September.
- (f) Thanksgiving Day on the fourth Thursday in November.
- (g) Christmas Day on December 25.

(2) For the purpose of this section, each time a holiday, other than Sunday, listed in subsection (1) of this section falls on Sunday, the succeeding Monday shall be recognized as a legal holiday. Each time a holiday listed in subsection (1) of this section falls on Saturday, the preceding Friday shall be recognized as a legal holiday.

(3) Subsections (1) and (2) of this section do not apply to a contract for a public improvement if the contractor is a party to a collective bargaining agreement in effect with any labor organization.

(4) 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 any legal holiday specified in ORS 187.010 and 187.020 that is not listed in subsection (1) of this section.

(5) 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 the State Board of Forestry, under ORS 477.406.

(6) Any contractor or subcontractor or contractor's or subcontractor's surety who violates the provisions of subsection (1) of this section shall be liable to the employes affected in the amount of their unpaid overtime wages and in an additional amount equal to the unpaid overtime wages as liquidated damages.

(7) An action to enforce liability to workers under subsection (6) of this section may be brought as an action on the contractor's bond as provided for in ORS 279.536. [Amended by 1963 c 241 §1, 1967 c 167 §2; 1979 c 5 §2; 1981 c 281 §4, 1983 c.264 §1]

**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 worker 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 black-face 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 workers employed on the work.

(2) Maintained such circular continuously posted from the inception to the completion of the contract on which workers are or have been employed. [Amended by 1981 c.712 §7]

**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 lead persons, security personnel and timekeepers paid on monthly rate. [Amended by 1981 c.712 §8]

**279.340 Overtime for labor directly employed by local governments.** 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) Employment less than 10 hours in any one day where labor is directly employed on a four-day workweek.
- (5) Employes exempted from overtime:
  - (a) By a county, municipality, municipal corporation, school district or subdivision because of the executive, administrative, supervisory or professional nature of their employment as the nature of such employment is defined by rule of the Commissioner of the Bureau of Labor and Industries; or
  - (b) By a collective bargaining agreement expressly waiving application of ORS 279.340.

(6) Employes of a county, city, municipal corporation or other political subdivision engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, before performance of the work and pursuant to an agreement between the employer and employe or between the employer and the bargaining representative of the employes when the employes are represented under a collective bargaining agreement, a work period of 14 consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for the employe's employment in excess of eight hours in any workday and in excess of 80 hours in such 14-day period, the employe receives compensation at a rate not less than one and one-half times the rate at which the employe is employed. [Amended by 1953 c.579 §3, 1955 c.510 §1; 1967 c.67 §1, 1973 c.460 §1; 1975 c.770 §1; 1977 c.388 §1; 1981 c.361 §3, 1983 c.699 §4]

**279.344** [Repealed by 1953 c.577 §2]

**279.346** [Repealed by 1953 c.577 §2]

### (Prevailing Wage Rate)

**279.348 Definitions for ORS 279.348 to 279.363.** As used in ORS 279.348 to 279.365, unless the context requires otherwise:

(1) "Prevailing rate of wage" means the rate of hourly wage, including all fringe benefits under subsection (4) of this section, paid in the locality to the majority of workers employed on projects of similar character in the same trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries. In making such determinations, the commissioner may take into consideration findings of an appropriate federal agency which determines prevailing wages and bargaining agreements in force in the locality for particular trades or occupations. If there is not a majority in the same trade or occupation paid at the same rate, the average rate of hourly wage, including all fringe benefits under subsection (4) of this section, paid in the locality to workers in the same trade or occupation shall be the prevailing rate. If the wage paid by any contractor or subcontractor to workers 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. If it appears to the commissioner data necessary to determine the prevailing rate of wage in a locality is not available or is not sufficient, the Commissioner of the Bureau of Labor and Industries may adopt the prevailing rate of wage as determined by the Secretary of Labor of the United States.

(2) "Locality" means the following district in which the public work, or the major portion thereof, is to be performed:

- (a) District 1, composed of Clatsop, Columbia and Tillamook Counties;
- (b) District 2, composed of Clackamas, Multnomah and Washington Counties;
- (c) District 3, composed of Marion, Polk and Yamhill Counties;
- (d) District 4, composed of Benton, Lincoln and Linn Counties;
- (e) District 5, composed of Lane County;
- (f) District 6, composed of Douglas County;
- (g) District 7, composed of Coos and Curry Counties;
- (h) District 8, composed of Jackson and Josephine Counties;
- (i) District 9, composed of Hood River, Sherman and Wasco Counties;

(j) District 10, composed of Crook, Deschutes and Jefferson Counties;

(k) District 11, composed of Klamath and Lake Counties;

(L) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;

(m) District 13, composed of Baker, Union and Wallowa Counties; and

(n) District 14, composed of Harney and Malheur Counties.

(3) "Public works" includes, but is not limited to, roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on by any public agency to serve the interest of the general public.

(4) "Fringe benefits" means the amount of:

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

(b) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program which is committed in writing to the workers affected, for 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, for unemployment benefits, life insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state or local law to provide any of such benefits.

(5) "Public agency" means the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter. [1959 c.627 §1; 1969 c.369 §1; subsection (4) enacted as 1969 c.369 §3; subsection (5) enacted as 1969 c.369 §4; 1977 c.797 §1, 1979 c.282 §2; 1981 c 712 §9, 1983 c 710 §1]

**279.350 Workers on public works to be paid not less than prevailing rate of wage; posting of rates.** (1) The hourly rate of wage to be paid by any contractor or subcontractor to workers 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. The obligation of a contractor or subcontractor to pay the prevailing rate of wage may be discharged by making the payments in cash, by the making of contributions of a type referred to in ORS 279.348 (4)(a), or by the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in ORS 279.348 (4)(b), or any combination thereof, where the aggregate of any such payments, contributions and costs is not less than the prevailing rate of wage.

(2) After a contract for a public works is executed with any contractor or work is commenced upon any public works, the amount of the prevailing rate of wage shall not be subject to attack in any legal proceeding by any contractor or subcontractor in connection with that contract.

(3) It shall not be a defense in any legal proceeding that the prevailing rate of wage is less than the amount required to be in the specifications of a contract for public works, or that there was an agreement between the employe and the employer to work at less than the wage rates required to be paid under this section.

(4) Every contractor or subcontractor engaged on a project for which there is a contract for a public work shall keep the prevailing wage rates for that project posted in a conspicuous and accessible place in or about the project. Contractors and subcontractors shall be furnished copies of these wage rates by the commissioner without charge. [1959 c.627 §2; 1977 c.797 §2; 1981 c 712 §19; 1983 c 264 §2, 1983 c 710 §2]

**279.352 Provision in contract for minimum rate of wage.** The specifications for every contract for a public work shall contain a provision stating the existing prevailing rate of wage which may be paid to workers 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 workers shall be paid not less than such specified minimum hourly rate of wage. [1959 c.627 §3, 4; 1965 c.449 §1; 1977 c 797 §3; 1979 c.282 §3; 1983 c 710 §3]

**279.354 Certification of rate of wage by contractor or subcontractor.** (1) The contractor or the contractor's surety and every subcontractor or the subcontractor's surety shall file certified statements with the public contracting agency in writing in form prescribed by the Com-

missioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the contractor or the subcontractor has employed upon such public work, and further certifying that no worker employed 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 the contractor's surety or subcontractor or the subcontractor's surety that the contractor or subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to the contractor or subcontractor's knowledge. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid.

(2) Each certified statement required by subsection (1) of this section shall be delivered or mailed by the contractor or subcontractor to the public contracting agency. A true copy of the certified statements shall also be filed at the same time with the Commissioner of the Bureau of Labor and Industries. Certified statements shall be submitted as follows:

(a) For any project 90 days or less from the date of award of the contract to the date of completion of work under the contract, the statements shall be submitted once before the first payment and once before final payment is made of any sum due on account of a contract for a public work.

(b) For any project exceeding 90 days from the date of award of the contract to the date of completion of work under the contract, the statements shall be submitted once before the first payment is made, at 90-day intervals thereafter, and once before final payment is made of any sum due on account of a contract for a public work.

(3) Each contractor or subcontractor shall preserve the certified statements for a period of three years from the date of completion of the contract. [1959 c.627 §5; 1967 c.207 §1; 1977 c.797 §4; 1981 c.712 §12; 1983 c.710 §4]

**279.355 Inspection to determine whether prevailing rate of wage being paid; proceedings to require payment of prevailing rate or overtime.** (1) At any reasonable time the Commissioner of the Bureau of Labor and Industries 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 workers 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 workers upon public works.

(3) Notwithstanding ORS 192.410 to 192.505, any record obtained or made by the commissioner under this section shall not be open to inspection by the public.

(4) The Commissioner of the Bureau of Labor and Industries may, without necessity of an assignment, initiate legal proceedings against employers to enjoin future failures to pay required prevailing wages or overtime pay and to require the payment of prevailing wages or overtime pay due employees. The commissioner is entitled to recover, in addition to other costs, such sum as the court or judge may adjudge reasonable as attorney fees. If the commissioner does not prevail in such action, the commissioner shall pay all costs and disbursements from the Bureau of Labor and Industries Account. [1969 c.369 §5; 1981 c.712 §13]

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

(2) Actions to enforce liability to workers under subsection (1) of this section may be brought as actions on contractors' bonds as provided for in ORS 279.536.

(3) If the public agency fails to include the provision required by ORS 279.352 in a public works contract, the liability for unpaid minimum wages, as described in subsection (1) of this section, shall be exclusively that of the public contracting agency. The Commissioner of the Bureau of Labor and Industries may enforce the provisions of this subsection by a civil action under ORS 279.355 (4), by a civil action on an assigned wage claim under ORS 652.330, or by an

administrative proceeding on an assigned wage claim under ORS 652.332. [1959 c.627 §§6, 7; 1969 c.369 §6; 1981 c.712 §14, 1983 c.264 §4, 1983 c.711 §3]

**279.357 Exemptions.** (1) ORS 279.348 to 279.365 do not apply to:

(a) Projects for which the contract price does not exceed \$10,000.

(b) Projects regulated under the Davis-Bacon Act (40 U.S.C. 276a). Notwithstanding such regulation, contractors and subcontractors shall pay individuals employed as flaggers on such projects not less than the prevailing rate of wage as determined by the Commissioner of the Bureau of Labor and Industries for that classification of work.

(2) As used in this section, a "flagger" means a person who controls the movement of vehicular traffic through construction projects using sign, hand or flag signals. [1977 c.797 §8; 1981 c.712 §15; 1983 c.710 §5; 1985 c.766 §1]

**Note:** 279.357 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 279 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**279.358** [1975 c.772 §5, renumbered 279.400]

**279.359 Determination of prevailing rate of wage; providing commissioner with information.** (1) The Commissioner of the Bureau of Labor and Industries shall determine the prevailing rate of wage for workers in each trade or occupation in each locality under ORS 279.348 at least once each year and make this information available. The commissioner may amend the rate at any time.

(2) A person shall make such reports and returns to the Bureau of Labor and Industries as the commissioner may require to determine the prevailing rates of wage. The reports and returns shall be made upon forms furnished by the bureau and within the time prescribed therefor by the commissioner. The person or an authorized representative of the person shall certify to the accuracy of the reports and returns.

(3) Notwithstanding ORS 192.410 to 192.505, all information or records provided to the commissioner under this section are confidential and not available for inspection by the public.

(4) As used in this section, "person" includes any employer, labor organization or any official representative of an employe or employer association. [1977 c.797 §7; 1983 c.710 §6]

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

**279.361 Ineligibility for public contracts for failure to pay or post prevailing rate of wage; payroll reports to commissioner.** (1) When the Commissioner of the Bureau of Labor and Industries, in accordance with the provisions of ORS 183.310 to 183.550, determines that a contractor or subcontractor has intentionally failed or refused to pay the prevailing rate of wage to workers employed upon public works, or has intentionally failed or refused to post the prevailing wage rates as required by ORS 279.350 (4), the contractor, subcontractor or any firm, corporation, partnership or association in which the contractor or subcontractor has a financial interest shall be ineligible for a period not to exceed three years from the date of publication of the name of the contractor or subcontractor on the ineligible list as provided in this section to receive any contract or subcontract for public works. The commissioner shall maintain a written list of the names of those contractors and subcontractors determined to be ineligible under this section and the period of time for which they are ineligible. A copy of the list shall be published, furnished upon request and made available to contracting agencies.

(2) When the contractor or subcontractor is a corporation, the provisions of subsection (1) of this section shall apply to any corporate officer or corporate agent who is responsible for the failure or refusal to pay or post the prevailing rate of wage.

(3) For good cause shown, the Commissioner of the Bureau of Labor and Industries may direct the removal of the name of that contractor or subcontractor from the ineligible list.

(4) To assist the Commissioner of the Bureau of Labor and Industries in determining if the contractor or subcontractor is paying the prevailing rate of wage, when a prevailing wage rate claim is filed, a contractor or subcontractor required to pay the prevailing rate of wage to workers employed upon public works under ORS chapter 279 shall send a certified copy of the payroll for those workers when the commissioner requests the certified copy. [1977 c.797 §6, 1983 c.710 §7]

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

**279.363 Notifying commissioner of contract.** Public contracting agencies shall notify the Commissioner of the Bureau of Labor and Industries in writing, on a form prescribed by the commissioner, whenever a contract subject to the provisions of ORS 279.348 to 279.365 has

been awarded. This notification shall be made within 30 days of the date that such contract is awarded. [1981 c 712 §11]

**279.365 Civil action to enforce payment of prevailing wage.** (1) The Commissioner of the Bureau of Labor and Industries or any other person may bring a civil action in any court of competent jurisdiction to require a public agency under a public contract with a contractor to withhold twice the wages in dispute if it is shown that the contractor or subcontractor on the contract has intentionally failed or refused to pay the prevailing rate of wage to workers employed on that contract and to require the contractor to pay the prevailing rate of wage and any deficiencies that can be shown to exist because of improper wage payments already made. In addition to other relief, the court may also enjoin any such contractor or subcontractor from committing future violations. The contractor or subcontractor involved shall be named as a party in all civil actions brought under this section. In addition to other costs, the court may award the prevailing party a reasonable attorney fee at the trial and on appeal. However, no attorney fee may be awarded against the Commissioner of the Bureau of Labor and Industries under this section.

(2) The court shall require any party, other than the Commissioner of the Bureau of Labor and Industries, that brings a civil action under this section to post a bond sufficient to cover the estimated attorney fees and costs to the public agency and to the contractor or subcontractor of any temporary restraining order, preliminary injunction or permanent injunction awarded in the action, in the event that the party bringing the action does not ultimately prevail.

(3) In addition to any other relief, the court in a civil action brought under this section may enjoin the public agency from contracting with the contractor or subcontractor if the court finds that the Commissioner of the Bureau of Labor and Industries would be entitled to place the contractor or subcontractor on the ineligible list established under ORS 279.361 (1). If the court issues such an injunction, the commissioner shall place the contractor or subcontractor on the list for a period of three years, subject to the provision of ORS 279.361 (2).

(4) "Public agency" has the meaning given the term in ORS 279.011. [1983 c 711 §2]

#### (Retainage)

**279.400 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 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. [Formerly 279.358, 1979 c 196 §3]

**279.410 "Retainage" defined for ORS 279.011 to 279.575.** As used in ORS 279.011 to 279.575, unless the context otherwise requires, "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 contracting agency. [1977 c.727 §3]

**279.420 Form of retainage.** (1) Money retained by a public contracting agency under ORS 279.575 (2) shall be:

(a) Retained in a fund by the public contracting agency and paid to the contractor in accordance with ORS 279.575; or

(b) At the option of the contractor, paid to the contractor in accordance with subsection (3) or (4) of this section and in a manner authorized by the Director of the Department of General Services.

(2) If the public agency incurs additional costs as a result of the exercise of the options described in subsection (1) of this section, the agency may recover such costs from the contractor by reduction of the final payment. As work on the contract progresses, the agency shall, upon demand, inform the contractor of all accrued costs.

(3) The contractor may deposit bonds or securities with the public contracting agency or in any bank or trust company to be held in lieu of the cash retainage for the benefit of the public contracting agency. In such event the public agency shall reduce the retainage in an amount equal to the value of the bonds and securities and pay the amount of the reduction to the contractor in accordance with ORS 279.575. Interest on such bonds or securities shall accrue to the contractor.

(4) If the contractor elects, the retainage as accumulated shall be deposited by the public contracting agency in an interest-bearing account in a bank, savings bank, trust company or savings association for the benefit of the public contracting agency. Interest earned on such an account shall accrue to the contractor.

(5) Bonds and securities deposited or acquired in lieu of retainage, as permitted by this section, shall be of a character approved by the Director of the Department of General Services, 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. [1977 c.727 §4; 1983 c.690 §15]

**279.430 Limitation on retainage requirements.** Unless otherwise specifically included by statute, the provisions of ORS 279.420 or 279.575 shall only apply as between the public contracting agency and the party with whom it contracts. [1977 c.727 §5]

### BONDS; ACTIONS ON BOND

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

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

**279.512** [Amended by 1957 c 650 §3, repealed by 1975 c.771 §33]

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

**279.515** [1957 c.650 §5, repealed by 1975 c.771 §33]

**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 Right of action against bond of contractor or subcontractor; notice of claim.** 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 the contractor furnishing the bond or direct contractual relationship with any subcontractor, or an assignee of such person, or a person claiming

moneys due the State Accident Insurance Fund Corporation, 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 only if:

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

(2) The person gives written notice of claim, as prescribed in ORS 279.528, to the contractor and the Secretary of State, if the contract is with a state agency, or the clerk or auditor of the public body which let the contract if the public body is other than a state agency. [Amended by 1953 c.131 §3; 1957 c 650 §6; 1969 c 689 §1, 1975 c.771 §21; 1981 c.712 §16; 1983 c.264 §3, 1985 c 526 §1]

**279.528 Notice of claim.** (1) The notice of claim required by ORS 279.526 shall be sent by registered or certified mail or hand delivered no later than 120 days after the day the person last provided labor or furnished materials. The notice may be sent or delivered to the contractor at any place the contractor maintains an office, conducts business or at the residence of the contractor.

(2) Notwithstanding subsection (1) of this section, if the claim is for a required contribution to a fund of any employee benefit plan, the notice required by ORS 279.526 shall be sent or delivered within 150 days after the employee last provided labor or materials.

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

To (here insert Secretary of State or the name of the public body and contractor):

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, if known, the surety or sureties upon the bond) for the work of (here insert a brief description of the work concerning which the bond was taken). Such material or labor was supplied to (here insert the name of the contractor or subcontractor).

----- (here to be signed)

(4) The notice shall be signed by the person making the claim or giving the notice. [Amended by 1957 c.650 §7, 1969 c.689 §2; 1975 c 771 §22; 1985 c 526 §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; limitation.** (1) A person who has a right of action on the bond pursuant to ORS 279.526 and, where required, who has filed and served the notice or notices of claim, as required under ORS 279.526 and 279.528, or that person's 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 that person's 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 that person's assignee, as the fact may appear.

(3) The action must be instituted no later than the expiration of two years after the person last provided labor or materials. [1957 c 650 §8, 1969 c 689 §3, 1975 c.771 §23; 1981 c.712 §17, 1985 c.526 §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 279.526 to 279.542. [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 the subcontractor, shall be deemed to have performed labor for prosecution of the work provided in the contract for the purposes of ORS 279.526 to 279.542. [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 §23a]

**279.544** [Formerly 279.534, repealed by 1975 c.771 §33]

### (Payments)

**279.575 Progress payments on public contracts; retainage; interest; exception; settlement of compensation disputes.** (1) Public contracting agencies shall make progress payments on the contract monthly as work progresses on a public contract for a public improvement. Payments shall be based upon estimates of work completed that are approved by the public contracting agency. A progress payment shall not be considered acceptance or approval of any work or waiver of any defects therein. The public contracting agency shall pay to the contractor interest at the rate of one and one-half percent per month on the progress payment, not including retainage, due the contractor. The interest shall commence 30 days after the request for payment is made by the contractor or 15 days after the payment is approved by the agency, whichever is the earlier date.

(2) A public contracting agency may reserve as retainage from any progress payment on a public contract an amount not to exceed five percent of the payment. As work progresses, an agency may reduce the amount of the retainage and the agency may eliminate retainage on any remaining monthly contract payments after 50 percent of the work under the contract is completed if, in the agency's opinion, such work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon

written application by the contractor, which application shall include written approval of the contractor's surety; except that when the contract work is 97-1/2 percent completed the agency may, at its discretion and without application by the contractor, reduce the retained amount to 100 percent of the value of the contract work remaining to be done.

(3) The retainage held by a public contracting agency shall be included in and paid to the contractor as part of the final payment of the contract price. The public contracting agency shall pay to the contractor interest at the rate of one and one-half 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 in writing when the contractor considers the work complete and the public contracting agency shall, within 15 days after receiving the written 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 to fulfill contractual obligations, the interest provided by this subsection shall commence to run 30 days after the end of the 15-day period.

(4)(a) The public contracting agency shall pay, upon settlement or judgment in favor of the contractor regarding 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 two times the federal discount interest rate as established by the Twelfth Federal Reserve Bank at the time of settlement or judgment but not to exceed 18 percent, accruing from the later of:

(A) The due date of any progress payment received under the contract for the period in which such work was performed; or

(B) Thirty days after the date on which the claim for the payment under dispute was presented to the public contracting agency by the contractor in writing or in accordance with applicable provisions of the contract.

(b) Such interest shall be added to and not made a part of the settlement or judgment. [1969 c.423 §1; 1971 c.746 §1; 1973 c.384 §1; 1975 c.771 §28, 1975 c.772 §8; 1977 c.727 §1; 1979 c.406 §3; 1981 c.712 §18, 1985 c.435 §1]

**279.610** [Amended by 1957 c.418 §1, repealed by 1975 c.771 §33]

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

**279.614** [Repealed by 1975 c.771 §33]

**279.616** [Repealed by 1975 c.771 §33]

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

**279.620** [Amended by 1955 c.693 §1, repealed by 1975 c.771 §33]

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

**279.624** [Repealed by 1975 c.771 §33]

**279.626** [Repealed by 1975 c.771 §33]

**279.628** [Repealed by 1975 c.771 §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, public improvement projects, 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, 1977 c.598 §30]

**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 for state agencies; approval of professional and personal services; exemptions.** (1) 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.

(2) The department shall approve all professional and personal services contracts of agencies for architectural, engineering, and related services before any such contract becomes binding and before any service may be performed under the contract.

(3) Subsections (1) and (2) of this section do not apply to:

(a) Purchases of alcoholic liquor by the Oregon Liquor Control Commission;

(b) Agreements entered into by the Department of Education for the purchase or distribution of textbooks;

(c) Personal service and public improvement contracts of the Department of Transportation relating to maintenance or construction of highways, bridges, parks or other transportation facilities;

(d) Personal service and public improvement contracts of the Department of Higher Education relating to instructional, research, student union, athletic and recreational facilities;

(e) Personal service and public improvement contracts of the State Department of Fish and Wildlife for dams, fishways, ponds and related fish and game propagation facilities;

(f) Personal and professional service contracts subject to review by the Executive Department as provided in ORS 291.021; and

(g) Insurance and service contracts to provide medical assistance as provided for under ORS 414.115, 414.125, 414.135 and 414.145. [Amended by 1957 c 660 §2, 1973 c 84 §3, 1977 c 598 §31, 1983 c.590 §11]

**279.714** [Amended by 1969 c 349 §2, 1969 c 607 §3, 1971 c.180 §2, repealed by 1975 c 771 §33]

**279.716** [Amended by 1969 c 607 §4; repealed by 1975 c 771 §33]

**279.717 Securing bids.** (1) The Department of General Services may secure competitive bids formally or informally. Formal bids may be secured through public advertising or the circularization of mailing lists or both.

(2) The department shall:

(a) Keep lists of interested bidders for circularization.

(b) Post in its office reasonably in advance of the last date for receiving bids copies of all notices of calls for bids.

(c) Take reasonable measures in securing informal bids to assure that calls for bids are adequately advertised and that prospective bid-

ders have a reasonable opportunity to submit their bids.

(d) Take other reasonable measures to assure that calls for bids are adequately advertised. [1977 c 314 §2]

**279.718** [Repealed by 1975 c 771 §33]

**279.720** [Amended by 1969 c 607 §5, repealed by 1975 c.771 §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 the option of the bidder, furnish a bond covering any and all bids submitted 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 shall deposit such a check in the General Services Operating Account, established under ORS 283.075. However, the department shall return the appropriate bid security held to an unsuccessful bidder in a timely manner and pursuant to the provisions of ORS 279.031. [Amended by 1955 c 57 s 1, 1971 c 743 §350; 1981 c.106 §3]

**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 §3, 1955 c 194 §1, repealed by 1975 c 771 §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 §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 §1; repealed by 1975 c.771 §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 §56, repealed by 1975 c.771 §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 §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 §3]

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

**279.735 Rules for recycling and reusing solid waste; exemption.** (1) Notwithstanding ORS 183.335 (5) the department shall adopt rules pursuant to ORS 183.310 to 183.550 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 the Governor 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 the reasons for granting such exemptions. [1975 c.240 §4]

**279.736** [Repealed by 1975 c.771 §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 §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 §6]

**279.740** [Amended by 1975 c.240 §7, renumbered 279 729]

**279.742 Purchase of supplies, materials and equipment for supply of state agencies from General Services Operating Account; classified list of estimated needs.**

(1) The department may purchase supplies, materials and equipment from the General Services Operating Account for the purpose of supplying requirements of state agencies, the cost of which shall be reimbursed to the account from charges paid by state agencies on the basis of actual usage. Administrative costs incurred in the operation of the General Services Operating Account may be paid from the account and the amount of such costs shall be added to the cost of the services, supplies, materials and equipment as charged to the agencies supplied.

(2) 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 Operating Account, 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, 1977 c.91 §1; 1981 c.106 §1]

**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 operating account provided for in ORS 283.075, purchase the entire amount or only a part thereof at one time; and if the operating account 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; 1981 c 106 §14]

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

**279.810** [Amended by 1955 c 47 §1, repealed by 1975 c 771 §33]

**279.812** [Repealed by 1975 c.771 §33]

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

**279.816** [Amended by 1967 c 419 §28, repealed by 1975 c.771 §33]

**279.818** [Repealed by 1975 c 771 §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 the Governor 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 Operating Account.

(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 §1; 1959 c.662 §15; 1961 c.128 §1; 1975 c.771 §29]

**279.822 Use of General Services Operating Account; cash dividends.** (1) In addition to the other purposes for which the General Services Operating Account created by ORS 283.075 may be used, the General Services Operating Account hereby is appropriated continuously for and may be used for the purposes of ORS 279.820 and this section. All claims approved by the Department of General Services for the purposes of ORS 279.820 and this section shall be paid as provided in ORS 293.295 to 293.462. The Executive Department shall draw warrants on the State Treasurer for the payment thereof payable out of the General Services Operating Account. All moneys received under ORS 279.820 shall be paid by the department to the State Treasurer for credit to the General Services Operating Account.

(2) The Director of the Department of General Services may distribute in the form of cash dividends accumulated surpluses in the General Services Operating Account 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 ORS 279.820 (1). 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 Operating Account which is attributable to the activities under ORS 279.820 and this section shall be refunded pro rata to the eligible recip-

ients referred to in ORS 279.820 (1) 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 unfunded money shall be paid to the Treasurer of the United States. [Amended by 1957 c.42 §2; 1959 c.662 §14; 1975 c.771 §30, 1981 c.106 §15; 1983 c.740 §77]

**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 §31]

## PRODUCTS OF THE HANDICAPPED

**279.835 Definitions for ORS 279.835 to 279.855.** As used in ORS 279.835 to 279.855:

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

(2) "Handicapped individual" means a disabled individual who, because of the nature of disabilities, is not able to participate fully in competitive employment, and for whom specialized employment opportunities must be provided.

(3) "Public agency" or "public contracting agency" has the same meaning contained in ORS 279.011.

(4) "Qualified nonprofit agency for handicapped" means a nonprofit activity center or sheltered workshop:

(a) Organized under the laws of the United States or of this state and operated in the interest of handicapped individuals, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(b) Which complies with any applicable occupational health and safety standard required by the laws of the United States or of this state; and

(c) Which in the manufacture of products and in the provision of services, whether or not the products or services are procured under ORS 279.015 and 279.835 to 279.855, during the fiscal year employs handicapped individuals for not less than 75 percent of the man-hours of direct labor

required for the manufacture or provision of the products or services.

(5) "Direct labor" includes all work required for preparation, processing and packing, but not supervision, administration, inspection and shipping. [1977 c 304 §3, 1983 c.690 §17]

**279.840 Policy.** The purpose of ORS 279.015 and 279.835 to 279.855 is to further the policy of this state to encourage and assist handicapped individuals to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for sheltered workshop and activity center products and services, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on welfare and need for costly institutionalization. [1977 c 304 §2]

**279.845 Department of General Services to determine and revise prices for products and services of nonprofit agency for handicapped; department to publish sources of products and services.** (1) It shall be the duty of the department to:

(a) Determine the price of all products manufactured and services offered for sale to the various public agencies by any qualified nonprofit agency for the handicapped. The price shall recover for the workshops the cost of raw materials, labor, overhead, delivery costs and a margin held in reserve for inventory and equipment replacement;

(b) To revise such prices from time to time in accordance with changing cost factors; and

(c) To make such rules regarding specifications, time of delivery and other relevant matters of procedure as shall be necessary to carry out the purposes of ORS 279.015 and 279.835 to 279.855.

(2) The department shall establish and publish a list of sources or potential sources of products produced by any qualified nonprofit agency for the handicapped and the services provided by any such agency, which the department determines are suitable for procurement by public agencies pursuant to ORS 279.015 and 279.835 to 279.855. This procurement list and revisions thereof shall be distributed to all public purchasing officers. [1977 c.304 §4]

**279.850 Procurement of product or service; department authorized to make agreements for procurement.** (1) If any public agency intends to procure any product or service on the procurement list, that agency shall, in accordance with rules of the department, pro-

cure such product or service, at the price established by the department, from a qualified nonprofit agency for the handicapped provided the product or service is of the appropriate specifications and is available within the period required by that public agency.

(2) In furthering the purposes of ORS 279.015 and 279.835 to 279.855, it is the intent of the Legislative Assembly that there be close cooperation between the department, public contracting agencies and qualified nonprofit agencies for the handicapped. The department on behalf of public contracting agencies and qualified nonprofit agencies for the handicapped is authorized to enter into such contractual agreements, cooperative working relationships or other arrangements as may be determined to be necessary for effective coordination and efficient realization of the objectives of ORS 279.015 and 279.835 to 279.855 and any other law requiring procurement of products or services. [1977 c 304 §5]

**279.855 Qualified nonprofit agencies may obtain goods and services through department.** Qualified nonprofit agencies for the handicapped participating in the program set forth in ORS 279.015 and 279.835 to 279.850 may purchase equipment, materials, supplies and services through the department in the same manner as state agencies as provided in ORS 279.710 to 279.746 and 279.820 to 279.824. [1977 c 304 §7]

## PENALTIES

**279.990 Penalties.** (1) 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 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.

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

(3) 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) (1979 Replacement Part) enacted as 1955 c 563 §3; 1969 c 369 §7; 1971 c 743 §351]

