

Chapter 279

1993 EDITION

Public Contracts and Purchasing

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PURCHASING AND BIDS AND BIDDING IN GENERAL

279.005 Policy of competition in public contracts. (1) It is the policy of the State of Oregon to encourage public contracting competition that supports openness and impartiality to the maximum extent possible.

(2) The Legislative Assembly finds that:

(a) Competition exists not only in prices, but in the technical competence of suppliers, in their ability to make timely deliveries and in the quality and performance of their products and services and that a balance must exist between performance competition and price competition;

(b) The nature of effective competition varies with the product or service being procured and that while competitive sealed bids are a common method of procurement, it is not always the most advantageous or practical method of source selection; and

(c) Meaningful competition can be achieved through a variety of methods when procuring products or services. The methods include but are not limited to:

(A) Price competition as represented by the initial or acquisition price;

(B) Competition as represented by price and performance evaluations of the competing items and suppliers;

(C) Competition as represented by evaluation of the capabilities of bidders or proposers to perform needed services;

(D) Competition as represented by evaluation of the capabilities of the bidders or proposers to perform the services followed by a negotiation on price; or

(E) Competition as represented by another method of procurement that is reasonably calculated to satisfy the public contracting agency's need. [1993 c.724 §19]

279.007 Methods of fostering competition. (1) All public contracts shall be made under conditions that foster competition among a sufficient number of potential suppliers that offer a wide spectrum of products and services and that represent a broad marketplace. Fostering competition shall be reflected in:

(a) Writing specifications and procurement documents in a simple and easy to read format;

(b) Searching for new sources of supply;

(c) Attempting to make solicitation documents simple and inviting;

(d) Everyday courtesy shown to prospective suppliers and contractors; and

(e) The way information on contracting opportunities is provided to suppliers, in-

cluding but not limited to advertisement in publications of general circulation or the Oregon Department of Administrative Services' electronic bulletin board services, and any other reasonable methods that encourage competition and that are consistent with ORS 279.025.

(2) A public contracting agency may evaluate every aspect of competition in its effort to purchase products or services, choose the appropriate solicitation process in accordance with the criteria described in ORS 279.005 and arrive at offers that represent optimal value to the state. [1993 c.724 §20]

279.008 [Repealed by 1975 c.771 §33]

279.009 Exemption of public improvement contracts from ORS 279.005 and 279.007. Any contract of public improvement, as defined in ORS 279.011, shall not be subject to the requirements of ORS 279.005 and 279.007. [1993 c.724 §39]

Note: 279.009 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.

Note: Section 40, chapter 724, Oregon Laws 1993, provides:

Sec. 40. As soon as reasonably practicable after the effective date of this Act [November 4, 1993], the Oregon Department of Administrative Services shall develop and implement an education program for construction contractors. The program shall provide information on the qualifications-based selection process, offer training and assistance in preparing proposals and identify techniques or strategies that proposers have used to obtain award of public improvement contracts. This education program may be undertaken in cooperation with any trade association of construction contractors. On or before January 1, 1995, the Oregon Department of Administrative Services shall report to the Legislative Assembly in the manner prescribed in ORS 192.245 on the implementation of this Act. [1993 c.724 §40]

279.010 [Repealed by 1975 c.771 §33]

279.011 Definitions for ORS 279.005 to 279.111. As used in ORS 279.005 to 279.111:

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

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

(3) "Director" means the Director of the Oregon Department of Administrative Services.

(4) "Emergency" means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to the public health or safety that requires prompt execution of a contract to remedy the condition.

(5) "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.

(6) "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 inter-governmental agreement.

(7) "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; 1991 c.20 §1; 1993 c.500 §29]

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; exceptions; exemptions. (1) Subject to the policies and provisions of ORS 279.005 and 279.007, all public contracts shall be based upon competitive bids or proposals except:

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

(b) Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals;

(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;

(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); and

(g)(A) Contracts between public agencies utilizing an existing solicitation or current requirement contract of one of the public agencies that is party to the contract for which:

(i) The original contract met the requirements of this chapter;

(ii) The contract allows other public agency usage of the contract; and

(iii) The original contracting public agency concurs.

(B) No written agreement under ORS chapter 190 is necessary under this para-

graph if the arrangement is between or among units of local government.

(2) Subject to subsection (5)(b) of this section, the director or board may exempt certain public contracts or classes of public contracts from the competitive bidding requirements of subsection (1) of this section upon approval of the following findings submitted by the public contracting agency seeking the exemption:

(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 bidding 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 subsection (3)(a) of this section are present. The rules shall prescribe that if an emergency is declared, any contract awarded under this subsection and subsection (3)(a) 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 subsection (2)(a) and (b) of this section, the director or board shall:

(a) 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.

(b) Require and approve or disapprove written findings by the public contracting agency that support the awarding of a particular public contract or a class of public

contracts, without the competitive requirements of subsection (1) of this section. The findings must show that the exemption of a contract or class of contracts complies with the requirements of subsection (2)(a) and (b) of this section. [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; 1989 c.224 §40; 1989 c.454 §1; 1993 c.724 §21]

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 statewide 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;

(j) Whether or not a contractor or subcontractor must be licensed under ORS 468A.720; and

(k) That no bid for a construction contract shall be received or considered by the public contracting agency unless the bidder is registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board as required by ORS 671.530. [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; 1991 c.197 §1]

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 Oregon Department of Administrative 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 publica-

tion 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 Oregon Department of Administrative Services. If a person is prequalified with the Department of Transportation to perform contracts, or with the Oregon Department of Administrative 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 prequali-

fication 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 generally and as applicable to certain personal service contracts. (1) 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.

(2) The Attorney General shall add to the model rules described in subsection (1) of this section a provision for procedures for the screening and selection of persons to perform architectural and engineering personal service contracts. In developing such procedures, the Attorney General shall use the least restrictive processes allowed under ORS 183.341. [1975 c.771 §26; 1983 c.690 §12; 1991 c.414 §1]

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 disability. [1975 c.771 §32; 1981 c.325 §4; 1985 c.724 §3; 1989 c.224 §41]

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 emerging small businesses. (1) A public contracting agency may require a bidder to subcontract some part of the contract to, or obtain materials to be used in performing the contract from, a business enterprise that is a certified emerging small business.

(2) A public contracting agency may require that a contract be awarded to a responsible bidder as defined in ORS 200.005 and 200.045 (3). [1985 c.769 §§2, 3; 1987 c.893 §6; 1989 c.1043 §7]

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 Oregon Department of Administrative Services 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 or on behalf of adversely affected bidder. (1) Any bidder adversely affected or any trade association of construction contractors acting on behalf of a member of the association to protect interests common to construction contractor members may commence a suit in the circuit court for the county in which are located the principal offices of the public contracting 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 agency.

(2) The court may order such equitable relief as it considers appropriate in the circumstances. In addition to or in lieu of any equitable relief, the court may award an aggrieved bidder any damages suffered by the bidder as a result of violations of ORS 279.011 to 279.063 for the reasonable cost of preparing and submitting a bid. A decision of the public contracting agency shall not be voided if other equitable relief is available.

(3) If the public agency is successful in defending its actions against claims of violation or potential violation of ORS 279.011 to 279.063, then the court may award to the aggrieved public agency any damages suffered as a result of the suit.

(4) The court may order payment of reasonable attorney fees and costs on trial and on appeal to a successful party in a suit brought under this section.

(5) As used in this section, "bidder" means any person who submitted a bid to a public agency. [1983 c.690 §27; 1990 c.6 §1]

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

279.073 Action against successful bidder; amount of damages; when action to be commenced; defenses. (1) Any person that loses a competitive bid for a contract involving the construction, repair, remodeling, alteration, conversion, modernization, replacement or renovation of a building or structure may bring an action for damages against another person who is awarded the contract for which the bid was made if the person making the losing bid can establish that the other person knowingly violates the provisions of ORS 279.350, 656.017, 657.505 or 701.055 while performing the work under the contract, or knowingly failed to pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

(2) A person bringing an action under this section must establish a violation of ORS 279.350, 316.167, 656.017, 657.505 or 701.055 by a preponderance of the evidence.

(3) Upon establishing that the violation occurred, the person shall recover, as liquidated damages, 10 percent of the total amount bid, by the person bringing the action, on the contract, or \$5,000, whichever is greater.

(4) In any action under this section, the prevailing party shall be entitled to an award of reasonable attorney fees.

(5) An action under this section shall be commenced within two years of the substantial completion of the construction, repair, remodeling, conversion, modernization, improvement, rehabilitation, replacement or renovation. For the purposes of this subsection, "substantial completion" has the meaning given in ORS 12.135.

(6) No person shall be allowed to recover any amounts under this section if the defendant in the action establishes by a preponderance of the evidence that the plaintiff:

(a) Was in violation of ORS 701.055 at the time of making the bid on the contract;

(b) Was in violation of ORS 316.167, 656.017 or 657.505 with respect to any employees of the plaintiff as of the time of making the bid on the contract; or

(c) Was in violation of ORS 279.350 with respect to any contract performed by the plaintiff within one year prior to making the bid on the contract. [1991 c.323 §1]

Note: 279.073 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.

279.075 [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.

279.101 Districts authorized to enter into property purchase contracts with payment period less than 20 years; county authority to enter into property purchase contracts; effect on other powers. (1) A district, as defined in ORS 198.010, may enter into a contract for the purchase or for the lease with option to purchase of real or personal property when the period of time allowed for payment under the contract does not exceed 20 years. A district entering into a contract authorized by this subsection and subsection (2) of this section may budget funds annually for payment of amounts due under the contract in each year during the term of the contract, unless the contract is terminated sooner in accordance with its terms.

(2) A county may enter into a contract for the purchase or for the lease with option to purchase of real or personal property when:

(a) The period of time allowed for payment under the contract does not exceed 20 years; and

(b) The county is not obligated to make payments under the contract in any fiscal year unless the county governing body includes such payments in the county's budget for that fiscal year and makes an appropriation therefor.

(3) The powers granted to districts and counties by subsections (1) and (2) of this section are in addition to any other powers possessed by districts and counties in this state and subsections (1) and (2) of this section shall not be construed to limit such powers. [1989 c.407 §§1,2]

Note: 279.101 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.

279.106 Requirement to subcontract with emerging small business. A public contracting agency may require a bidder to subcontract some part of the contract to, or obtain materials to be used in performing the contract from, certified emerging small businesses that are, as identified by the public contracting agency, located in, or draw their workforces from within, economically depressed areas, as designated by the Economic Development Department in cooperation with the Employment Department. [1989 c.1043 §9]

Note: 279.106 and 279.111 were enacted into law by the Legislative Assembly but were 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.

279.111 Discrimination in subcontracting prohibited; disqualification; appeal. (1) A contractor who contracts with a public contracting agency shall not discriminate against minority, women or emerging small business enterprises in the awarding of subcontracts. The contractor shall certify as part of the bid documents accompanying the bid on a public contract that the contractor has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts.

(2) The public contracting agency may disqualify any person as a bidder on a public contract if the agency finds that the person has violated subsection (1) of this section in a contract between the person and the agency.

(3) If the person desires to appeal the disqualification, the appeal procedure shall be subject to ORS 279.043 and 279.045. [1989 c.1043 §11]

Note: See note under 279.106.

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 employees 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]

279.315 Conditions concerning health care benefits for employees. (1) Every public service contract shall contain a condition that the contractor shall provide health care benefits to all employees who are performing services previously performed by public employees performing duties under the contract. This subsection does not apply to temporary, non-ongoing or nonrecurring contracts.

(2) As used in this section, "contract" means a contract entered into between a public agency and a private entity to purchase services necessary to carry out the lawful purposes of the agency, if the services to be provided under the contract were provided by public employees of the agency within one year prior to entering into the contract.

(3) The benefits provided under this section must include at least benefits substantially similar to those recommended by the Health Services Commission and funded pursuant to ORS 414.025, 414.036, 414.042, 414.065 and 414.705 to 414.750, and services available under ORS 653.765 (4). [Formerly 653.767]

Note: 279.315 [formerly 653.767] was added to and made a part of 653.705 to 653.785 by legislative action but was not added to ORS chapter 279 or any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

279.316 Condition concerning hours of labor. (1) 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, except in cases of contracts for personal services as defined in ORS 279.051, 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.

(2) In the case of contracts for personal services as defined in ORS 279.051, the contract shall contain a provision that the laborer shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime.

(3) In the case of a contract for services at a county fair or for other events authorized by a county fair board, the contract shall contain a provision that the labor performed on the contract shall be paid at least time and a half for work in excess of eight

hours in any one day or 40 hours in any one week. [Amended by 1967 c.167 §1; 1979 c.5 §1; 1989 c.572 §1; 1993 c.279 §1]

279.318 Provisions relating to environmental and natural resources laws and rules; remedies when requirements change. (1) Bid documents for 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 awarded the project 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 public contracting agency may:

- (a) Terminate the contract;
- (b) Complete the work itself;
- (c) Use nonagency forces already under contract with the public contracting agency;
- (d) Require that the underlying property owner be responsible for cleanup;
- (e) Go out to bid for a new contractor to provide the necessary services under the competitive bid requirements of ORS 279.015; or
- (f) Issue the successful bidder a change order setting forth the additional work that must be undertaken.

(2) In addition to the obligation imposed under subsection (1) of this section to refer to federal, state and local agencies with regulations dealing with the prevention of environmental pollution and the preservation of natural resources, a public bid document must also make specific reference to known conditions at the construction site that may require the successful bidder to comply with the statutes, ordinances or regulations identified under subsection (1) of this section.

(3) If the successful bidder encounters a condition not referred to in the bid documents and not caused by the successful bidder and not discoverable by a reasonable prebid visual site inspection and the condition requires compliance with the regulations referred to under subsection (1) of this section, the successful bidder shall immediately give notice of the condition to the public contracting agency.

(4) Except in the case of an emergency and except as may otherwise be required by

any environmental or natural resource regulation, the successful bidder shall not commence work nor incur any additional job site costs in regard to the condition encountered and described in subsection (3) of this section without written direction from the public contracting agency.

(5) Upon request by the public contracting agency, the successful bidder shall estimate the emergency or regulatory compliance costs as well as the anticipated delay and costs resulting from the encountered condition. This cost estimate shall be promptly delivered to the public contracting agency for resolution.

(6) Within a reasonable period of time, the public contracting agency may:

- (a) Terminate the contract;
- (b) Complete the work itself;
- (c) Use nonagency forces already under contract with the public contracting agency;
- (d) Require that the underlying property owner be responsible for cleanup;
- (e) Go out to bid for a new contractor to provide the necessary services under the competitive bid requirements of ORS 279.015; or

(f) Issue the successful bidder a change order setting forth the additional work that must be undertaken.

(7)(a) If the public contracting agency chooses to terminate the contract under subsection (6)(a) of this section, the successful bidder shall be entitled to all costs and expenses incurred to the date of termination, including overhead and reasonable profits, on the percentage of the work completed. The awarding agency shall have access to the successful bidder's bid documents when making its determination of the additional compensation due to the successful bidder.

(b) If the public contracting agency causes work to be done by another contractor under subsection (1)(c) or (e) of this section or under subsection (6)(c) or (e) of this section, the successful bidder shall not be held liable for actions or omissions of the other contractor.

(c) The change order under subsection (1)(f) of this section or under subsection (6)(f) of this section shall include the appropriate extension of contract time and compensate the successful bidder for all additional costs, including overhead and profit, reasonably incurred as a result of complying with the applicable regulations. The awarding agency shall have access to the successful bidder's bid documents when making its determination of the additional compensation due to the successful bidder.

(8) Notwithstanding the provisions of this section, an awarding agency:

(a) May allocate all or a portion of the known environmental and natural resource risks to a contractor by listing such environmental and natural resource risks with specificity in the bid documents; and

(b) In a local improvement district, may allocate all or a portion of the known and unknown environmental and natural resource risks to a contractor by so stating in the bid documents. [Amended by 1973 c.523 §2; 1975 c.771 §19; 1991 c.638 §1]

279.319 Condition concerning use of inmate labor for removal, abatement or demolition of asbestos in state buildings.

(1) Every public contract for the removal, abatement or demolition of asbestos in a state building shall contain a condition requiring the contractor to use a certified inmate work force, if available, of:

(a) Thirty percent, not to exceed 30 inmates the first year.

(b) Twenty-five percent, not to exceed 50 inmates the second year.

(c) Twenty percent, not to exceed 100 inmates the third year.

(2) As used in this section:

(a) "Inmate" means an inmate of a Department of Corrections institution.

(b) "Certified inmate" means an inmate certified pursuant to ORS 468A.730. [1989 c.1092 §5]

279.320 Condition concerning payment for medical care and providing workers' compensation.

(1) 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 employees 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 employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

(2) Every public contract also shall contain a clause or condition that all employers working under the contract are subject employers that will comply with ORS 656.017.

[Amended by 1967 c.359 §687; 1981 c.712 §6; subsection (2) enacted as 1989 c.684 §3]

(Termination for Public Interest Reasons)

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 de-

fined 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 lo-

cal 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; liability 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) This section shall not apply to contracts for personal services as defined in

ORS 279.051, provided that persons employed under such contracts shall receive at least time and a half pay for work performed on the legal holidays specified in subsection (1)(b) to (g) of this section and for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime.

(7) Subsection (1) of this section does not apply to contracts for services at a county fair or for other events authorized by a county fair board if persons employed under the contract receive at least time and a half for work in excess of eight hours in any one day or 40 hours in any one week.

(8) 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 employees affected in the amount of their unpaid overtime wages and in an additional amount equal to the unpaid overtime wages as liquidated damages.

(9) An action to enforce liability to workers under subsection (8) 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; 1989 c.572 §2; 1993 c.279 §2]

279.335 Nonapplication of ORS 279.334 to financial institutions. ORS 279.334 does not apply to financial institutions as defined in ORS 706.005. [1993 c.394 §2]

279.336 Time limitation on claim for overtime; posting of circular by contractor. Where labor is employed by the state, county, school district, municipality, municipal corporation or subdivision, through another as a contractor, any 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 blackface pica type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all 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) Employees 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) Employees 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) Employees 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 employee or between the employer and the bargaining representative of the employees when the employees 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 employee's employment in excess of eight hours in any workday and in excess of 80 hours in such 14-day period, the employee receives compensation at a rate not less than one and one-half times the rate at which the employee 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 279.365. 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 or contracted for by any public agency to serve the public interest but does not include the reconstruction or renovation of privately owned property which is leased by a public agency.

(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; 1989 c.752 §1]

279.350 Workers on public works to be paid not less than prevailing rate of wage; posting of rates and health and welfare plan provisions. (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 employee 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.

(5) Every contractor or subcontractor engaged on a project for which there is a

contract for a public work to which the prevailing wage requirements apply that also provides for or contributes to a health and welfare plan or a pension plan, or both, for its employees on the project shall post notice describing such plans in a conspicuous and accessible place in or about the project. The notice preferably shall be posted in the same place as the notice required under subsection (4) of this section. In addition to the description of the plans, the notice shall contain information on how and where to make claims and where to obtain further information. [1959 c.627 §2; 1977 c.797 §2; 1981 c.712 §19; 1983 c.264 §2; 1983 c.710 §2; 1989 c.286 §1]

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 Commissioner 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 deliv-

ered 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 employee 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 re-

sponsible 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 279.542. As used in ORS 279.011 to 279.542, 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 279.435 (6) shall be:

(a) Retained in a fund by the public contracting agency and paid to the contractor in accordance with ORS 279.435; 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 Oregon Department of Administrative 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 279.435. 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. When the public contracting agency is an agency of the State of Oregon, the account shall be established through the State Treasurer. Earnings 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 Oregon Department of Administrative 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.

(6) The contractor, with the approval of the public contracting agency, may deposit a surety bond for all or any portion of the amount of funds retained, or to be retained, by the public contracting agency in a form acceptable to the public contracting agency. Such bond and any proceeds therefrom shall

be made subject to all claims and liens and in the same manner and priority as set forth for retainage under ORS 279.400 to 279.542. The public contracting agency shall reduce the retainage in an amount equal to the value of the bond and pay the amount of the reduction to the contractor in accordance with ORS 279.435. Whenever a public contracting agency accepts a surety bond from a contractor in lieu of retainage, the contractor shall accept like bonds from any subcontractor or supplier from which the contractor has retainage. The contractor shall then reduce the retainage in an amount equal to the value of the bond and pay the amount of the reduction to the subcontractor or supplier. [1977 c.727 §4; 1983 c.690 §15; 1989 c.106 §1; 1991 c.516 §3]

279.430 Limitation on retainage requirements. Unless otherwise specifically included by statute, the provisions of ORS 279.420 or 279.542 shall only apply as between the public contracting agency and the party with whom it contracts. [1977 c.727 §5]

(Payments)

279.435 Prompt payment policy; progress payments on public contracts; retainage; interest; exception; settlement of compensation disputes. (1) It is the policy of this state that all payments due on a public contract for a public improvement and owed by a public contracting agency shall be paid promptly. No public contracting agency shall be exempt from the provisions of this section.

(2) 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 receipt of the invoice from the contractor or 15 days after the payment is approved by the agency, whichever is the earlier date.

(3) Interest shall be paid automatically when payments become overdue. The public contracting agency shall document, calculate and pay any interest due when payment is made on the principal. Interest payments shall accompany payment of net due on public contracts. The public contracting agency shall not require the contractor to petition,

invoice, bill or wait additional days to receive interest due.

(4) In instances when an invoice is filled out incorrectly, or when there is any defect or impropriety in any submitted invoice or when there is a good faith dispute, the public contracting agency shall so notify the contractor within 15 days stating the reason or reasons the invoice is defective or improper or the reasons for the dispute. A defective or improper invoice, if corrected by the contractor within seven days of being notified by the agency, shall not cause a payment to be made later than specified in this section unless interest is also paid.

(5) Payment of interest may be postponed when payment on the principal is delayed because of disagreement between the public contracting agency and the contractor. Whenever a contractor brings formal administrative or judicial action to collect interest due under this section, the prevailing party shall be entitled to costs and reasonable attorney fees.

(6) 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. Upon receipt of a written application by the contractor, the agency shall respond in writing within a reasonable time.

(7) 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, ei-

ther 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.

(8)(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. [Formerly 279.575; 1991 c.516 §1]

(Subcontractors)

279.445 Contractor's relations with subcontractors. (1) This section applies to contracts for contractors of public improvements.

(2) A contractor shall not request payment from the public contracting agency of any amount withheld or retained in accordance with subsection (6) of this section until such time as the contractor has determined and certified to the public contracting agency that the subcontractor has determined and certified to the public contracting agency that the subcontractor is entitled to the payment of such amount.

(3) A dispute between a contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to subsection (4) or (5) of this section does not constitute a dispute to which the public contracting agency is a party. The public contracting agency shall not be included as a party in any administrative or judicial proceeding involving such a dispute.

(4) Each contract awarded by a public contracting agency shall include a clause that requires the contractor to include in each subcontract for property or services en-

tered into by the contractor and a subcontractor, including a material supplier, for the purpose of performing a construction contract:

(a) A payment clause that obligates the contractor to pay the subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the contractor by the public contracting agency under such contract; and

(b) An interest penalty clause that obligates the contractor to pay to the subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph (a) of this subsection:

(A) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(B) Computed at the rate specified in ORS 279.435.

(5) The contract awarded by the public contracting agency shall further require the contractor to include in each of its subcontracts, for the purpose of performance of such contract condition, a provision requiring the subcontractor to include a payment clause and an interest penalty clause conforming to the standards of subsection (4) of this section in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(6)(a) The clauses required by subsections (4) and (5) of this section are not intended to impair the right of a contractor or a subcontractor at any tier to negotiate, and to include in the subcontract, provisions that:

(A) Permit the contractor of a subcontractor to retain, in the event of a good faith dispute, an amount not to exceed 150 percent of the amount in dispute from the amount due a subcontractor under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties consider appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(B) Permit the contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(C) Permit such withholdings without incurring any obligation to pay a late payment interest penalty if:

(i) A notice conforming to the standards of subsection (9) of this section has been previously furnished to the subcontractor; and

(ii) A copy of any notice issued by a contractor pursuant to sub-subparagraph (i) of this subparagraph has been furnished to the public contracting agency.

(b) As used in this subsection, "good faith dispute" means a documented dispute concerning:

(A) Unsatisfactory job progress.

(B) Defective work not remedied.

(C) Third party claims filed or reasonable evidence that claims will be filed.

(D) Failure to make timely payments for labor, equipment and materials.

(E) Damage to prime contractor or subcontractor.

(F) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

(7) If, after making application to a public contracting agency for payment under a contract but before making a payment to a subcontractor for the subcontractor's performance covered by such application, a contractor discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, the prime contractor shall:

(a) Furnish to the subcontractor a notice conforming to the standards of subsection (9) of this section as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(b) Furnish to the public contracting agency, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to paragraph (a) of this subsection;

(c) Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (a) of this subsection;

(d) Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency;

(e) Make such payment within:

(A) Seven days after correction of the identified subcontract performance deficiency unless the funds therefor must be recovered from the public contracting agency because of a reduction under paragraph (f)(A) of this subsection; or

(B) Seven days after the contractor recovers such funds from the public contracting agency;

(f) Notify the public contracting agency upon:

(A) Reduction of the amount of any subsequent certified application for payment; or

(B) Payment to the subcontractor of any withheld amounts of a progress payment, specifying:

(i) The amounts of the progress payments withheld under paragraph (a) of this subsection; and

(ii) The dates that such withholding began and ended; and

(g) Be obligated to pay to the public contracting agency an amount equal to interest on the withheld payments computed in the manner provided in ORS 279.435 from the 11th day after receipt of the withheld amounts from the public contracting agency until:

(A) The day the identified subcontractor performance deficiency is corrected; or

(B) The date that any subsequent payment is reduced under paragraph (f)(A) of this subsection.

(8)(a) If a contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor a written notice asserting a deficiency in such first-tier subcontractor's performance under the contract for which the contractor may be ultimately liable and the contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the contractor may, without incurring an obligation to pay a late payment interest penalty under subsection (7)(e) of this section:

(A) Furnish to the first-tier subcontractor a notice conforming to the standards of subsection (9) of this section as soon as practicable upon making such determination; and

(B) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (A) of this paragraph.

(b) As soon as practicable, but not later than 10 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the contractor shall pay the amount withheld under paragraph (a)(B) of this subsection to such first-tier subcontractor, or shall incur an obligation to pay a late

payment interest penalty to such first-tier subcontractor computed at the rate specified in ORS 279.435.

(9) A written notice of any withholding shall be issued to a subcontractor, with a copy to the public contracting agency of any such notice issued by a prime contractor, specifying:

(a) The amount to be withheld;

(b) The specified causes for the withholding under the terms of the subcontract; and

(c) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(10) Except as provided in subsection (3) of this section, this section shall not limit or impair any contractual, administrative or judicial remedies otherwise available to a contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by a contractor or deficient subcontractor performance or nonperformance by a subcontractor.

(11) A contractor's obligation to pay a late payment interest penalty to a subcontractor pursuant to the clause included in a subcontract under subsection (4) or (5) of this section is not intended to be an obligation of the public contracting agency for such late payment interest penalty. A contract modification shall not be made for the purpose of providing reimbursement of such late payment interest penalty. A cost reimbursement claim shall not include any amount for reimbursement of such late payment interest penalty. [1991 c.516 §2]

Note: 279.445 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.

279.502 [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]

BONDS; ACTION ON BONDS

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 state agency, 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; 1993 c.98 §6]

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 the name of the contractor and the name of the state agency or public body):

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

cent of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of its total weight consisting of post-consumer waste. "Recycled product" also includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.

(6) "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 excess virgin resources of the manufacturing process. For paper, "secondary waste materials" does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

(7) "State agency" includes the Legislative Assembly, the courts and their officers and committees and the constitutional state officers. [Formerly 279.731]

279.550 Policy. (1) The Legislative Assembly finds that:

(a) It is the policy of the state to conserve and protect its resources. The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.

(b) The volume of solid waste generated within the state, an increased rate in the consumption of products and materials, including paper products, and the absence of adequate programs and procedures for the reuse and recycling of these products and materials threaten the quality of the environment and well-being of the people of Oregon.

(2) Therefore, the Legislative Assembly declares that the policy and intent of ORS 279.545 to 279.650 is to improve environmental quality by providing for:

(a) The procurement of products made from recycled materials; and

(b) The recycling of waste materials. [1991 c.385 §63]

279.555 Purchasing agencies to use recovered resources and recycled materials; notice to prospective contractors. (1) All state agencies purchasing supplies, materials, equipment or personal services shall:

(a) Review their procurement specifications currently utilized in order to eliminate, wherever economically feasible, discrimi-

nation against the procurement of recovered resources or recycled materials.

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

(c) 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.

(d) Establish management practices which minimize the volume of solid waste generated by reusing paper, envelopes, containers and all types of packaging and by limiting the amount of materials consumed and discarded.

(e) 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.

(2) Any invitation to bid or request for proposal under this chapter shall include the following language: "Vendors shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document." [Formerly 279.733]

279.560 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. [Formerly 279.735]

279.565 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. [Formerly 279.737]

279.570 Preference for recycled materials. (1) Notwithstanding provisions of law requiring a state agency or a public agency to enter into contracts with the lowest responsible bidder and subject to subsection (2) of this section, any state agency or public agency charged with the purchase of materials and supplies for any public use shall give preference to the purchase of materials and supplies manufactured from recycled materials.

(2) A state agency or public agency shall give preference to materials and supplies manufactured from recycled materials if:

(a) The recycled product is available;

(b) The recycled product meets applicable standards;

(c) The recycled product can be substituted for a comparable nonrecycled product; and

(d) Recycled product costs do not exceed the costs of nonrecycled products by more than five percent.

(3) At its discretion, a state or public agency may give preference to the purchase of materials and supplies manufactured from recycled materials, even if the cost differential exceeds the five percent preference set forth in subsection (2) of this section.

(4) State agencies, unless otherwise specified in ORS 279.545 to 279.650, and public agencies may give preference to the suppliers of recycled products and recycled paper or to products that reduce the amount of waste generated. State agencies, unless otherwise specified in ORS 279.545 to 279.650, and public agencies may determine the amount of this preference.

(5) In any bid in which the state has reserved the right to make multiple awards, the recycled product or recycled paper preference shall be applied to the extent possible to maximize the dollar participation of firms offering recycled products or recycled paper in the contract award.

(6) A state or public agency shall require the bidder to specify the minimum, if not exact, percentage of recycled paper in paper products or recycled product in products offered, and both the post-consumer and secondary waste content regardless of whether the product meets the percentage of recycled material specified for recycled paper or recycled products in ORS 279.545. For paper products, a state agency or public agency also shall require that the bidder specify the fiber type. The contractor may certify a zero percent recycled paper or product. All contract provisions impeding the consideration of products with recycled paper or recycled products shall be deleted in favor of performance standards.

(7) The department shall review and work with state agencies to develop procurement specifications that encourage the use of recycled products whenever quality of a recycled product is functionally equal to the same product manufactured with virgin resources. Except for specifications that have been established to preserve the public health and safety, all procurement and purchasing specifications shall be established in a manner that encourages procurement and purchase of recycled products.

(8) All public and state agencies shall establish purchasing practices that assure, to the maximum extent economically feasible, purchase of materials, goods and supplies that may be recycled or reused when discarded. [Formerly 279.739]

279.573 Report on effect of recycling programs; content. On or before August 31, 1993, and every year thereafter, the Oregon Department of Administrative Services, in consultation with the Department of Environmental Quality, shall prepare a report to the Legislative Assembly describing the purchase and procurement of products purchased by state agencies before and after January 1, 1992. The report shall detail, as much as possible, the amount of recycled product used by state contractors before and after July 1, 1991. The report shall include but not be limited to the following:

(1) Listed by department, the total dollar amounts, volume and number of contracts of individual products purchased by the department and any other state agency having delegated procurement authority.

(2) Total dollar amounts, volume and number of contracts of each product purchased by the state, including the Legislative Assembly and the State System of Higher Education.

(3) The total dollar amounts, volume and number of contracts of individual products, whether recycled or nonrecycled, purchased by the state.

(4) The total dollar amounts, volume and number of contracts for recycled products, recycled paper and compost products purchased, including whether the paper products commodity goals under ORS 279.621 were achieved.

(5) The total dollar amount and volume of compost and cocompost products used by the state under ORS 459A.605 to 459A.620 or any other state program. As used in this subsection, "cocompost" means a process that composts plant materials with organic sludges or a material resulting from such a process.

(6) For recycled paper products purchased by state agencies, the total number of contracts, dollar amounts and volume of those contracts that were eligible for the preference under ORS 279.621.

(7) For each recycled product, including recycled paper and compost products, the total dollar amounts, volume and number of contracts that were eligible for a preference or a combination thereof under ORS 279.570.

(8) The range of dollar amounts for bids on procurement contracts including but not limited to contracts for the procurement of individual recycled products.

(9) For each waste material, total revenue dollars and volume generated from the state recycling plan under ORS 279.635.

(10) Recommendations to the Legislative Assembly as to revisions of the percentage amounts contained in the secondary waste and post-consumer waste definitions for individual products that will result in greater procurement of recycled products composed of recycled resources that would otherwise be disposed of as solid waste in the state's disposal facilities.

(11) Recommendations on specific products available containing secondary post-consumer waste that are procured by the state, used in the performance of a service or project for the state and used in state construction contracts. These products shall be recommended as candidates for the application of the recycled paper product preference described in ORS 279.621.

(12) The Oregon Department of Administrative Services, in consultation with the Department of Environmental Quality, shall

identify those products purchased in either large volumes or high dollar amounts by the state which are available as a recycled product. The Oregon Department of Administrative Services shall include this list in the department's annual report and shall revise this list as products purchased by the state become feasibly available in recycled form. [1991 c.385 §81]

279.575 [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; renumbered 279.435 in 1989]

(Recycling Oil)

279.580 Definitions for ORS 279.580 to 279.595. As used in ORS 279.580 to 279.595:

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

(2) "Lubricating oil" means any oil intended for use in an internal combustion crankcase, transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment or machinery powered by an internal combustion engine.

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

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

(5) "Virgin oil" means oil that has been refined from crude oil and that has not been used or contaminated with impurities. [1991 c.385 §64]

279.585 Exclusion of recycled oils prohibited. Every state agency or public agency shall revise its procedures and specifications for the purchase of lubricating oil and industrial oil to eliminate any exclusion of recycled oils and any requirement that oils be manufactured from virgin materials. [1991 c.385 §65]

279.590 Preference for oil products with greater recycled content. Every state agency and public agency shall require that purchases of lubricating oil and industrial oil be made from the seller whose oil product contains the greater percentage of recycled oil, unless a specific oil product containing recycled oil is:

(1) Not available within a reasonable period of time or in quantities necessary to meet an agency's needs;

(2) Not able to meet the performance requirements or standards recommended by the equipment or vehicle manufacturer, including any warranty requirements; or

(3) Available only at a cost greater than five percent of the cost of comparable virgin oil products or other percent preference established by the agency under ORS 279.570 (3). [1991 c.385 §66]

279.595 Affirmative program for procuring oils with high recycled content. (1) Every state agency or public agency shall establish and maintain an affirmative program for procuring oils containing the maximum content of recycled oil.

(2) An affirmative program shall include but need not be limited to:

(a) Placement of descriptions of the preference for recycled oil products in publications used to solicit bids from suppliers.

(b) Descriptions of the recycled oil procurement program at bidders' conferences.

(c) Discussion of the preference program in lubricating oil and industrial oil procurement solicitations or invitations to bid.

(d) Efforts to inform industry trade associations about the preference program. [1991 c.385 §67]

(Retreaded Tires)

279.605 Definition for ORS 279.615 and 279.617. As used in ORS 279.615 and 219.617, "retreaded tire" means any tire that uses an existing casing for the purpose of vulcanizing new tread to such casing that meets all performance and quality standards specified in the Federal Motor Vehicle Safety Standards determined by the United States Department of Transportation. [1991 c.385 §68]

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]

279.615 Rules for purchase of retreaded tires. The Oregon Department of Administrative Services, in consultation with the Department of Environmental Quality and with representatives of the Oregon retreading industry, may adopt rules for the purchase of retreaded tires by the State of Oregon. The rules shall designate the state minimum quality standards for retreaded tires. The rules shall be designed to maximize the use of retreads without jeopardizing the safety of the occupants of the vehicle or the intended end use of the tire. [1991 c.385 §71]

279.616 [Repealed by 1975 c.771 §33]

279.617 When retreaded tires to be used; exceptions. (1) Unless the study under section 69, chapter 385, Oregon Laws 1991, recommends against state agency acquisition of retreaded tires, and the Legislative Assembly accepts the recommendations, on or before July 1, 1993, and to the extent that

existing stock shall be used first, all tires for use on the nonsteering wheels of state agency and public agency vehicles shall, at the next required installation of tires, be equipped with retreaded tires.

(2) Subsection (1) of this section shall not apply to:

(a) Emergency vehicles as defined in ORS 801.260;

(b) Other fire suppression or emergency assistance vehicles; or

(c) Passenger-carrying vehicles with a gross vehicle weight rating of one ton or more.

(3) At its discretion, a state agency or public agency may elect not to use retreaded tires as required under subsection (1) of this section if the cost per mile differential of retreaded tires exceeds the five percent preference set forth in ORS 279.570. [1991 c.385 §70]

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]

(Paper Products)

279.621 Preference to paper products that reduce waste or are recycled. (1) The Oregon Department of Administrative Services, in consultation with the Department of Environmental Quality, shall revise its procedures and specifications for state purchases of paper products to give preference to the purchase of paper products that reduce production of solid waste or contain recycled paper.

(2) The Oregon Department of Administrative Services shall give a preference to the suppliers of recycled paper. This preference shall be up to 12 percent of the lowest bid or price quoted by suppliers offering nonrecycled paper products. In any bid in which the state has reserved the right to make multiple awards, the recycled paper preference cost shall be applied, to the extent possible, to maximize the dollar participation of recycled business in the contract award.

(3) To encourage the use of post-consumer waste, the Oregon Department of Administrative Services' specifications shall require recycled paper contracts to be awarded to the bidder whose paper product contains the greater percentage of post-consumer waste if the fitness, quality and price meet the requirements in this section and the type of recycled content is consistent with the type of virgin material, so that the purchase does not interfere with an existing recycling recovery program. The Director of the Oregon Department of Administrative Services shall determine:

(a) Whether use of any proposed paper constitutes an economic or environmental interference with an existing recycling recovery program; or

(b) If a reasonable modification of the existing recycling recovery program, in accordance with ORS 279.635 and 279.640, would allow the use of the proposed paper without economic or environmental interference.

(4)(a) By January 1, 1993, no less than 25 percent of state agency purchases of paper products shall be from recycled paper products.

(b) By January 1, 1995, no less than 35 percent of state agency purchases of paper products shall be from recycled paper products. [1991 c.385 §72]

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

279.624 [Repealed by 1975 c.771 §33]

279.625 Symbol on recycled paper. At the discretion of the individual agency director, a state agency may print a symbol on paper products selected by the agency director. This symbol shall be determined by the department, in consultation with the Department of Environmental Quality, and shall be similar to the following: "Printed on recycled paper." This symbol may be printed only on recycled paper. [1991 c.385 §73]

279.626 [Repealed by 1975 c.771 §33]

279.628 [Repealed by 1975 c.771 §33]

279.630 Recycled paper specifications; purchasing practices; in-state preference for tax credit. (1) The director, in consultation with the Department of Environmental Quality, shall review the procurement specifications currently used by the department to eliminate, wherever economically feasible, discrimination against the procurement of recycled paper.

(2) The director, in consultation with the Department of Environmental Quality, shall review the recycled paper specifications at least annually to consider increasing the percentage of recycled paper in paper and woodpulp product purchases. The director's conclusions and recommendations shall be included in the annual report required under ORS 279.573.

(3) When contracting with the department for the sale of material subject to this section, the contractor shall certify in writing to the contracting officer that the material offered contains the minimum percentage of recycled paper required by ORS 279.545 and shall specify the minimum, if not exact, percentage of secondary and post-consumer waste and fiber type in the paper products.

The certification shall be furnished under penalty of perjury.

(4) The department, in consultation with the Department of Environmental Quality, shall establish purchasing practices that, to the maximum extent economically feasible, assure purchase of materials that may be recycled or reused when discarded.

(5) The department shall make every effort to eliminate purchases of paper products considered potential contaminants to the state's recycling plan under ORS 279.640 (1).

(6) In addition to any other requirement of law, any person or corporation receiving a credit against taxes otherwise due under ORS chapter 316, 317 or 318 for the use of recycled or recyclable materials must show that the person receiving the credit gives preference to Oregon producers of the recycled or recyclable materials used.

(7) Subsections (6) and (7) of this section apply to tax years beginning on and after January 1, 1992. [1991 c.385 §74]

279.635 State waste paper collection program; waste audit. It is the intent of the Legislative Assembly that:

(1) For the current state waste paper collection program, the department, in consultation with the Department of Environmental Quality, shall provide participating locations with public awareness information and training to state and legislative employees, including but not limited to the proper separation and disposal of recycled resources. Additionally, the department, in consultation with the Department of Environmental Quality, shall provide training for personnel, including but not limited to state buildings and grounds personnel responsible for the collection of waste materials. This training shall include but not be limited to educating and training the personnel concerning the separation and collection of recyclable materials.

(2) The department continue the current state waste paper collection program and use this program as a model to develop a plan for other waste materials generated by state and legislative employees.

(3) The department, in consultation with the Department of Environmental Quality, shall submit a new recycling plan, which includes but is not limited to the collection and sale of waste materials generated by state and legislative employees. The plan shall include for each state agency, specific goals relating to office materials recovered from the waste stream, and waste not recovered on a per capita basis. This plan shall be submitted to the appropriate legislative policy committees on or before August 31, 1992. The plan may be phased in using those office

facilities and collecting those waste materials most conducive to operation of a source separation program, but shall be fully implemented by June 1, 1993.

(4) The collection program for each product shall be reevaluated by the director on or before January 1, 1994. Subsequently, the director, in consultation with the Department of Environmental Quality, upon the determination that inclusion of any particular material type would result in a net revenue loss to the state, may exclude that material from the program, and shall include the director's conclusions and recommendations in the report required under ORS 279.630 (6) and (7). In determining the net revenue loss for the collection of a specified waste material, the director shall include the avoided cost to dispose of the waste material.

(5) No individual, group of individuals, state office, agency or its employees shall establish a similar collection program or enter into agreement for a similar program unless approved by the director.

(6)(a) If any single activity or facility of state agency fails to meet the specific goals of the plan within six months after implementation of the plan, the department shall require the agency to implement at the activity or facility actions which:

(A) Shall include but need not be limited to:

(i) A waste audit to specifically determine the best way to meet the goals;

(ii) An employee information and education program to inform and encourage employee participation; and

(iii) A timetable for these remedial measures to take place; and

(B) May include a plan or contract for janitorial services that includes collection of source separated recyclables.

(b) As used in this subsection, "waste audit" means a systematic survey of the waste generation characteristics of a facility or agency that produces recommendations on how to most effectively reduce the volume of waste materials being generated through the applied techniques of source reduction, reuse and recycling. [1991 c.385 §75]

279.640 Recycling plan for legislature.

(1) After implementing a recycling plan under ORS 279.635 (3), the department, with the advice of the Department of Environmental Quality, shall establish, implement and maintain a recycling plan for the Legislative Assembly, which may include all legislative offices and individual member's district offices and all state offices whether in state-owned buildings or leased facilities. The plan shall include provisions for recycling office

paper, corrugated cardboard, newsprint, beverage containers as defined in ORS 459A.700, waste oil and any other material at the discretion of the director, in consultation with the Department of Environmental Quality.

(2) The department may contract as necessary for the recycling of products returned under subsection (1) of this section. [1991 c.385 §76,77]

279.645 Revenues and savings to be used to offset costs. (1) Revenues received or cost reductions realized from the plan developed under ORS 279.621 to 279.640 or any other activity involving the collection and transfer of recyclable materials in state and legislative offices located in state-owned and state-leased buildings, such as the sale of waste materials through recycling programs operated by the department or in agreement with the department, shall be used to offset recycling program costs for the programs developed under ORS 279.621 to 279.640.

(2) Any remaining revenues not expended during a biennium shall be transferred to the Oregon State Productivity Improvement Revolving Fund established in ORS 182.375. [1991 c.385 §78]

279.650 Certain paper products required to be recyclable; exceptions. (1) Except as provided in subsection (2) of this section, after January 1, 1993, no state or public agency may purchase any office copier or facsimile paper product that is not recyclable.

(2) Subsection (1) of this section does not apply if:

(a) There is no alternative paper product available;

(b) A specific type of paper product that is not recyclable is required to be used in office copier or facsimile equipment purchased on or before July 1, 1991; or

(c) It is not economically feasible for a state or public agency to purchase facsimile equipment that uses recyclable paper.

(3) As used in this section, "recyclable" means the paper product is able to be collected for recycling as high grade ledger paper. [1991 c.385 §79]

STATE PURCHASING

279.710 Definitions for ORS 279.545 to 279.746. As used in ORS 279.545 to 279.746, unless the context otherwise requires:

(1) "Department" means the Oregon Department of Administrative 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; 1993 c.500 §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 to purchase for state agencies; approval of professional and personal services; exemptions. (1) The Oregon Department of Administrative 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 Oregon Department of Administrative Services as provided in ORS 291.021;

(g) Insurance and service contracts to provide medical assistance as provided for under ORS 414.115, 414.125, 414.135 and 414.145; and

(h) Personal service and public improvement contracts of the Economic Development Department relating to its foreign trade offices operating outside the state. [Amended by 1957 c.660 §2; 1973 c.84 §3; 1977 c.598 §31; 1983 c.590 §11; 1991 c.95 §2; 1993 c.500 §31]

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 Oregon Department of Administrative 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 bidders 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 Oregon Department of Admin-

istrative Services Operating Fund, established under ORS 283.076. 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 279.545. [Formerly 279.740]

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

279.731 [1975 c.240 §2; 1991 c.385 §59; renumbered 279.545 in 1991]

279.732 [Renumbered 279.723]

279.733 [1975 c.240 §3; 1991 c.385 §60; renumbered 279.555 in 1991]

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

279.735 [1975 c.240 §4; renumbered 279.560 in 1991]

279.736 [Repealed by 1975 c.771 §33]

279.737 [1975 c.240 §5; renumbered 279.565 in 1991]

279.738 [Renumbered 279.727]

279.739 [1975 c.240 §6; 1991 c.385 §61; renumbered 279.570 in 1991]

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 Oregon Department of Administrative Services Operating Fund; classified list of estimated needs. (1) The department may purchase supplies, materials and equipment from the Oregon Department of Administrative Services Operating Fund 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 Oregon Department of Administrative Services Operating Fund 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 Oregon Department of Administrative Services Operating Fund, purchase either the entire amount or only a part thereof at one time. [Amended by 1959 c.662 §1; 1965 c.365 §6; 1967 c.419 §41; 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 279.545 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 Oregon Department of Administrative 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 283.076, 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

279.800 Definitions for ORS 279.800 to 279.833. As used in ORS 279.800 to 279.833, unless the context requires otherwise:

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

(2) "Residential facility" has the meaning given that term in ORS 443.400 and 443.405.

(3) "Sheltered workshop" has the meaning given that term in ORS 344.710.

(4) "State agency" or "agency" has the meaning given that term in ORS 291.002.

(5) "Work activity center" means a nonprofit facility established and operated by a private organization, agency or institution to provide therapeutic activities for disabled individuals whose physical or mental impairment is so severe as to make their productive capacity inconsequential. Therapeutic activities include those activities which focus on teaching basic living skills, social-recreational skills and work skills. [1991 c.176 §2; 1993 c.500 §32]

279.805 Inspection, appraisal and inventory of state property; reports by state agencies. The department may provide for the periodical inspection and appraisal of state property, real and personal, and for keeping current and perpetual inventories thereof, and may require any state agency to make reports of the real and personal property in its custody at such intervals and in such form as it may deem necessary. [Formerly 291.652 and then 283.210]

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 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 Oregon Department of Administrative Services to continue such functions, the department 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, 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 adopt rules 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 Oregon Department of Administrative Services Operating Fund.

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

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

(2) The governing board or the executive head of state institutions and agencies and political subdivisions of the state, eligible under federal law to acquire surplus or excess property, may by order or resolution confer upon any officer or employee thereof continuing authority from time to time to secure the transfer to it of surplus or excess property through the department 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; 1991 c.176 §3]

279.822 Use of Oregon Department of Administrative Services Operating Fund; cash dividends. (1) In addition to the other purposes for which the Oregon Department of Administrative Services Operating Fund created by ORS 283.076 may be used, the Oregon Department of Administrative Services Operating Fund hereby is appropriated continuously for and may be used for the purposes of ORS 279.820 and this section. All claims approved by the Oregon Department of Administrative Services for the purposes of ORS 279.820 and this section shall be paid as provided in ORS 293.295 to 293.462. The Oregon Department of Administrative Services shall draw warrants on the State Treasurer for the payment thereof payable out of the Oregon Department of Administrative Services Operating Fund. All moneys received under ORS 279.820 shall be paid by the department to the State Treasurer for credit to the Oregon Department of Administrative Services Operating Fund.

(2) The Director of the Oregon Department of Administrative Services may distribute in the form of cash dividends accumulated surpluses in the Oregon Department of Administrative Services Operating Fund that arise because the charges collected from eligible recipients are in excess of the amount necessary to keep the activities under ORS 279.820 and this section on a self-sustaining basis. The cash dividends shall be paid to the eligible recipients referred to in 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 Oregon Department of Administrative Services Operating Fund which is attributable to the activities under ORS 279.820 and this section shall be refunded pro rata to the eligible recipients referred to in 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 Oregon Department of Administrative Services determines that the cost of making any such refund is excessive in which case the unrefunded money shall be paid to the Treasurer of the United States. [Amended by 1957 c.42 §2; 1959 c.662 §14; 1975 c.771 §30; 1981 c.106 §15; 1983 c.740 §77; 1993 c.500 §33]

279.824 Contracts with Federal Government for accepting gifts and acquiring surplus war materials; bids not required. The Oregon Department of Administrative 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]

279.826 Leasing of state property. The department may lease any state property, real or personal, not needed for public use, and the leasing of which is not prohibited by law, where the authority to lease such property is not vested in any other state agency. [Formerly 291.654 and then 283.220]

279.828 Sale, transfer of surplus, obsolete and unused supplies, materials and equipment; costs of transfers. (1)(a) Without requiring competitive bidding:

(A) The department may sell or transfer supplies and equipment that are surplus, obsolete or unused to or between state agencies, to local government units and to not-for-profit organizations, including any rehabilitation facility, work activity center, or residential facility which operates under contract or agreement with, or grant from, any public agency. Not-for-profit organizations eligible to receive federal surplus supplies and equipment shall be eligible to receive state surplus supplies and equipment. State agencies, local government units and not-for-profit organizations, in that order, shall be given preference to acquire state surplus supplies and equipment.

(B) The department may sell or transfer supplies and equipment that are surplus, obsolete or unused, at their option, to or between the courts, the constitutional state officers and the Legislative Assembly or any of its statutory, standing, special or interim committees.

(b) Authorized transfers under this subsection include those made with or without consideration.

(2) In accordance with the provisions of this chapter relating to competitive bidding, the department may sell supplies, materials and equipment of the state that are surplus, obsolete or unused.

(3) All proceeds derived from the disposal of property under the authority of this section, except such particular proceeds as may not under federal laws or regulations be deposited in the manner provided by this sec-

tion, shall be deposited in the State Treasury to the credit of the Oregon Department of Administrative Services Operating Fund created by ORS 283.076.

(4) In addition to the other purposes for which the Oregon Department of Administrative Services Operating Fund may be used, the Oregon Department of Administrative Services Operating Fund is appropriated continuously for and may be used for paying the administrative costs incurred in the transfer or disposal of property pursuant to subsections (1) and (2) of this section, and for paying the amount due to the agency the property of which has been sold. The total amount payable to the agency for whom property is sold shall be the amount derived from the disposal of the property less the amount of the administrative costs incurred in disposing of the property. Such total amount may be deposited in the State Treasury to the credit of the miscellaneous receipts account established pursuant to ORS 279.833 for the agency the property of which has been sold.

(5) The cost of services for disposal of property under this section that is not recoverable from the proceeds of a sale of such property shall be charged to the agency served and paid to the department in the same manner as other claims against the agency are paid. [Formerly 283.230]

279.830 Local government units to have preference in purchase of state real property or surplus supplies; restriction on subsequent use; market value on sale. (1) It is the policy of the State of Oregon to give local government units the first opportunity after other state agencies to purchase real property or surplus supplies, materials or equipment to be sold or disposed of by the State of Oregon.

(2) The state agency responsible for selling or transferring the property may require, at the time of sale or transfer, that any state property sold or transferred to a unit of local government shall be for use for a public purpose or benefit and not be for resale to a private purchaser. However, the state agency responsible is not required to seek competitive bids for the sale or transfer of such property to other state agencies or units of local government.

(3) The Oregon Department of Administrative Services may adopt rules to carry out the policy stated in subsection (1) of this section.

(4) Nothing in this section requires any state agency to sell real property or surplus supplies, materials or equipment for less than the highest value that could be obtained for the property. [Formerly 283.235]

279.831 Disposition of moneys received as payment for repair or replacement of damaged, destroyed, lost or stolen property. All moneys received from insurers and other sources as payment for the cost and expense of repair and replacement of property of state agencies which has been damaged, destroyed, lost or stolen, except such particular moneys as may not under federal law or regulations be deposited in the manner provided by this section, may be deposited in the State Treasury to the credit of the miscellaneous receipts account established pursuant to ORS 279.833 for the agency whose property has been damaged, destroyed, lost or stolen. [Formerly 291.666 and then 283.240]

279.833 Miscellaneous receipts accounts. (1) The State Treasurer is authorized to establish a miscellaneous receipts account for any state agency and shall credit to such account any amounts paid into the State Treasury pursuant to ORS 190.240 (1), 279.828, 279.831 or 283.110 by the state agency for which such account was established. The moneys credited to the miscellaneous receipts account of a state agency established pursuant to this section hereby are appropriated continuously for the payment of the expenses of such agency, subject to the allotment system provided by ORS 291.234 to 291.260.

(2) The laws enacted by the Legislative Assembly limiting expenditures do not limit expenditures from miscellaneous receipts accounts established pursuant to this section except where the law limiting expenditures of a particular state agency specifically establishes a limit for expenditures from the miscellaneous receipts account of that agency. [Formerly 291.678 and then 283.250]

PRODUCTS OF DISABLED INDIVIDUALS

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

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

(2) "Disabled individual" means an 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 disabled individual" means a nonprofit activity center or rehabilitation facility:

(a) Organized under the laws of the United States or of this state and operated

in the interest of disabled 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 disabled 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; 1989 c.224 §42; 1991 c.93 §1; 1993 c.500 §34]

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 disabled 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; 1989 c.224 §43]

279.845 Department to determine and revise prices for products and services of nonprofit agency for disabled individuals; 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 disabled individuals. 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 disabled individuals 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; 1989 c.224 §44]

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, procure such product or service, at the price established by the department, from a qualified nonprofit agency for disabled individuals 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 disabled individuals. The department on behalf of public contracting agencies and qualified nonprofit agencies for disabled individuals 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; 1989 c.224 §45]

279.855 Qualified agencies may obtain goods and services through department. The following may purchase equipment, materials, supplies and services through the department in the same manner as state agencies as provided in ORS 279.545 to 279.746 and 279.800 to 279.833:

(1) Qualified nonprofit agencies for disabled individuals participating in the program set forth in ORS 279.015 and 279.835 to 279.850.

(2) Residential programs when under contract with the Department of Human Resources or any division thereof to provide services to youth in the custody of the state.

(3) Public benefit corporations, as defined in ORS 65.001, that provide public services either under contract with a state agency, as defined in ORS 171.133, or under contract with a unit of local government, as defined in ORS 190.003, that funds the contract, in whole or in part, with state funds. [1977 c.304 §7; 1989 c.224 §46; 1991 c.419 §1]

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 279.545 to 279.746 and 279.824. Any violation of ORS 279.545 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]