

SENATE AMENDMENTS TO HOUSE BILL 2214

By COMMITTEE ON GENERAL GOVERNMENT

May 6

1 On page 1 of the printed bill, line 2, after “200.170,” insert “279A.010,”.

2 In line 3, after “279B.015,” insert “279B.020, 279B.065, 279B.075, 279B.085, 279B.215, 279B.235,
3 279B.400,”.

4 In line 4, after “279C.335,” insert “279C.360,” and delete “279C.390,”.

5 In line 6, delete “and 279C.625 and section 105” and insert “, 279C.625, 530.050 and 530.500 and
6 sections 105 and 336”.

7 After line 24, insert:

8 “**SECTION 1a.** ORS 279A.010 is amended to read:

9 “279A.010. (1) As used in the Public Contracting Code, unless the context or a specifically ap-
10 plicable definition requires otherwise:

11 “(a) ‘Bidder’ means a person that submits a bid in response to an invitation to bid.

12 “(b) ‘Contracting agency’ means a public body authorized by law to conduct a procurement.
13 ‘Contracting agency’ includes, but is not limited to, the Director of the Oregon Department of Ad-
14 ministrative Services and any person authorized by a contracting agency to conduct a procurement
15 on the contracting agency’s behalf. ‘Contracting agency’ does not include the judicial department
16 or the legislative department.

17 “(c) ‘Days’ means calendar days.

18 “(d) ‘Department’ means the Oregon Department of Administrative Services.

19 “(e) ‘Director’ means the Director of the Oregon Department of Administrative Services or a
20 person designated by the director to carry out the authority of the director under the Public Con-
21 tracting Code.

22 “(f) ‘Emergency’ means circumstances that:

23 “(A) Could not have been reasonably foreseen;

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

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

27 “(g) ‘Energy savings performance contract’ means a public contract between a contracting
28 agency and a qualified energy service company for the identification, evaluation, recommendation,
29 design and construction of energy conservation measures, including a design-build contract, that
30 guarantee energy savings or performance.

31 “(h) ‘Executive department’ has the meaning given that term in ORS 174.112.

32 “(i)(A) ‘Grant’ means:

33 “(i) An agreement under which a contracting agency receives moneys, property or other assist-
34 ance, including but not limited to federal assistance that is characterized as a grant by federal law
35 or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other

1 assets, from a grantor for the purpose of supporting or stimulating a program or activity of the
2 contracting agency and in which no substantial involvement by the grantor is anticipated in the
3 program or activity other than involvement associated with monitoring compliance with the grant
4 conditions; or

5 “(ii) An agreement under which a contracting agency provides moneys, property or other as-
6 sistance, including but not limited to federal assistance that is characterized as a grant by federal
7 law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or
8 other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the
9 recipient and in which no substantial involvement by the contracting agency is anticipated in the
10 program or activity other than involvement associated with monitoring compliance with the grant
11 conditions.

12 “(B) ‘Grant’ does not include a public contract for a public improvement, for public works, as
13 defined in ORS 279C.800, or for emergency work, minor alterations or ordinary repair or mainte-
14 nance necessary to preserve a public improvement, when under the public contract a contracting
15 agency pays, in consideration for contract performance intended to realize or to support the real-
16 ization of the purposes for which grant funds were provided to the contracting agency, moneys that
17 the contracting agency has received under a grant.

18 “(j) ‘Industrial oil’ means any compressor, turbine or bearing oil, hydraulic oil, metal-working
19 oil or refrigeration oil.

20 “(k) ‘Judicial department’ has the meaning given that term in ORS 174.113.

21 “(L) ‘Legislative department’ has the meaning given that term in ORS 174.114.

22 “(m) ‘Local contract review board’ means a local contract review board described in ORS
23 279A.060.

24 “(n) ‘Local contracting agency’ means a local government or special government body authorized
25 by law to conduct a procurement. ‘Local contracting agency’ includes any person authorized by a
26 local contracting agency to conduct a procurement on behalf of the local contracting agency.

27 “(o) ‘Local government’ has the meaning given that term in ORS 174.116.

28 “(p) ‘Lowest responsible bidder’ means the lowest bidder who:

29 “(A) Has substantially complied with all prescribed public contracting procedures and require-
30 ments;

31 “(B) Has met the standards of responsibility set forth in ORS 279B.110 or 279C.375;

32 “(C) Has not been debarred or disqualified by the contracting agency under ORS 279B.130 or
33 279C.440; and

34 “(D) If the advertised contract is a public improvement contract, is not on the list created by
35 the Construction Contractors Board under ORS 701.227.

36 “(q) ‘Lubricating oil’ means any oil intended for use in an internal combustion crankcase,
37 transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equip-
38 ment or machinery powered by an internal combustion engine.

39 “(r) ‘Person’ means a natural person capable of being legally bound, a sole proprietorship, a
40 corporation, a partnership, a limited liability company or partnership, a limited partnership, a for-
41 profit or nonprofit unincorporated association, a business trust, two or more persons having a joint
42 or common economic interest, any other person with legal capacity to contract or a public body.

43 “(s) ‘Post-consumer waste’ means a finished material that would normally be disposed of as solid
44 waste, having completed its life cycle as a consumer item. ‘Post-consumer waste’ does not include
45 manufacturing waste.

1 “(t) ‘Price agreement’ means a public contract for the procurement of goods or services at a set
2 price with:

3 “(A) No guarantee of a minimum or maximum purchase; or

4 “(B) An initial order or minimum purchase combined with a continuing contractor obligation to
5 provide goods or services in which the contracting agency does not guarantee a minimum or maxi-
6 mum additional purchase.

7 “(u) ‘Procurement’ means the act of purchasing, leasing, renting or otherwise acquiring goods
8 or services. ‘Procurement’ includes each function and procedure undertaken or required to be
9 undertaken by a contracting agency to enter into a public contract, administer a public contract and
10 obtain the performance of a public contract under the Public Contracting Code.

11 “(v) ‘Proposer’ means a person that submits a proposal in response to a request for proposals.

12 “(w) ‘Public body’ has the meaning given that term in ORS 174.109.

13 “(x) ‘Public contract’ means a sale or other disposal, or a purchase, lease, rental or other ac-
14 quisition, by a contracting agency of personal property, services, including personal services, public
15 improvements, public works, minor alterations, or ordinary repair or maintenance necessary to pre-
16 serve a public improvement. ‘Public contract’ does not include grants.

17 “(y) ‘Public contracting’ means procurement activities described in the Public Contracting Code
18 relating to obtaining, modifying or administering public contracts or price agreements.

19 “(z) ‘Public Contracting Code’ or ‘code’ means ORS chapters 279A, 279B and 279C.

20 “(aa) ‘Public improvement’ means a project for construction, reconstruction or major renovation
21 on real property by or for a contracting agency. ‘Public improvement’ does not include:

22 “(A) Projects for which no funds of a contracting agency are directly or indirectly used, except
23 for participation that is incidental or related primarily to project design or inspection; or

24 “(B) Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve
25 a public improvement.

26 “(bb) ‘Public improvement contract’ means a public contract for a public improvement. ‘Public
27 improvement contract’ does not include a public contract for emergency work, minor alterations, or
28 ordinary repair or maintenance necessary to preserve a public improvement.

29 “(cc) ‘Recycled material’ means any material that would otherwise be a useless, unwanted or
30 discarded material except for the fact that the material still has useful physical or chemical prop-
31 erties after serving a specific purpose and can, therefore, be reused or recycled.

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

35 “(ee) ‘Recycled paper’ means a paper product with not less than:

36 “(A) Fifty percent of its fiber weight consisting of secondary waste materials; or

37 “(B) Twenty-five percent of its fiber weight consisting of post-consumer waste.

38 “(ff) ‘Recycled PETE’ means post-consumer polyethylene terephthalate material.

39 “(gg) ‘Recycled product’ means all materials, goods and supplies, not less than 50 percent of the
40 total weight of which consists of secondary and post-consumer waste with not less than 10 percent
41 of its total weight consisting of post-consumer waste. ‘Recycled product’ includes any product that
42 could have been disposed of as solid waste, having completed its life cycle as a consumer item, but
43 otherwise is refurbished for reuse without substantial alteration of the product’s form.

44 “(hh) ‘Secondary waste materials’ means fragments of products or finished products of a manu-
45 facturing process that has converted a virgin resource into a commodity of real economic value.

1 'Secondary waste materials' includes post-consumer waste. 'Secondary waste materials' does not
2 include excess virgin resources of the manufacturing process. For paper, 'secondary waste
3 materials' does not include fibrous waste generated during the manufacturing process such as fibers
4 recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips,
5 sawdust or other wood residue from a manufacturing process.

6 "(ii) 'Special government body' has the meaning given that term in ORS 174.117.

7 "(jj) 'State agency' means the executive department, except the Secretary of State and the State
8 Treasurer in the performance of the duties of their constitutional offices.

9 "(kk) 'State contracting agency' means an executive department entity authorized by law to
10 conduct a procurement.

11 "(LL) 'State government' has the meaning given that term in ORS 174.111.

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

13 "(nn) 'Virgin oil' means oil that has been refined from crude oil and that has not been used or
14 contaminated with impurities.

15 "(2) Other definitions appearing in the Public Contracting Code and the sections in which they
16 appear are:

17		
18	'Adequate'	ORS 279C.305
19	'Administering contracting	
20	agency'	ORS 279A.200
21	'Affirmative action'	ORS 279A.100
22	'Architect'	ORS 279C.100
23	'Architectural, engineering and	
24	land surveying services'	ORS 279C.100
25	'Bid documents'	ORS 279C.400
26	'Bidder'	ORS 279B.415
27	'Bids'	ORS 279C.400
28	'Brand name'	ORS 279B.405
29	'Brand name or equal	
30	specification'	ORS 279B.200
31	'Brand name specification'	ORS 279B.200
32	'Class special procurement'	ORS 279B.085
33	'Consultant'	ORS 279C.115
34	'Contract-specific	
35	special procurement'	ORS 279B.085
36	'Cooperative procurement'	ORS 279A.200
37	'Cooperative procurement group'	ORS 279A.200
38	'Donee'	ORS 279A.250
39	'Engineer'	ORS 279C.100
40	' <i>Established catalog price</i> '	ORS 279B.005]
41	'Findings'	ORS 279C.330
42	'Fire protection equipment'	ORS 279A.190
43	'Flagger'	ORS 279C.810
44	'Fringe benefits'	ORS 279C.800
45	'Funds of a public agency'	ORS 279C.810

1	'Good cause'	ORS 279C.585
2	'Good faith dispute'	ORS 279C.580
3	'Goods'	ORS 279B.115
4	'Goods and services' or	
5	'goods or services'	ORS 279B.005
6	'Interstate cooperative	
7	procurement'	ORS 279A.200
8	'Invitation to bid'	ORS 279B.005
9		and 279C.400
10	'Joint cooperative procurement'	ORS 279A.200
11	'Labor dispute'	ORS 279C.650
12	'Land surveyor'	ORS 279C.100
13	'Legally flawed'	ORS 279B.405
14	'Locality'	ORS 279C.800
15	'Nonprofit organization'	ORS 279C.810
16	'Nonresident bidder'	ORS 279A.120
17	'Not-for-profit organization'	ORS 279A.250
18	'Original contract'	ORS 279A.200
19	'Permissive cooperative	
20	procurement'	ORS 279A.200
21	'Person'	ORS 279C.500
22		and 279C.815
23	'Personal services'	ORS 279C.100
24	'Prevailing rate of wage'	ORS 279C.800
25	'Procurement description'	ORS 279B.005
26	'Property'	ORS 279A.250
27	'Public agency'	ORS 279C.800
28	'Public contract'	ORS 279A.190
29	'Public contract for	
30	goods or services'	ORS 279B.005
31	'Public works'	ORS 279C.800
32	'Purchasing contracting agency'	ORS 279A.200
33	'Regularly organized fire	
34	department'	ORS 279A.190
35	'Related services'	ORS 279C.100
36	'Request for proposals'	ORS 279B.005
37	'Resident bidder'	ORS 279A.120
38	'Responsible bidder'	ORS 279A.105
39		and 279B.005
40	'Responsible proposer'	ORS 279B.005
41	'Responsive bid'	ORS 279B.005
42	'Responsive proposal'	ORS 279B.005
43	'Retainage'	ORS 279C.550
44	'Special procurement'	ORS 279B.085
45	'Specification'	ORS 279B.200

1 'State agency' ORS 279A.250
2 'Substantial completion' ORS 279C.465
3 'Surplus property' ORS 279A.250
4 'Unnecessarily restrictive' ORS 279B.405".

5 On page 2, delete lines 31 and 32 and insert:

6 "(k) Contracts for the sale of timber from lands owned or managed by the State Board of
7 Forestry and the State Forestry Department;".

8 On page 3, line 42, after "agency" insert "with procurement authority under ORS 279A.050".

9 On page 4, delete lines 22 through 28.

10 In line 29, delete "(b)" and insert "(a)".

11 In line 34, delete "(c)" and insert "(b)".

12 In line 36, delete "(d)" and insert "(c)".

13 In line 39, delete "(e)" and insert "(d)" and after "agencies" insert "with procurement authority
14 under ORS 279A.050".

15 In line 40, after "by" insert "the".

16 In line 41, delete "(f)" and insert "(e)".

17 In line 43, delete "(g)" and insert "(f)".

18 In line 45, delete "(h)" and insert "(g)".

19 On page 5, after line 6, insert:

20 "**SECTION 8a.** ORS 279B.020 is amended to read:

21 "279B.020. [(1) A contractor on a public contract, other than a contract for services at a county fair
22 or for other events authorized by a county fair board, shall pay employees for overtime work performed
23 under the public contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards
24 Act of 1938 (29 U.S.C. 201 et seq.).]

25 "[(2) A contractor on a contract for services at a county fair or for other events authorized by a
26 county fair board shall pay persons employed under the contract at least time and a half for work in
27 excess of 10 hours in any one day or 40 hours in any one week.]

28 "**(1) When labor is employed by a contracting agency through a contractor, a person may
29 not be required or permitted to labor more than 10 hours in any one day, or 40 hours in any
30 one week, except in cases of necessity or emergency or when the public policy absolutely
31 requires it, in which event, the person so employed for excessive hours shall receive at least
32 time and a half pay:**

33 "**(a)(A) For all overtime in excess of eight hours in any one day or 40 hours in any one
34 week when the work week is five consecutive days, Monday through Friday; or**

35 "**(B) For all overtime in excess of 10 hours in any one day or 40 hours in any one week
36 when the work week is four consecutive days, Monday through Friday; and**

37 "**(b) For all work performed on Saturday and on the following legal holidays:**

38 "**(A) Each Sunday.**

39 "**(B) New Year's Day on January 1.**

40 "**(C) Memorial Day on the last Monday in May.**

41 "**(D) Independence Day on July 4.**

42 "**(E) Labor Day on the first Monday in September.**

43 "**(F) Thanksgiving Day on the fourth Thursday in November.**

44 "**(G) Christmas Day on December 25.**

45 "**(2) An employer shall give notice in writing to employees who perform work under**

1 subsection (1) of this section, either at the time of hire or before commencement of work
2 on the contract, or by posting a notice in a location frequented by employees, of the number
3 of hours per day and days per week that employees may be required to work.

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

8 “(4) When specifically agreed to under a written labor-management negotiated labor
9 agreement, an employee may be paid at least time and a half pay for work performed on any
10 legal holiday specified in ORS 187.010 and 187.020 that is not listed in subsection (1) of this
11 section.

12 “(5) This section does not apply to contracts for personal services designated under ORS
13 279A.055, provided that persons employed under such contracts shall receive at least time
14 and a half pay for work performed on the legal holidays specified in subsection (1)(b)(B) to
15 (G) of this section and for all overtime worked in excess of 40 hours in any one week, except
16 for individuals under personal services contracts who are excluded under ORS 653.010 to
17 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

18 “(6) Subsections (1) and (2) of this section do not apply to contracts for services at a
19 county fair or for other events authorized by a county fair board if persons employed under
20 the contract receive at least time and a half for work in excess of 10 hours in any one day
21 or 40 hours in any one week.

22 “(7) Subsections (1) to (3) of this section do not apply to a contract for services if the
23 contractor is a party to a collective bargaining agreement in effect with any labor organiza-
24 tion.

25 “(8)(a) Subsections (1) and (2) of this section do not apply to contracts for services.
26 However, persons employed under such contracts shall receive at least time and a half pay
27 for work performed on the legal holidays specified in a collective bargaining agreement or in
28 subsection (1)(b)(B) to (G) of this section and for all time worked in excess of 10 hours in
29 any one day or in excess of 40 hours in any one week, whichever is greater.

30 “(b) An employer shall give notice in writing to employees who work on a contract for
31 services, either at the time of hire or before commencement of work on the contract, or by
32 posting a notice in a location frequented by employees, of the number of hours per day and
33 days per week that the employees may be required to work.

34 “[3] (9) Any contractor or subcontractor or contractor’s or subcontractor’s surety *[who violates*
35 *subsection (1) or (2)] that violates the provisions* of this section is liable to the affected employees
36 in the amount of their unpaid overtime wages and in an additional amount equal to the unpaid
37 overtime wages as liquidated damages. If the violation resulted from willful falsification of payroll
38 records, the contractor or subcontractor or contractor’s or subcontractor’s surety is liable to the
39 affected employees in the amount of their unpaid overtime wages and in an additional amount equal
40 to twice the unpaid overtime wages as liquidated damages.

41 “[4] (10) An action to enforce liability to employees under subsection [3] (9) of this section
42 may be brought as an action on the contractor’s payment bond as provided for in ORS 279C.610.

43 “[5] (11) This section does not apply to:

44 “(a) Financial institutions as defined in ORS 706.008.

45 “(b) Labor performed in the prevention or suppression of fire under contracts and agreements

1 made pursuant to the authority of the State Forester or the State Board of Forestry under ORS
2 477.406.

3 **“(c) Public contracts for goods or personal property.**

4 “[6] (12) In accordance with *[any applicable provision of]* ORS chapter 183, the Commissioner
5 of the Bureau of Labor and Industries may adopt rules to carry out the provisions of this section.

6 **“SECTION 8b.** ORS 279B.065 is amended to read:

7 “279B.065. (1) Any procurement of goods or services not exceeding \$5,000 may be awarded in
8 accordance with small procurement procedures established by rules adopted under ORS 279A.070.
9 A contract **may be** awarded in any manner deemed practical or convenient by the contracting
10 agency, including by direct selection or award. A contract awarded under this section may be
11 amended to exceed \$5,000 only in accordance with rules adopted under ORS 279A.065.

12 “(2) A procurement may not be artificially divided or fragmented so as to constitute a small
13 procurement under this section.

14 **“SECTION 8c.** ORS 279B.075 is amended to read:

15 “279B.075. (1) A contracting agency may award a contract for goods or services without com-
16 petition when the Director of the Oregon Department of Administrative Services, the local contract
17 review board **or a state contracting agency, if it has procurement authority under ORS**
18 **279A.050**, or a person designated in writing by the director, *[or]* board **or state contracting agency**
19 **with procurement authority under ORS 279A.050**, determines in writing, in accordance with rules
20 adopted under ORS 279A.065, that the goods or services, or class of goods or services, are available
21 from only one source.

22 “(2) The determination of a sole source must be based on written findings that may include:

23 “(a) That the efficient utilization of existing goods requires the acquisition of compatible goods
24 or services;

25 “(b) That the goods or services required for the exchange of software or data with other public
26 or private agencies are available from only one source;

27 “(c) That the goods or services are for use in a pilot or an experimental project; or

28 “(d) Other findings that support the conclusion that the goods or services are available from
29 only one source.

30 “(3) To the extent reasonably practical, the contracting agency shall negotiate with the sole
31 source to obtain contract terms advantageous to the contracting agency.

32 **“SECTION 8d.** ORS 279B.085 is amended to read:

33 “279B.085. (1) As used in this section and ORS 279B.400:

34 “(a) ‘Class special procurement’ means a contracting procedure that differs from the procedures
35 described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into
36 a series of contracts over time for the acquisition of a specified class of goods or services.

37 “(b) ‘Contract-specific special procurement’ means a contracting procedure that differs from the
38 procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of
39 entering into a single contract or a number of related contracts for the acquisition of specified goods
40 or services on a one-time basis or for a single project.

41 “(c) ‘Special procurement’ means, unless the context requires otherwise, a class special pro-
42 curement, a contract-specific special procurement or both.

43 “(2) **Except as provided in subsection (3) of this section**, to seek approval of a special pro-
44 curement, a contracting agency shall submit a written request to the Director of the Oregon De-
45 partment of Administrative Services or the local contract review board, as applicable, that describes

1 the proposed contracting procedure, the goods or services or the class of goods or services to be
2 acquired through the special procurement and the circumstances that justify the use of a special
3 procurement under the standards set forth in subsection [(3)] (4) of this section.

4 “(3) When the contracting agency is the office of the Secretary of State or the office of
5 the State Treasurer, to seek approval of a special procurement, the contracting agency shall
6 submit a written request to the Secretary of State or the State Treasurer, as applicable, that
7 describes the proposed contracting procedure, the goods or services or the class of goods or
8 services to be acquired through the special procurement and the circumstances that justify
9 the use of a special procurement under the standards set forth in subsection (4) of this sec-
10 tion.

11 “[3] (4) The director, [or] a local contract review board, the Secretary of State or the State
12 Treasurer may approve a special procurement if the director, [or] board, Secretary of State or
13 State Treasurer finds that a written request submitted under subsection (2) or (3) of this section
14 demonstrates that the use of a special procurement as described in the request, or an alternative
15 procedure prescribed by the director, [or] board, Secretary of State or State Treasurer, will:

16 “(a) Be unlikely to encourage favoritism in the awarding of public contracts or to substantially
17 diminish competition for public contracts; and

18 “(b)(A) Result in substantial cost savings to the contracting agency or to the public; or

19 “(B) Otherwise substantially promote the public interest in a manner that could not practicably
20 be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060,
21 279B.065 or 279B.070 or under any rules adopted thereunder.

22 “[4] (5) Public notice of the approval [*process for*] of a proposed special procurement must be
23 given in the same manner as provided in ORS 279B.055 [(4)(b)] (4).

24 “[5] (6) If a contract is awarded through a special procurement, the contracting agency shall
25 award the contract to the offeror whose offer the contracting agency determines in writing to be
26 the most advantageous to the contracting agency.

27 “[6] (7) When the director, [or] a local contract review board, the Secretary of State or the
28 State Treasurer approves a class special procurement under this section, the contracting agency
29 may award contracts to acquire goods or services within the class of goods or services in accord-
30 ance with the terms of the [*director’s or the board’s*] approval without making a subsequent request
31 for a special procurement.

32 “**SECTION 8e.** ORS 279B.215 is amended to read:

33 “279B.215. (1)(a) A brand name or equal specification may be used when the use of a brand name
34 or equal specification is advantageous to the contracting agency, because the brand name describes
35 the standard of quality, performance, functionality and other characteristics of the product needed
36 by the contracting agency.

37 “(b) The contracting agency is entitled to determine what constitutes a product that is equal
38 or superior to the product specified, and any such determination is final.

39 “(c) Nothing in this subsection may be construed as prohibiting a contracting agency from
40 specifying one or more comparable products as examples of the quality, performance, functionality
41 or other characteristics of the product needed by the contracting agency.

42 “(2) A brand name specification may be prepared and used only if the contracting agency de-
43 termines for a solicitation or a class of solicitations that only the identified brand name specification
44 will meet the needs of the contracting agency based on one or more of the following written deter-
45 minations:

1 “(a) That use of a brand name specification is unlikely to encourage favoritism in the awarding
2 of public contracts or substantially diminish competition for public contracts;

3 “(b) That use of a brand name specification would result in substantial cost savings to the con-
4 tracting agency;

5 “(c) That there is only one manufacturer or seller of the product of the quality, performance or
6 functionality required; or

7 “(d) That efficient utilization of existing goods requires the acquisition of compatible goods or
8 services.

9 “(3) A contracting agency’s use of a brand name specification may be subject to review only as
10 provided in ORS [279B.400] **279B.405**.

11 **“SECTION 8f.** ORS 279B.235 is amended to read:

12 *“279B.235. [(1) Every public contract, other than a contract for services at a county fair or for other*
13 *events authorized by a county fair board, must contain a condition that the contractor shall pay em-*
14 *ployees for overtime work performed under the public contract in accordance with ORS 653.010 to*
15 *653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).]*

16 **“(1) Except as provided in subsections (3) to (6) of this section, every public contract**
17 **subject to this chapter must contain a condition that a person may not be employed for more**
18 **than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity,**
19 **emergency or when the public policy absolutely requires it, and in such cases, except in cases**
20 **of contracts for personal services designated under ORS 279A.055, the employee shall be paid**
21 **at least time and a half pay:**

22 **“(a)(A) For all overtime in excess of eight hours in any one day or 40 hours in any one**
23 **week when the work week is five consecutive days, Monday through Friday; or**

24 **“(B) For all overtime in excess of 10 hours in any one day or 40 hours in any one week**
25 **when the work week is four consecutive days, Monday through Friday; and**

26 **“(b) For all work performed on Saturday and on any legal holiday specified in ORS**
27 **279B.020.**

28 **“(2) An employer must give notice in writing to employees who work on a public con-**
29 **tract, either at the time of hire or before commencement of work on the contract, or by**
30 **posting a notice in a location frequented by employees, of the number of hours per day and**
31 **days per week that the employees may be required to work.**

32 **“(3) In the case of contracts for personal services as described in ORS 279A.055, the**
33 **contract shall contain a provision that the employee shall be paid at least time and a half for**
34 **all overtime worked in excess of 40 hours in any one week, except for individuals under**
35 **personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C.**
36 **201 to 209 from receiving overtime.**

37 **“[(2)] (4) In the case of a contract for services at a county fair or for other events authorized**
38 **by a county fair board, the contract must contain a provision that employees must be paid at least**
39 **time and a half for work in excess of 10 hours in any one day or 40 hours in any one week. An**
40 **employer shall give notice in writing to employees who work on such a contract, either at the time**
41 **of hire or before commencement of work on the contract, or by posting a notice in a location fre-**
42 **quented by employees, of the number of hours per day and days per week that employees may be**
43 **required to work.**

44 **“(5)(a) Except as provided in subsection (4) of this section, contracts for services must**
45 **contain a provision that requires that persons employed under the contracts shall receive**

1 at least time and a half pay for work performed on the legal holidays specified in a collective
2 bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time worked in excess
3 of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

4 “(b) An employer shall give notice in writing to employees who work on a contract for
5 services, either at the time of hire or before commencement of work on the contract, or by
6 posting a notice in a location frequented by employees, of the number of hours per day and
7 days per week that the employees may be required to work.

8 “(6) This section does not apply to public contracts:

9 “(a) With financial institutions as defined in ORS 706.008.

10 “(b) Made pursuant to the authority of the State Forester or the State Board of Forestry
11 under ORS 477.406 for labor performed in the prevention or suppression of fire.

12 “(c) For goods or personal property.

13 “**SECTION 8g.** ORS 279B.400 is amended to read:

14 “279B.400. (1) Before seeking judicial review of the approval of a special procurement, a person
15 must file a protest, in accordance with the rules adopted under ORS 279A.065, with the Director of
16 the Oregon Department of Administrative Services or the local contracting agency, as applicable,
17 and exhaust all available nonjudicial remedies. The rules adopted under ORS 279A.065 shall provide
18 a reasonable time and manner for affected persons to protest [*a contracting agency's request for*] **the**
19 approval of a special procurement under ORS 279B.085.

20 “(2) The approval of a class special procurement by the director under ORS 279B.085 constitutes
21 rulemaking and not a contested case under ORS chapter 183. Any affected person, except the state
22 contracting agency that requested the approval or anyone representing the state contracting agency,
23 may petition the Court of Appeals in the manner provided in ORS 183.400 to test the validity of a
24 class special procurement approved by the director. A proceeding under ORS 183.400 does not affect
25 the validity of a contract executed pursuant to a class special procurement before the petition is
26 filed. Notwithstanding ORS 183.400 (1), before seeking judicial review under this subsection, a per-
27 son must file a protest with the director as described in subsection (1) of this section.

28 “(3)(a) The approval of a contract-specific special procurement by the director is reviewable
29 under ORS 183.484, but only if judicial review is sought before the contract is awarded. Otherwise,
30 a contract awarded pursuant to the contract-specific special procurement is conclusively presumed
31 valid and may not, in any future judicial or administrative proceeding, be challenged on the ground
32 that the contract was awarded under an invalid special procurement.

33 “(b) Judicial review may be sought from the Circuit Court for Marion County or the circuit
34 court for the county in which the principal offices of the state contracting agency that requested
35 the approval are located. The circuit court shall give priority on its docket and expedited review
36 to proceedings under this subsection.

37 “(4)(a) The approval of a special procurement by a local contract review board may be chal-
38 lenged by filing a writ of review under ORS chapter 34, provided that all available nonjudicial
39 remedies first have been exhausted, including protests as described in subsection (1) of this section.
40 Notwithstanding the 60-day filing period prescribed by ORS 34.030, the approval of a special pro-
41 curement is not subject to a writ of review proceeding more than 10 days after the board approves
42 the use of the special procurement.

43 “(b) The writ of review may be filed with and is reviewable by the circuit court for the county
44 in which the principal offices of the local contracting agency that requested the approval are lo-
45 cated. The circuit court shall give priority on its docket and expedited review to proceedings under

1 this subsection.

2 “(5) If timely judicial review is sought regarding the approval of a special procurement under
3 ORS 279B.085, the contracting agency may not proceed with contract execution unless the con-
4 tracting agency determines that there is a compelling governmental interest in proceeding or that
5 the goods or services are urgently needed. If the contracting agency makes such a determination,
6 the contracting agency shall set forth the reasons for the determination in writing and immediately
7 provide them to the person who filed the challenge. Thereafter, after joining the prospective con-
8 tractor as a party to the litigation and upon motion by the person filing the challenge, the court
9 may nonetheless stay the performance of the contract if the court finds that the contracting agen-
10 cy’s determination of the existence of a compelling governmental interest in proceeding with con-
11 tract execution, or the contracting agency’s determination that the goods or services were urgently
12 needed, was not supported by substantial evidence or constituted a manifest abuse of discretion. In
13 granting a stay, the court may require the person seeking the stay to post a bond in an amount
14 sufficient to protect the contracting agency and the public from costs associated with delay in con-
15 tract performance.

16 “(6) In its review, the circuit court shall give due deference to any factual contracting decision
17 made by the contracting agency and may not substitute its judgment for that of the contracting
18 agency, but shall review all questions of law de novo. Thereafter:

19 “(a) If a contract has not been executed and the court rules in favor of the party that sought
20 judicial review, and if the violation could have affected the award of the contract, the court shall
21 remand the procurement to the contracting agency for a determination whether to continue with the
22 procurement process in light of the court’s decision.

23 “(b) In addition to the relief provided for in paragraph (a) of this subsection, if a contract has
24 been executed and the court rules in favor of the party that sought judicial review, the court shall
25 include in its order a determination whether the party that signed the contract with the contracting
26 agency is entitled to reimbursement under the conditions of, and calculated in the same manner as
27 provided in, ORS 279C.470. Notwithstanding that ORS 279C.470 otherwise applies only to public
28 improvement contracts, under this paragraph the court shall apply ORS 279C.470 to both public
29 improvement contracts and other public contracts of contracting agencies.

30 “(c) The court may award costs and attorney fees to the prevailing party.”.

31 In line 24, after “agency” insert “with procurement authority under ORS 279A.050”.

32 On page 6, line 5, after “agency” insert “with procurement authority under ORS 279A.050”.

33 Delete lines 13 and 14 and insert:

34 “(c) A public improvement contract with a value of less than \$5,000.”.

35 In line 21, delete “(2)”.

36 After line 21, insert:

37 “(g) A public improvement contract awarded under subsection (6) of this section in response to
38 an emergency.”.

39 On page 7, delete lines 28 through 36 and insert:

40 “(6) After declaring that an emergency exists in accordance with rules adopted under ORS
41 279A.065, a contracting agency may award a public improvement contract in response to the emer-
42 gency without using a competitive solicitation.”.

43 After line 39, insert:

44 “(8) Public improvement contracts excepted from competitive bid requirements under subsection
45 (1)(a), (c), (d), (e), (f) or (g) of this section are not subject to the exemption requirements of sub-

1 section (2) of this section.”.

2 On page 8, delete lines 1 and 2 and insert:

3 “(c) A public improvement contract with a value of less than \$5,000.”.

4 In line 6, delete “(2)”.

5 After line 6, insert:

6 “(f) A public improvement contract awarded under subsection (6) of this section in response to

7 an emergency.”.

8 On page 9, delete lines 13 through 21 and insert:

9 “(6) After declaring that an emergency exists in accordance with rules adopted under ORS

10 279A.065, a contracting agency may award a public improvement contract in response to the emer-

11 gency without using a competitive solicitation.”.

12 After line 24, insert:

13 “(8) Public improvement contracts excepted from competitive bid requirements under subsection

14 (1)(a), (c), (d), (e) or (f) of this section are not subject to the exemption requirements of subsection

15 (2) of this section.”.

16 Delete lines 31 and 32 and insert:

17 “(c) A public improvement contract with a value of less than \$5,000.”.

18 In line 36, delete “(2)”.

19 After line 36, insert:

20 “(f) A public improvement contract awarded under subsection (6) of this section in response to

21 an emergency.”.

22 On page 10, delete lines 39 through 45.

23 On page 11, delete lines 1 and 2 and insert:

24 “(6) After declaring that an emergency exists in accordance with rules adopted under ORS

25 279A.065, a contracting agency may award a public improvement contract in response to the emer-

26 gency without using a competitive solicitation.”.

27 After line 5, insert:

28 “(8) Public improvement contracts excepted from competitive bid requirements under subsection

29 (1)(a), (c), (d), (e) or (f) of this section are not subject to the exemption requirements of subsection

30 (2) of this section.

31 “**SECTION 14a.** ORS 279C.360 is amended to read:

32 “279C.360. (1) An advertisement for public improvement contracts must be published at least

33 once in at least one newspaper of general circulation in the area where the contract is to be per-

34 formed and in as many additional issues and publications as the contracting agency may determine.

35 The Director of the Oregon Department of Administrative Services, [*or*] a local contract review

36 board **or, for contracts described in ORS 279A.050 (3)(b), the Director of Transportation**, by

37 rule or order, may authorize advertisements for public improvement contracts to be published elec-

38 tronically instead of in a newspaper of general circulation if the director or board determines that

39 electronic advertisements are likely to be cost-effective. If the public improvement contract has an

40 estimated cost in excess of \$125,000, the advertisement must be published in at least one trade

41 newspaper of general statewide circulation. The Director **of the Oregon Department of Admin-**

42 **istrative Services, the Director of Transportation or the local contract review** board may, by

43 rule or order, require an advertisement to be published more than once or in one or more additional

44 publications.

45 “(2) All advertisements for public improvement contracts must state:

- 1 “(a) The public improvement project;
- 2 “(b) The office where the specifications for the project may be reviewed;
- 3 “(c) The date that prequalification applications must be filed under ORS 279C.430 and the class
- 4 or classes of work for which bidders must be prequalified if prequalification is a requirement;
- 5 “(d) The date and time after which bids will not be received, which must be at least five days
- 6 after the date of the last publication of the advertisement;
- 7 “(e) The name and title of the person designated for receipt of bids;
- 8 “(f) The date, time and place that the contracting agency will publicly open the bids; and
- 9 “(g) If the contract is for a public works subject to ORS 279C.800 to 279C.870 or the Davis-
- 10 Bacon Act (40 U.S.C. 276a).”.

11 After line 43, insert:

12 “(5) Subsection (4) of this section applies only to public improvement contracts with a value,

13 estimated by the contracting agency, of more than \$100,000 or, in the case of contracts for highways,

14 bridges and other transportation projects, more than \$50,000.”.

15 On page 15, line 42, delete “\$50,000” and insert “\$100,000 or, in the case of contracts for high-

16 ways, bridges and other transportation projects, more than \$50,000”.

17 On page 16, delete lines 16 through 42 and insert:

18 “**NOTE:** Section 22 was deleted by amendment. Subsequent sections were not renumbered.”.

19 On page 23, line 9, delete “and (2)” and insert “to (3)”.

20 Delete lines 15 through 17.

21 In line 18, delete “(7)” and insert “(6)”.

22 In line 24, delete “(8)” and insert “(7)”.

23 In line 27, delete “(9)(a)” and insert “(8)(a)”.

24 In line 36, delete “(10)” and insert “(9)”.

25 In line 43, delete “(11)” and insert “(10)” and delete “(10)” and insert “(9)”.

26 Delete line 45.

27 On page 24, line 1, delete “(13)” and insert “(11)”.

28 On page 28, line 33, after “200.170,” insert “279A.010,”.

29 In line 34, after “279B.015,” insert “279B.020, 279B.065, 279B.075, 279B.085, 279B.215, 279B.235,

30 279B.400,” and after “279C.335,” insert “279C.360,”.

31 In line 35, delete “279C.390,”.

32 In line 36, after “12,” insert “14a,”.

33 After line 38, insert:

34 “**SECTION 37.** ORS 530.050 is amended to read:

35 “530.050. Under the authority and direction of the State Board of Forestry except as otherwise

36 provided for the sale of forest products, the State Forester shall manage the lands acquired pursuant

37 to ORS 530.010 to 530.040 so as to secure the greatest permanent value of [*such*] **those** lands to the

38 state, and to that end may:

39 “(1) Protect the lands from fire, disease and insect pests, cooperate with the counties and with

40 persons owning lands within the state in [*such*] **the protection of the lands** and enter into all

41 agreements necessary or convenient [*therefor*] **for the protection of the lands.**

42 “(2) Sell forest products from the lands, and execute mining leases and contracts as provided for

43 in ORS 273.551.

44 “(3) **Enter into and administer contracts for the sale of timber from lands owned or**

45 **managed by the State Board of Forestry and the State Forestry Department.**

1 “[(3)] (4) Permit the use of the lands for other purposes, including but not limited to forage and
2 browse for domestic livestock, fish and wildlife environment, landscape effect, protection against
3 floods and erosion, recreation, and protection of water supplies when, in the opinion of the board,
4 [such] **the** use is not detrimental to the best interest of the state.

5 “[(4)] (5) Grant easements, permits and licenses over, through and across the lands[; also,]. **The**
6 **State Forester** may require and collect reasonable fees or charges relating to the location and es-
7 tablishment of easements, permits and licenses granted by the state over [such lands, which
8 moneys] **the lands. The fees and charges collected** shall be used **exclusively** for the expenses of
9 [such location and establishment. Any moneys derived hereunder] **locating and establishing the**
10 **easements, permits and licenses under this subsection and** shall be placed in the State Forestry
11 Department Account [and used exclusively for such purposes].

12 “[(5)] (6) Require and collect fees or charges for the use of state forest roads[, which moneys].
13 **The fees or charges collected** shall be used **exclusively** for purposes of maintenance and im-
14 provements of [such] **the** roads[. Any moneys derived hereunder] **and** shall be placed in the State
15 Forestry Department Account [and used exclusively for such purposes].

16 “[(6)] (7) Reforest the lands and cooperate with the counties, and with persons owning
17 timberlands within the state, in [such] **the** reforestation, and make all agreements necessary or
18 convenient [therefor] **for the reforestation.**

19 “[(7)] (8) Require such undertakings as in the opinion of the board are necessary or convenient
20 to secure performance of any contract entered into under the terms of this section[,] or ORS 273.551.

21 “[(8)] (9) Sell rock, sand, gravel, pumice and other such materials from the lands[; such]. **The**
22 sale may be negotiated without bidding, provided the appraised value of [such] **the materials** does
23 not exceed \$2,500.

24 “[(9)] (10) Enter into agreements, each for not more than 10 years duration, for the production
25 of minor forest products.

26 “[(10)] (11) Establish a forestry carbon offset program to market, register, transfer or sell
27 forestry carbon offsets. In establishing the program, the forester may:

28 “(a) Execute any contracts or agreements necessary to create opportunities for the creation of
29 forestry carbon offsets; and

30 “(b) Negotiate prices that are at, or greater than, fair market value for the transfer or sale of
31 forestry carbon offsets.

32 “[(11)] (12) Do all things and make all rules, not inconsistent with law, necessary or convenient
33 for the management, protection, utilization and conservation of the lands.

34 “**SECTION 38.** ORS 530.500 is amended to read:

35 “530.500. In order to accomplish the purposes of ORS 530.490, the State Forester may:

36 “(1) Protect the lands from fire, disease and insect pests, cooperate with the counties and with
37 persons owning lands within the state in [such] **the protection of the lands** and enter into all
38 agreements necessary or convenient [therefor] **for the protection of the lands.**

39 “[(2) Sell forest products from the lands and execute contracts thereby required.]

40 “**(2) Enter into and administer contracts for the sale of timber from lands owned or**
41 **managed by the State Board of Forestry and the State Forestry Department.**

42 “(3) Permit the use of the lands for other purposes, including but not limited to fish and wildlife
43 environment, landscape effect, protection against flood and erosion, recreation and production and
44 protection of water supplies when [such] **the** use is not detrimental to the purpose for which [such]
45 **the** lands are dedicated.

1 “(4) Contract with other governmental bodies for the protection of water supplies to facilitate
2 the multiple use of publicly owned water supplies for recreational purposes as well as a source of
3 water for domestic and industrial use.

4 “(5) Grant permits and licenses on, over and across the lands.

5 “(6) Reforest the lands and cooperate with persons owning timberlands within the state in
6 [such] **the** reforestation, and make all agreements necessary or convenient [therefor] **for the**
7 **reforestation.**

8 “(7) Establish a forestry carbon offset program to market, register, transfer or sell forestry
9 carbon offsets. In establishing the program, the forester may:

10 “(a) Execute any contracts or agreements necessary to create opportunities for the creation of
11 forestry carbon offsets; and

12 “(b) Negotiate prices that are at, or greater than, fair market value for the transfer or sale of
13 forestry carbon offsets.

14 “(8) Do all things and make all rules and regulations, not inconsistent with law, necessary or
15 convenient for the management, protection, utilization and conservation of the lands.

16 “(9) Require such undertakings as in the opinion of the State Forester are necessary or con-
17 venient to secure performance of any agreement authorized in ORS 530.450 to 530.520.

18 “**SECTION 39.** Section 336, chapter 794, Oregon Laws 2003, is amended to read:

19 “**Sec. 336. (1)** Sections 1 to 21, 23 to 91, 94 to 103, 106 to 108, 111, 114 to 125 and 128 to 192,
20 **chapter 794, Oregon Laws 2003** [of this 2003 Act], the amendments to statutes and uncodified law
21 by sections 193 to 229 and 229b to 331d, **chapter 794, Oregon Laws 2003**, [of this 2003 Act] and the
22 repeal of statutes by section 332, **chapter 794, Oregon Laws 2003**, [of this 2003 Act] apply only to
23 public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005.

24 “**(2)(a) Statutes repealed by section 332, chapter 794, Oregon Laws 2003, and rules that**
25 **expire under or are repealed effective March 1, 2005, pursuant to section 334, chapter 794,**
26 **Oregon Laws 2003, continue to apply to public contracts, and to the solicitation of public**
27 **contracts, that are first advertised, but if not advertised then entered into, before March 1,**
28 **2005, to all protests concerning those solicitations, and to the judicial review of those solic-**
29 **itations and protests. However, an amendment or change to the work, made on or after**
30 **March 1, 2005, of a public contract must comply with those provisions of chapter 794, Oregon**
31 **Laws 2003, and rules adopted thereunder that govern the authority to make those amend-**
32 **ments or changes and that regulate those amendments or changes.**

33 “**(b) As used in this subsection, ‘solicitation’ means contracting processes that occur**
34 **before contract formation.”.**

35 In line 39, delete “37” and insert “40”.
36
