

RESOLUTION NO. 1402

A RESOLUTION AUTHORIZING THE CITY OF CANBY'S DELIGATED PURCHASING MANAGER TO INCREASE THE CITY'S CONTRACTING AND PROCUREMENT POLICY THRESHOLDS TO MATCH REVISIONS PASSED BY THE OREGON STATE LEGISLATIVE ASSEMBLY IN SENATE BILL 1047.

WHEREAS, the City adopted a contracting and procurement administrative policy effective June 20, 2018 by Resolution 1290;

WHEREAS, the City Administrator serves as the Purchasing Manager for the City of Canby and shall cause the Public Rules and Administrative Policy to be reviewed, and make any modifications required to ensure compliance with statutory change;

WHEREAS, the Oregon Legislative Assembly enacted a statutory change in public contracting awards under ORS 297B.065 and 279B.070 effective January 1, 2024 by the passing of Senate Bill (SB) 1047; and

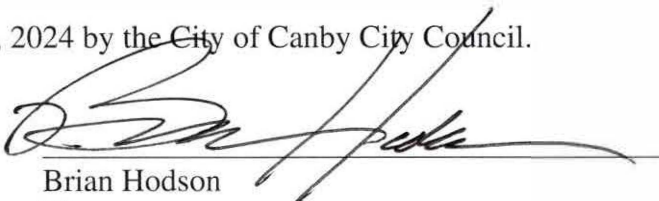
WHEREAS, the City of Canby desires to align its contracting and procurement policy with the amounts specified in SB 1047.

NOW THEREFORE, BE IT RESOLVED by the City of Canby City Council as follows:

1. Approve the City's Purchasing Manager to authorize a policy change allowing the contract and procurement thresholds to be increased and match the amounts as described in SB 1047 – See attached Exhibit "A".
2. Resolution No. 1290 is hereby repealed.

This Resolution will take effect immediately upon adoption by the City Council.

ADOPTED this 17th day of April, 2024 by the City of Canby City Council.


Brian Hodson
Mayor

ATTEST:


Maya Benham, CMC
City Recorder

Exhibit "A"
City of Canby Administrative Policy
Contracting and Procurement - Revised

00CITY OF CANBY ADMINISTRATIVE POLICY	Effective Date:
Contracting and Procurement	Resolution #

- SECTION I: Purpose
- SECTION II: Authority and Delegation
- SECTION III: Procurement and Contract Expenditure Authority Levels
- SECTION IV: Solicitation Preferences
- SECTION V: Methods of Source Selection
- SECTION VI: Goods Procurement and Non-Professional Services Contracts
- SECTION VII: Personal/Professional Services Contracts
- SECTION VIII: Public Works Contracts
- SECTION IX: Construction/Public Improvement Contracts
- SECTION X: Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying and Related Services Contracts
- SECTION XI: Procurements Using Federal Funds
- SECTION XII: Definitions

SECTION I.
PURPOSE

This policy is intended to:

- Use public contracting practices and methods that maximize the efficient use of public resources and the purchasing power of public funds by promoting impartial and open competition;
- Provide appropriate authority for and control over City expenditures;
- Ensure compliance with the Oregon Department of Administrative Services (DAS) contracting and procurement policy, Oregon Public Contracting Code (Code), and the Department of Justice Model Rules; and the Federal Uniform Guidance for Grants and Agreements;
- Fully implement the Code and the City’s Public Contracting Rules (Resolution 1290) by delegating authority for purchasing decisions;
- Define signature authority levels for City expenditures.

SECTION II.
AUTHORITY AND DELEGATION

1. General Authority

The City Administrator shall serve as the Purchasing Manager for the City and is authorized to issue all solicitations and to award all City contracts to complete work outlined in the adopted budget or if the contract price does not exceed \$25,000. Subject to this chapter, the Purchasing Manager may adopt and amend all solicitation materials, contracts and forms required or permitted to be adopted by contracting agencies under the Oregon Public Contracting Code or otherwise convenient for the City’s contracting needs. The Purchasing Manager shall hear all solicitation and award protests.

2. Delegation of Purchasing Manager’s Authority

Any of the responsibilities or authorities of the Purchasing Manager under this chapter may be delegated and sub-delegated by the Purchasing Manager.

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3. Mandatory Review of Rules

Whenever the Oregon State Legislative Assembly enacts laws that cause the attorney general to modify its Oregon Department of Administrative Services (DAS) contracting and procurement policy, Oregon Public Contracting Code (Code), and the Model Rules, the Purchasing Manager shall cause the Public Contracting Rules and Administrative Policy to be reviewed, and make any modifications required to ensure compliance with statutory changes.

4. Legal Framework

The laws, ordinances, and rules applicable to purchasing, contracting, and the sale of City property are:

- A. Oregon Revised Statutes:
 - 1. ORS Chapter 279A regarding public contracting – general provisions
 - 2. ORS Chapter 279B regarding public contracting – public procurements
 - 3. ORS Chapter 279C regarding public contracting – public improvements and related contracts
- B. Oregon Administrative Rules, Chapter 125 and 137; and
- C. Oregon Constitution.

SECTION III.

PROCUREMENT AND CONTRACT EXPENDITURE AUTHORITY LEVELS

When the City Administrator, a Director or a Manager/Supervisor approves City expenditures, a purchase order, or timecard s/he is approving that:

- A. The expenditure is an appropriate use of City funds.
- B. The expenditure has been approved by the City Council in the adopted budget.
- C. There are funds available in the budget for the expenditure.
- D. The account coding associated with the expenditure is correct.

Expenditures are authorized as follows:

City Council	Expenditures of budgeted funds for a single purchase or contract in excess of \$50,000 or expenditures of sums not appropriated in the budget.
City Administrator Assistant City Administrator	Up to \$50,000 unless expenditure causes the City to exceed a budget appropriation. City Council must approve if exceeds budget appropriation.
Finance Director	Up to \$25,000 unless expenditure causes the City to exceed a budget appropriation.
All other City Directors	Up to \$10,000 unless expenditure causes the City to exceed a budget appropriation.
Managers and Supervisors	Up to \$5,000 unless expenditure causes the City to exceed a budget appropriation.

SECTION IV.
SOLICITATION PREFERENCES

Under ORS 279A, the following preferences for procurements and contracts should be taken into account when soliciting goods or services:

1. Preference for Oregon goods and services; nonresident bidders

- A. For the purposes of awarding a public contract, the City shall:
 - I. Give preference to goods or services that have been manufactured or produced in Oregon if price, fitness, availability and quality are otherwise equal; and
 - II. Add a percent increase to the bid of a nonresident bidder equal to the percent, if any, of the preference give to the bidder in the state in which the bidder resides.
- B. When a public contract is awarded to a nonresident bidder and the contract price exceeds \$25,000, the bidder shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. The contracting agency shall satisfy itself that the requirement of this subsection has been complied with before the contracting agency issues a final payment on a public contract.
- C. 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 state. A 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.

2. Preference for recycled materials

- A. Give preference to goods that are certified to be made from recycled products when such goods are available, can be substituted for non-recycled products without a loss in quality, and the cost of goods made from recycled products is not significantly more than the cost of goods made from non-recycled products.

3. Preference for goods fabricated or processed within state or services performed within state

- A. Notwithstanding provisions of law requiring the City to award a contract to the lowest responsible bidder or best proposer or provider of a quotation, when the City uses public funds to procure goods or services for a public use under ORS chapter 279B, the City may give preference to procuring goods that are fabricated or processed, or services that are performed, entirely within this state if the goods or services cost not more than 10 percent (10%) more than goods that are not fabricated or processed, or services that are not performed, entirely within this state. If more than one bidder or proposer qualifies for the preference described in this subsection, the contracting agency may give a further preference to a qualifying bidder or proposer that resides in or is headquartered in this state.
- B. The City by order may set a higher percentage than the percentage set forth in paragraph (A) of this subsection if the City, in a written determination to support the order, finds good cause to set the higher percentage and explains the City's reasons and evidence for the finding.
- C. Notwithstanding ORS 279C.320 (1), subsection (A) of this section does not apply to emergency work, minor alterations, ordinary repairs or maintenance work for public improvements or to other construction contracts described in ORS 279C.320 (1).

SECTION V.
METHODS OF SOURCE SELECTION

Except as permitted by ORS 279B.065 through ORS 279B.085 (procurements listed in Section VI), the City shall award a public contract for goods or services by competitive sealed bidding under ORS 279B.055 or competitive sealed proposals under ORS 279B.060.

1. Competitive sealed bidding (ITB) (OAR 137-047-0255 and ORS 279B.055)

- A. **USE:** specification and cost-based with cost as the primary basis for award of the contract. Bids are submitted on pre-determined specifications.
- B. The City may solicit and award a public contract for goods or services, or may award multiple public contracts for goods or services when specified in the invitation to bid, by competitive sealed bidding.
- C. Reference OAR 137-047-0255 and ORS 279B.055 for specific instructions when dealing with competitive sealed bids.

2. Competitive sealed proposals (RFP) (OAR 137-047-0260 and ORS 279B.060)

- A. **USE:** when a goal or outcome is known, but multiple solutions may exist. This allows for comparison of solutions, demonstrations, and negotiations.
- B. RFP is looking for the highest quality with price being secondary. Used when City wants the ability to negotiate contract terms.
- C. The City may solicit and award a public contract for goods or services, or may award multiple public contracts for goods or services when specified in the request for proposals, by requesting and evaluating competitive sealed proposals.
- D. Reference OAR 137-047-0269 and ORS 279B.060 for specific instructions when dealing with competitive sealed proposals.

SECTION VI.
GOODS PROCUREMENT & NON-PROFESSIONAL SERVICES CONTRACTS

1. Buy Decision for Source Selection (OAR 125-247-0200)

- A. The buy decision means the decision to buy supplies and services through socio-economic programs, agreements, or the open market (source). The City is not required to make a buy decision based on the lowest price. See the specific statute or rules for the authority to use each source.
- B. The City **WILL ATTEMPT TO** make their buy decision in the priority order set forth in subsections (i) through (iv) (priority order). If a higher priority source satisfies a procurement, the City will attempt to procure through that higher priority source and may not elect to procure through a lower priority source.
 - i. Qualified Rehabilitation Facilities (QRFs) (ORS 279.835 through 279.855 and OAR 125-055-0005 through 125-055-0045)
 - ii. Inmate Labor (Oregon Constitution, Article I, Section 41)
 - iii. Statewide DAS Price Agreement (OAR 125-247-0296).
Go to ORPIN and perform a "statewide contract search" or an "award search" for "active" contracts.
 - iv. Surplus Property (OAR 125-050-0100 through 125-050-0400)
When appropriate, the City will attempt to purchase goods through the surplus property system or govdeals.com.

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- C. **ORS 190 Agreement.** Section (B) does not apply to ORS 190 Agreements that promote the use of existing state resources, including an Interagency Agreement, Intergovernmental Agreement, Interstate Agreement, International Agreement, or Tribal Agreement (OAR 125-246-0365). The City may elect to use an ORS 190 Agreement at any time and supersede the Buy Decision checklist.
- D. **Open Market.** If sections (B) and (C) do not apply, the City may procure supplies and services through the open market, using the methods provided under the Code, related Rules, and policies. (ORS 279A and B, OAR 125-246 and 247).
- E. **Minority, Women and Emerging Small Business (MWESB).** For a public contract with a value of \$5,000 or more, the City shall provide timely notice and information to the Advocate for Minority, Women, and Emerging Small Business regarding bid or proposal solicitations and contract awards. The Advocate should be notified by sending a fax or emailing the Office of Economic and Business Equity.

2. Small procurements (OAR 137-047-0265 and ORS 279B.065)

- A. The City may award a [*procurement of*] **public contract for** goods or services that does not exceed [*\$10,000*] **a contract price of \$25,000** in any manner the City deems practical or convenient, including by direct selection award.
- B. A contract awarded under this section may be amended in accordance with OAR 137-047-0800, but the cumulative amendments may not increase the total contract price to greater than one hundred twenty-five percent (125%) of the original contract price.
- C. The City may not artificially divide or fragment a procurement so as to constitute a small procurement under this section.
- D. If purchase is over [*\$5,000*] **\$10,000**, the Minority, Women, and Emerging Small Business advocate must be notified. Posting to ORPIN meets the basic notification requirement for MWESBs.

3. Intermediate procurements (OAR 137-047-0270 and ORS 279B.070)

- A. The City may award a [*procurement of*] **public contract for** goods and services that exceeds [*\$10,000*] **a contract price of \$25,000**, but does not exceed [*\$150,000*] **a contract price of \$250,000** [*in accordance with intermediate procurement procedures*] as provided in subsection (4) pursuant to ORS 279B.070.
- B. A contract awarded under this section may be amended in accordance with OAR 137-047-0800, but the cumulative amendments may not increase the total contract price to greater than two hundred twenty-five percent (125%) of the original contract price or \$250,000, whichever is greater.
- C. The City may not artificially divide or fragment a procurement so as to constitute an intermediate procurement under this section.
- D. When conducting an intermediate procurement, the City shall seek at least three informally solicited competitive price quotes or competitive proposals from prospective contractors. The City shall keep a written record of the sources of the quotes or proposals received. If three quotes or proposals are not reasonably available, fewer will suffice, but the City shall make a written record of the effort the City makes to obtain the quotes or proposals.
- E. If the City awards a **public** contract, the City shall award the **public** contract to the offeror whose quote or proposal will best serve the interests of the City, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility under ORS 279B.110.
- F. If purchase is over [*\$5,000*] **\$10,000**, the Minority, Women, and Emerging Small Business advocate must be notified. Posting to ORPIN meets the basic notification requirement for

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MWESBs.

4. Sole source procurements (OAR 137-047-0275 and ORS 279B.075)

- A. The City may award a contract for goods or services without competition when the City Council, City Administrator, Director, or Manager with the City, determines in writing, that the goods or services, or class of goods or services, are available from only one source.
- B. The determination of a sole source must be based on written findings that may include:
 - a. That the efficient utilization of existing goods requires the acquisition of compatible goods or services;
 - b. That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source;
 - c. That the goods or services are for use in a pilot or an experimental project; or
 - d. Other findings that support the conclusion that the goods or services are available from only one source.
- C. To the extent reasonably practical, the City shall negotiate with the sole source to obtain contract terms advantageous to the contracting agency.

5. Emergency procurements (OAR 137-047-0280 and ORS 279B.080)

- A. The City, or designee, may make or authorize others to make emergency procurements of goods or services in an emergency. The City shall document the nature of the emergency and describe the method used for the selection of the particular contractor.
- B. For an emergency procurement of construction services that are not public improvements, the City shall ensure competition for a contract for the emergency work that is reasonable and appropriate under the emergency circumstances. In conducting the procurement, the City shall set a solicitation time period that the City determines to be reasonable under the emergency circumstances and may issue written or oral requests for offers or make direct appointments without competition in cases of extreme necessity.

6. Special procurements (OAR 137-047-0285 and ORS 279B.085)

- A. Except as provided in subsection (3) of this section, to seek approval of a special procurement, the City shall submit a written request to the local contract review board that describes the contracting procedure, the goods or services or the class of goods or services that are the subject of the special procurement and the circumstances that justify the use of a special procurement under the standards set forth in subsection (4) of this section.
- B. The City Administrator or the local contract review board may approve a special procurement if the City Administrator or board finds that a written request submitted demonstrates that the use of a special procurement as described in the request, or an alternative procedure prescribed:
 - a. Is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and
 - b. Is reasonably expected to result in substantial cost savings to the contracting agency or to the public; or
 - c. Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any rules adopted there under.
- C. Public notice of the approval of a special procurement must be given in the same manner as provided in ORS 279B.055 (4).
- D. If the City intends to award a contract through a special procurement that calls for competition among prospective contractors, the City shall award the contract to the offeror

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the City determines to be the most advantageous.

- E. When the City Administrator or local contract review board approves a class special procurement under this section, the City may award contracts to acquire goods or services within the class of goods or services in accordance with the terms of the approval without making a subsequent request for a special procurement.

SECTION VII.

PERSONAL/PROFESSIONAL SERVICES CONTRACTS

(For Architectural, engineering, photogrammetric mapping, transportation planning, land surveying, and related services contracts, see section X)

1. Personal/Professional services contracts (OAR 137-047-0560 and ORS 279A.055)

- A. Except as otherwise provided in these rules, personal services contracts may be awarded in the same manner as contracts for services under ORS 279B.050, ORS 279B.060, and ORS 279B.085.
 - a. Personal services contracts in any amount may be awarded under a publicly advertised request for competitive sealed proposals.
 - b. Contracts for personal services for which the estimate contract price does not exceed \$100,000 may be awarded using an informal solicitation for proposals. When informal solicitation is used under this subsection for personal services, the following shall be considered, but not be limited to, the person's (or persons'):
 - i. Professional expertise;
 - ii. Experience related to the particular type of work for that contract;
 - iii. Experience in working with public entities;
 - iv. History of completing such tasks in a timely manner;
 - v. Ability to work with the employees and groups involved in the project; and
 - vi. Price of services.
 - c. Three to five informally solicited competitive price quotes or competitive proposals are required.
 - d. Contracts for personal services for which the estimated contract price does not exceed \$100,000 may be awarded by direct appointment without competition from the City's current list of qualified consultants, another public contracting agency's current list of consultants pursuant to an interagency or intergovernmental agreement entered into in accordance with ORS Chapter 190, or from consultants offering the necessary services that the City reasonably can locate.
 - e. Personal Service Contracts of not more than \$100,000 for the continuation of work by a contractor who performed preliminary studies, analysis or planning for the work under a prior contract may be awarded without competition if the prior contract was awarded under a competitive process and the Purchasing Manager determines that use of the original contractor will significantly reduce the costs of, or risks associated with, the work.

SECTION VIII.

PUBLIC WORKS CONTRACTS

1. Contracts for construction other than public improvements (OAR 137-049-0140)

- A. Contracting agencies shall enter into contracts for emergency work, minor alteration, ordinary repair or maintenance of public improvements, as well as any other construction contract that is not defined as a public improvement under ORS 279A.010 (Definitions for Public Contracting Code), in accordance with the provisions of ORS chapter 279B.

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- B. Pursuant to ORS 279C.320, public contracts for construction services that are not public improvement contracts may be procured and amended as general trade services under the provisions of ORS 279B rather than under the provisions of ORS Chapter 279C. Emergency contracts for construction services are not public improvement contracts and are regulated under ORS 279B.080 or number 4 in this section.

SECTION IX.

CONSTRUCTION/PUBLIC IMPROVEMENT CONTRACTS

(For Architectural, engineering, photogrammetric mapping, transportation planning, land surveying, and related services contracts, see section X)

1. Public improvement contracts intermediate procurements (OAR 137-049-0160)

- A. Public improvement contracts estimated by the City not to exceed \$100,000 may be awarded in accordance with intermediate level procurement procedures for competitive quotes established by this rule.
- B. See OAR 137-049-0160 for complete listing of requirements.

2. Public improvement contracts – Alternative contracting methods (OAR137-049-0600 to OAR 137-049-0690)

Under ORS 279C.335, the City may use alternative contracting methods for public improvement contracts. These include, but are not limited to the following forms of contracting: design- build, energy savings performance contract and the construction manager/general contractor method. To the extent any such alternative contracting methods are utilized within the competitive bidding process set forth in ORS 279.335, these OAR 137-049-0600 to OAR 137- 049-0690 rules are advisory only and may be used or referred to by the City.

3. Public improvement contracts – Formal procurement process (OAR 137-049-0200)

When a public improvement project cost is estimated to exceed \$100,000, the City will follow the formal procurement process outlined in OAR 137-049-0200 through OAR 137-049-0490.

SECTION X.

ARCHITECTURAL, ENGINEERING, PHOTOGRAMMETRIC MAPPING, TRANSPORTATION PLANNING, LAND SURVEYING AND RELATED SERVICES CONTRACTS

When selecting the most qualified consultant to perform architectural, engineering, photogrammetric mapping, transportation planning or land surveying services, the City shall follow the applicable selection procedure under either OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure).

1. The City shall select consultants to provide architectural, engineering, photogrammetric mapping, transportation planning or land surveying services on the basis of the consultant's qualifications for the type of professional service required. The City may solicit or use pricing policies and proposals or other pricing information, including the number of hours proposed for the service required, expenses, hourly rates and overhead, to determine consultant compensation **only after** the contracting agency has selected a candidate pursuant to subsection (2) of this section.
2. Subject to the requirements of subsection (1) of this section, the procedures that the City creates to screen and select consultants and to select a candidate under this section are at the City's sole discretion. The City may adjust the procedures to accommodate the City's scope, schedule or

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objectives for a particular project if the estimated cost of the architectural, engineering, photogrammetric mapping, transportation planning or land surveying services for the project does not exceed \$250,000.

3. Notwithstanding the provisions of subsection (1) of this section the City may directly appoint a consultant if the estimated cost of the architectural, engineering, photogrammetric mapping, transportation planning or land surveying services for the project does not exceed \$100,000.
4. Notwithstanding the provisions of subsections (1) and (3) of this section, the City may directly appoint a consultant for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services in an emergency.
5. The City's screening and selection procedures under this section, regardless of the estimated cost of the architectural, engineering, photogrammetric mapping, transportation planning or land surveying services for a project, may include considering each candidate's:
 - A. Specialized experience, capabilities and technical competence, which the candidate may demonstrate with the candidate's proposed approach and methodology to meet the project requirements;
 - B. Resources committed to perform the work and the proportion of the time that the candidate's staff would spend on the project, including time for specialized services, within the applicable time limits;
 - C. Record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;
 - D. Ownership status and employment practices regarding minority, women and emerging small businesses or historically underutilized businesses;
 - E. Availability to the project locale;
 - F. Familiarity with the project locale; and
 - G. Proposed project management techniques.
6. If the screening and selection procedures the City creates under subsection (2) of this section result in the City's determination that two or more candidates are equally qualified, the City may select a candidate through any process the City adopts that is not based on the candidate's pricing policies, proposals or other pricing information.
7. The City and the selected candidate shall mutually discuss and refine the scope of services for the project and shall negotiate conditions, including but not limited to compensation level and performance schedule, based on the scope of services. The compensation level paid must be reasonable and fair to the City as determined solely by the City. Authority to negotiate a contract under this section does not supersede any provision of ORS 279A.140 or 279C.520.
8. If the City and the selected candidate are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the City, the City shall, either orally or in writing, formally terminate negotiations with the selected candidate. The City may then negotiate with the next most qualified candidate. The negotiation process may continue in this manner through successive candidates until an agreement is reached or the City terminates the consultant contracting process.

RELATED SERVICES

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"Related services" means personal services, other than architectural, engineering, photogrammetric mapping, transportation planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvement projects, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner's representation services or land-use planning services. When the City selects a consultant to perform related services, it shall follow one of the following selection procedures:

1. When selecting a consultant on the basis of qualifications alone, the City shall follow the applicable selection procedure under OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure), or 137-048-0220 (Formal Selection Procedure);
2. When selecting a consultant on the basis of price competition alone, the City shall follow the applicable provisions under OAR 137-048-0200 (Direct Appointment Procedure), the applicable provisions of 137-048-0210 (Informal Selection Procedure) pertaining to obtaining and evaluating price proposals and other pricing information, or the applicable provisions of 137-048-0220 (Formal Selection Procedure) pertaining to obtaining and evaluating price proposals and other pricing information; and
3. When selecting a consultant on the basis of price and qualifications, the City shall follow the applicable provisions under OAR 137-048-0200 (Direct Appointment Procedure), the applicable provisions of 137-048-0210 (Informal Selection Procedure) pertaining to obtaining and evaluating price and qualifications proposals, or the applicable provisions of 137-048-0220 (Formal Selection Procedure) pertaining to obtaining and evaluating price and qualifications proposals. For selections under the informal selection procedure of OAR 137-048-0210, the City may use abbreviated requests for proposals that nevertheless meet the requirements of 137-048-0210, when the City determines, in its sole discretion, that the characteristics of the project and the related services required by the City would be adequately addressed by a more abbreviated request for proposals document, generally comparable to the intermediate procurement procedures and related documentation under ORS 279B.070 and OAR 137-047-0270. If the City is subject to this section (2) may request and consider a proposer's pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, submitted with a proposal.

The City is not required to follow the procedures listed in either section (1) of architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or section (1) of related services, when the City has established price agreements with more than one consultant and is selecting a single consultant to perform architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services under an individual work order or task order. Provided, however, the criteria and procedures the City uses to select a single consultant, when the City has established price agreements with more than one consultant, must meet the requirements of OAR 137-048-0270 (price agreements).

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Direct Appointment Procedure (137-048-0200)

The City may enter into a contract directly with a consultant for architectural, engineering, photogrammetric mapping, transportation planning, land surveying or related services without the following selection procedures set forth above in these rules when one of the conditions from OAR 137-048-0200 is met.

Informal Selection Procedure (137-048-0210)

The City may use the informal selection process to obtain a contract with a consultant for architectural, engineering, photogrammetric mapping, transportation planning, land surveying or related services without the following selection procedures set forth above in these rules when one of the conditions from OAR 137-048-0210 is met.

Formal Selection Procedure (137-024-0220)

Subject to OAR 137-048-0130 (applicable selection procedures; pricing information; disclosure of proposals), the City shall use the formal selection procedure described in this rule to select a consultant if the consultant cannot be selected under either 137-048-0200 (direct appointment procedure) or under 137-048-0210 (informal selection procedure). The formal selection procedure described in this rule may otherwise be used at the City's discretion.

If the City uses the formal selection procedure, it shall obtain contracts through public advertisement of requests for proposals, or requests for qualifications followed by requests for proposals.

SECTION XI.
PROCUREMENTS USING FEDERAL FUNDS

When the City procures either goods or services using federal money the following rules must be followed:

1. Review Vendor for Suspension and Debarment

Non-federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

Prior to hiring or contracting with a vendor the vendor must be run through the suspended and debarred database at www.sam.gov. If a vendor is suspended or debarred the City may not under any circumstances contract with this vendor

2. Purchase Method

The amount of the purchase and what the purchase is for will determine the correct purchasing process to follow. Below are the five purchasing processes to use when procuring goods or services using Federal money.

- A. **Micro Purchases** – the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold of \$3,500. Micro-purchases may be awarded without soliciting competitive quotes if the City considers the price to be reasonable.

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- B. **Small Purchases** – the acquisition of services, supplies, or other property that fall within the Simplified Acquisition Threshold of \$3,500 - \$250,000. Small purchases require price or rate quotes to be obtained from an adequate number of qualified sources.

- C. **Sealed Bid Purchases** – bids are publicly solicited and a fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid conforms to all the material terms and conditions of the invitation for bid and is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the following conditions apply.
 - a. A complete, adequate, and realistic specification or purchase description is available;
 - b. Two or more responsible bidders are willing and able to compete effectively for the business; and
 - c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

- a. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, and the invitation for bids must be publicly advertised;
 - b. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - c. All bids will be opened at the time and place prescribed in the invitation for bids, and the bids must be opened publicly;
 - d. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - e. Any or all bids may be rejected if there is a sound documented reason.
-
- D. **Competitive Proposal Purchases** – the technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:
 - a. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - b. Proposals must be solicited from an adequate number of qualified sources;
 - c. The City must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
 - d. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
 - e. The City may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby

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competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

- E. **Noncompetitive Proposal Purchases** - procurement through solicitation of a proposal from only one source may be used only when one or more of the following circumstances apply:
- a. The item is available only from a single source;
 - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - c. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the City; or
 - d. After solicitation of a number of sources, competition is determined inadequate.

SECTION XII.
DEFINITIONS

Award means the selection of a person to provide goods, services or public improvements under a public contract. The award of a contract is not binding on the City until the contract is executed and delivered by the City.

Bid means a binding, sealed, written offer to provide goods, services or public improvements for a specified price or prices.

Concession agreement means a contract that authorizes and requires a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from real property owned or managed by the City, and under which the concessionaire makes payments to the City based, at least in part, on the concessionaire's revenues or sales. The term "concession agreement" does not include a mere rental agreement, license or lease for the use of premises.

Contract price means the total amount paid or to be paid under a contract, including any approved alternates, and any fully executed change orders or amendments.

Contract review board or **local contract review board** means the Canby City Council.

Cooperative procurement means a procurement conducted by or on behalf of one or more contracting agencies.

Debarment means a declaration by the City Council under ORS 279B.130 or ORS 279C.440 or the Federal Government that prohibits a potential contractor from competing for the City's public contracts for a prescribed period of time.

Disposal means any arrangement for the transfer of property by the City under which the City relinquishes ownership.

Emergency means circumstances that create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and require prompt execution of a contract to remedy the condition.

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Energy savings performance contract means a contract with a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures that guarantee energy savings or performance.

Findings are the statements of fact that provide justification for a determination. Findings may include, but are not limited to, information regarding operation, budget and financial data; public benefits; cost savings; competition in public contracts; quality and aesthetic considerations, value engineering; specialized expertise needed; public safety; market conditions; technical complexity; availability, performance and funding sources.

Goods means any item or combination of supplies, equipment, materials or other personal property, including any tangible, intangible and intellectual property and rights and licenses related to the goods.

Informal solicitation means a solicitation made in accordance with the City's Public Contracting Rules to a limited number of potential contractors, in which the Solicitation Agent attempts to obtain at least three written quotes or proposals.

Intermediate procurement means a procurement of goods or services exceeding \$25,000 but not exceeding \$250,000.

Invitation to bid means a publicly advertised request for competitive sealed bids.

Model rules means the public contracting rules adopted by the Attorney General under ORS 279A.065.

Non-professional services contract means a contract with an independent contractor predominantly for services that do not require special training. Such services include, but are not limited to, the services of janitorial, landscaping, small equipment rental, and computer programming. The Purchasing Manager shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of non-professional services. *For Personal/Professional Services Contract, please see below.*

Offeror means a person who submits a bid, quote or proposal to enter into a public contract with the City.

Oregon Public Contracting Code means ORS Chapters 279A, 279B and 279C.

Person means a natural person or any other private or governmental entity, having the legal capacity to enter into a binding contract.

Proposal means a binding offer to provide goods, services or public improvements with the understanding that acceptance will depend on the evaluation of factors other than, or in addition to, price. A proposal may be made in response to a request for proposals or under an informal solicitation.

Personal/professional services contract means a contract with an independent contractor predominantly for services that require special training or certification, skill, technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers. The Purchasing

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Manager shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of personal services. *For Non-Professional Services Contract, please see above.*

Public contract means a sale or other disposal, or a purchase, lease, rental or other acquisition, by the City of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement.

Public improvement means a project for construction, reconstruction or major renovation on real property by or for the City. **Public improvement** does not include:

- a. Projects for which no funds of the City are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or
- b. Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.

Purchasing manager means the City Administrator or the City Administrator's designee.

Qualified pool means a pool of vendors who are prequalified to compete for the award of contracts for certain types of contracts or to provide certain types of services.

Quote means a price offer made in response to an informal or qualified pool solicitation to provide goods, services or public improvements.

Related services means personal services, other than architectural, engineering, photogrammetric mapping, transportation planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvement projects, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner's representation services or land-use planning services.

Request for proposals means a publicly advertised request for sealed competitive proposals.

Services means and includes all types of services (including construction labor) other than personal services.

Solicitation means an invitation to one or more potential contractors to submit a bid, proposal, quote, statement of qualifications or letter of interest to the City with respect to a proposed project, procurement or other contracting opportunity. The word "solicitation" also refers to the process by which the City requests, receives and evaluates potential contractors and awards public contracts.

Solicitation Agent means with respect to a particular solicitation, the City employee charged with responsibility for conducting the solicitation and making an award or making a recommendation on award to the City Council.

Solicitation documents means all informational materials issued by the City for a solicitation, including, but not limited to advertisements, instructions, submission requirements and schedules, award criteria,

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contract terms and specifications, and all laws, regulations and documents incorporated by reference.

Standards of responsibility means the qualifications of eligibility for award of a public contract. An offeror meets the standards of responsibility if the offeror has:

- a. Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the offeror to meet all contractual responsibilities;
- b. A satisfactory record of performance. The Solicitation Agent shall document the record of performance of an offeror if the Solicitation Agent finds the offeror to be not responsible under this paragraph;
- c. A satisfactory record of integrity. The Solicitation Agent shall document the record of integrity of an offeror if the Solicitation Agent finds the offeror to be not responsible under this paragraph;
- d. Qualified legally to contract with the City;
- e. Supplied all necessary information in connection with the inquiry concerning responsibility. If an offeror fails to promptly supply information requested by the Solicitation Agent concerning responsibility, the Solicitation Agent shall base the determination of responsibility upon any available information or may find the offeror non-responsible; and
- f. Not been debarred by the City, and, in the case of public improvement contracts, has not been listed by the Construction Contractors Board as a contractor who is not qualified to hold a public improvement contract.

Surplus property means personal property owned by the City which is no longer needed for use by the department to which such property has been assigned.

Senate Bill 1047

Sponsored by Senator WAGNER (at the request of Governor Tina Kotek)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Raises contract price threshold under which contracting agency may apply certain solicitation and procurement methods for public contracts. Requires state contracting agency that awards public contract with contract price of \$10,000 or more to document in state contracting agency's procurement file actions that state contracting agency takes to provide notice of procurement to Governor's Policy Advisor for Economic and Business Equity and to invite or consider for participation in procurement businesses or enterprises that Certification Office for Business Inclusion and Diversity certifies.

Requires Oregon Department of Administrative Services to promote policy of diversity, equity and inclusion in public contracting by engaging in efforts to increase public contracting opportunities for businesses and enterprises that Certification Office for Business Inclusion and Diversity has certified. Requires department to review and evaluate results of disparity study, to develop plan to implement and implement priority recommendations of study and to report periodically to Governor's Policy Advisor for Economic and Business Equity concerning progress of department's plan and implementation.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to equity in public procurements; creating new provisions; amending ORS 279B.065,
3 279B.070 and 279C.335; and prescribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 279B.065 is amended to read:

6 279B.065. (1) A contracting agency may award a [*procurement of*] **public contract for** goods or
7 services that does not exceed [*\$10,000*] **a contract price of \$25,000** in any manner the contracting
8 agency deems practical or convenient, including by direct selection or award. A contract awarded
9 under this section may be amended to exceed [*\$10,000*] **\$25,000** only in accordance with rules
10 adopted under ORS 279A.065.

11 **(2) A state contracting agency that awards a public contract with a contract price of**
12 **\$10,000 or more using a method permitted under this section shall document in the state**
13 **contracting agency's procurement file the actions the state contracting agency takes to:**

14 **(a) Comply with ORS 200.035; and**

15 **(b) Consider for the procurement businesses or enterprises that the Certification Office**
16 **for Business Inclusion and Diversity certifies under ORS 200.055.**

17 [(2)] **(3) A contracting agency may not artificially divide or fragment a procurement so as to**
18 **constitute a small procurement under this section.**

19 **SECTION 2.** ORS 279B.070 is amended to read:

20 279B.070. (1) A contracting agency may award a [*procurement of*] **public contract for** goods or
21 services that exceeds [*\$10,000*] **a contract price of \$25,000**, but does not exceed [*\$150,000*] **a con-**
22 **tract price of \$250,000, [in accordance with intermediate procurement procedures] as provided in**
23 **subsection (4) of this section.** A contract awarded under this section may be amended to exceed
24 [*\$150,000*] **\$250,000** only in accordance with rules adopted under ORS 279A.065.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 **(2) A state contracting agency that awards a public contract with a contract price of**
 2 **\$10,000 or more using a method permitted under this section shall document in the state**
 3 **contracting agency's procurement file the actions the state contracting agency takes to:**

4 **(a) Comply with ORS 200.035; and**

5 **(b) Invite to participate in the procurement qualified businesses or enterprises that the**
 6 **Certification Office for Business Inclusion and Diversity certifies under ORS 200.055.**

7 [(2)] **(3)** A contracting agency may not artificially divide or fragment a procurement so as to
 8 constitute an intermediate procurement under this section.

9 [(3)] **(4)** When conducting an intermediate procurement, a contracting agency shall seek at least
 10 three informally solicited competitive price quotes or competitive proposals from prospective con-
 11 tractors. The contracting agency shall keep a written record of the sources of the quotes or pro-
 12 posals received. If three quotes or proposals are not reasonably available, fewer will suffice, but the
 13 contracting agency shall make a written record of the effort the contracting agency makes to obtain
 14 the quotes or proposals.

15 [(4)] **(5)** If a contracting agency awards a **public** contract, the contracting agency shall award
 16 the **public** contract to the offeror whose quote or proposal will best serve the interests of the con-
 17 tracting agency, taking into account price as well as considerations including, but not limited to,
 18 experience, expertise, product functionality, suitability for a particular purpose and contractor re-
 19 sponsibility under ORS 279B.110.

20 **SECTION 3.** ORS 279C.335 is amended to read:

21 279C.335. (1) A contracting agency may award a public improvement contract only in response
 22 to competitive bids, except for:

23 (a) A public improvement contract with a qualified nonprofit agency that provides employment
 24 opportunities for individuals with disabilities under ORS 279.835 to 279.855.

25 (b) A public improvement contract that is exempt under subsection (2) of this section.

26 (c) A public improvement contract with a value of less than [~~\$10,000~~] **\$25,000. A state con-**
 27 **tracting agency that awards a public improvement contract with a contract price of \$10,000**
 28 **or more under this paragraph shall document in the state contracting agency's procurement**
 29 **file the actions the state contracting agency takes to:**

30 **(A) Comply with ORS 200.035; and**

31 **(B) Invite to participate in the procurement qualified businesses or enterprises that the**
 32 **Certification Office for Business Inclusion and Diversity certifies under ORS 200.055.**

33 (d) A public improvement contract with a contract price that does not exceed \$100,000 made
 34 under procedures for competitive quotes in ORS 279C.412 and 279C.414.

35 (e) A contract to repair, maintain, improve or protect property the Department of Veterans'
 36 Affairs obtains under ORS 407.135 and 407.145 (1).

37 (f) An energy savings performance contract that a contracting agency enters into in accordance
 38 with rules of procedure adopted under ORS 279A.065.

39 (g) A public improvement contract with an estimated contract price of \$250,000 or less that a
 40 contracting agency awards to an emerging small business certified under ORS 200.055 and funds
 41 with moneys from the Emerging Small Business Account established under ORS 200.180. A con-
 42 tracting agency that awards a public contract exempted from competitive bidding under this para-
 43 graph shall solicit competitive quotes as provided in ORS 279C.414 before making the award.

44 (2) Subject to subsection (4)(b) and (c) of this section, the Director of the Oregon Department
 45 of Administrative Services, a local contract review board or, for contracts described in ORS

1 279A.050 (3)(b), the Director of Transportation may exempt a public improvement contract or a class
2 of public improvement contracts from the competitive bidding requirement of subsection (1) of this
3 section after the Director of the Oregon Department of Administrative Services, the Director of
4 Transportation or the local contract review board approves the following findings that the con-
5 tracting agency submits or, if a state agency is not the contracting agency, that the state agency
6 that is seeking the exemption submits:

7 (a) The exemption is unlikely to encourage favoritism in awarding public improvement contracts
8 or substantially diminish competition for public improvement contracts.

9 (b) Awarding a public improvement contract under the exemption will likely result in substantial
10 cost savings and other substantial benefits to the contracting agency or the state agency that seeks
11 the exemption or, if the contract is for a public improvement described in ORS 279A.050 (3)(b), to
12 the contracting agency or the public. In approving a finding under this paragraph, the Director of
13 the Oregon Department of Administrative Services, the Director of Transportation or the local
14 contract review board shall consider the type, cost and amount of the contract and, to the extent
15 applicable to the particular public improvement contract or class of public improvement contracts,
16 the following:

17 (A) How many persons are available to bid;

18 (B) The construction budget and the projected operating costs for the completed public im-
19 provement;

20 (C) Public benefits that may result from granting the exemption;

21 (D) Whether value engineering techniques may decrease the cost of the public improvement;

22 (E) The cost and availability of specialized expertise that is necessary for the public improve-
23 ment;

24 (F) Any likely increases in public safety;

25 (G) Whether granting the exemption may reduce risks to the contracting agency, the state
26 agency or the public that are related to the public improvement;

27 (H) Whether granting the exemption will affect the sources of funding for the public improve-
28 ment;

29 (I) Whether granting the exemption will better enable the contracting agency to control the
30 impact that market conditions may have on the cost of and time necessary to complete the public
31 improvement;

32 (J) Whether granting the exemption will better enable the contracting agency to address the size
33 and technical complexity of the public improvement;

34 (K) Whether the public improvement involves new construction or renovates or remodels an
35 existing structure;

36 (L) Whether the public improvement will be occupied or unoccupied during construction;

37 (M) Whether the public improvement will require a single phase of construction work or multi-
38 ple phases of construction work to address specific project conditions; and

39 (N) Whether the contracting agency or state agency has, or has retained under contract, and
40 will use contracting agency or state agency personnel, consultants and legal counsel that have
41 necessary expertise and substantial experience in alternative contracting methods to assist in de-
42 veloping the alternative contracting method that the contracting agency or state agency will use to
43 award the public improvement contract and to help negotiate, administer and enforce the terms of
44 the public improvement contract.

45 (c) As an alternative to the finding described in paragraph (b) of this subsection, if a contracting

1 agency or state agency seeks an exemption that would allow the contracting agency or state agency
2 to use an alternative contracting method that the contracting agency or state agency has not pre-
3 viously used, the contracting agency or state agency may make a finding that identifies the project
4 as a pilot project for which the contracting agency or state agency intends to determine whether
5 using the alternative contracting method actually results in substantial cost savings to the con-
6 tracting agency, to the state agency or, if the contract is for a public improvement described in ORS
7 279A.050 (3)(b), to the contracting agency or the public. The contracting agency or state agency
8 shall include an analysis and conclusion regarding actual cost savings, if any, in the evaluation re-
9 quired under ORS 279C.355.

10 (3) In making findings to support an exemption for a class of public improvement contracts, the
11 contracting agency or state agency shall clearly identify the class using the class's defining char-
12 acteristics. The characteristics must include a combination of project descriptions or locations, time
13 periods, contract values, methods of procurement or other factors that distinguish the limited and
14 related class of public improvement contracts from the agency's overall construction program. The
15 agency may not identify a class solely by funding source, such as a particular bond fund, or by the
16 method of procurement, but shall identify the class using characteristics that reasonably relate to
17 the exemption criteria set forth in subsection (2) of this section.

18 (4) In granting exemptions under subsection (2) of this section, the Director of the Oregon De-
19 partment of Administrative Services, the Director of Transportation or the local contract review
20 board shall:

21 (a) If appropriate, direct the use of alternative contracting methods that take account of market
22 realities and modern practices and are consistent with the public policy of encouraging competition.

23 (b) Require and approve or disapprove written findings by the contracting agency or state
24 agency that support awarding a particular public improvement contract or a class of public im-
25 provement contracts, without the competitive bidding requirement of subsection (1) of this section.
26 The findings must show that the exemption of a contract or class of contracts complies with the
27 requirements of subsection (2) of this section.

28 (c) Require a contracting agency or state agency that procures construction manager/general
29 contractor services to conduct the procurement in accordance with model rules the Attorney Gen-
30 eral adopts under ORS 279A.065 (3).

31 (5)(a) A contracting agency or state agency may hold a public hearing before approving the
32 findings required by subsection (2) of this section and before the Director of the Oregon Department
33 of Administrative Services, the Director of Transportation or the local contract review board grants
34 an exemption from the competitive bidding requirement for a public improvement contract or a class
35 of public improvement contracts.

36 (b) Notification of a proposed exemption under subsection (2) of this section must be published
37 in at least one trade newspaper of general statewide circulation a minimum of 14 days before the
38 date on which the contracting agency intends to take action to approve or disapprove the ex-
39 emption.

40 (c) The notice must state that in response to a written request, the contracting agency or state
41 agency will hold a public hearing for the purpose of taking comments on the draft findings for an
42 exemption from the competitive bidding requirement.

43 (d) If the contracting agency or state agency conducts a public hearing, the contracting agency
44 or state agency shall offer an opportunity for any interested party to appear and comment.

45 (e) If a contracting agency or state agency must act promptly because of circumstances beyond

1 the agency's control that do not constitute an emergency, notification of the proposed exemption
2 may be published simultaneously with the agency's solicitation of contractors for the alternative
3 public contracting method, as long as responses to the solicitation are due at least five days after
4 the agency intends to take action to approve or disapprove the proposed exemption.

5 (6) The purpose of an exemption is to exempt one or more public improvement contracts from
6 competitive bidding requirements. The representations in and the accuracy of the findings, including
7 any general description of the resulting public improvement contract, are the bases for approving
8 the findings and granting the exemption. The findings may describe anticipated features of the re-
9 sulting public improvement contract, but the final parameters of the contract are those character-
10 istics or specifics announced in the solicitation document.

11 (7) A public improvement contract awarded under the competitive bidding requirement of sub-
12 section (1) of this section may be amended only in accordance with rules adopted under ORS
13 279A.065.

14 (8) A public improvement contract that is excepted from the competitive bidding requirement
15 under subsection (1)(a), (c), (d), (e), (f) or (g) of this section is not subject to the exemption require-
16 ments of subsection (2) of this section.

17 **SECTION 4. The Oregon Department of Administrative Services shall promote and apply**
18 **a policy of diversity, equity and inclusion in public contracting by engaging in efforts to in-**
19 **crease public contracting opportunities for businesses and enterprises that the Certification**
20 **Office for Business Inclusion and Diversity has certified under ORS 200.055. The department**
21 **shall undertake the following actions:**

22 (1) Review and evaluate the recommendations of a statewide study of disparities in
23 awarding public contracts;

24 (2) Develop a plan to implement the priority recommendations set forth in the study de-
25 scribed in subsection (1) of this section;

26 (3) Implement the priority recommendations set forth in the study described in sub-
27 section (1) of this section; and

28 (4) Report to the Governor's Policy Advisor for Economic and Business Equity concern-
29 ing the department's plan and implementation every six months until the earlier of the date
30 on which the department has fully implemented the priority recommendations or June 30,
31 2025. The department shall submit the first report not later than 90 days after the com-
32 pletion of the study described in subsection (1) of this section.

33 **SECTION 5. Section 4 of this 2023 Act and the amendments to ORS 279B.065, 279B.070**
34 **and 279C.335 by sections 1 to 3 of this 2023 Act apply to procurements that a contracting**
35 **agency advertises or otherwise solicits or, if the contracting agency does not advertise or**
36 **otherwise solicit the procurement, to public contracts into which the contracting agency**
37 **enters on or after the operative date specified in section 6 of this 2023 Act.**

38 **SECTION 6. (1) The amendments to ORS 279B.065, 279B.070 and 279C.335 by sections 1 to**
39 **3 of this 2023 Act become operative on January 1, 2024.**

40 (2) A contracting agency that adopts rules under ORS 279A.065 or 279A.070 may adopt
41 rules and take any other action before the operative date specified in subsection (1) of this
42 section that is necessary for the contracting agency to undertake and exercise all of the
43 duties, functions and powers conferred on the contracting agency by the amendments to ORS
44 279B.065, 279B.070 and 279C.335 by sections 1 to 3 of this 2023 Act.

45 **SECTION 7. This 2023 Act takes effect on the 91st day after the date on which the 2023**

1 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

2
