

RECEIVED
NOV 10 1983

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR THE COUNTY OF LINCOLN

ORDINANCE # 204

Lincoln County Legal Counsel

AN ORDINANCE AMENDING ORDINANCE #155, CHAPTER SEVEN, LOCAL CONTRACT REVIEW BOARD, SECTIONS 7.010, 7.030, ADDING SECTION 7.055, AND DECLARING AN EMERGENCY

The Lincoln County Board of Commissioners hereby ORDAINS as follows:

SECTION I: Section 7.010 is hereby amended as follows

Sections 7.005 to 7.055 constitute the rules of the Local Contract Review Board and are adopted pursuant to the authority granted to the Board by ORS chapter 279 for the purpose of establishing the standard procedures for contracts entered into by the county, and contracts for which the Board is responsible pursuant to 1983 Oregon Laws, chapter 690.

SECTION II: Section 7.030 is hereby amended to read as follows:

"Emergency Contracts

"A contract may also be exempted from competitive bidding if the Board determines that emergency conditions require prompt execution of the contract. A determination of such an emergency shall be entered into the record of the meeting at which the determination is made. If an emergency is declared, any contract awarded pursuant to this section must be awarded within 60 days following declaration of the emergency, unless the Board grants an extension."

.....

Lincoln County Legal Counsel
Lincoln County Courthouse
225 W. Olive Street
Newport, OR 97365
Phone: 263-6611 ext 308

Lincoln County Legal Counsel
Lincoln County Courthouse
223 W. Olive Street
Newport, OR 97365
Phone: 265-6611 ext 308

1 SECTION III: Section 7.055 is hereby added to read as
2 follows:

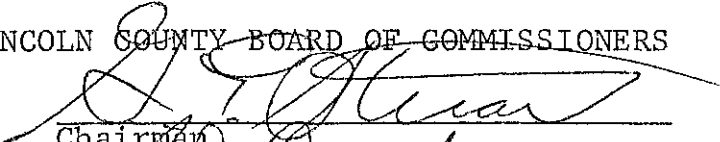
3 "Local Public Agencies


4 "If the Board serves as the local contract review board
5 for local public agencies that do not create their own boards pur-
6 suant to law, the Board is hereby authorized to impose fees on the
7 local public agencies, which fees shall be calculated to reimburse
8 the county for its costs in serving the local public agencies. The
9 fees imposed for serving the local public agencies shall be pres-
10 cribed by Board rule at a public hearing of the Local Contract
11 Review Board."

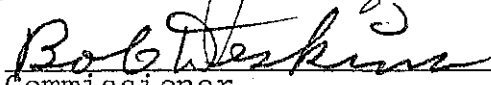
12 SECTION IV: This ordinance being necessary for the
13 immediate preservation of the public peace, health, and safety,
14 an emergency is hereby declared to exist and this ordinance takes
15 effect on its adoption.

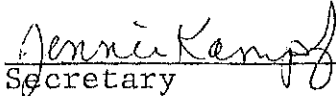
16 DATED this 9th day of November, 1983.

17 LINCOLN COUNTY BOARD OF COMMISSIONERS

18 
19 Chairman

20 
21 Commissioner

22 
23 Commissioner

24 
25 Secretary

62nd OREGON LEGISLATIVE ASSEMBLY--1983 Regular Session

Enrolled

Senate Bill 190

PRINTED PURSUANT TO ORS 171.130 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Executive Department)

CHAPTER.....690.....

AN ACT

Relating to public contracting; creating new provisions; amending ORS 276.431, 279.011, 279.015, 279.017, 279.019, 279.025, 279.033, 279.039, 279.041, 279.043, 279.045, 279.049, 279.051, 279.055, 279.420, 279.835 and 701.435; repealing ORS 279.013; appropriating money; and declaring an emergency.

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

SECTION 1. ORS 276.431 is amended to read:

276.431. (1) The Director of the Department of General Services, as custodian of the capitol area and state office buildings, with the advice of the occupying agency and the approval of the Executive Department, may make available on occasion or lease at such rates as the director considers to be in the public interest auditoriums, meeting rooms, courtyards, suitable rooftops and lobbies of state buildings to persons, firms or organizations engaged in commercial, cultural, educational or recreational activities that do not disrupt the operations of the building and of state government. Where rent is charged, the director shall set a rate consistent with the public interest. The director may impose terms and conditions on use that are consistent with the public interest.

(2) The director may enter into leases of space in state buildings with persons, firms and organizations engaged in commercial, cultural, educational or recreational activities for terms not to exceed five years. The rental rate for the space shall be equivalent to the prevailing commercial rate for comparable space devoted to a similar purpose in the vicinity of the state building notwithstanding the cost to the state government of making such space available for such activities. Such leases may be negotiated without competitive bid, subject to *[review and approval of the Public Contract Review Board]* rules adopted by the director, and shall contain terms and conditions necessary to protect the public interest.

(3) The moneys collected under this section shall be deposited in the General Services Operating Account and are appropriated for the purposes of that fund.

SECTION 2. ORS 279.011 is amended to read:

279.011. As used in ORS 279.011 to 279.061:

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

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

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

~~(1)~~ (4) "Public contract" means any purchase, lease or sale by a public agency of personal property, public improvements or services other than agreements which are for personal service.

[(2)] (5) "Public agency" or "public contracting agency" means any agency of the State of Oregon or any political subdivision thereof authorized by law to enter into public contracts and any public body created by intergovernmental agreement.

[(3)] (6) "Public improvement" means projects for construction, reconstruction or major renovation on real property by or for a public agency. "Public improvement" does not include emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve a public improvement.

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

SECTION 3. ORS 279.015 is amended to read:

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

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

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

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

[(c)] (d) A public contract exempt under subsection (2) of this section.

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

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

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

(3) A public contract also may be exempted from the requirements of subsection (1) of this section if emergency conditions require prompt execution of the contract. The director or board shall adopt [regulations] rules allowing the governing body of a public agency to declare that an emergency exists. The rules shall prescribe that if an emergency is declared, any contract awarded under this subsection must be awarded within 60 days following declaration of the emergency, unless the director or board grants an extension.

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

SECTION 3a. If House Bill 3013 becomes law, section 3 of this Act is repealed and ORS 279.015, as amended by section 9, chapter 590, Oregon Laws 1983 (Enrolled House Bill 3013), is further amended to read:

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

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

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

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

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

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

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

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

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

we need these rules go these a must



(3) A public contract also may be exempted from the requirements of subsection (1) of this section if emergency conditions require prompt execution of the contract. The director or board shall adopt [regulations] rules allowing the governing body of a public agency to declare that an emergency exists. The rules shall prescribe that if an emergency is declared, any contract awarded under this subsection must be awarded within 60 days following declaration of the emergency, unless the director or board grants an extension.

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

SECTION 4. ORS 279.017 is amended to read:

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

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

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

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

(c) There is only one manufacturer or seller of the product of the quality required; [.] or

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

SECTION 5. ORS 279.019 is amended to read:

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

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

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

SECTION 6. ORS 279.025 is amended to read:

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

(2) All advertisements for bids shall state:

(a) If the contract is for a public work, that no bid will be received or considered by the public contracting agency unless the bid contains a statement by the bidder as a part of [his] its bid that the provisions of ORS 279.350 are to be complied with;

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

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

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

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

- (f) The name and title of the person designated for receipt of bids; and
- (g) The date, time and place that the public contracting agency will publicly open the bids.

SECTION 7. ORS 279.033 is amended to read:

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

SECTION 8. ORS 279.039 is amended to read:

279.039. (1) Any public contracting agency may adopt a rule, resolution, ordinance or other regulation requiring mandatory prequalification for all persons desiring to bid for public [improvements] contracts that are to be let by the agency. The rule, resolution, ordinance or other regulation authorized by this section shall include the time for submitting prequalification applications and a general description of the type and nature of the contracts that may be let. The prequalification application shall be in writing on a standard form prescribed by the [board created by ORS 279.013] director.

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

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

[(4)] (3) If a public contracting agency subsequently discovers that a person heretofore prequalified under subsections (1) and (2) of this section is no longer qualified [under ORS 279.037], the agency may revoke the prequalification upon reasonable notice to the prospective bidder; provided, however, that such revocation shall be invalid as to any contract for which an advertisement for bids has already been made under ORS 279.025.

SECTION 9. ORS 279.041 is amended to read:

279.041. (1) When a public contracting agency permits or requires prequalification of bidders, a person who wishes to prequalify shall submit a prequalification application to the agency on a standard form prescribed by the [Public Contract Review Board created by ORS 279.013] director. Within 30 days after receipt of a prequalification application, the public contracting officer shall investigate the prospective bidder as necessary to determine if the prospective bidder is qualified. The determination shall be made in less than 30 days, if practical, if the prospective bidder requests an early decision to allow the bidder as much time as possible to prepare a bid on a contract that has been advertised. In making its determination, the agency shall only disqualify a person in accordance with ORS 279.037. It shall promptly notify the person whether or not that person is qualified.

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

(3) If a public contracting agency has reasonable cause to believe that there has been a substantial change in the conditions of a prequalified person and that the person is no longer qualified or is less qualified, the agency may revoke or may revise and reissue the prequalification after reasonable notice to the prequalified person. The notice shall state the reasons found under ORS 279.037 for revocation or revision of the prequalification of the person and inform the person of the right to a hearing under ORS 279.043 and 279.045. A revocation or revision does not apply to any contract for which publication of advertisement for bids, in

Need prequalify regs

0
if
ns]
all
60
or
ke
so
y
pt
is
or
r
it
e
d
e
e
t
l
y

accordance with ORS 279.025, commenced prior to the date the notice of revocation or revision was received by the prequalified person.

SECTION 10. ORS 279.043 is amended to read:

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

SECTION 11. ORS 279.045 is amended to read:

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

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

(3) In the hearing the director or board shall consider de novo the notice of disqualification, the record of the investigation made by the public contracting agency and any evidence provided by the parties. In all other *[matters, the]* respects, hearings before the director shall be conducted in the same manner as a contested case under ORS 183.415 (3) to (6) and (8), 183.425, 183.440 and 183.450. Hearings before a board shall be conducted under rules of procedure adopted by the board.

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

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

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

(b) If the decision to disqualify a person as a bidder is reversed by the director, the director's costs shall be paid by the public contracting agency whose disqualification decision is the subject of the appeal.

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

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

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

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

(6) The procedure provided in this section is the exclusive means of judicial review of the decision of the director or board. The judicial review provisions of ORS 183.480 and writs of review and mandamus are not available.

(7) The circuit court may, in its discretion, stay the letting of the contract which is the subject of the petition in the same manner as a suit in equity. In the event the court determines that there has been an improper disqualification and the contract has been let, the court may proceed to take evidence to determine the damages, if any, suffered by the petitioner and award such damages as the court may find as a judgment against the director or board. The court may award costs and attorney fees to the prevailing party.

SECTION 12. ORS 279.049 is amended to read:

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

SECTION 13. ORS 279.051 is amended to read:

279.051. (1) Public agencies may enter into contracts for personal services. The provisions of this section do not relieve the agency of the duty to comply with ORS 291.021 or applicable city or county charter provisions. Each public agency shall create procedures for the screening and selection of persons to perform personal services.

(2) The director or board by ordinance, resolution, [or] administrative rule or other regulation may designate certain service contracts or classes of service contracts as personal service contracts.

SECTION 14. ORS 279.055 is amended to read:

279.055. [Any city, any county and any metropolitan service district organized under ORS chapter 268 may adopt an ordinance, and any peoples' utility district organized under ORS chapter 261 or the governing body of any utility authorized under ORS chapter 225 may adopt a resolution creating its governing body as a local contract review board for that city, county, district or utility. The local contract review board shall have all the powers of the Public Contract Review Board.]

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

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

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

(4) Except as provided in ORS 279.019 (1) and (2) and the authority to prescribe the standard prequalification application forms in ORS 279.039 (1), boards created under this section shall have all the powers granted the department and director under ORS 279.011 to 279.061. The board shall exercise such powers only after it has adopted rules pursuant to the requirements of subsection (5) of this section.

(5) Each board created under this section shall have rulemaking authority to carry out the powers and duties of the board under ORS 279.011 to 279.061. The rules shall be adopted in the manner prescribed in the resolution or ordinance creating the board.

(6) A local public agency, other than a county, by resolution or ordinance may rescind its action to create a local contract review board. The rescission shall take effect on the date a copy of the resolution or ordinance is filed with the county governing body or on the date stated therein, whichever is the later date. After the date of filing or the date specified, the county board, created pursuant to subsection (1) of this section, shall serve as the local contract review board for the public agency.

(7) Notwithstanding subsection (3) of this section, a local public agency may contract with another public agency to serve as its local contract review board with the powers and duties the local board has over contracts of its own local public agency. Notice of the contract and of its termination shall be given to the county in the same manner as notice is given to the county under subsections (2) and (6) of this section.

SECTION 15. ORS 279.420 is amended to read:

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

received
 ss days
 als the
 which is
 political
 appropriate
 be in
 vided
 ORS
 time
 days
 h in
 d of
 her
 ase
 ted
 re
 nd
 re
 n
 r,
 h
 i

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

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

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

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

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

(5) Bonds and securities deposited or acquired in lieu of retainage, as permitted by this section, shall be of a character approved by the [Public Contract Review Board] Director of the Department of General Services, including but not limited to:

- (a) Bills, certificates, notes or bonds of the United States.
- (b) Other obligations of the United States or its agencies.
- (c) Obligations of any corporation wholly owned by the Federal Government.
- (d) Indebtedness of the Federal National Mortgage Association.

SECTION 16. ORS 701.435 is amended to read:

701.435. (1) When a contractor on a public contract deposits bonds or securities under ORS 279.420 (3), if the subcontract price exceeds \$50,000 and constitutes more than 10 percent of the cost of the public contract, a subcontractor on the public contract may deposit bonds or securities with the contractor or in any bank or trust company to be held in lieu of cash retainage for the benefit of the contractor. In such event the contractor shall reduce the retainage in an amount equal to the value of the bonds and securities and pay the amount of the reduction to the subcontractor in accordance with ORS 701.420 and 701.430. Interest on such bonds or securities shall accrue to the subcontractor.

(2) When a contractor on a public contract elects to have the public contracting agency deposit the accumulated retainage in an interest-bearing account under ORS 279.420 (4), the contractor, within 30 days following payment of the final amount due for construction of the public improvement, shall pay to each subcontractor who performed work on the construction the subcontractor's proportional share of the interest earnings that accrued to the contractor as a result of that election. A subcontractor's share of the total amount of interest earnings under this subsection shall be determined by the proportion which the amount of retainage withheld from the subcontractor bears to the amount of retainage withheld from the contractor and the length of time the retainage was withheld from the subcontractor. A share of the interest earnings shall be paid to a subcontractor under this subsection only when:

- (a) Retainage is withheld from the subcontractor for more than 60 days after the day on which the first partial payment was due the subcontractor under the terms of the subcontract; and
- (b) The amount of interest earnings due the subcontractor exceeds \$100.

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

(4) Bonds and securities deposited or acquired in lieu of retainage, as permitted by this section, shall be of a character approved by the [Public Contract Review Board] Director of the Department of General Services, including but not limited to:

- (a) Bills, certificates, notes or bonds of the United States.

- (b) Other obligations of the United States or its agencies.
- (c) Obligations of any corporation wholly owned by the Federal Government.
- (d) Indebtedness of the Federal National Mortgage Association.

SECTION 17. ORS 279.835 is amended to read:

279.835. As used in ORS [279.015 and] 279.835 to 279.855:

- (1) "Department" means the Department of General Services.
- (2) "Handicapped individual" means a disabled individual who, because of the nature of [his] disabilities, is not able to participate fully in competitive employment, and for whom specialized employment opportunities must be provided.
- (3) "Public agency" or "public contracting agency" has the same meaning contained in ORS 279.011 [(2)].
- (4) "Qualified nonprofit agency for handicapped" means a nonprofit activity center or sheltered workshop:

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

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

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

(5) "Direct labor" includes all work required for preparation, processing and packing, but not supervision, administration, inspection and shipping.

SECTION 18. The Public Contract Review Board is abolished. On the effective date of this Act, the tenure of the office of the members of the board shall cease.

SECTION 19. Except as they relate to ORS 279.420 and 701.435, and the authority to prescribe standard prequalification application forms in ORS 279.039, all the duties, functions and powers of the Public Contract Review Board are imposed upon, transferred to and vested in:

- (1) The Department of General Services insofar as they apply to the state; and
- (2) The local contract review board insofar as they apply to the local public agency by or for which it serves.

SECTION 20. Notwithstanding the transfer of duties, functions and powers by this Act, the lawfully adopted rules of the Public Contract Review Board in effect on the effective date of this Act continue in effect until lawfully superseded or repealed by rules of the Director of the Department of General Services or local contract review board. References in rules of the board to the board or an officer or employe thereof are considered to be references to the director or local contract review board or an officer or employe thereof.

SECTION 21. The transfer of duties, functions and powers under this Act does not affect any action, suit, proceeding or prosecution involving or with respect to such duties, functions and powers begun before and pending at the time of the transfer, except that the Department of General Services or local contract review board shall be substituted for the Public Contract Review Board in such action, suit, proceeding or prosecution.

SECTION 22. (1) Nothing in this Act relieves a person of an obligation with respect to a tax, fee, fine or other charge, interest, penalty, forfeiture or other liability, duty or obligation accruing under or with respect to the duties, functions and powers transferred by this Act. The Department of General Services or local contract review board may undertake the collection or enforcement of any such tax, fee, fine, charge, interest, penalty, forfeiture or other liability, duty or obligation.

(2) The rights and obligations of the Public Contract Review Board legally incurred under contracts, leases and business transactions, executed, entered into or begun before the effective date of this Act, are transferred to the Department of General Services. For the purpose of succession to these rights and obligations, the Department of General Services is considered to be a continuation of the Public Contract Review Board and not a new authority, and the Department of General Services shall exercise such rights and fulfill such obligations as if they had not been transferred.

SECTION 23. There are transferred to the Department of General Services all the supplies, materials, equipment, records, books, papers and facilities of the Public Contract Review Board.

SECTION 24. (1) Any reference in the statutes to the Public Contract Review Board shall be considered a reference to the Director of the Department of General Services or the local contract review board, as appropriate.

(2) For the purpose of harmonizing and clarifying statute sections published in Oregon Revised Statutes, the Legislative Counsel may substitute for words designating the Public Contract Review Board, wherever they occur in Oregon Revised Statutes, words designating the Director of the Department of General Services or the local contract review board, as appropriate.

SECTION 25. All unexpended moneys appropriated or otherwise available to a state officer or agency for the purposes of any of the duties, functions or powers transferred by this Act to the director or the Department of General Services, are appropriated to the department.

SECTION 26. Nothing in this Act shall affect a local contract review board created pursuant to ORS 279.055 before the effective date of this Act. Such boards shall continue as if created pursuant to ORS 279.055 as amended by this Act. However, local public agencies shall notify the county governing body of the existence of a local contract review board for that public agency.

SECTION 27. Any bidder adversely affected may commence a suit in the circuit court for the county in which are located the principal offices of the local contract review board or the local government agency, for the purpose of requiring compliance with, or prevention of violations of, ORS 279.011 to 279.061, or to determine the applicability of ORS 279.011 to 279.061 to matters or decisions of the board or agency. The court may order such equitable relief as it considers appropriate in the circumstances. A decision of the local contract review board or the local government agency shall not be voided if other equitable relief is available. The court may order payment of reasonable attorney fees and costs to a successful party in a suit brought under this section.

SECTION 28. ORS 279.013 is repealed.

SECTION 29. (1) There is created an Advisory Committee on Public Contracts appointed by the Director of the Department of General Services consisting of seven members to represent cities, counties, school districts, state agencies, vendors, contractors and the general public. The committee shall advise the director on matters pertaining to public contracting and the development of appropriate rules relating thereto.

(2) Members shall not be entitled to per diem or expenses.

(3) On or before June 30, 1984, the director shall adopt uniform rules governing public contracts for state agencies and shall distribute copies to local contract review boards.

(4) The Advisory Committee on Public Contracts is abolished on June 30, 1984.

SECTION 30. The Department of General Services shall report to the Legislative Assembly on or before February 1, 1985, on the implementation of the rules adopted by the director pursuant to subsection (3) of section 29 of this Act.

SECTION 31. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect July 1, 1983.

Approved by the Governor August 3, 1983.

Filed in the office of Secretary of State August 4, 1983.