

February 25, 2005

New public contracting code operative on March 1

BY SEAN GAY



Oregon's construction industry will be subject to the new Public Contracting Code on March 1. Responding to a mandate from the Oregon Legislature in 2001, representatives of state agencies, local governments, school districts, contractors, unions and trade organizations contributed to changing Oregon's public contracting laws. The new statutes, known as the Public Contracting Code, will become operative and apply to contracts first advertised on or after March 1, or, if not advertised, entered into on or after March 1. Although the "new" statutes are largely a reorganized version of current chapter 279, design professionals, contractors, subcontractors and suppliers who bid and work on public construction projects in Oregon should be aware of a few changes.

First, the new code is organized into three chapters. Chapter 279A sets forth the comprehensive provisions that apply to the entire code, including definitions and policy statements. Chapter 279B includes those laws relating to the procurement of "goods and services," excluding architectural, engineering, land surveying and related services. Chapter 279C sets forth the provisions that govern public improvements, public works and public contracts with design professionals and land surveyors. Chapters 279B and 279C were separated to allow for innovation in general procurement contracting while continuing Oregon's traditional approach to public improvements.

Second, the new code does not change

existing law with respect to competitive bidding, prevailing wages, hours of labor, contractor prequalification and disqualification, first-tier subcontractor disclosure, payments, retainage, legal remedies and actions on bonds. However, there are several notable changes that affect the construction industry under chapter 279C:

- Performance and payment bonds: The new code clarifies that contractors are to provide separate performance and payment bonds on public projects, each with a value equal to the full contract price. This is in contrast to the current chapter 279, which arguably allowed a single combined performance and payment bond with a value equal to the full contract price.

- Architectural, engineering, land surveying and related services: The provisions relating to design professionals and land surveyors will be centralized within a subdivision of chapter 279C. "Related services" are defined, and procedures for the selection of consultants for those services are set forth.

- Competitive bidding: Although largely unchanged, the new code clarifies procedures for the emergency exception to the competitive bidding laws and requires that an agency declare an emergency before awarding contracts. Emergency contracts must be awarded within 60 days of an agency's declaration of emergency.

- Competitive proposals: The procedures for awarding contracts based on competitive proposals when authorized by an exemption to the competitive bidding requirements were clarified and expanded.

- Competitive quotes: A temporary provision, expiring in 2009, allows a public

agency to award a contract under \$100,000 - or under \$50,000 for transportation contracts - after soliciting three informal quotes from contractors.

- Contracts for minor alteration, repair or maintenance: The new code incorporates a new exception to the competitive bidding requirements for contracts involving minor alterations, ordinary repair or maintenance of a public improvement.

Finally, the legislation implementing the Public Contracting Code also requires that all of the existing administrative rules adopted under the current chapter 279 be repealed as of the operative date of the new code. As a result, the Oregon Attorney General's Model Public Contract Rules have been revised, and state agencies and local governments that do not wish to be bound by the Model Rules also have been required to revise their own rules - all of which will become operative and replace the current administrative rules on March 1. Like the code, the Model Rules have been reorganized into divisions addressing (1) comprehensive rules that apply to all provisions of the Model Rules; (2) public procurements for goods and services; (3) architectural, engineering, land surveying and related services; and (4) public improvements and other public construction projects. In light of these changes to Oregon's public contracting laws and administrative rules, design professionals, contractors, subcontractors and suppliers should become familiar with the new code and the new contracting rules before the changes become operative on March 1.

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