

A-Engrossed
Senate Bill 1518

Ordered by the Senate February 13
Including Senate Amendments dated February 13

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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.

Prohibits state contracting agency, under specified conditions, from accepting bid or proposal from bidder or proposer that advised or assisted state contracting agency concerning solicitation documents or materials related to public contract. Permits state contracting agency to apply to Director of Oregon Department of Administrative Services for exception to prohibition.

Requires Oregon Department of Administrative Services to report certain information related to public contracting to Legislative Assembly.

Permits bidder or proposer to submit, and state contracting agency to consider, personnel deployment disclosure as part of bid or proposal. Specifies contents of personnel deployment disclosure. Permits state contracting agency, in certain circumstances, to give preference based on information in personnel deployment disclosure.

Becomes operative January 1, 2013.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public contracting by state contracting agencies; and declaring an emergency.

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

4 **SECTION 1. Section 2 of this 2012 Act is added to and made a part of ORS chapter 279B.**

5 **SECTION 2. (1) Except as provided in subsection (2) of this section, a state contracting**
6 **agency that procures personal services for the purpose of advising or assisting the state**
7 **contracting agency in developing specifications, a scope or statement of work, an invitation**
8 **to bid, a request for proposals or other solicitation documents and materials related to a**
9 **procurement may not accept from the contractor, or an affiliate of the contractor, that ad-**
10 **vised or assisted the state contracting agency a bid or proposal for the goods or services**
11 **described, specified or identified in the solicitation documents or materials if a reasonable**
12 **person would believe that, by giving the advice or assistance, the contractor or affiliate**
13 **would have or would appear to have an advantage in obtaining the public contract that is the**
14 **subject of the solicitation.**

15 **(2)(a) If a state contracting agency anticipates that the state contracting agency will or**
16 **must seek advice or assistance of the type described in subsection (1) of this section from a**
17 **contractor that is also engaged in providing goods or services that will be described or**
18 **identified in the solicitation documents and materials that result from the advice or assist-**
19 **ance, and the state contracting agency wishes to accept a bid or proposal from the contrac-**
20 **tor, the state contracting agency, before awarding a contract for the advice or assistance,**
21 **shall apply to the Director of the Oregon Department of Administrative Services for an ex-**

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 ception to the prohibition set forth in subsection (1) of this section.

2 (b) The state contracting agency in the application for the exception shall include
3 findings and justifications, along with sufficient facts to support the findings and justifica-
4 tions, that will enable the director to make an independent judgment as to whether:

5 (A) The state contracting agency needs advice or assistance from a contractor to develop
6 the solicitation documents and materials described in subsection (1) of this section;

7 (B) Accepting a bid or proposal from the contractor that gives the advice or assistance
8 is the only practicable way in which the state contracting agency can conduct the procure-
9 ment successfully; and

10 (C) Approving the exception:

11 (i) Is unlikely to encourage favoritism in awarding public contracts or to substantially
12 diminish competition for public contracts; and

13 (ii)(I) Is reasonably expected to result in substantial cost savings to the state contracting
14 agency or the public; or

15 (II) Otherwise substantially promotes the public interest in a manner that could not be
16 practicably realized by complying with the prohibition described in subsection (1) of this
17 section.

18 (c)(A) If the director approves the state contracting agency's application, the director
19 shall prepare written findings and justifications for the approval. The state contracting
20 agency's findings, justifications and facts and the director's findings, justifications and ap-
21 proval are public records that are subject to disclosure as provided in ORS 192.410 to 192.505.

22 (B) If the director disapproves the state contracting agency's application, the director
23 shall state the director's reasons for the disapproval in a written notice to the state con-
24 tracting agency and shall indicate whether the disapproval extends only to the state con-
25 tracting agency's acceptance of a bid or proposal from a contractor that gives advice or
26 assistance in preparing solicitation documents and other materials or whether the director
27 also disagrees with the state contracting agency's stated need for advice or assistance from
28 a contractor.

29 (C) The director's approval or disapproval is final.

30 (3) As used in this section, "affiliate" means a person that, directly or indirectly through
31 one or more intermediaries, controls, is controlled by or is under common control with a
32 contractor described in this section.

33 (4) This section does not apply to the Secretary of State or the State Treasurer.

34 **SECTION 3.** Section 4 of this 2012 Act is added to and made a part of ORS chapter 279A.

35 **SECTION 4.** (1) The Oregon Department of Administrative Services, before the beginning
36 of each odd-numbered year regular legislative session, shall provide to an appropriate com-
37 mittee of the Legislative Assembly that considers questions related to public contracting a
38 report that contains information about special procurements conducted under the provisions
39 of ORS 279B.085 by state contracting agencies that are subject to the authority of the de-
40 partment under ORS 279A.050 (2) and (7). The information must include, at a minimum:

41 (a) The name of each state contracting agency that conducted a procurement under the
42 provisions;

43 (b) The number of procurements the state contracting agency conducted under the pro-
44 visions and the number of contracts the state contracting agency awarded under the pro-
45 visions;

1 (c) A summary of the reasons that the state contracting agency decided to conduct the
2 procurement under the provisions;

3 (d) A descriptive summary of the procurement procedure the state contracting agency
4 used to conduct the procurement, noting whether the procedure was competitive or not and
5 listing the number of bids or proposals the state contracting agency received if the procedure
6 was competitive;

7 (e) The contract price or estimated contract price for each contract the state contracting
8 agency awarded under the provisions; and

9 (f) A summary of the protests or other responses the state contracting agency received
10 in response to the decision to conduct the procurement under the provisions, and a summary
11 of the disposition of the protests or other responses.

12 (2) A state contracting agency subject to the authority of the department under ORS
13 279A.050 (2) and (7) shall maintain records that enable the state contracting agency to cal-
14 culate or otherwise determine and provide to the department the information described in
15 subsection (1) of this section. The state contracting agency shall maintain the records for
16 the purposes described under this section and may not use the information for evaluating
17 proposals or invitations to bid that the state contracting agency receives in response to a
18 solicitation for a procurement.

19 (3) This section does not apply to the Secretary of State or the State Treasurer.

20 SECTION 5. Section 6 of this 2012 Act is added to and made a part of ORS chapter 279B.

21 SECTION 6. (1) A bidder or proposer that submits a bid or proposal for a public contract
22 may submit with the bid or proposal a personnel deployment disclosure. A personnel de-
23 ployment disclosure that a bidder or proposer submits under this section must state:

24 (a) The number of workers that the bidder or proposer and the bidder or proposer's
25 subcontractors plan to deploy to perform the work described in the invitation to bid or the
26 request for proposals;

27 (b) The number of workers that the bidder or proposer and the bidder's or proposer's
28 first-tier subcontractors will employ within this state; and

29 (c) The number of jobs in each of the categories described in paragraphs (a) and (b) of
30 this subsection that would be a newly created job.

31 (2) A state contracting agency that receives a personnel deployment disclosure from a
32 bidder or proposer under subsection (1) of this section may consider the personnel deploy-
33 ment disclosure in evaluating a bid or proposal if the contracting agency states in the solic-
34 itation documents for a procurement that the state contracting agency will consider a
35 personnel deployment disclosure. The state contracting agency may give a preference to a
36 bid or proposal that states that the bidder or proposer will employ more workers within this
37 state than a competing bid or proposal if the bids or proposals otherwise suit the state con-
38 tracting agency's specifications for the procurement equally well.

39 (3) The Director of the Oregon Department of Administrative Services, the Attorney
40 General and a state contracting agency that adopts rules under ORS 279A.065 may adopt
41 rules to prescribe the form and contents of a personnel deployment disclosure and otherwise
42 to implement the provisions of this section.

43 (4) This section does not apply to the Secretary of State or the State Treasurer.

44 SECTION 7. (1) Sections 2 and 6 of this 2012 Act apply to a contract that a state con-
45 tracting agency first advertises or otherwise solicits on or after the operative date specified

1 in section 8 of this 2012 Act or, if the state contracting agency does not advertise or solicit
2 the public contract, to a public contract that the state contracting agency enters into on or
3 after the operative date specified in section 8 of this 2012 Act.

4 (2) Section 4 of this 2012 Act applies to a procurement that a state contracting agency
5 first advertises or solicits one year before, or on or after, the operative date specified in
6 section 8 of this 2012 Act.

7 **SECTION 8.** (1) Sections 2, 4 and 6 of this 2012 Act become operative January 1, 2013.

8 (2) The Director of the Oregon Department of Administrative Services, the Attorney
9 General or a state contracting agency that adopts rules under ORS 279A.065 may take any
10 action before the operative date specified in subsection (1) of this section that is necessary
11 to enable the director, the Attorney General or the state contracting agency to exercise, on
12 and after the operative date specified in subsection (1) of this section, all of the duties,
13 functions and powers conferred on the director, the Attorney General or the state con-
14 tracting agency by sections 2, 4 and 6 of this 2012 Act.

15 **SECTION 9.** This 2012 Act being necessary for the immediate preservation of the public
16 peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect
17 on its passage.

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