

A-Engrossed
Senate Bill 442

Ordered by the Senate March 10
Including Senate Amendments dated March 10

Sponsored by Senator HAYDEN (Pre-session filed.)

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.

Permits contracting agency to grant preference to procuring for public use goods that are fabricated or processed, or services that are performed, entirely within this state if goods or services cost not more than five percent more than goods not processed or fabricated, or services not performed, entirely within this state if contracting agency can reasonably and credibly determine that procuring at higher price offsets environmental costs of transporting goods or service providers from outside this state. **Specifies exceptions.**

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to contract preferences in public procurement that aid in offsetting environmental costs;
3 creating new provisions; amending ORS 279A.128; and prescribing an effective date.

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

5 **SECTION 1.** ORS 279A.128 is amended to read:

6 279A.128. (1) As used in this section, "services" means services as defined in ORS 279A.010
7 (1)(kk) and personal services designated under ORS 279A.055.

8 (2)(a) Notwithstanding provisions of law requiring a contracting agency to award a contract to
9 the lowest responsible bidder or best proposer or provider of a quotation, a contracting agency that
10 uses public funds to procure goods or services for a public use under ORS chapter 279B may give
11 preference to procuring goods that are fabricated or processed, or services that are performed, en-
12 tirely within this state if:

13 **(A) The goods or services cost not more than five percent more than goods or services**
14 **that are not fabricated or processed, or services that are not performed, entirely within this**
15 **state and the contracting agency can reasonably and credibly determine that procuring the**
16 **goods or services at the higher price offsets environmental costs that are attributable to**
17 **transporting the goods or the service providers from outside this state; or**

18 **(B) The goods or services otherwise** cost not more than 10 percent more than goods that are
19 not fabricated or processed, or services that are not performed, entirely within this state.

20 **(b)** If more than one bidder or proposer qualifies for [*the*] a preference described in **paragraph**
21 **(a)** of this subsection, the contracting agency may give a further preference to a qualifying bidder
22 or proposer that resides in or is headquartered in this state.

23 [*b*] **(c)** The contracting agency by order may set a higher percentage than the [*percentage*]
24 **percentages** set forth in paragraph (a) of this subsection if the contracting agency, in a written
25 determination to support the order, finds good cause to set the higher percentage and explains the

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 contracting agency's reasons and evidence for the finding.

2 (3) Notwithstanding ORS 279C.320 (1), subsection (2) of this section does not apply to emergency
3 work, minor alterations, ordinary repairs or maintenance work for public improvements or to other
4 construction contracts described in ORS 279C.320 (1).

5 (4) **Subsection (2) of this section does not apply to a public improvement contract or
6 contract for public works that a contracting agency procures under ORS chapter 279C or to
7 a contract for goods that a contracting agency procures in connection with a public im-
8 provement contract or contract for public works.**

9 **SECTION 2. The amendments to ORS 279A.128 by section 1 of this 2023 Act apply to
10 procurements that a contracting agency first advertises or otherwise solicits or, if the con-
11 tracting agency does not advertise or solicit the procurement, to public contracts into which
12 the contracting agency enters on or after the operative date specified in section 3 of this 2023
13 Act.**

14 **SECTION 3. (1) The amendments to ORS 279A.128 by section 1 of this 2023 Act become
15 operative on January 1, 2024.**

16 (2) **The Attorney General, the Director of the Oregon Department of Administrative
17 Services, the Director of Transportation and a contracting agency that adopts rules under
18 ORS 279A.065 or 279A.070 may take any action before the operative date specified in sub-
19 section (1) of this section that is necessary to enable the Attorney General, the directors or
20 the contracting agency to undertake and exercise, on and after the operative date specified
21 in subsection (1) of this section, all of the duties, functions and powers conferred on the
22 Attorney General, the directors or the contracting agency by the amendments to ORS
23 279A.128 by section 1 of this 2023 Act.**

24 **SECTION 4. This 2023 Act takes effect on the 91st day after the date on which the 2023
25 regular session of the Eighty-second Legislative Assembly adjourns sine die.**

26