

Senate Bill 625

Sponsored by Senator LIEBER (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 **as introduced**.

Requires Oregon Department of Administrative Services to establish pilot program for evaluating use of challenge-based procurement to conduct certain information technology procurements. Specifies features that pilot program must have. Requires contracting agencies that use challenge-based procurement method to provide sufficient information to department to allow department to evaluate and report results of pilot program to Governor and to interim committees of Legislative Assembly related to public procurement not later than December 31, 2025.

Sunset January 2, 2026.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to methods of public procurement; and prescribing an effective date.

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

4 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 279B.**

5 **SECTION 2. (1) As used in this section, "challenge-based procurement" means a pro-**
6 **urement process in which a contracting agency:**

7 (a) **Identifies a problem or need that requires a solution;**

8 (b) **Solicits proposals from prospective contractors to resolve the problem or meet the**
9 **need, requiring as part of the prospective contractor's proposal an identification of a feasible**
10 **and effective approach to resolving the problem or meeting the need that may include:**

11 (A) **Identifying and describing an appropriate algorithm, methodology, technology, or-**
12 **ganization or process;**

13 (B) **Describing or setting specifications;**

14 (C) **Defining or redefining the scope of the problem or need; or**

15 (D) **Otherwise identifying potential approaches or solutions;**

16 (c) **Engages in a phased competitive process to evaluate proposals from two or more**
17 **prospective contractors, which process might include:**

18 (A) **Conducting competitive trials, demonstrations or proofs of concept;**

19 (B) **Evaluating and combining approaches from different proposals; or**

20 (C) **Otherwise cooperating or collaborating with one or more prospective contractors to**
21 **identify and shape a feasible and effective solution; and**

22 (d) **Awards a public contract to the prospective contractor or contractors whose pro-**
23 **posals the contracting agency determines will best resolve the problem or meet the need and**
24 **provide the best value to the contracting agency at a reasonable cost.**

25 (2) **The Oregon Department of Administrative Services shall establish a pilot program to**
26 **evaluate the utility, feasibility and effectiveness of using a challenge-based procurement**
27 **method for conducting information technology procurements under ORS chapter 279B for a**
28 **period of two years, beginning on the operative date of this 2023 Act. The pilot program, at**

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 a minimum, must:

2 (a) Solicit the expertise of a contractor or public agency that is familiar with challenge-
3 based procurement to assist the department in designing and implementing the pilot program
4 and employing best practices that are based on the experience of other jurisdictions that
5 have used challenge-based procurement;

6 (b) Identify potential procurements that are best suited for challenge-based procurement,
7 prioritizing low-risk projects that are about to begin solicitations and that can be completed
8 and evaluated within the two-year span of the pilot program;

9 (c) Use challenge-based procurement to conduct at least five procurements within the
10 two-year span of the pilot program, each with an anticipated contract price of at least
11 \$150,000 and not more than \$2 million; and

12 (d) Require from each contracting agency that participates in the pilot program infor-
13 mation about each procurement for which the contracting agency used challenge-based pro-
14 curement. The information must be sufficient to enable the department to evaluate and
15 report the results of the pilot program as provided in subsection (3) of this section, using
16 at least the following criteria:

17 (A) The amount of time the procurement required, from soliciting to awarding the public
18 contract and an estimate of the amount of time a comparable procurement would have re-
19 quired without using challenge-based procurement;

20 (B) The level of engagement from prospective contractors, including the number of in-
21 quires, proposals and other responses the contracting agency received, the number of pro-
22 spective contractors that engaged in the contracting agency's competitive process and the
23 number of contractors to which the contracting agency awarded a public contract as a result
24 of the process, along with a comparison of typical levels of engagement from prospective
25 contractors in comparable projects that did not use challenge-based procurement;

26 (C) An evaluation of the average quality of the proposals the contracting agency received,
27 viewed from the perspective of the feasibility and effectiveness of the proposed approaches
28 and the extent to which the challenge-based procurement method encouraged creative, un-
29 orthodox or otherwise unanticipated solutions;

30 (D) The increase or decrease in the amount of time and effort the contracting agency's
31 staff required to conduct the challenge-based procurement, compared to other methods by
32 which the contracting agency might have conducted the procurement, and a qualitative de-
33 scription of the experiences of the contracting agency's staff;

34 (E) The reactions of prospective contractors to the challenge-based procurement and any
35 identifiable benefits or detriments to prospective contractors that resulted from using
36 challenge-based procurement;

37 (F) The extent to which challenge-based procurement encouraged or discouraged partic-
38 ipation in the contracting agency's procurements from small businesses and other businesses
39 that are certified under ORS 200.055, along with a description of any other observed impacts
40 on small business participation and engagement;

41 (G) The extent, if any, to which contracting agencies that participated in the pilot pro-
42 gram realized other nonmonetary benefits or detriments in the procurement process as a
43 result of using challenge-based procurement and the nature of the benefits or detriments;
44 and

45 (H) The extent and amount of overall cost savings to the contracting agency, if any, that

1 are attributable to using challenge-based procurement.

2 (3) The department, not later than December 31, 2025, shall report in writing to the
3 Governor and to the interim committees of the Legislative Assembly related to public pro-
4 curement concerning the nature of the pilot program and the results of the department's
5 evaluation under subsection (2) of this section.

6 SECTION 3. (1) Section 2 of this 2023 Act becomes operative on January 1, 2024.

7 (2) The Director of the Oregon Department of Administrative Services may adopt rules
8 and take any other action before the operative date specified in subsection (1) of this section
9 that is necessary to enable the director, on and after the operative date specified in sub-
10 section (1) of this section, to undertake or exercise all of the duties, functions and powers
11 conferred on the director under section 2 of this 2023 Act.

12 SECTION 4. Section 2 of this 2023 Act is repealed on January 2, 2026.

13 SECTION 5. This 2023 Act takes effect on the 91st day after the date on which the 2023
14 regular session of the Eighty-second Legislative Assembly adjourns sine die.

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