

House Bill 2903

Sponsored by Representatives D EDWARDS, ESQUIVEL, WITT; Representatives BARKER, BARNHART, BONAMICI, BOONE, BRUUN, CLEM, C EDWARDS, GALIZIO, GREENLICK, KOMP, OLSON, RILEY, ROSENBAUM, SHIELDS, WHISNANT, Senators METSGER, PROZANSKI, WALKER

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 contractors submitting bids or proposals on state public contracts to certify where services would be performed. Prohibits state agency from awarding contract to contractor that would perform services outside of United States. Provides exceptions. Permits contracting agency to bring civil action for breach of contract.

A BILL FOR AN ACT

1
2 Relating to state contracting for services performed within United States.

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

4 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS chapter 279B.**

5 **SECTION 2. (1) A contractor submitting a bid or proposal to a state agency for a public**
6 **contract for services shall certify in writing the location where the services are to be per-**
7 **formed and whether the contractor contemplates any of the work necessary to provide the**
8 **services being performed outside of the United States.**

9 **(2) A state agency may not award a public contract for services that permits the con-**
10 **tractor or any subcontractor to perform work under the contract at a site outside the United**
11 **States, and may not award a public contract for services to a contractor that does not pro-**
12 **vide the written certification required under subsection (1) of this section, unless:**

13 **(a)(A) The contractor or its subcontractor provides unique services that cannot be pro-**
14 **vided by a contractor in the United States; and**

15 **(B) The particular services are deemed mandatory and central to the core functions of**
16 **the state agency;**

17 **(b) The contractor or its subcontractor is a foreign firm hired to market Oregon goods**
18 **or services to a foreign country;**

19 **(c) An economic cost factor exists, equalling at least a five percent differential over the**
20 **life of the contract, that outweighs the economic effect of providing the services within the**
21 **United States, such that a failure to use the contractor's or its subcontractor's services**
22 **would result in economic hardship to this state; or**

23 **(d) The contractor or its subcontractor maintains a significant business presence in the**
24 **United States and performs less than 10 percent of the work under the contract outside the**
25 **United States.**

26 **(3) Every public contract for services to which this section applies must contain the fol-**
27 **lowing conditions:**

28 **(a) The contractor shall comply, throughout the duration of the contract, with the con-**
29 **tractor's written certification made under subsection (1) of this section.**

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 **(b) The state agency reserves the right to inspect the performance of the work and the**
2 **contractor's records to ensure that the contractor complies with the condition described in**
3 **paragraph (a) of this subsection.**

4 **(4)(a) If, during the term of a public contract, a contractor that has certified that ser-**
5 **vices will be performed in the United States shifts work to a site outside of the United**
6 **States, the contractor is deemed to be in substantial breach of contract, unless the state**
7 **agency first determines in writing that extraordinary circumstances require the shift of**
8 **work.**

9 **(b) If the contractor is in substantial breach of contract under this subsection, the state**
10 **agency shall:**

11 **(A) Affirm the contract and require the contractor to pay damages in an amount equal**
12 **to the amount paid by the state agency to the contractor for the work performed outside the**
13 **United States; or**

14 **(B) Rescind the contract and demand restitution.**

15 **(c) The state agency may bring a civil action in state or federal court to seek a remedy**
16 **under this section. The court may award attorney fees and costs to the state agency.**

17 **(5) This section does not apply to the solicitation or award of a public contract for ser-**
18 **vices if the state agency soliciting the contract determines that any requirement of this**
19 **section would conflict with, or would not be permitted under, an applicable federal law or**
20 **treaty.**

21 **SECTION 3.** **Section 2 of this 2007 Act applies only to public contracts for services first**
22 **advertised, but if not advertised then entered into, on or after the effective date of this 2007**
23 **Act.**