

House Bill 2631

Sponsored by Representative SCHAUFLER (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**.

Prohibits contracting agency from considering monetary donation or in-kind contribution in evaluating responsiveness of bid or proposal or responsibility of bidder or proposer.

Prohibits contracting agency from using amount or value of monetary donation or in-kind contribution to offset, reduce or otherwise modify amount of bidder's bid or cost of proposer's proposal.

Prohibits contracting agency from using monetary donation or in-kind contribution as factor in determining which bid or proposal complies with least-cost policy set forth for constructing public improvements.

Permits contracting agency to accept and consider in-kind contribution from bidder or proposer as part of bidder's or proposer's bid or proposal if contracting agency affirmatively states in solicitation documents and in advertisement for procurement that contracting agency will accept and consider in-kind contribution as part of bid or proposal.

Becomes operative on January 1, 2012.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to in-kind contributions in connection with public procurements; and declaring an emer-
3 gency.

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

5 **SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS chapter 279C.**

6 **SECTION 2. (1) As used in this section:**

7 (a) **"In-kind contribution" means a transaction in which a bidder or proposer, without**
8 **receiving or obtaining a direct or indirect promise of receiving anything of ascertainable**
9 **value from a contracting agency, donates, provides, conveys or otherwise gives or promises**
10 **to give to the contracting agency:**

11 (A) **A good or service;**

12 (B) **A discount, rebate or other reduction from a standard charge or price that would**
13 **ordinarily apply in a transaction related to goods or services;**

14 (C) **Real or personal property or intellectual or other intangible but valuable property;**

15 (D) **A utility, road, appurtenance, device or structure that permits access to or use of**
16 **real or personal property;**

17 (E) **An easement or other right to enter, use, occupy or traverse real property or extract**
18 **or sever valuable timber, minerals or other goods from real property;**

19 (F) **Technical or other assistance, advice, consultation, expertise, goodwill, know-how or**
20 **other valuable but intangible consideration; or**

21 (G) **Other similar or related consideration or anything of ascertainable value that the**
22 **Director of the Oregon Department of Administrative Services, the Attorney General or a**
23 **contracting agency identifies in rules adopted under ORS 279A.065.**

24 (b) **"Prospective bidder" means a bidder from which a contracting agency has previously**
25 **received a bid in response to an invitation to bid or from which a contracting agency may**

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 reasonably expect to receive a bid in response to a future invitation to bid.

2 (c) "Prospective proposer" means a proposer from which a contracting agency has pre-
 3 viously received a proposal in response to a request for proposals or from which a con-
 4 tracting agency may reasonably expect to receive a proposal in response to a future request
 5 for proposals.

6 (2)(a) Except as provided in paragraph (b) of this subsection, a contracting agency that
 7 receives a monetary donation or an in-kind contribution from a bidder or proposer or a
 8 prospective bidder or prospective proposer may not:

9 (A) Consider the monetary donation or the in-kind contribution in evaluating the re-
 10 sponsiveness of a bid or proposal or the responsibility of the bidder or proposer under ORS
 11 279C.375; or

12 (B) Use the amount or value of the monetary donation or in-kind contribution to offset,
 13 reduce or otherwise modify the amount of a bidder's bid or the cost of a proposer's proposal
 14 or use the monetary donation or in-kind contribution as a factor in determining which bid
 15 or proposal complies with the least-cost policy set forth under ORS 279C.305.

16 (b) A contracting agency may accept and consider an in-kind contribution from a bidder
 17 or proposer as part of the bidder's or proposer's bid or proposal if the contracting agency
 18 affirmatively states in the solicitation documents and, if appropriate, in any advertisement
 19 for the procurement that the contracting agency will accept and consider an in-kind contri-
 20 bution as part of the bid or proposal.

21 (3) This section does not apply to a bid or proposal that a contracting agency receives in
 22 connection with and under the terms and conditions of an existing price agreement.

23 **SECTION 3.** Section 2 of this 2011 Act applies to contracts that a contracting agency first
 24 advertises or otherwise solicits on or after the operative date specified in section 4 of this
 25 2011 Act or, if the contracting agency does not advertise or solicit the contract, to contracts
 26 that the contracting agency first enters into on or after the operative date specified in sec-
 27 tion 4 of this 2011 Act.

28 **SECTION 4.** (1) Section 2 of this 2011 Act becomes operative on January 1, 2012.

29 (2) The Director of the Oregon Department of Administrative Services, the Attorney
 30 General or a contracting agency that adopts rules under ORS 279A.065 may take any action
 31 before the operative date specified in subsection (1) of this section that is necessary to enable
 32 the director, the Attorney General or the contracting agency to exercise, on and after the
 33 operative date specified in subsection (1) of this section, all of the duties, functions and
 34 powers conferred on the director, the Attorney General or the contracting agency by section
 35 2 of this 2011 Act.

36 **SECTION 5.** This 2011 Act being necessary for the immediate preservation of the public
 37 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
 38 on its passage.