

# House Bill 3488

Sponsored by Representatives CONGER, JOHNSON, SHEEHAN, WHISNANT; Representatives BREWER, CAMERON, OLSON, THOMPSON, WEIDNER, WINGARD

## 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**.

Raises threshold for requiring cost analysis for procurement from \$250,000 to \$2 million. Requires contracting agency to include overhead costs in estimation of costs contracting agency would incur in performing services subject to procurement. Removes prohibition on proceeding with procurement if contractor's costs are lower solely because contractor pays employees less. Removes requirement for state contracting agency to prepare request for appropriation to obtain resources necessary to perform service that state contracting agency determines would cost less for state contracting agency to perform but for which state contracting agency lacks necessary personnel and resources.

Becomes operative 91 days after effective date of Act.  
Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to public contracting; creating new provisions; amending ORS 279B.030 and 279B.033; and  
3 declaring an emergency.

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

5 **SECTION 1.** ORS 279B.030 is amended to read:

6 279B.030. (1) Except as provided in ORS 279B.036, before conducting a procurement for services  
7 with an estimated contract price that exceeds [*\$250,000*] **\$2 million**, a contracting agency shall:

8 (a) Demonstrate, by means of a written cost analysis in accordance with ORS 279B.033, that the  
9 contracting agency would incur less cost in conducting the procurement than in performing the  
10 services with the contracting agency's own personnel and resources; or

11 (b) Demonstrate, in accordance with ORS 279B.036, that performing the services with the con-  
12 tracting agency's own personnel and resources is not feasible.

13 (2) If a local contracting agency authorizes a department, bureau, office or other subdivision of  
14 the local contracting agency to conduct a procurement on behalf of another department, bureau,  
15 office or subdivision of the local contracting agency, the department, bureau, office or subdivision  
16 on whose behalf the procurement is conducted shall comply with the requirement set forth in sub-  
17 section (1) of this section.

18 (3) Subsection (1) of this section does not apply to:

19 (a) A local contracting agency or a local contract review board for a city that has a population  
20 of not more than 15,000 or a county that has a population of not more than 30,000;

21 (b) A community college that enrolls not more than 1,000 full-time equivalent students, as de-  
22 fined in ORS 341.005;

23 (c) A special district, as defined in ORS 198.010, a diking district formed under ORS chapter 551  
24 and a soil and water conservation district organized under ORS 568.210 to 568.808;

25 (d) The Port of Portland; or

26 (e) Procurements for client services, [*as defined in OAR 125-246-0110*] **the definition and scope**

**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 **of which the Oregon Department of Administrative Services specifies by rule.**

2 **SECTION 2.** ORS 279B.033 is amended to read:

3 279B.033. (1) In the cost analysis required under ORS 279B.030, a contracting agency shall:

4 (a) Estimate the contracting agency's cost of performing the services, including:

5 (A) Salary or wage and benefit costs for contracting agency employees who are directly involved  
6 in performing the services, including employees who inspect, supervise or monitor the performance  
7 of the services.

8 (B) Material costs, including costs for space, energy, transportation, storage, raw and finished  
9 materials, equipment and supplies.

10 (C) Costs incurred in planning for, training for, starting up, implementing, transporting and de-  
11 livering the services and costs related to stopping and dismantling a project or operation because  
12 the contracting agency intends to procure a limited quantity of services or procure the services  
13 within a defined or limited period of time.

14 (D) Miscellaneous costs related to performing the services. The contracting agency [*may not*]  
15 **shall** include in the cost analysis the contracting agency's indirect overhead costs for existing sal-  
16 aries, [*or*] wages and benefits for administrators [*or for*] **and** rent, equipment, utilities and materials  
17 [*except to the extent that the costs are attributable solely to performing the services and would not exist*  
18 *unless the contracting agency performs the services*].

19 (b) Estimate the cost a potential contractor would incur in performing the services, including:

20 (A) Average or actual salary or wage and benefit costs for contractors and employees who:

21 (i) Work in the industry or business most closely involved in performing the services that the  
22 contracting agency intends to procure; and

23 (ii) Would be necessary and directly involved in performing the services or who would inspect,  
24 supervise or monitor the performance of the services;

25 (B) Material costs, including costs for space, energy, transportation, storage, raw and finished  
26 materials, equipment and supplies; and

27 (C) Miscellaneous costs related to performing the services, including but not limited to reason-  
28 ably foreseeable fluctuations in the costs for the items identified in this subsection over the expected  
29 duration of the procurement.

30 (2)(a) After comparing the difference between the costs estimated as provided in subsection (1)(a)  
31 of this section with the costs estimated as provided in subsection (1)(b) of this section, except as  
32 provided in paragraph (b) of this subsection, the contracting agency may proceed with the procure-  
33 ment only if the contracting agency would incur more cost in performing the services with the  
34 contracting agency's own personnel and resources than the contracting agency would incur in pro-  
35 curing the services from a contractor. [*The contracting agency may not proceed with the procurement*  
36 *if the sole reason that the costs estimated in subsection (1)(b) of this section are lower than the costs*  
37 *estimated in subsection (1)(a) of this section is because the costs estimated in subsection (1)(b)(A) of this*  
38 *section are lower than the costs estimated in subsection (1)(a)(A) of this section.*]

39 (b) A contracting agency may proceed with a procurement even if the contracting agency de-  
40 termines that the contracting agency would incur less cost in providing the services with the con-  
41 tracting agency's own personnel and resources if at the time the contracting agency intends to  
42 conduct a procurement, the contracting agency lacks personnel and resources that are necessary to  
43 perform the services within the time in which the services are required. If the contracting agency  
44 conducts a procurement under the conditions described in this paragraph, the contracting agency  
45 shall:

1 (A) Keep a record of the cost analysis and findings that the contracting agency makes for each  
2 procurement the contracting agency conducts under this section, along with the basis for the con-  
3 tracting agency's decision to proceed with the procurement; and

4 (B) Collect and provide copies of the records described in subparagraph (A) of this paragraph  
5 each calendar quarter to the local contract review board, if the contracting agency is a local con-  
6 tracting agency, or to the Emergency Board, if the contracting agency is a state contracting agency.

7 *[(c) If the contracting agency is a state contracting agency, in addition to complying with the pro-  
8 visions of paragraph (b) of this subsection the contracting agency shall prepare a request to the Gov-  
9 ernor for an appropriation and any authority that is necessary for the contracting agency to hire  
10 personnel and obtain resources necessary to perform the services that the contracting agency procured  
11 under the conditions described in paragraph (b) of this subsection. The request must include a copy  
12 of the records that the contracting agency provided to the Emergency Board under paragraph (b)(B)  
13 of this subsection.]*

14 (3) A cost analysis, record, documentation or determination made under this section is a public  
15 record.

16 **SECTION 3. The amendments to ORS 279B.030 and 279B.033 by sections 1 and 2 of this  
17 2011 Act apply to a contract that a contracting agency first advertises or otherwise solicits  
18 on or after the operative date set forth in section 4 of this 2011 Act or, if the contracting  
19 agency does not advertise or solicit the contract, to a contract that the contracting agency  
20 enters into on or after the operative date set forth in section 4 of this 2011 Act.**

21 **SECTION 4. (1) The amendments to ORS 279B.030 and 279B.033 by sections 1 and 2 of this  
22 2011 Act become operative on the 91st day following the effective date of this 2011 Act.**

23 **(2) The Director of the Oregon Department of Administrative Services, the Attorney  
24 General or a contracting agency that adopts rules under ORS 279A.065 may take any action  
25 before the operative date specified in subsection (1) of this section that is necessary to enable  
26 the director, the Attorney General or the contracting agency to exercise, on and after the  
27 operative date specified in subsection (1) of this section, all of the duties, functions and  
28 powers conferred on the director, the Attorney General or the contracting agency by the  
29 amendments to ORS 279B.030 and 279B.033 by sections 1 and 2 of this 2011 Act.**

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