

# Senate Bill 581

Sponsored by Senator WHITSETT

## 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**.

Creates Alternative Contracting Review Board and prescribes board membership, duties and functions. Permits board to establish advisory and technical committees to assist board in performing functions. Requires Oregon Department of Administrative Services to provide staff support and any needed facilities to board.

Provides that board shall review and approve or disapprove recommendations to exempt public improvement contract or class of public improvement contracts from competitive bidding requirements and evaluations of alternative contracting methods. Requires board to charge contracting agencies fee for reviewing applications for exemption from competitive bidding requirements. Requires board to hold public hearing on decision to grant exemption or approve or disapprove evaluation.

Becomes operative on January 1, 2012.  
Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to reviewing exemptions from competitive bidding requirements in public contracting; cre-  
3 ating new provisions; amending ORS 279C.330, 279C.335, 279C.350, 279C.355, 279C.370 and  
4 279C.400; and declaring an emergency.

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

6 **SECTION 1. Sections 2 to 4 of this 2011 Act are added to and made a part of ORS chapter**  
7 **279C.**

8 **SECTION 2. (1) There is established an Alternative Contracting Review Board that con-**  
9 **sists of seven members appointed by the Governor after consultation with the Secretary of**  
10 **State. The members of the board must be residents of this state who are well informed on**  
11 **issues related to construction contracting, public improvements and public contracting.**

12 **(2) The Governor shall appoint the members of the board in the following manner:**

13 **(a) Two members must be public members;**

14 **(b) One member must be a licensed construction contractor who works primarily on**  
15 **public improvements;**

16 **(c) One member must be from a labor organization that represents workers in the con-**  
17 **struction trade;**

18 **(d) One member must be from a state contracting agency;**

19 **(e) One member must be from a local contracting agency or local contract review board;**  
20 **and**

21 **(f) One member must be from the Division of Audits of the office of the Secretary of**  
22 **State.**

23 **(3)(a) Except as provided in paragraph (b) of this subsection, the term of office of each**  
24 **member is one year, but a member serves at the pleasure of the Governor. Before a**  
25 **member's term expires, the Governor shall appoint a successor whose term begins on Janu-**

**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 ary 1 of the year next following. A member is eligible for reappointment. If there is a vacancy  
2 for any cause, the Governor shall make an appointment to become immediately effective for  
3 the unexpired term.

4 (b) Of the members first appointed to the board:

5 (A) Two shall serve for terms that end December 31, 2012;

6 (B) Two shall serve for terms that end December 31, 2013;

7 (C) Two shall serve for terms that end December 31, 2014; and

8 (D) One shall serve for a term that ends December 31, 2015.

9 (4) The appointment of a member is subject to confirmation by the Senate in the manner  
10 prescribed in ORS 171.562 and 171.565.

11 (5) A member of the board is entitled to compensation and expenses as provided in ORS  
12 292.495.

13 (6) A member of the board is subject to the provisions of ORS chapter 244.  
14 Notwithstanding ORS 244.120 (2)(b)(B), a member of the board that has an actual conflict of  
15 interest with respect to a matter before the board may not participate in a discussion or  
16 debate on the matter before the board or vote in the board's decision on the matter.

17 **SECTION 3.** (1) The Alternative Contracting Review Board shall select one of the board's  
18 members as chairperson and another as vice chairperson, for the terms and with the duties  
19 and powers necessary to perform the functions of the offices as the board determines.

20 (2) A majority of the members of the board constitutes a quorum for the transaction of  
21 business.

22 (3) The board shall meet at least once every month at a place, day and hour determined  
23 by the board. The board may also meet at other times and places specified by the call of the  
24 chairperson or of a majority of the members of the board.

25 (4)(a) The board may establish advisory and technical committees as the board considers  
26 necessary to aid and advise the board in performing the board's functions. The committees  
27 may be continuing or temporary committees. The board shall determine the representation,  
28 qualifications for membership, terms and organization of a committee and shall appoint  
29 members of the committee. The chairperson of the board or a board member that the  
30 chairperson designates must be a member of each committee.

31 (b) Members of a committee, except for members that are also members of the board,  
32 are not entitled to compensation, but at the discretion of the board may be reimbursed from  
33 funds available to the board for actual and necessary travel and other expenses the members  
34 of the committee incur in performing official duties, in the manner and amount provided in  
35 ORS 292.495.

36 (5) The Oregon Department of Administrative Services shall provide staff support to the  
37 board and any facilities the board requires to perform the board's functions. At the board's  
38 direction, the department shall provide training and information necessary for members of  
39 a committee created under subsection (4) of this section to understand and apply the pro-  
40 visions of the Public Contracting Code and rules adopted under ORS 279A.065 that relate to  
41 granting exemptions from competitive bidding requirements.

42 (6)(a) The board shall charge a contracting agency that submits a request for an ex-  
43 emption from competitive bidding requirements a fee in an amount that the board specifies  
44 by rule. The board by rule may prescribe classes or categories of fees that apply to different  
45 classes or categories of contracting agencies or to different classes or categories of public

1 improvement contracts.

2 (b) The board shall determine the amount of the fee before July 1 of each year. The ag-  
3 gregated amount of the fees the board charges may not exceed the cost of administering the  
4 board's functions under a budget that is subject to expenditure limitations set by the Legis-  
5 lative Assembly or the Emergency Board. The board shall report to the Legislative Assembly  
6 or the Emergency Board, as appropriate, before adopting a rule that specifies a fee under  
7 this subsection.

8 **SECTION 4. (1)(a) The Alternative Contracting Review Board shall:**

9 (A) Review and approve or disapprove findings that a contracting agency makes and a  
10 recommendation that the Director of the Oregon Department of Administrative Services, the  
11 Director of Transportation or a local contract review board makes to exempt a public im-  
12 provement contract or a class of public improvement contracts from the competitive bidding  
13 requirements set forth in ORS 279C.335.

14 (B) Hold the public hearing described in ORS 279C.335 (5) and approve or disapprove the  
15 findings and recommendation described in ORS 279C.335 (2).

16 (C) Receive a contracting agency's evaluation of a public improvement contract or class  
17 of public improvement contracts that the contracting agency awarded by means of an alter-  
18 native contracting process and approve or disapprove the evaluation in a public hearing on  
19 the basis of criteria set forth in ORS 279C.355 (2).

20 (b) The board shall approve or disapprove findings, a recommendation or an evaluation  
21 described in paragraph (a) of this subsection by a majority of the voting members of the  
22 board present.

23 (c) If the board does not approve findings, a recommendation or an evaluation described  
24 in paragraph (a) of this subsection:

25 (A) The public improvement contract for which a contracting agency sought an ex-  
26 emption from competitive bidding requirements is not exempt from the requirements, if the  
27 board did not approve the findings and recommendation to grant an exemption; or

28 (B) The contracting agency must resubmit an evaluation that does not meet the criteria  
29 set forth in ORS 279C.355 (2), if the board does not approve the contracting agency's evalu-  
30 ation.

31 (2) The board shall approve or disapprove the findings and the recommendation on the  
32 record and otherwise in accordance with ORS chapter 183 and shall issue the board's ap-  
33 proval or disapproval in writing, setting forth the board's reasons for the decision. The  
34 findings, recommendation and decision are public records. The board shall publish and dis-  
35 seminate the findings, recommendation and decision electronically or otherwise and shall  
36 make the findings, recommendation and decision available upon request to the public.

37 (3) In accordance with applicable provisions of ORS chapter 183, the board may adopt  
38 rules necessary to administer the laws the board is charged with administering.

39 **SECTION 5.** ORS 279C.335 is amended to read:

40 279C.335. (1) *[All public improvement contracts shall be based upon competitive bids except:]* A  
41 contracting agency shall use a competitive bid as the basis for awarding a public improve-  
42 ment contract, except for:

43 (a) *[Contracts made with]* A contract with a qualified nonprofit *[agencies providing]* agency  
44 that provides employment opportunities for individuals with disabilities under ORS 279.835 to  
45 279.855.

1 (b) A public improvement contract *[exempt under subsection (2) of this section]* **that the Alternative Contracting Review Board has exempted under section 4 (2) of this 2011 Act.**

3 (c) A public improvement contract with a value of less than \$5,000.

4 (d) A contract *[not to]* **with a value that does not** exceed \$100,000 made under procedures for  
5 competitive quotes in ORS 279C.412 and 279C.414.

6 (e) *[Contracts for]* **A contract to** repair, *[maintenance, improvement or protection of]* **maintain,**  
7 **improve or protect** property *[obtained by]* the Department of Veterans' Affairs **obtains** under ORS  
8 407.135 and 407.145 (1).

9 (f) **An** energy savings performance *[contracts]* **contract** entered into in accordance with rules  
10 of procedure adopted under ORS 279A.065.

11 (2) Subject to subsection (4)(b) of this section, the Director of the Oregon Department of Ad-  
12 ministrative Services, a local contract review board or, for contracts described in ORS 279A.050  
13 (3)(b), the Director of Transportation may *[exempt]* **recommend to the Alternative Contracting**  
14 **Review Board that** a public improvement contract or a class of public improvement contracts **be**  
15 **exempt** from the competitive bidding requirements of subsection (1) of this section *[upon approval*  
16 *of]* **after the director or the local contract review board approves** the following findings sub-  
17 mitted by the contracting agency or, if a state agency is not the contracting agency, the state  
18 agency seeking the exemption:

19 (a) *[It is unlikely that]* The exemption *[will]* **is unlikely to** encourage favoritism in *[the]* awarding  
20 *[of]* public improvement contracts or substantially diminish competition for public improvement  
21 contracts.

22 (b) *[The awarding of]* **Awarding a** public improvement *[contracts]* **contract** under the exemption  
23 will likely result in substantial cost savings to the contracting agency, to the state agency based  
24 upon the justification and information described in ORS 279C.330 or, if the *[contracts are]* **contract**  
25 **is for a** public *[improvements]* **improvement** described in ORS 279A.050 (3)(b), to the contracting  
26 agency or the public. In *[making]* **approving** the finding, the Director of the Oregon Department of  
27 Administrative Services, the Director of Transportation or the local contract review board may  
28 consider the type, cost and amount of the contract, the number of persons available to bid and  
29 *[such]* other **appropriate** factors *[as may be deemed appropriate]*.

30 (c) As an alternative to the finding described in paragraph (b) of this subsection, *[when]* **if** a  
31 contracting agency or state agency seeks an exemption that would allow the **agency to** use *[of]* an  
32 *[alternate]* **alternative** contracting method that the agency has not previously used, the agency may  
33 make a finding that identifies the project as a pilot project for which the agency intends to deter-  
34 mine whether the use of the *[alternate]* **alternative** contracting method actually results in substan-  
35 tial cost savings to the contracting agency, to the state agency or, if the contract is for a public  
36 improvement described in ORS 279A.050 (3)(b), to the contracting agency or the public. The agency  
37 shall include an analysis and conclusion regarding actual cost savings, if any, in the evaluation re-  
38 quired under ORS 279C.355.

39 (3) In making findings to support an exemption for a class of public improvement contracts, the  
40 contracting agency or state agency shall clearly identify the class using the class's defining char-  
41 acteristics. *[Those]* **The** characteristics *[shall]* **must** include *[some]* **a** combination of project de-  
42 scriptions or locations, time periods, contract values, methods of procurement or other factors that  
43 distinguish the limited and related class of public improvement contracts from the agency's overall  
44 construction program. The agency may not identify a class solely by funding source, such as a par-  
45 ticular bond fund, or by the method of procurement, but shall identify the class using characteristics

1 that reasonably relate to the exemption criteria set forth in subsection (2) of this section.

2 (4) In *[granting exemptions]* **recommending an exemption** under subsection (2) of this section,  
3 the Director of the Oregon Department of Administrative Services, the Director of Transportation  
4 or the local contract review board shall:

5 (a) *[When]* **If** appropriate, direct the use of *[alternate]* **alternative** contracting methods that take  
6 account of market realities and modern practices and are consistent with the public policy of en-  
7 couraging competition.

8 (b) Require and approve or disapprove written findings by the contracting agency or state  
9 agency that support *[the]* awarding *[of]* a particular public improvement contract or a class of public  
10 improvement contracts[,] without the competitive bidding requirement of subsection (1) of this sec-  
11 tion. The findings must *[show that the exemption of]* **support a decision to exempt** a contract or  
12 class of contracts *[complies with the requirements of]* **on the basis of criteria set forth in** sub-  
13 section (2) of this section.

14 (5)(a) *[Before final adoption of]* **The Alternative Contracting Review Board shall hold a**  
15 **public hearing before approving or disapproving** *[the]* findings required by subsection (2) of this  
16 section *[exempting]* **and a recommendation by the Director of the Oregon Department of Ad-**  
17 **ministrative Services, the Director of Transportation or a local contract review board to**  
18 **exempt** a public improvement contract or a class of public improvement contracts from the re-  
19 quirement of competitive bidding[, *a contracting agency or state agency shall hold a public hearing*].

20 (b) Notification of the public hearing *[shall]* **must** be published in at least one trade newspaper  
21 of general statewide circulation a minimum of 14 days before the hearing.

22 (c) The notice *[shall]* **must** state that the public hearing is for the purpose of taking comments  
23 on the draft findings **and recommendation** for an exemption from the competitive bidding require-  
24 ment. At the time of the notice, copies of the draft findings *[shall]* **and recommendation must** be  
25 made available to the public. *[At the option of the contracting agency or state agency,]* The notice  
26 *[may]* **must** describe the process by which the **Alternative Contracting Review Board approves**  
27 **or disapproves the findings and the recommendation** *[are finally adopted]* and *[may]* **must** indi-  
28 cate the opportunity for *[any]* further public comment.

29 (d) At the public hearing, the *[contracting agency or state agency]* **Alternative Contracting**  
30 **Review Board** shall offer an opportunity for any interested party to appear and present comment.

31 (e) If a contracting agency or state agency *[is required to]* **must** act promptly *[due to]* **because**  
32 **of** circumstances beyond the agency's control that do not constitute an emergency, notification of  
33 the public hearing may be published simultaneously with the agency's solicitation of contractors for  
34 the alternative *[public]* contracting method, as long as responses to the solicitation are due at least  
35 five days after the *[meeting]* **hearing** and approval of the findings **and recommendation**.

36 (6) The purpose of an exemption is to exempt one or more public improvement contracts from  
37 competitive bidding requirements. The representations in and the accuracy of the findings, including  
38 *[any]* **a general description of the resulting public improvement contract, the comment received**  
39 **at the public hearing and the judgment of the board's members** are the bases for approving the  
40 findings and granting the *[exception]* **exemption**. The findings may describe anticipated features of  
41 the resulting public improvement contract, but the final parameters of the contract are those char-  
42 acteristics or specifics announced in the solicitation document.

43 (7) A public improvement contract awarded under the competitive bidding requirement of sub-  
44 section (1) of this section may be amended only in accordance with rules adopted under ORS  
45 279A.065.

1 (8) **A** public improvement [*contracts*] **contract that is** excepted from competitive bid require-  
 2 ments under subsection (1)(a), (c), (d), (e) or (f) of this section [*are*] **is** not subject to [*the exemption*  
 3 *requirements of*] subsection (2) of this section.

4 **SECTION 6.** ORS 279C.350 is amended to read:

5 279C.350. (1) Exemptions [*granted by the Director of the Oregon Department of Administrative*  
 6 *Services under ORS 279C.335 (2) or*] **that the Alternative Contracting Review Board grants un-**  
 7 **der section 4 (2) of this 2011 Act or that the Director of the Oregon Department of Admin-**  
 8 **istrative Services grants under 279C.345 (2)** constitute rulemaking and not contested cases under  
 9 ORS chapter 183. However, [*an exemption granted with regard to*] **the Alternative Contracting**  
 10 **Review Board shall grant an exemption for** a specific public improvement contract [*by the Di-*  
 11 *rector of the Oregon Department of Administrative Services, or an exemption granted by the Director*  
 12 *of Transportation with regard to a specific public improvement contract*] or a class of public im-  
 13 provement contracts described in ORS 279A.050 (3)(b)[, *shall be granted*] by order. The order shall  
 14 set forth findings [*supporting*] **and reasons that support** the decision to grant or deny the request  
 15 for the exemption. The order is reviewable under ORS 183.484 and does not constitute a contested  
 16 case order. Jurisdiction for review of the order is with the Circuit Court of Marion County. The  
 17 court may award costs and attorney fees to the prevailing party.

18 (2) [*Any*] **A** person, except the contracting agency or [*anyone representing*] **a person that re-**  
 19 **presents** the contracting agency, may bring a petition for a declaratory judgment **in the manner**  
 20 **provided in ORS 183.400** to test the validity of [*any*] a rule [*adopted by*] **that the Alternative**  
 21 **Contracting Review Board adopts under ORS 279C.335 or section 4 of this 2011 Act or that**  
 22 the Director of the Oregon Department of Administrative Services **adopts** under ORS [*279C.335 or*]  
 23 *279C.345 [in the manner provided in ORS 183.400].*

24 (3) [*Any*] **A** person, except the contracting agency or [*anyone representing*] **a person that re-**  
 25 **presents** the contracting agency, may bring an action for writ of review under ORS chapter 34 to  
 26 test the validity of an exemption **that a local contract review board** granted under ORS [*279C.335*  
 27 *or*] *279C.345 [by a local contract review board].*

28 **SECTION 7.** ORS 279C.355 is amended to read:

29 279C.355. (1) [*Upon completion of and final payment*] **After completing and paying** for [*any*] a  
 30 public improvement contract, or class of public improvement contracts, in excess of \$100,000 for  
 31 which the contracting agency did not use the competitive bidding process, the contracting agency  
 32 shall prepare and deliver to the [*Director of the Oregon Department of Administrative Services, the*  
 33 *local contract review board or, for public improvement contracts described in ORS 279A.050 (3)(b), the*  
 34 *Director of Transportation*] **Alternative Contracting Review Board** an evaluation of the public  
 35 improvement contract or the class of public improvement contracts.

36 (2) The evaluation must include but is not limited to the following matters:

37 (a) The actual project cost as compared with original project estimates;

38 (b) The amount of any guaranteed maximum price;

39 (c) The number of project change orders **the contracting agency** issued [*by the contracting*  
 40 *agency*];

41 (d) A narrative description of successes and failures during the design, engineering and con-  
 42 struction of the project; and

43 (e) An objective assessment of the use of the alternative contracting process as compared to the  
 44 findings required by ORS 279C.335.

45 (3) The evaluations required by this section:

- 1 (a) Must be made available for public inspection; and
- 2 (b) Must be completed within 30 days [of] **after** the date the contracting agency accepts:
- 3 (A) The public improvement project; or
- 4 (B) The last public improvement project if the project falls within a class of public improvement
- 5 contracts.

6 **SECTION 8.** ORS 279C.330 is amended to read:

7 279C.330. As used in ORS 279C.335[,] **and** 279C.345 [*and 279C.350*], “findings” means the justi-  
8 fication for a contracting agency conclusion that includes, but is not limited to, information re-  
9 garding:

- 10 (1) Operational, budget and financial data;
- 11 (2) Public benefits;
- 12 (3) Value engineering;
- 13 (4) Specialized expertise required;
- 14 (5) Public safety;
- 15 (6) Market conditions;
- 16 (7) Technical complexity; and
- 17 (8) Funding sources.

18 **SECTION 9.** ORS 279C.370 is amended to read:

19 279C.370. (1)(a) Within two working hours after the date and time of the deadline when bids are  
20 due to a contracting agency for a public improvement contract, a bidder shall submit to the con-  
21 tracting agency a disclosure of the first-tier subcontractors that:

- 22 (A) Will be furnishing labor or will be furnishing labor and materials in connection with the
- 23 public improvement contract; and
- 24 (B) Will have a contract value that is equal to or greater than five percent of the total project
- 25 bid or \$15,000, whichever is greater, or \$350,000 regardless of the percentage of the total project
- 26 bid.

27 (b) For each contract to which this subsection applies, the contracting agency shall designate  
28 a deadline for submission of bids that has a date on a Tuesday, Wednesday or Thursday and a time  
29 between 2 p.m. and 5 p.m., except that this paragraph does not apply to public contracts for main-  
30 tenance or construction of highways, bridges or other transportation facilities.

31 (c) This subsection applies only to public improvement contracts with a value, estimated by the  
32 contracting agency, of more than \$100,000.

33 (d) This subsection does not apply to public improvement contracts that have been exempted  
34 from competitive bidding requirements under [*ORS 279C.335 (2)*] **section 4 (2) of this 2011 Act.**

35 (2) The disclosure of first-tier subcontractors under subsection (1) of this section must include  
36 the name of each subcontractor, the category of work that each subcontractor will perform and the  
37 dollar value of each subcontract. The information shall be disclosed in substantially the following  
38 form:

39 \_\_\_\_\_

40  
41 **FIRST-TIER SUBCONTRACTOR**  
42 **DISCLOSURE FORM**  
43

44 **PROJECT NAME:** \_\_\_\_\_

45 **BID #:** \_\_\_\_\_

1 BID CLOSING: Date: \_\_\_\_\_ Time: \_\_\_\_\_

2

3 This form must be submitted at the location specified in the Invitation to Bid on the advertised bid  
4 closing date and within two working hours after the advertised bid closing time.

5

6 List below the name of each subcontractor that will be furnishing labor or will be furnishing labor  
7 and materials and that is required to be disclosed, the category of work that the subcontractor will  
8 be performing and the dollar value of the subcontract. Enter "NONE" if there are no subcontractors  
9 that need to be disclosed. (ATTACH ADDITIONAL SHEETS IF NEEDED.)

10

11	DOLLAR	CATEGORY
12 NAME	VALUE	OF WORK
13 1) _____	\$ _____	_____
14 _____	_____	_____
15 2) _____	\$ _____	_____
16 _____	_____	_____
17 3) _____	\$ _____	_____
18 _____	_____	_____
19 4) _____	\$ _____	_____
20 _____	_____	_____

21

22 Failure to submit this form by the disclosure deadline will result in a nonresponsive bid. A nonre-  
23 sponsive bid will not be considered for award.

24

25 Form submitted by (bidder name): \_\_\_\_\_

26 Contact name: \_\_\_\_\_

27 Phone no.: \_\_\_\_\_

28

29

30 (3) A contracting agency shall accept the subcontractor disclosure. The contracting agency shall  
31 consider the bid of any contractor that does not submit a subcontractor disclosure to the contract-  
32 ing agency to be a nonresponsive bid and may not award the contract to the contractor. A con-  
33 tracting agency is not required to determine the accuracy or the completeness of the subcontractor  
34 disclosure.

35 (4) After the bids are opened, the subcontractor disclosures must be made available for public  
36 inspection.

37 (5) A contractor may substitute a first-tier subcontractor under the provisions of ORS 279C.585.

38 (6) A subcontractor may file a complaint under ORS 279C.590 based on the disclosure require-  
39 ments of subsection (1) of this section.

40 **SECTION 10.** ORS 279C.400 is amended to read:

41 279C.400. (1) When authorized or required by an exemption granted under [ORS 279C.335] **sec-**  
42 **tion 4 (2) of this 2011 Act**, a contracting agency may solicit and award a public improvement  
43 contract, or may award multiple public improvement contracts when specified in the request for  
44 proposals, by requesting and evaluating competitive proposals. A contract awarded under this sec-  
45 tion may be amended only in accordance with rules adopted under ORS 279A.065.



1 (2) Except as provided in ORS 279C.330 to 279C.355, 279C.360 to 279C.390, 279C.395 and 279C.430  
 2 to 279C.450, competitive proposals shall be subject to the following requirements of competitive  
 3 bidding:

4 (a) Advertisement under ORS 279C.360;

5 (b) Requirements for solicitation documents under ORS 279C.365;

6 (c) Disqualification due to a Construction Contractors Board listing as described in ORS  
 7 279C.375 (3)(a);

8 (d) Contract execution and bonding requirements under ORS 279C.375 and 279C.380;

9 (e) Determination of responsibility under ORS 279C.375 (3)(b);

10 (f) Rejection of bids under ORS 279C.395; and

11 (g) Disqualification and prequalification under ORS 279C.430, 279C.435 and 279C.440.

12 (3) For the purposes of applying the requirements listed in subsection (2) of this section to  
 13 competitive proposals, when used in the sections listed in subsection (2) of this section, "bids" in-  
 14 cludes proposals, and "bid documents" and "invitation to bid" include requests for proposals.

15 (4) Competitive proposals are not subject to the following requirements of competitive bidding:

16 (a) First-tier subcontractor disclosure under ORS 279C.370; and

17 (b) Reciprocal preference under ORS 279A.120.

18 (5) The contracting agency may require proposal security that serves the same function with  
 19 respect to proposals as bid security serves with respect to bids under ORS 279C.365 (5) and  
 20 279C.385, as follows:

21 (a) The contracting agency may require proposal security in a form and amount as may be de-  
 22 termined to be reasonably necessary or prudent to protect the interests of the contracting agency.

23 (b) The contracting agency shall retain the proposal security if a proposer who is awarded a  
 24 contract fails to promptly and properly execute the contract and provide any required bonds or in-  
 25 surance.

26 (c) The contracting agency shall return the proposal security to all proposers upon the exe-  
 27 cution of the contract, or earlier in the selection process.

28 (6) In all other respects, and subject to rules adopted under ORS 279A.065, references in this  
 29 chapter to invitations to bid, bids or bidders shall, to the extent practicable within the proposal  
 30 process, be deemed equally applicable to requests for proposals, proposals or proposers. However,  
 31 notwithstanding ORS 279C.375 (1), a contracting agency may not be required to award a contract  
 32 advertised under the competitive proposal process based on price, but may award the contract in  
 33 accordance with ORS 279C.410 (8).

34 **SECTION 11. Sections 2, 3 and 4 of this 2011 Act and the amendments to ORS 279C.330,**  
 35 **279C.335, 279C.350, 279C.355, 279C.370 and 279C.400 by sections 5 to 10 of this 2011 Act apply**  
 36 **to a contract that a contracting agency first advertises or otherwise solicits on or after the**  
 37 **operative date set forth in section 12 of this 2011 Act or, if the contracting agency does not**  
 38 **advertise or solicit the contract, to a contract that the contracting agency enters into on**  
 39 **or after the operative date set forth in section 12 of this 2011 Act.**

40 **SECTION 12. (1) Sections 2, 3 and 4 of this 2011 Act and the amendments to ORS**  
 41 **279C.330, 279C.335, 279C.350, 279C.355, 279C.370 and 279C.400 by sections 5 to 10 of this 2011**  
 42 **Act become operative on January 1, 2012.**

43 **(2) The Director of the Oregon Department of Administrative Services, the Attorney**  
 44 **General or a contracting agency that adopts rules under ORS 279A.065 may take any action**  
 45 **before the operative date specified in subsection (1) of this section that is necessary to enable**

1 the director, the Attorney General or the contracting agency to exercise, on and after the  
2 operative date specified in subsection (1) of this section, all of the duties, functions and  
3 powers conferred on the director, the Attorney General or the contracting agency by  
4 sections 2, 3 and 4 of this 2011 Act and the amendments to ORS 279C.330, 279C.335, 279C.350,  
5 279C.355, 279C.370 and 279C.400 by sections 5 to 10 of this 2011 Act.

6 SECTION 13. This 2011 Act being necessary for the immediate preservation of the public  
7 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect  
8 on its passage.

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