

Enrolled
Senate Bill 1518

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CHAPTER

AN ACT

Relating to public contracting by state contracting agencies; and declaring an emergency.

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

SECTION 1. Section 2 of this 2012 Act is added to and made a part of ORS chapter 279B.

SECTION 2. (1) Except as provided in subsection (2) of this section, a state contracting agency that procures personal services for the purpose of advising or assisting the state contracting agency in developing specifications, a scope or statement of work, an invitation to bid, a request for proposals or other solicitation documents and materials related to a procurement may not accept from the contractor, or an affiliate of the contractor, that advised or assisted the state contracting agency a bid or proposal for the goods or services described, specified or identified in the solicitation documents or materials if a reasonable person would believe that, by giving the advice or assistance, the contractor or affiliate would have or would appear to have an advantage in obtaining the public contract that is the subject of the solicitation.

(2)(a) If a state contracting agency anticipates that the state contracting agency will or must seek advice or assistance of the type described in subsection (1) of this section from a contractor that is also engaged in providing goods or services that will be described or identified in the solicitation documents and materials that result from the advice or assistance, and the state contracting agency wishes to accept a bid or proposal from the contractor, the state contracting agency, before awarding a contract for the advice or assistance, shall apply to the Director of the Oregon Department of Administrative Services for an exception to the prohibition set forth in subsection (1) of this section.

(b) The state contracting agency in the application for the exception shall include findings and justifications, along with sufficient facts to support the findings and justifications, that will enable the director to make an independent judgment as to whether:

(A) The state contracting agency needs advice or assistance from a contractor to develop the solicitation documents and materials described in subsection (1) of this section;

(B) Accepting a bid or proposal from the contractor that gives the advice or assistance is the only practicable way in which the state contracting agency can conduct the procurement successfully; and

(C) Approving the exception:

(i) Is unlikely to encourage favoritism in awarding public contracts or to substantially diminish competition for public contracts; and

(ii)(I) Is reasonably expected to result in substantial cost savings to the state contracting agency or the public; or

(II) Otherwise substantially promotes the public interest in a manner that could not be practically realized by complying with the prohibition described in subsection (1) of this section.

(c)(A) If the director approves the state contracting agency's application, the director shall prepare written findings and justifications for the approval. The state contracting agency's findings, justifications and facts and the director's findings, justifications and approval are public records that are subject to disclosure as provided in ORS 192.410 to 192.505.

(B) If the director disapproves the state contracting agency's application, the director shall state the director's reasons for the disapproval in a written notice to the state contracting agency and shall indicate whether the disapproval extends only to the state contracting agency's acceptance of a bid or proposal from a contractor that gives advice or assistance in preparing solicitation documents and other materials or whether the director also disagrees with the state contracting agency's stated need for advice or assistance from a contractor.

(C) The director's approval or disapproval is final.

(3) As used in this section, "affiliate" means a person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a contractor described in this section.

(4) This section does not apply to the Secretary of State or the State Treasurer.

SECTION 3. Section 4 of this 2012 Act is added to and made a part of ORS chapter 279A.

SECTION 4. (1) The Oregon Department of Administrative Services, before the beginning of each odd-numbered year regular legislative session, shall provide to an appropriate committee of the Legislative Assembly that considers questions related to public contracting a report that contains information about special procurements conducted under the provisions of ORS 279B.085 by state contracting agencies that are subject to the authority of the department under ORS 279A.050 (2) and (7). The information must include, at a minimum:

(a) The name of each state contracting agency that conducted a procurement under the provisions;

(b) The number of procurements the state contracting agency conducted under the provisions and the number of contracts the state contracting agency awarded under the provisions;

(c) A summary of the reasons that the state contracting agency decided to conduct the procurement under the provisions;

(d) A descriptive summary of the procurement procedure the state contracting agency used to conduct the procurement, noting whether the procedure was competitive or not and listing the number of bids or proposals the state contracting agency received if the procedure was competitive;

(e) The contract price or estimated contract price for each contract the state contracting agency awarded under the provisions; and

(f) A summary of the protests or other responses the state contracting agency received in response to the decision to conduct the procurement under the provisions, and a summary of the disposition of the protests or other responses.

(2) A state contracting agency subject to the authority of the department under ORS 279A.050 (2) and (7) shall maintain records that enable the state contracting agency to calculate or otherwise determine and provide to the department the information described in subsection (1) of this section. The state contracting agency shall maintain the records for the purposes described under this section and may not use the information for evaluating proposals or invitations to bid that the state contracting agency receives in response to a solicitation for a procurement.

(3) This section does not apply to the Secretary of State or the State Treasurer.

SECTION 5. Section 6 of this 2012 Act is added to and made a part of ORS chapter 279B.

SECTION 6. (1) A bidder or proposer that submits a bid or proposal for a public contract may submit with the bid or proposal a personnel deployment disclosure. A personnel deployment disclosure that a bidder or proposer submits under this section must state:

(a) The number of workers that the bidder or proposer and the bidder or proposer's subcontractors plan to deploy to perform the work described in the invitation to bid or the request for proposals;

(b) The number of workers that the bidder or proposer and the bidder's or proposer's first-tier subcontractors will employ within this state; and

(c) The number of jobs in each of the categories described in paragraphs (a) and (b) of this subsection that would be a newly created job.

(2) A state contracting agency that receives a personnel deployment disclosure from a bidder or proposer under subsection (1) of this section may consider the personnel deployment disclosure in evaluating a bid or proposal if the contracting agency states in the solicitation documents for a procurement that the state contracting agency will consider a personnel deployment disclosure. The state contracting agency may give a preference to a bid or proposal that states that the bidder or proposer will employ more workers within this state than a competing bid or proposal if the bids or proposals otherwise suit the state contracting agency's specifications for the procurement equally well.

(3) The Director of the Oregon Department of Administrative Services, the Attorney General and a state contracting agency that adopts rules under ORS 279A.065 may adopt rules to prescribe the form and contents of a personnel deployment disclosure and otherwise to implement the provisions of this section.

(4) This section does not apply to the Secretary of State or the State Treasurer.

SECTION 7. (1) Sections 2 and 6 of this 2012 Act apply to a contract that a state contracting agency first advertises or otherwise solicits on or after the operative date specified in section 8 of this 2012 Act or, if the state contracting agency does not advertise or solicit the public contract, to a public contract that the state contracting agency enters into on or after the operative date specified in section 8 of this 2012 Act.

(2) Section 4 of this 2012 Act applies to a procurement that a state contracting agency first advertises or solicits one year before, or on or after, the operative date specified in section 8 of this 2012 Act.

SECTION 8. (1) Sections 2, 4 and 6 of this 2012 Act become operative January 1, 2013.

(2) The Director of the Oregon Department of Administrative Services, the Attorney General or a state contracting agency that adopts rules under ORS 279A.065 may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the director, the Attorney General or the state contracting agency to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the director, the Attorney General or the state contracting agency by sections 2, 4 and 6 of this 2012 Act.

SECTION 9. This 2012 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect on its passage.

Passed by Senate February 15, 2012

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House February 27, 2012

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Received by Governor:

.....M,....., 2012

Approved:

.....M,....., 2012

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2012

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Kate Brown, Secretary of State