

# D R A F T

## SUMMARY

Permits contracting agency to directly appoint consultant to provide architectural, engineering, photogrammetric mapping, transportation planning or land surveying services if estimated value of services is less than \$100,000.

Prohibits contracting agency from using consultant's pricing policies and proposals or other pricing information as basis for direct appointment.

Becomes operative January 1, 2014.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to direct appointments for certain consulting services; creating new  
3 provisions; amending ORS 279C.110; and declaring an emergency.

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

5 **SECTION 1.** ORS 279C.110 is amended to read:

6 279C.110. (1) A contracting agency shall select consultants to provide ar-  
7 chitectural, engineering, photogrammetric mapping, transportation planning  
8 or land surveying services on the basis of the consultant's qualifications for  
9 the type of professional service required. A contracting agency may solicit  
10 or use pricing policies and proposals or other pricing information, including  
11 the number of hours proposed for the service required, expenses, hourly rates  
12 and overhead, to determine consultant compensation only after the con-  
13 tracting agency has selected a candidate [*pursuant to*] **in accordance with**  
14 subsection (2) of this section.

15 (2) Subject to the requirements of subsection (1) of this section, the pro-  
16 cedures that a contracting agency creates to screen and select consultants  
17 and to select a candidate under this section are at the contracting agency's  
18 sole discretion. The contracting agency may adjust the procedures to ac-

**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 commodate the contracting agency's scope, schedule or objectives for a par-  
2 ticular project if the estimated cost of the architectural, engineering,  
3 photogrammetric mapping, transportation planning or land surveying ser-  
4 vices for the project do not exceed \$250,000.

5 (3) A contracting agency's screening and selection procedures under this  
6 section, regardless of the estimated cost of the architectural, engineering,  
7 photogrammetric mapping, transportation planning or land surveying ser-  
8 vices for a project, may include considering each candidate's:

9 (a) Specialized experience, capabilities and technical competence, which  
10 the candidate may demonstrate with the candidate's proposed approach and  
11 methodology to meet the project requirements;

12 (b) Resources committed to perform the work and the proportion of the  
13 time that the candidate's staff would spend on the project, including time for  
14 specialized services, within the applicable time limits;

15 (c) Record of past performance, including but not limited to price and cost  
16 data from previous projects, quality of work, ability to meet schedules, cost  
17 control and contract administration;

18 (d) Ownership status and employment practices regarding minority,  
19 women and emerging small businesses or historically underutilized busi-  
20 nesses;

21 (e) Availability to the project locale;

22 (f) Familiarity with the project locale; and

23 (g) Proposed project management techniques.

24 (4) If the screening and selection procedures a contracting agency creates  
25 under subsection (2) of this section result in the contracting agency's deter-  
26 mination that two or more candidates are equally qualified, the contracting  
27 agency may select a candidate through any process the contracting agency  
28 adopts that is not based on the candidate's pricing policies, proposals or  
29 other pricing information.

30 (5) The contracting agency and the selected candidate shall mutually  
31 discuss and refine the scope of services for the project and shall negotiate

1 conditions, including but not limited to compensation level and performance  
2 schedule, based on the scope of services. The [*compensation level paid must*  
3 *be*] **contracting agency shall pay compensation for the services that is**  
4 reasonable and fair to the contracting agency [*as determined solely by the*  
5 *contracting agency*]. Authority to negotiate a contract under this section does  
6 not supersede any provision of ORS 279A.140 or 279C.520.

7 (6) If the contracting agency and the selected candidate are unable for  
8 any reason to negotiate a contract at a compensation level that is reasonable  
9 and fair to the contracting agency, the contracting agency shall, either  
10 orally or in writing, formally terminate negotiations with the selected can-  
11 didate. The contracting agency may then negotiate with the next most qual-  
12 ified candidate. The negotiation process may continue in this manner  
13 through successive candidates until an agreement is reached or the con-  
14 tracting agency terminates the consultant contracting process.

15 (7) [*It is the goal of*] This state **has a goal** to promote a sustainable  
16 economy in the rural areas of the state. In order to monitor progress toward  
17 this goal, a state contracting agency shall keep a record of the locations in  
18 which architectural, engineering, photogrammetric mapping, transportation  
19 planning or land surveying services contracts and related services contracts  
20 are performed throughout the state, the locations of the selected consultants  
21 and the direct expenses on each contract. This record must include the total  
22 number of contracts awarded to each consultant firm over a 10-year period.  
23 The record of direct expenses must include all personnel travel expenses as  
24 a separate and identifiable expense on the contract. Upon request, the state  
25 contracting agency shall make these records available to the public.

26 (8)(a) Notwithstanding the provisions of subsection (1) of this section, a  
27 contracting agency may directly appoint a consultant **to provide architec-**  
28 **tural, engineering, photogrammetric mapping, transportation planning**  
29 **or land surveying services for a project** if the estimated cost of the ar-  
30 chitectural, engineering, photogrammetric mapping, transportation planning  
31 or land surveying services for the project do not exceed \$100,000.

1       **(b) A contracting agency may not solicit or use a consultant's**  
2 **pricing policies and proposals or other pricing information, including**  
3 **the number of hours the consultant proposes for the service required,**  
4 **expenses, hourly rates and overhead as the basis for a direct appoint-**  
5 **ment under paragraph (a) of this subsection.**

6       (9)(a) Notwithstanding the provisions of subsections (1) and (8) of this  
7 section, a contracting agency may directly appoint a consultant for archi-  
8 tectural, engineering, photogrammetric mapping, transportation planning or  
9 land surveying services in an emergency.

10       **(b) A contracting agency may not solicit or use a consultant's**  
11 **pricing policies and proposals or other pricing information, including**  
12 **the number of hours the consultant proposes for the service required,**  
13 **expenses, hourly rates and overhead as the basis for a direct appoint-**  
14 **ment under paragraph (a) of this subsection.**

15       SECTION 2. (1) The amendments to ORS 279C.110 by section 1 of  
16 this 2013 Act become operative January 1, 2014.

17       (2) The Attorney General, the Director of the Oregon Department  
18 of Administrative Services, the Director of Transportation or a con-  
19 tracting agency that adopts rules under ORS 279A.065 may take any  
20 action before the operative date specified in subsection (1) of this sec-  
21 tion that is necessary to enable the Attorney General, the director or  
22 the contracting agency to exercise, on and after the operative date  
23 specified in subsection (1) of this section, all of the duties, functions  
24 and powers conferred on the Attorney General, the director or the  
25 contracting agency by the amendments to ORS 279C.110 by section 1  
26 of this 2013 Act.

27       (3) The amendments to ORS 279C.110 by section 1 of this 2013 Act  
28 apply to contracts that a contracting agency first advertises or other-  
29 wise solicits or, if the contracting agency does not advertise or solicit  
30 the contract, to a contract that the contracting agency first enters  
31 into on or after the operative date specified in subsection (1) of this

1 **section.**

2 **SECTION 3. This 2013 Act being necessary for the immediate pres-**  
3 **ervation of the public peace, health and safety, an emergency is de-**  
4 **clared to exist, and this 2013 Act takes effect on its passage.**

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