

Senate Bill 644

Sponsored by COMMITTEE ON BUSINESS AND TRANSPORTATION

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**.

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 provisions; amending

3 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 architectural, engineering,
7 photogrammetric mapping, transportation planning or land surveying services on the basis of the
8 consultant's qualifications for the type of professional service required. A contracting agency may
9 solicit or use pricing policies and proposals or other pricing information, including the number of
10 hours proposed for the service required, expenses, hourly rates and overhead, to determine consult-
11 ant compensation only after the contracting agency has selected a candidate [*pursuant to*] **in ac-**
12 **cordance with** subsection (2) of this section.

13 (2) Subject to the requirements of subsection (1) of this section, the procedures that a con-
14 tracting agency creates to screen and select consultants and to select a candidate under this section
15 are at the contracting agency's sole discretion. The contracting agency may adjust the procedures
16 to accommodate the contracting agency's scope, schedule or objectives for a particular project if the
17 estimated cost of the architectural, engineering, photogrammetric mapping, transportation planning
18 or land surveying services for the project do not exceed \$250,000.

19 (3) A contracting agency's screening and selection procedures under this section, regardless of
20 the estimated cost of the architectural, engineering, photogrammetric mapping, transportation plan-
21 ning or land surveying services for a project, may include considering each candidate's:

22 (a) Specialized experience, capabilities and technical competence, which the candidate may
23 demonstrate with the candidate's proposed approach and methodology to meet the project require-
24 ments;

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

28 (c) Record of past performance, including but not limited to price and cost data from previous

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 projects, quality of work, ability to meet schedules, cost control and contract administration;

2 (d) Ownership status and employment practices regarding minority, women and emerging small
3 businesses or historically underutilized businesses;

4 (e) Availability to the project locale;

5 (f) Familiarity with the project locale; and

6 (g) Proposed project management techniques.

7 (4) If the screening and selection procedures a contracting agency creates under subsection (2)
8 of this section result in the contracting agency's determination that two or more candidates are
9 equally qualified, the contracting agency may select a candidate through any process the contract-
10 ing agency adopts that is not based on the candidate's pricing policies, proposals or other pricing
11 information.

12 (5) The contracting agency and the selected candidate shall mutually discuss and refine the
13 scope of services for the project and shall negotiate conditions, including but not limited to com-
14 pensation level and performance schedule, based on the scope of services. The [*compensation level*
15 *paid must be*] **contracting agency shall pay compensation for the services that is** reasonable
16 and fair to the contracting agency [*as determined solely by the contracting agency*]. Authority to ne-
17 gotiate a contract under this section does not supersede any provision of ORS 279A.140 or 279C.520.

18 (6) If the contracting agency and the selected candidate are unable for any reason to negotiate
19 a contract at a compensation level that is reasonable and fair to the contracting agency, the con-
20 tracting agency shall, either orally or in writing, formally terminate negotiations with the selected
21 candidate. The contracting agency may then negotiate with the next most qualified candidate. The
22 negotiation process may continue in this manner through successive candidates until an agreement
23 is reached or the contracting agency terminates the consultant contracting process.

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

33 (8)(a) Notwithstanding the provisions of subsection (1) of this section, a contracting agency may
34 directly appoint a consultant **to provide architectural, engineering, photogrammetric mapping,**
35 **transportation planning or land surveying services for a project** if the estimated cost of the
36 architectural, engineering, photogrammetric mapping, transportation planning or land surveying
37 services for the project do not exceed \$100,000.

38 (b) **A contracting agency may not solicit or use a consultant's pricing policies and pro-**
39 **posals or other pricing information, including the number of hours the consultant proposes**
40 **for the service required, expenses, hourly rates and overhead as the basis for a direct ap-**
41 **pointment under paragraph (a) of this subsection.**

42 (9)(a) Notwithstanding the provisions of subsections (1) and (8) of this section, a contracting
43 agency may directly appoint a consultant for architectural, engineering, photogrammetric mapping,
44 transportation planning or land surveying services in an emergency.

45 (b) **A contracting agency may not solicit or use a consultant's pricing policies and pro-**

1 proposals or other pricing information, including the number of hours the consultant proposes
2 for the service required, expenses, hourly rates and overhead as the basis for a direct ap-
3 pointment under paragraph (a) of this subsection.

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

6 (2) The Attorney General, the Director of the Oregon Department of Administrative
7 Services, the Director of Transportation or a contracting agency that adopts rules under
8 ORS 279A.065 may take any action before the operative date specified in subsection (1) of this
9 section that is necessary to enable the Attorney General, the director or the contracting
10 agency to exercise, on and after the operative date specified in subsection (1) of this section,
11 all of the duties, functions and powers conferred on the Attorney General, the director or
12 the contracting agency by the amendments to ORS 279C.110 by section 1 of this 2013 Act.

13 (3) The amendments to ORS 279C.110 by section 1 of this 2013 Act apply to contracts that
14 a contracting agency first advertises or otherwise solicits or, if the contracting agency does
15 not advertise or solicit the contract, to a contract that the contracting agency first enters
16 into on or after the operative date specified in subsection (1) of this section.

17 **SECTION 3.** This 2013 Act being necessary for the immediate preservation of the public
18 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
19 on its passage.
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