

Senate Bill 792

Sponsored by Senators ROBLAN, ROSENBAUM; Representatives BAILEY, BARTON, BUCKLEY, CLEM, DOHERTY, FREDERICK, GARRETT, GOMBERG, HOLVEY, HOYLE, KENY-GUYER, KOMP, LIVELY, NATHANSON, TOMEI, UNGER, WITT

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**.

Provides that prospective contractor must disclose and provide certain information about prospective contractor's employees who formerly worked for contracting agency when submitting bid or proposal to contracting agency. Requires contracting agency in public contract to limit work that former contracting agency employee may do for contractor in connection with public contract. Provides penalties for contractor's failure to provide required information or for making false statements or withholding or concealing material information.

Prohibits contracting agency employee who worked for previous or prospective contractor of contracting agency from performing certain work in connection with public contract for which previous or prospective contractor may submit bid or proposal unless employee receives certain authorizations.

Provides that person who ceases to hold position as public official may not have financial interest in public contract under certain circumstances for two years following date on which public contract was authorized.

Becomes operative January 1, 2014.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to ethical considerations in connection with public contracts; creating new provisions; re-
3 pealing ORS 244.047; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS chapter 279A.**

6 **SECTION 2. (1) A contracting agency shall require in solicitation documents for a pro-**
7 **urement that a prospective contractor, in any bid or proposal the prospective contractor**
8 **submits to the contracting agency:**

9 (a) Identify any person who is an owner, manager, employee or agent of the prospective
10 contractor and who, during the year that precedes the date on which the prospective con-
11 tractor submits the bid or proposal:

12 (A) Worked as an employee of the contracting agency; or

13 (B) Served as a member of a board, commission, council, bureau, committee or other
14 governing body that had responsibility for authorizing procurements or contracts for or on
15 behalf of the contracting agency;

16 (b) Describe the work that any person the prospective contractor identifies in accordance
17 with paragraph (a) of this subsection now performs for the prospective contractor; and

18 (c) Include a signed statement from any person the prospective contractor identifies in
19 accordance with paragraph (a) of this subsection that describes any work the person will or
20 might perform for the prospective contractor under any contract that results from the pro-
21 spective contractor's bid or proposal.

22 (2)(a) The contracting agency shall incorporate any identification, description or signed

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 statement that the contracting agency receives from a prospective contractor under sub-
 2 section (1) of this section into any public contract the contracting agency awards to the
 3 prospective contractor and shall provide in the public contract that the prospective
 4 contractor's complete, accurate and truthful response to the requirements set forth in sub-
 5 section (1) of this section is a material term of the public contract.

6 (b) The contracting agency shall provide in the public contract that the contractor may
 7 not permit a person the contractor identified in accordance with subsection (1)(a) of this
 8 section to perform, in connection with the public contract, work that is the same as, or
 9 substantially similar to, work the person performed for the contracting agency within the
 10 one-year period that precedes the execution date for the public contract unless the con-
 11 tracting agency determines that the work the person would perform in connection with the
 12 public contract would not:

13 (A) Require or permit the person to make decisions concerning the nature or scope of
 14 the work the contractor would perform under the public contract;

15 (B) Involve direct contact with employees of the contracting agency that the person
 16 formerly supervised; or

17 (C) Otherwise create an actual conflict or the appearance of a conflict between the in-
 18 terests the contractor has in the public contract and the interests the contracting agency
 19 has in the public contract. The contracting agency shall use a reasonable person standard
 20 to determine whether an actual conflict or the appearance of a conflict exists.

21 (3)(a) A contracting agency shall reject as unresponsive a bid or proposal from a pro-
 22 spective contractor that fails to make the identification required under subsection (1)(a) of
 23 this section or include, if necessary, the description and signed statement required under
 24 subsection (1)(b) and (c) of this section.

25 (b) A contracting agency shall cancel a public contract with a contractor that withholds
 26 or conceals material information concerning, or makes a false statement in connection with,
 27 an identification, description or signed statement required under subsection (1) of this sec-
 28 tion.

29 (c) A contracting agency, in addition to canceling a public contract under paragraph (b)
 30 of this subsection, may revoke the contractor's prequalification for public contracts under
 31 ORS 279B.120 (3) or 279C.430 (3) and may debar the contractor under ORS 279B.130 or dis-
 32 qualify the contractor under ORS 279C.440.

33 (4)(a) Except as provided in paragraph (c) of this subsection, an employee of a contract-
 34 ing agency who worked for a previous or prospective contractor of the contracting agency
 35 may not, for one year after the employee's hiring date:

36 (A) Participate in drafting specifications or plans for a procurement for which the pre-
 37 vious or prospective contractor may submit a bid or proposal;

38 (B) Review, score or otherwise participate in evaluating any bid or proposal that the
 39 previous or prospective contractor submits to the contracting agency; or

40 (C) Participate in awarding a public contract for which the previous or prospective con-
 41 tractor submits a bid or proposal.

42 (b) If a contracting agency asks or requires an employee to perform work described in
 43 paragraph (a) of this subsection, the employee shall immediately inform the contracting
 44 agency that the provisions of paragraph (a) of this section prevent the employee from per-
 45 forming the work without appropriate authorization and refrain from performing the work

1 unless and until the employee receives authorization from the contracting agency under
2 paragraph (c) of this subsection.

3 (c) An employee of a contracting agency may perform work in connection with a public
4 contract in the situation described in paragraph (a) or (b) of this subsection only if the con-
5 tracting agency authorizes the employee to continue work after determining that:

6 (A) The person will not make decisions concerning the nature or scope of the work the
7 contractor would perform under the public contract;

8 (B) The employee will not have direct contact with employees of the contractor that the
9 employee formerly supervised; or

10 (C) The employee's work will not create an actual conflict or the appearance of a conflict
11 between the interests the contractor has in the public contract and the interests the con-
12 tracting agency has in the public contract. The contracting agency shall use a reasonable
13 person standard to determine whether an actual conflict or the appearance of a conflict ex-
14 ists.

15 (5) A person who ceases to hold a position as a public official may not, for two years after
16 the date on which a public contract was authorized, have a direct beneficial financial interest
17 in the public contract if the person authorized the public contract in the person's capacity
18 as a public official or if the public contract was authorized by a board, commission, council,
19 bureau, committee or other governing body of a public body, as defined in ORS 174.109, of
20 which the person was a member unless the person did not participate in authorizing the
21 public contract while the person was a member of the board, commission, council, bureau,
22 committee or other governing body.

23 **SECTION 3.** ORS 244.047 is repealed.

24 **SECTION 4.** Section 2 of this 2013 Act and the repeal of ORS 244.047 by section 3 of this
25 2013 Act apply to public contracts that a contracting agency first advertises or otherwise
26 solicits or, if the contracting agency does not advertise or otherwise solicit the public con-
27 tract, to a public contract into which a contracting agency first enters into on or after the
28 operative date specified in section 5 of this 2013 Act.

29 **SECTION 5.** (1) Section 2 of this 2013 Act and the repeal of ORS 244.047 by section 3 of
30 this 2013 Act become operative on January 1, 2014.

31 (2) The Director of the Oregon Department of Administrative Services, the Director of
32 Transportation, the Attorney General or a contracting agency that adopts rules under ORS
33 279A.065 may take any action before the operative date specified in subsection (1) of this
34 section that is necessary to enable the director, the Attorney General or the contracting
35 agency to exercise, on and after the operative date specified in subsection (1) of this section,
36 all of the duties, functions and powers conferred on the director, the Attorney General or
37 the contracting agency by section 2 of this 2013 Act and the repeal of ORS 244.047 by section
38 3 of this 2013 Act.

39 **SECTION 6.** This 2013 Act being necessary for the immediate preservation of the public
40 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
41 on its passage.