

# House Bill 4119

Sponsored by Representative HOYLE (Pre-session filed.)

## 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 solicit or use pricing policies or proposals or other pricing information to determine compensation for consultant providing certain services only after contracting agency has selected candidate and before entering into contract with consultant.

Becomes operative January 1, 2015.

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

30 (d) Ownership status and employment practices regarding minority, women and emerging small

**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 businesses or historically underutilized businesses;

2 (e) Availability to the project locale;

3 (f) Familiarity with the project locale; and

4 (g) Proposed project management techniques.

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

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

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

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

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

36 (b) **In directly appointing a consultant, a contracting agency may solicit or use the**  
37 **consultant's pricing policy or proposal or other pricing information, including the number**  
38 **of hours proposed for the service required, expenses, hourly rates and overhead, to deter-**  
39 **mine compensation for a consultant only after the contracting agency has selected a candi-**  
40 **date and before entering into a contract with the consultant.**

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

44 **SECTION 2. (1) The amendments to ORS 279C.110 by section 1 of this 2014 Act become**  
45 **operative on January 1, 2015.**

