

D R A F T

SUMMARY

Requires contracting agencies to provide to Oregon Department of Administrative Services, and department to post on Oregon transparency website, certain information about public contracts.

Requires public contract to provide that contractor provide information to contracting agency and that contracting agency treat information as public record subject to disclosure under state's public records laws. Requires meetings between contractor and contracting agency head or local contract review board to comply with state's public meetings laws.

Prohibits contracting agency from awarding public contract unless contracting agency first determines that contracting agency has necessary personnel and expertise to properly administer, oversee and monitor public contract and contractor's performance under public contract. Specifies criteria for contracting agency's determination.

Specifies required provisions and allowable contents of public contract for goods or services, including personal services. Prohibits certain provisions in public contract for goods or services, including personal services.

Requires bidder or proposer to demonstrate responsibility by submitting affidavit that certifies that contractor has complied with applicable local, state and federal laws, rules, regulations, ordinances and resolutions.

Becomes operative January 1, 2016.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public contracts; creating new provisions; amending ORS 184.483
3 and 279B.110; and declaring an emergency.

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

5 **SECTION 1.** ORS 184.483 is amended to read:

6 184.483. (1) The Oregon Department of Administrative Services shall de-
7 velop and make available an Oregon transparency website. The website
8 [*shall*] **must** allow any person to view information that is a public record

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 and **is** not exempt from disclosure under ORS 192.410 to 192.505, including
2 but not limited to information described in subsection (3) of this section.

3 (2) [*State agencies and education service districts,*] To the extent practi-
4 cable, [*and*] subject to laws relating to confidentiality, [*when*] **if** at no addi-
5 tional cost, [*using*] **with** existing data and existing resources [*of*] **and**
6 **without reallocating resources,** [*the*] **a** state agency or **an** education ser-
7 vice district [*and without reallocation of resources,*] shall:

8 (a) [*Furnish information to the Oregon transparency website by posting*]
9 **Post reports to the Oregon transparency website** and [*providing*] **provide**
10 links **from the Oregon transparency website** to existing **state agency**
11 **and education service district** information system applications in accord-
12 ance with standards [*established by the Oregon Department of Administrative*
13 *Services*] **the department establishes;** and

14 (b) Provide the information in the format and manner [*required by*] **that**
15 the [*Oregon Department of Administrative Services*] **department requires.**

16 (3) To the extent practicable, [*and*] subject to laws relating to
17 confidentiality, [*when*] **if** at no additional cost, [*using*] **with** existing data
18 and existing resources of the state agency or education service district and
19 without reallocation of resources, the Oregon transparency website [*shall*
20 *contain*] **must make available** information about each state agency and ed-
21 ucation service district, including but not limited to:

22 (a) [*Annual revenues of state agencies*] **The state agency's** and education
23 service [*districts*] **district's annual revenue;**

24 (b) [*Annual expenditures of state agencies*] **The state agency's** and edu-
25 cation service [*districts*] **district's annual expenditures;**

26 (c) **The state agency's and education service district's** annual human
27 resources expenses, including compensation[, *of state agencies and education*
28 *service districts*];

29 (d) **The state agency's** annual tax expenditures [*of state agencies*], in-
30 cluding, when possible, the identity of the recipients of each tax expenditure;

31 (e) [*For each state agency,*] A description of the percentage of expenditures

1 **the state agency** made in this state and the percentage of expenditures **the**
2 **state agency** made outside this state under all contracts for goods or ser-
3 vices [*entered into by*] the state agency **entered into** during each biennium;

4 (f) A prominently placed graphic representation of the primary funding
5 categories and approximate number of individuals [*served by*] **that** the state
6 agency or the education service district **serves**;

7 (g) A description of the **state agency's or education service district's**
8 mission, function and program categories [*of the state agency or education*
9 *service district*];

10 (h) Information about the state agency from the Oregon Progress Board;

11 (i) A copy of any audit report [*issued by*] **that** the Secretary of State **is-**
12 **sued** for the state agency or of any audit reports issued for the education
13 service district;

14 (j) The local service plans of the education service [*districts*] **district**;

15 (k) A copy of each report required by statute for **the** education service
16 [*districts*] **district**; and

17 (L) A copy of all notices of public meetings of the education service
18 [*districts*] **district**.

19 (4) In addition to the information described in subsection (3) of this sec-
20 tion:

21 (a) The department shall post on the Oregon transparency website notices
22 of public meetings [*required to be provided by the*] **a** state agency **must**
23 **provide** under ORS 192.640. If the state agency maintains a website where
24 minutes or summaries of the public meetings are available, the state agency
25 shall provide the department with the link to [*that*] **the** website for posting
26 on the Oregon transparency website.

27 (b) The department shall post on the Oregon transparency website a link
28 for the website [*maintained by*] **that** the Secretary of State **maintains** for
29 rules **the state agency** adopted [*by the state agency*]. If the state agency
30 maintains a website where the **state agency's** rules [*of the agency*] are
31 posted, or where any information relating to the **state agency's** rules [*of the*

1 agency] is posted, the state agency shall provide the department with the link
2 to that website for posting on the Oregon transparency website.

3 *[(c) The department shall provide links on the Oregon transparency website
4 for information received by the department regarding contracts and subcon-
5 tracts entered into by a state agency or education service district, to the extent
6 disclosure of that information is allowed by law and the information is already
7 available on websites maintained by the state agency or education service dis-
8 trict. To the extent available, the information linked to under this section must
9 include:]*

10 *[(A) Information on professional, personal and material contracts;]*

11 *[(B) The date of each contract and the amount payable under the
12 contract;]*

13 *[(C) The period during which the contract is or was in effect; and]*

14 *[(D) The names and addresses of vendors.]*

15 **(5)(a) As used in this subsection:**

16 **(A) “Contracting agency” has the meaning given that term in ORS
17 279A.010.**

18 **(B) “Procurement” has the meaning given that term in ORS
19 279A.010.**

20 **(C)(i) “Public contract” means a purchase, lease, rental or other
21 acquisition, or a sale or other disposal, of personal property, goods or
22 services, including personal services, and minor repairs, alterations
23 and maintenance necessary to preserve a public improvement.**

24 **(ii) “Public contract” does not include construction services, public
25 improvements, public works and grants.**

26 **(b) A contracting agency shall provide the department with, and the
27 department shall post on the Oregon transparency website, the fol-
28 lowing information concerning each public contract into which the
29 contracting agency enters:**

30 **(A) The name of the contracting agency;**

31 **(B) The name and business address of each contractor with which**

1 the contracting agency executes a public contract and the name and
2 business address of each subcontractor with which each contractor
3 executes a subcontract related to the public contract;

4 (C) A description of the nature of the procurement and a brief
5 summary of the terms and conditions of the public contract;

6 (D) The dates on which the contracting agency executes or renews
7 the public contract and the dates on which the public contract termi-
8 nates;

9 (E) The contract price for the public contract, the amount the
10 contracting agency expends on the public contract during each fiscal
11 year during which the public contract is in force, the funding source
12 for the contracting agency's expenditures and the amount remaining
13 of the contract price that the contracting agency must pay to the
14 contractor under the terms of the public contract for which the agency
15 does not have a current appropriation or expenditure limit; and

16 (F) A list of full-time equivalent positions that the contractor em-
17 ploys in performing the public contract and the annual salary or
18 hourly wage rate, as appropriate, that the contractor pays each full-
19 time equivalent position in connection with the public contract.

20 (c) The department shall use the information described in para-
21 graph (b) of this subsection, and shall request from each contracting
22 agency any other information the department requires, to compile and
23 post on the Oregon transparency website the following summaries,
24 statistics and measurements:

25 (A) A list of all of each contracting agency's active public contracts
26 and the total amount each contracting agency has expended or will
27 expend for all of the contracting agency's public contracts in the cur-
28 rent fiscal year;

29 (B) A list of all of each contracting agency's public contracts for
30 the past five fiscal years and the total amount each contracting
31 agency expended for all of the contracting agency's public contracts

1 **in each fiscal year;**

2 **(C) A graphic representation of the amount that each contracting**
3 **agency spent on all of the contracting agency's public contracts for**
4 **each fiscal year as a percentage of the contracting agency's total**
5 **budget;**

6 **(D) A listing and graphic representation of the amount that each**
7 **contracting agency expended in each fiscal year for all of the full-time**
8 **equivalent positions that contractors employ to perform all of the**
9 **contracting agency's public contracts, compared with the amount the**
10 **contracting agency pays each fiscal year for all of the full-time**
11 **equivalent positions that the contracting agency employs to perform**
12 **the contracting agency's functions; and**

13 **(E) A listing and graphic representation of the salary or wage rate,**
14 **as appropriate, for each category of full-time equivalent positions for**
15 **which each contracting agency pays a contractor under the terms of**
16 **the contracting agency's public contracts, compared with the salary**
17 **or wage rate, as appropriate, for the nearest equivalent category of**
18 **positions, if any, that the contracting agency would employ to perform**
19 **a function similar to the function a contractor's employee performs**
20 **for the contracting agency under a public contract.**

21 **(d) The department shall ensure that the information the depart-**
22 **ment posts on the Oregon transparency website in accordance with**
23 **this subsection is searchable, sortable, downloadable and easily acces-**
24 **sible and otherwise meets the requirements set forth in subsection (6)**
25 **of this section.**

26 **(e) The department shall adopt rules to implement the provisions**
27 **of this subsection.**

28 **[(5)] (6) In creating, operating, refining and recommending enhancements**
29 **to the Oregon transparency website, the [*Oregon Department of Administra-***
30 ***tive Services*] **department** and the Transparency Oregon Advisory Commis-**
31 **sion created in ORS 184.486 shall consider and, to the extent practicable,**

1 adhere to the following principles:

2 (a) The website must be accessible without cost and be easy to use;

3 (b) Information included on the Oregon transparency website must be
4 presented using plain, easily understandable language; and

5 (c) The website should teach users about how state government and edu-
6 cation service districts work and provide users with the opportunity to learn
7 *[something about]* how state government and education service districts raise
8 and spend revenue.

9 ~~[(6)]~~ **(7)** If a state agency or an education service district *[is not able to]*
10 **cannot** include information described in this section on the Oregon trans-
11 parency website because of the lack of availability of information or cost in
12 acquiring *[it]* **the information**, the Transparency Oregon Advisory Com-
13 mission created in ORS 184.486 shall list the information that is not included
14 for *[that]* **the** state agency or education service district in the commission's
15 report to the Legislative Assembly required under ORS 184.486.

16 ~~[(7)]~~ **(8)** The *[Oregon Department of Administrative Services]* **department**
17 shall include on the Oregon transparency website a page that provides links
18 to websites *[established by]* **that** local governments, as defined in ORS
19 174.116, and *[by]* special government bodies, as defined in ORS 174.117, **es-**
20 **tablish** for the purpose of providing transparency in the **local**
21 **governments' and special government bodies'** revenues, expenditures and
22 budgets *[of the public bodies]*, **if a local government or special govern-**
23 **ment body requests the department to post a link.** The department shall
24 *[include a link to the website of the public body upon receiving a request from*
25 *the public body, and shall]* consider recommendations from the Transparency
26 Oregon Advisory Commission for *[the inclusion of]* **including** other links to
27 local and special government body websites. The department shall include a
28 prominent link on the home page of the Oregon transparency website for
29 information posted to the page described in this subsection.

30 **SECTION 2. Sections 3, 4 and 5 of this 2015 Act are added to and**
31 **made a part of ORS chapter 279B.**

1 **SECTION 3.** (1)(a) Each public contract for services, including per-
2 sonal services, shall require the contractor to:

3 (A) Provide the contracting agency with copies of all of the
4 contractor's records, books, documents, electronic files and other
5 materials that the contractor uses in performing the public contract;
6 and

7 (B) Charge the contracting agency not more than the contractor's
8 actual cost of copying and delivering the records, books, documents,
9 electronic files and other materials.

10 (b) The public contract shall provide that the records, books, doc-
11 uments, electronic files and other materials are public records that
12 are subject to disclosure as provided in ORS 192.410 to 192.505.

13 (2) A contractor that performs a public contract for services, in-
14 cluding personal services, shall at a minimum create, maintain and
15 preserve the records, books, documents, electronic files and other
16 materials that a contracting agency would ordinarily and necessarily
17 create, maintain and preserve if the contracting agency performed the
18 functions that the contractor performs under the public contract. The
19 contracting agency shall list and describe the records, books, docu-
20 ments, electronic files and other materials that a contractor must
21 create, maintain and preserve under this subsection.

22 (3) A public contract for services, including personal services, shall
23 provide that any meeting between the contractor or an agent of the
24 contractor and the director, commissioner, governing body or other
25 head of a contracting agency or a local contract review board is a
26 public meeting that is subject to the provisions of ORS 192.610 to
27 192.690.

28 **SECTION 4.** (1) A contracting agency may not award a public con-
29 tract under this chapter unless the contracting agency has determined
30 that the contracting agency has the personnel and expertise necessary
31 to properly administer, oversee and monitor the public contract and

1 the contractors that perform the public contract. If the contracting
2 agency determines that the contracting agency does not have adequate
3 personnel or expertise to properly administer, oversee and monitor a
4 public contract that the contracting agency intends to award, the
5 contracting agency may not award the public contract unless the
6 contracting agency first seeks and obtains an appropriation, expendi-
7 ture limitation or other budgetary authority necessary to employ the
8 necessary personnel or acquire the necessary expertise.

9 (2) For the purposes of subsection (1) of this section, a contracting
10 agency has the personnel and expertise necessary to properly admin-
11 ister, oversee and monitor a public contract if the contracting agency
12 has project management and personnel management policies and pro-
13 cedures, trained personnel and an organization and structure that is
14 capable of:

15 (a) Developing and specifying acceptance criteria for a contractor's
16 performance that are adequate to ensure that the contracting agency
17 receives the benefit of the contracting agency's bargain with the con-
18 tractor under the public contract;

19 (b) Ensuring that the contractor follows invoicing, billing and other
20 financial practices and controls that the contracting agency requires
21 under the public contract;

22 (c) Monitoring the contractor's performance to ensure that the
23 contractor conforms with the schedule set forth in the public contract,
24 timely delivers any goods or services required under the public con-
25 tract, meets or exceeds the quality specifications and other specifica-
26 tions for goods and services set forth in the public contract and does
27 not exceed cost specifications set forth in the public contract;

28 (d) Recognizing when a contractor is not providing timely or oth-
29 erwise acceptable performance and requiring a cure or, if necessary,
30 declaring a breach of the public contract;

31 (e) Collecting, organizing, filing and maintaining copies of all nec-

1 **essary documentation, including records, books, documents, electronic**
2 **files and other materials that the contractor uses in performing the**
3 **public contract and that the contracting agency generates in admin-**
4 **istering, overseeing and monitoring the public contract; and**

5 **(f) Meeting standards that an auditor would apply in evaluating**
6 **whether the contracting agency properly administered, oversaw and**
7 **monitored the public contract.**

8 **(3) A contracting agency shall make the contracting agency's de-**
9 **termination, and reasons for the determination, under subsection (1)**
10 **of this section available as a public record and shall post the deter-**
11 **mination and reasons on the contracting agency's website.**

12 **(4) The Attorney General, the Director of the Oregon Department**
13 **of Administrative Services and a contracting agency that adopts rules**
14 **under ORS 279A.065 may adopt rules necessary to implement the pro-**
15 **visions of this section.**

16 **SECTION 5. (1) A public contract for goods or services, including**
17 **personal services, must:**

18 **(a) Specify criteria for a contractor's performance and criteria un-**
19 **der which a contracting agency accepts the contractor's performance;**

20 **(b) Specify costs associated with the contractor's performance in-**
21 **cluding, but not limited to, costs for:**

22 **(A) Goods or services, or portions or components of goods or ser-**
23 **vices, that the contractor delivers to the contracting agency;**

24 **(B) The time a contractor spends performing the public contract,**
25 **expressed, if appropriate, as an hourly rate;**

26 **(C) Materials and supplies that the contractor provides or delivers;**

27 **(D) The contractor's expected profit;**

28 **(E) The contractor's overhead, fees, insurance premiums and other**
29 **expenses that the contractor charges to the contracting agency; and**

30 **(F) Other or miscellaneous expenditures associated with the**
31 **contractor's performing the public contract; and**

1 (c) Provide that a contractor shall report to the contracting agency
2 each quarter, at a minimum, with respect to:

3 (A) The contractor's compliance with the provisions of the public
4 contract;

5 (B) The contractor's compliance with the performance criteria and
6 specifications set forth in the public contract; and

7 (C) The compensation and expenses for which the contractor has
8 billed the contracting agency as compared to projected costs and ex-
9 penses for the public contract at the time of the report.

10 (2) A public contract for goods or services, including personal ser-
11 vices, may not:

12 (a) Guarantee profits for a contractor or guarantee payment for
13 goods or services that a contractor does not provide;

14 (b) Guarantee occupancy or occupancy rates for any facility, build-
15 ing, structure or other public improvement that a contracting agency
16 leases to a contractor or agrees to have a contractor operate on the
17 contracting agency's behalf;

18 (c) Prohibit a contracting agency from altering, repairing or main-
19 taining a public improvement that the contracting agency owns, leases
20 or occupies;

21 (d) Pay or reimburse a contractor for the contractor's losses as a
22 result of a fire, flood, earthquake or other natural disaster, emer-
23 gency, war, riot, strike or act of civil or military authority or other
24 mishap that the contracting agency could not reasonably anticipate
25 or control; or

26 (e) Provide for automatic or guaranteed increases in a contractor's
27 hourly rates or other compensation without the contracting agency's
28 or the local contract review board's review and assent, conducted in
29 accordance with the provisions of ORS 192.610 to 192.690.

30 (3) A contracting agency shall provide in each public contract for
31 goods or services, including personal services, that the contracting

1 **agency may terminate the public contract if the contractor:**

2 **(a) Fails to meet performance or acceptance criteria specified in the**
3 **public contract after the contracting agency gives the contractor an**
4 **opportunity to cure;**

5 **(b) Charges compensation or expenses to contracting agency that**
6 **exceed the compensation and expenses set forth in the public contract**
7 **for the fiscal year, unless the contracting agency agrees to the excess**
8 **and amends the public contract accordingly; or**

9 **(c) Fails to comply with applicable local, state and federal laws,**
10 **rules, regulations, ordinances and resolutions.**

11 **(4)(a) Except as provided in paragraph (b) of this subsection, a**
12 **contracting agency may not renew a public contract without con-**
13 **ducting a competitive process, if the contracting agency initially**
14 **awarded the public contract after a competitive process.**

15 **(b) A contracting agency may renew the public contract without**
16 **repeating the entire previous competitive process if the contracting**
17 **agency:**

18 **(A) Develops specifications and anticipated costs for a new pro-**
19 **curement of goods or services, including personal services, that are**
20 **the same as, or similar to, the goods or services the contracting**
21 **agency procured under the existing public contract, taking account**
22 **of changes in costs, in technologies, in delivery methods and in other**
23 **aspects of the market for the goods or services at the time the con-**
24 **tracting agency develops the specifications for the new procurement;**
25 **and**

26 **(B) Determines that the existing contractor will meet the specifi-**
27 **cations and costs that the contracting agency developed under sub-**
28 **paragraph (A) of this paragraph.**

29 **SECTION 6. ORS 279B.110, as amended by section 3, chapter 77, Oregon**
30 **Laws 2014, is amended to read:**

31 **279B.110. (1) As part of a contracting agency's evaluation of a bid or**

1 proposal, the contracting agency shall determine whether the bidder or
2 proposer is responsible in accordance with the standards of responsibility set
3 forth in subsection (2) of this section. If the contracting agency determines
4 that a bidder or proposer is not responsible, the contracting agency shall
5 provide the bidder or proposer with written notice of the contracting
6 agency's determination.

7 (2) In order for a contracting agency to determine that a bidder or
8 proposer is responsible, the bidder or proposer must demonstrate to the
9 contracting agency that the bidder or proposer:

10 (a) Has available the appropriate financial, material, equipment, facility
11 and personnel resources and expertise, or has the ability to obtain the re-
12 sources and expertise, necessary to meet all contractual responsibilities.

13 (b) Completed previous contracts of a similar nature with a satisfactory
14 record of performance. For purposes of this paragraph, a satisfactory record
15 of performance means that to the extent that the costs associated with and
16 time available to perform a previous contract remained within the bidder's
17 or proposer's control, the bidder or proposer stayed within the time and
18 budget allotted for the procurement and otherwise performed the contract in
19 a satisfactory manner. The contracting agency shall document the bidder's
20 or proposer's record of performance if the contracting agency finds under
21 this paragraph that the bidder or proposer is not responsible.

22 (c) Has a satisfactory record of integrity. The contracting agency in
23 evaluating the bidder's or proposer's record of integrity may consider, among
24 other things, whether the bidder or proposer has previous criminal con-
25 victions for offenses related to obtaining or attempting to obtain a contract
26 or subcontract or in connection with the bidder's or proposer's performance
27 of a contract or subcontract. The contracting agency shall document the
28 bidder's or proposer's record of integrity if the contracting agency finds un-
29 der this paragraph that the bidder or proposer is not responsible.

30 (d) Is legally qualified to contract with the contracting agency.

31 (e) Complied with **all applicable local, state and federal laws, rules,**

1 **regulations, ordinances and resolutions, including** the tax laws of this
2 state or a political subdivision of this state, [*including*] **and specifically**
3 **with** ORS 305.620 and ORS chapters 316, 317 and 318. The bidder or proposer
4 shall demonstrate compliance by submitting a signed affidavit that attests,
5 under penalty of perjury, that the bidder or proposer has complied with [*the*
6 *tax laws of this state or a political subdivision of this state*] **applicable local,**
7 **state and federal laws, rules, regulations, ordinances and resolutions.**

8 (f) Supplied all necessary information in connection with the inquiry
9 concerning responsibility. If a bidder or proposer fails to promptly supply
10 information concerning responsibility that the contracting agency requests,
11 the contracting agency shall determine the bidder's or proposer's responsi-
12 bility based on available information or may find that the bidder or proposer
13 is not responsible.

14 (g) Was not debarred by the contracting agency under ORS 279B.130.

15 (3) A contracting agency may refuse to disclose outside of the contracting
16 agency confidential information [*furnished by*] **that** a bidder or proposer
17 **provides** under this section [*when*] **if** the bidder or proposer has clearly
18 identified in writing the information the bidder or proposer seeks to have
19 treated as confidential and the contracting agency has authority under ORS
20 192.410 to 192.505 to withhold the identified information from disclosure.

21 **SECTION 7. Sections 3, 4 and 5 of this 2015 Act and the amendments**
22 **to ORS 184.483 and 279B.100 by sections 1 and 6 of this 2015 Act apply**
23 **to public contracts that a contracting agency first advertises or oth-**
24 **erwise solicits or, if the contracting agency did not advertise or solicit**
25 **the public contract, to a public contract into which the contracting**
26 **agency enters, on or after the operative date specified in section 8 of**
27 **this 2015 Act.**

28 **SECTION 8. (1) Sections 3, 4 and 5 of this 2015 Act and the amend-**
29 **ments to ORS 184.483 and 279B.110 by sections 1 and 6 of this 2015 Act**
30 **become operative January 1, 2016.**

31 **(2) The Attorney General, the Director of the Oregon Department**

1 of Administrative Services and a contracting agency that adopts rules
2 under ORS 279A.065 may adopt rules and take any other action before
3 the operative date specified in subsection (1) of this section that is
4 necessary to enable the Attorney General, the director or the con-
5 tracting agency to exercise, on and after the operative date specified
6 in subsection (1) of this section, all of the duties, functions and powers
7 conferred on the Attorney General, the director or the contracting
8 agency by sections 3, 4 and 5 of this 2015 Act and the amendments to
9 ORS 184.483 and 279B.110 by sections 1 and 6 of this 2015 Act.

10 SECTION 9. This 2015 Act being necessary for the immediate pres-
11 ervation of the public peace, health and safety, an emergency is de-
12 clared to exist, and this 2015 Act takes effect on its passage.

13
