

# D R A F T

## SUMMARY

Requires contracting agency before conducting procurement to conduct study concerning how procurement will affect local area in which work in connection with procurement will occur and to post results of study to contracting agency's website and to Oregon transparency website.

Requires contracting agency to provide results of cost analysis to employees of contracting agency or certified exclusive representative of employees, provide opportunity to employees or exclusive representative to provide alternative cost analysis and consider alternative cost analysis on same basis as contracting agency's cost analysis.

Requires contracting agency to demonstrate that procurement will result in contracting agency incurring at least 10 percent less in costs than contracting agency would incur in performing services with contracting agency's own personnel and resources.

Requires contractor on public contract to pay contractor's employees wages and benefits that are equivalent to wages and benefits that public employee would receive.

Becomes operative January 1, 2016.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to requirements contracting agencies must meet in conducting  
3 public procurements; creating new provisions; amending ORS 279B.030,  
4 279B.220 and 279B.230; and declaring an emergency.

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

6 **SECTION 1.** ORS 279B.030 is amended to read:

7 279B.030. (1) Except as provided in ORS 279B.036, before conducting a  
8 procurement for services with an estimated contract price that exceeds  
9 \$250,000, a contracting agency shall:

10 **(a)(A) Conduct a study to examine, for the area in which the con-**

1 **tracting agency anticipates that work in connection with the pro-**  
2 **urement will occur, how the procurement will affect:**

3 (i) **Employment, worker income, social services and public assist-**  
4 **ance programs;**

5 (ii) **Other businesses;**

6 (iii) **Tax revenue for the local jurisdiction;**

7 (iv) **The environment; and**

8 (v) **Other issues that concern residents of the area;**

9 (B) **Provide the public with information concerning the procure-**  
10 **ment and conduct a public hearing to solicit responses from residents**  
11 **of the area described in subparagraph (A) of this paragraph; and**

12 (C) **Post the results of the study and all comments the contracting**  
13 **agency receives during the public hearing described in subparagraph**  
14 **(B) of this paragraph to the contracting agency's website and to the**  
15 **Oregon transparency website described in ORS 184.483;**

16 [(a)] (b)(A) **Demonstrate, by means of a written cost analysis in accord-**  
17 **ance with ORS 279B.033, that the contracting agency would [*incur less cost***  
18 ***in*] by conducting the procurement [*than in*] incur at least 10 percent less**  
19 **in costs than the contracting agency would incur in performing the**  
20 **services with the contracting agency's own personnel and resources; or**

21 [(b)] (B) **Demonstrate, in accordance with ORS 279B.036, that performing**  
22 **the services with the contracting agency's own personnel and resources is**  
23 **not feasible[.]; and**

24 (c) **Provide the results of the cost analysis described in paragraph**  
25 **(b) of this subsection to employees of the contracting agency or a labor**  
26 **organization that is certified as the exclusive representative for the**  
27 **employees' bargaining unit, give the employees or the exclusive rep-**  
28 **resentative an opportunity to present an alternative cost analysis and**  
29 **consider the alternative cost analysis on the same basis as the con-**  
30 **tracting agency's cost analysis.**

31 (2) **If a local contracting agency authorizes a department, bureau, office**

1 or other subdivision of the local contracting agency to conduct a procure-  
2 ment on behalf of another department, bureau, office or subdivision of the  
3 local contracting agency, the department, bureau, office or subdivision on  
4 whose behalf the procurement is conducted shall comply with the require-  
5 ment set forth in subsection (1)(b) of this section.

6 (3) Subsection (1)(b) of this section does not apply to:

7 (a) A local contracting agency or a local contract review board for a city  
8 that has a population of not more than 15,000 or a county that has a popu-  
9 lation of not more than 30,000;

10 (b) A community college that enrolls not more than 1,000 full-time  
11 equivalent students, as defined in ORS 341.005;

12 (c) A special district, as defined in ORS 198.010, a diking district formed  
13 under ORS chapter 551 and a soil and water conservation district organized  
14 under ORS 568.210 to 568.808;

15 (d) The Port of Portland; or

16 (e) Procurements for client services, [*as defined in OAR 125-246-0110*] **the**  
17 **definition and scope of which the Oregon Department of Administra-**  
18 **tive Services specifies by rule.**

19 **SECTION 2.** ORS 279B.220 is amended to read:

20 279B.220. Every public contract [*shall contain a condition*] **must provide**  
21 that the contractor shall:

22 (1) [*Make payment promptly, as due, to*] **Pay promptly** all persons [*sup-*  
23 *plying to the contractor*] **that supply** labor or material **to the contractor** for  
24 [*the performance of*] **performing** the [*work provided for in the*] **public con-**  
25 **tract.**

26 (2)(a) **Pay a salary or wage to the contractor's employees that is**  
27 **at least equivalent to the lesser of:**

28 (A) **The average wage that workers receive in the local area in**  
29 **which the contractor performs the public contract for work that is**  
30 **substantially similar to the work required under the public contract;**  
31 **or**

1       **(B) The wage that a public employee would receive for work that**  
2 **is substantially similar to the work required under the public contract.**

3       **(b) Report to the contracting agency each quarter the amounts and**  
4 **rates of wages that the contractor pays to the contractor's workers,**  
5 **specifying individual amounts and rates for each of the contractor's**  
6 **employees who perform work on the public contract. A report under**  
7 **this paragraph is a public record.**

8       [(2)] **(3) Pay all contributions or amounts due to the Industrial Accident**  
9 **Fund in connection with work the contractor performs under the**  
10 **public contract** [*from the contractor or subcontractor incurred in the per-*  
11 *formance of the contract*].

12       [(3)] **(4) Take all actions that are necessary to prevent** [*Not permit*  
13 *any*] **a lien or claim** [*to be*] **from being** filed or prosecuted against the state  
14 or a county, school district, municipality, municipal corporation or subdivi-  
15 sion [*thereof*] **of the state**, on account of any labor or material furnished.

16       [(4)] **(5) Pay to the Department of Revenue all sums the contractor**  
17 **withheld from employees under ORS 316.167.**

18       **SECTION 3.** ORS 279B.230 is amended to read:

19       279B.230. (1) Every public contract [*shall contain a condition that*] **must**  
20 **provide that the contractor shall:**

21       **(a)** [*The contractor shall promptly, as due, make payment to*] **Pay**  
22 **promptly, as due**, any person, copartnership, association or corporation  
23 [*furnishing*] **that provides** medical, surgical and hospital care services or  
24 other needed care and attention, incident to sickness or injury, to the em-  
25 ployees of the contractor, [*of*] all sums that the contractor agrees to pay for  
26 the services and all moneys and sums that the contractor collected or de-  
27 ducted from the wages of employees under any law, contract or agreement  
28 for the purpose of providing or paying for the services[.]; **and**

29       **(b) Provide health insurance and other health benefits to the**  
30 **contractor's employees that are comparable to health insurance and**  
31 **other health benefits that public employees receive, or supplement the**

1 **employees' wages in an amount that is sufficient for the employees to**  
2 **purchase health insurance and other health benefits that are compa-**  
3 **erable to health insurance and other health benefits that public em-**  
4 **ployees receive.**

5 (2) Every public contract [*shall contain a clause or condition that all*]  
6 **must provide that all** subject employers [*working*] **that perform work**  
7 under the contract are either employers that [*will*] **must** comply with ORS  
8 656.017 or employers that are exempt under ORS 656.126.

9 **SECTION 4. The amendments to ORS 279B.030, 279B.220 and 279B.230**  
10 **by sections 1 to 3 of this 2015 Act apply to procurements that a con-**  
11 **tracting agency advertises or otherwise solicits or, if the contracting**  
12 **agency does not advertise or solicit the procurement, to a public con-**  
13 **tract into which the contracting agency enters on or after the opera-**  
14 **tive date specified in section 5 of this 2015 Act.**

15 **SECTION 5. (1) The amendments to ORS 279B.030, 279B.220 and**  
16 **279B.230 by sections 1 to 3 of this 2015 Act become operative January**  
17 **1, 2016.**

18 (2) The Attorney General, the Director of the Oregon Department  
19 of Administrative Services, the Director of Transportation or a con-  
20 tracting agency that adopts rules under ORS 279A.065 may take any  
21 action before the operative date specified in subsection (1) of this sec-  
22 tion that is necessary to enable the Attorney General, the director or  
23 the contracting agency, on and after the operative date specified in  
24 subsection (1) of this section, to exercise the duties, functions and  
25 powers conferred on the Attorney General, the director or the con-  
26 tracting agency by the amendments to ORS 279B.030, 279B.220 and  
27 279B.230 by sections 1 to 3 of this 2015 Act.

28 **SECTION 6. This 2015 Act being necessary for the immediate pres-**  
29 **ervation of the public peace, health and safety, an emergency is de-**  
30 **clared to exist, and this 2015 Act takes effect on its passage.**

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