

Enrolled House Bill 2375

Sponsored by Representative NATHANSON; Representatives BARNHART, BOONE, BUCKLEY, DOHERTY, FREDERICK, GALLEGOS, GOMBERG, GREENLICK, HELM, HOLVEY, KENY-GUYER, KOTEK, LININGER, LIVELY, MCLAIN, PILUSO, RAYFIELD, TAYLOR, VEGA PEDERSON, WILLIAMSON, WITT (Pre-session filed.)

CHAPTER

AN ACT

Relating to accountability in public procurement; and declaring an emergency.

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

SECTION 1. Sections 2, 3 and 4 of this 2015 Act are added to and made a part of ORS 279A.140 to 279A.155.

SECTION 2. (1) As used in this section:

(a)(A) “Contract form” means a document with terms and conditions that the Attorney General and the Oregon Department of Administrative Services develop, approve and make available for state contracting agencies to use without alteration, except as provided in subparagraph (B) of this paragraph, as the terms and conditions of a public contract.

(B) “Contract form” does not include specifications for a procurement, a scope of work, pricing information, information that identifies parties to the public contract or similar or related portions of a public contract that a state contracting agency necessarily develops or must alter, with approval from the Attorney General or the Oregon Department of Administrative Services, as a means of achieving the results the state contracting agency intends for the procurement.

(b)(A) “Contract template” means a document with terms and conditions that the Attorney General and the department develop, approve and make available for state contracting agencies to use, with appropriate alterations, as the basis for the terms and conditions of a public contract.

(B) “Contract template” does not include specifications for a procurement, a scope of work, pricing information, information that identifies parties to the public contract or similar or related portions of a public contract that a state contracting agency necessarily develops or must alter as a means of achieving the results the state contracting agency intends for the procurement.

(c) “Solicitation template” means a request for information, a request for a quotation, an invitation to bid, a request for proposals or other document for soliciting a procurement under the Public Contracting Code in which the Attorney General and the department develop, approve and make available standardized language that a state contracting agency must use, with appropriate alterations, for a solicitation.

(2)(a) Except as provided in paragraph (c) of this subsection, a state contracting agency shall use a solicitation template in advertising and soliciting all procurements under the

Public Contracting Code and, as provided in paragraph (b) of this subsection, shall use a contract form or a contract template, as appropriate, as the basis for all public contracts into which the state contracting agency enters. A state contracting agency, in accordance with the Public Contracting Code, may negotiate the terms and conditions set forth in a contract form or contract template but may not vary the terms and conditions without the advice of the Attorney General or legal counsel that the Attorney General approves if the state contracting agency anticipates that the contract form or contract template will be the basis for a public contract with a contract price that exceeds \$150,000.

(b) A state contracting agency shall use a contract form or contract template for all price agreements, cooperative procurements or procurements for which the Attorney General or the Director of the Oregon Department of Administrative Services determines that the specifications for goods or services, the terms and conditions, the scope of work or other aspects of a procurement or a class of procurements do not vary significantly among state contracting agencies, or for procurements or classes of procurements in which the Attorney General or the director determines that using a contract form or contract template is necessary for the state contracting agency to avoid unreasonable liabilities or other risks or would promote best practices in public contracting. A state contracting agency, in accordance with the Public Contracting Code, may negotiate the terms and conditions set forth in a contract form or contract template but may not vary the terms and conditions without the advice of the Attorney General or legal counsel that the Attorney General approves if the state contracting agency anticipates that the contract form or contract template will be the basis for a public contract with a contract price that exceeds \$150,000.

(c) A state contracting agency may base a public contract on terms and conditions other than the terms and conditions set forth in a contract form or contract template only if:

(A) The state contracting agency receives approval from the Attorney General or, if the state contracting agency is subject to ORS 279A.140, from the Director of the Oregon Department of Administrative Services, unless the state contracting agency determines that the contract price for the public contract is unlikely to exceed \$150,000;

(B) The nature of the procurement is unique and the public contract requires specific terms and conditions to accommodate the unique nature of the procurement or the state contracting agency, in accordance with provisions in the solicitation documents for the procurement, negotiated terms and conditions for the public contract that differ from the terms and conditions in a contract form or contract template;

(C) The state contracting agency consults the Attorney General, or legal counsel that the Attorney General approves, to develop appropriate terms and conditions for the public contract and for legal advice during all phases of the procurement for which the Attorney General determines that legal advice is necessary and relevant; and

(D) The state contracting agency submits the public contract to the Attorney General for approval for legal sufficiency, if the provisions of ORS 291.047 require the submission.

(d) This subsection does not apply to a procurement that a state contracting agency conducts under ORS 279B.065, 279B.080 or 279C.110 (9).

(3) Notwithstanding provisions of this section that require a state contracting agency to use a solicitation template, contract form or contract template that the Attorney General and the department develop, the office of the Secretary of State and the office of the State Treasurer shall use standardized forms and templates that each office develops for each office's own use in conducting procurements or entering into public contracts. The Secretary of State and the State Treasurer may elect to use solicitation templates, contract forms or contract templates that the Attorney General and the department develop.

(4) The Attorney General and the Director of the Oregon Department of Administrative Services shall cooperate to:

(a) Develop and make available solicitation templates, contract forms and contract templates for procurements or classes of procurements that state contracting agencies require; and

(b) Adopt rules under ORS 279A.065 to implement the provisions of this section.

SECTION 3. (1) A person that conducts a procurement or administers a public contract for a state contracting agency shall complete a course of education and training or have professional experience that, at a minimum and in accordance with standards established under subsection (2) of this section, adequately prepares the person to:

(a) Develop specifications and develop or adapt solicitation documents for a procurement;

(b) Read critically, understand, interpret and apply terms and conditions set forth in public contracts of the scope and nature that the person administers or will administer;

(c) Draft scopes of work, statements of work, contract amendments, change orders, insurance requirements, notices and other documents and communications that are necessary to conduct a procurement or administer a public contract of the scope and nature for which the person is or will be responsible;

(d) Monitor a contractor's performance under a public contract to ensure that the contractor performs services, provides goods or supplies materials according to the schedule, pricing, specifications and terms and conditions set forth in the public contract;

(e) Manage relations between a state contracting agency and contractors so that contractors meet obligations to the state contracting agency and the state contracting agency meets obligations to contractors;

(f) Recognize and investigate emerging disputes or other risks, unique requirements, unusual situations or other issues that arise in connection with a procurement and formulate appropriate responses and resolutions, seeking advice from legal counsel, risk management personnel or other persons when necessary;

(g) Understand auditing requirements and procedures that apply to procurements of the scope and nature for which the person is or will be responsible and organize and maintain appropriate documentation and administrative practices that meet the auditing requirements; and

(h) Follow regular business and office procedures, implement applicable state contracting agency policies and procedures and otherwise conduct procurements or administer public contracts for a state contracting agency in accordance with best practices.

(2)(a) The Oregon Department of Administrative Services by rule shall establish standards for the education and training or experience a person must have to conduct a procurement or administer a public contract for a state contracting agency other than the Secretary of State or State Treasurer and may specify requirements in addition to the requirements set forth in subsection (1) of this section. The standards must describe the contents and quality of a curriculum for an appropriate education or training program, fix a passing score for an examination or assessment, if appropriate, specify requirements for obtaining a certificate or other evidence of having completed the education or training program and otherwise determine the skills and the level and depth of knowledge a person must have obtained from the education or training program. The standards must also describe the length of service or other evidence of adequate experience that a person must have in order to conduct a procurement or administer a public contract for a state contracting agency.

(b) The department may establish levels or classifications of education and training or experience that are necessary for a person to conduct a procurement or administer a public contract for a state contracting agency, according to:

(A) The complexity, scope or category of procurements a state contracting agency conducts;

(B) The degree of responsibility a person will have for conducting a procurement or administering a public contract; or

(C) Other appropriate criteria.

(c) The department may provide an education or training program that meets the standards the department establishes under this subsection or may approve an education or training program that meets the standards.

(d) The department by rule shall set a date, not later than December 31, 2017, by which an education or training program must meet the standards the department establishes under this subsection and a date, not later than December 31, 2018, after which all persons that conduct procurements or administer public contracts for state contracting agencies must meet the requirements specified in this section. In setting dates under this paragraph, the department shall take into account the fiscal impact of the standards and requirements on state contracting agencies and may phase in or specify incremental steps for meeting the standards and requirements.

(3) The office of the Secretary of State and the office of the State Treasurer, not later than December 31, 2017, shall each establish standards for the education and training or experience a person must have to conduct a procurement or administer a public contract for the Secretary of State or the State Treasurer. The standards for education and training or experience must meet the requirements set forth in subsection (1) of this section. The Secretary of State and the State Treasurer may specify requirements in addition to the requirements set forth in subsection (1) of this section and may elect to meet the standards that the department establishes under subsection (2) of this section. Not later than December 31, 2018, a person that conducts a procurement or administers a public contract for the office of the Secretary of State or the office of the State Treasurer shall meet the standards that the office of the Secretary of State or the office of the State Treasurer, as appropriate, establishes under this subsection.

SECTION 4. (1) Before a state contracting agency executes a public contract with a contract price that exceeds \$150,000, the director or other head of the state contracting agency shall review, and shall verify that the person that will administer the public contract for the state contracting agency has read and understands, all advice and recommendations that the Oregon Department of Administrative Services, the Department of Justice or other legal counsel gave to the state contracting agency with respect to the public contract and the procurement that resulted in the public contract. The director or other head of the state contracting agency shall sign and retain in the state contracting agency's records a statement that acknowledges that the director or other head of the state contracting agency reviewed the advice and recommendations and made the verification described in this subsection.

(2) The director or other head of a state contracting agency that enters into more than 12 public contracts during a calendar year may delegate to a qualified employee of the state contracting agency all or a portion of the duties the director or other head of the state contracting agency has under subsection (1) of this section.

SECTION 5. The Oregon Department of Administrative Services shall develop and evaluate advice and recommendations for promoting best practices in public contracting that are predicated on previous successes and failures, managing risks, reducing inefficiencies and otherwise improving accountability, responsiveness, effectiveness and quality in public contracting. The department shall evaluate the feasibility and practicality of, and methods by which the state may develop and implement, a system of peer review or a reservoir of shared expertise among state contracting agencies and shall seek and obtain advice and recommendations from subject matter specialists that the Attorney General, the department and other state contracting agencies employ or recognize as having expertise, experience or ideas that will enable the department to meet the requirements of this section. The department shall include the advice and recommendations the department develops and evaluates under this section in a report to an interim committee of the Legislative Assembly related to public contracting not later than November 30, 2015.

SECTION 6. (1) Section 2 of this 2015 Act applies to procurements that a state contracting agency conducts on or after the operative date specified in section 7 of this 2015 Act.

(2) Section 3 of this 2015 Act applies to procurements that a state contracting agency conducts on or after the date the Oregon Department of Administrative Services sets under section 3 (2)(d) of this 2015 Act.

(3) Section 4 of this 2015 Act applies to public contracts into which a state contracting agency enters on or after the operative date specified in section 7 of this 2015 Act.

SECTION 7. (1) Sections 2, 3 and 4 of this 2015 Act become operative January 1, 2016.

(2) The Attorney General, the Director of the Oregon Department of Administrative Services, the Director of Transportation and a state contracting agency that adopts rules under ORS 279A.065 may adopt rules and take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the Attorney General, the director or the state contracting agency to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the Attorney General, the director or the state contracting agency by sections 2, 3 and 4 of this 2015 Act.

SECTION 8. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Passed by House April 23, 2015

Received by Governor:

Repassed by House June 26, 2015

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Approved:

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Timothy G. Sekerak, Chief Clerk of House

.....M,....., 2015

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Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate June 25, 2015

Filed in Office of Secretary of State:

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Peter Courtney, President of Senate

.....M,....., 2015

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Jeanne P. Atkins, Secretary of State