

A-Engrossed
House Bill 2375

Ordered by the House April 20
Including House Amendments dated April 20

Sponsored by Representative NATHANSON; Representatives BARNHART, GOMBERG, HELM, LININGER, LIVELY, PILUSO, WITT (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.

[Establishes Task Force on Accountability in Public Contracting with nine members appointed by President of Senate, Speaker of House of Representatives, Director of Oregon Department of Administrative Services, Director of Transportation, Attorney General, Secretary of State and Legislative Fiscal Officer. Directs task force to investigate and evaluate measures for improving accountability in public contracting among state contracting agencies and lowering risks to state. Specifies measures that task force must consider at minimum.]

[Sunsets December 31, 2016.]

Requires state contracting agency to use solicitation template that Attorney General and Oregon Department of Administrative Services develop, approve and make available in advertising and soliciting procurements under Public Contracting Code and to use contract form or contract template, as appropriate, that Attorney General and department develop, approve and make available as basis for public contracts into which state contracting agency enters. Specifies exceptions. Exempts Secretary of State and State Treasurer from requirement to use solicitation template, contract template or contract form that Attorney General and department develop.

Requires person that conducts procurement or administers public contract for state contracting agency to complete course of education and training or have professional experience that meets specified requirements. Requires department to establish standards for education and training program or experience requirement and to set date by which person that conducts procurement or administers public contract must complete education and training or have required experience.

Requires director or head of state contracting agency to sign statement that acknowledges that director or head of state contracting agency reviewed, and verified that person that will administer contract read and understood, legal advice and recommendations from Oregon Department of Administrative Services, Department of Justice or other legal counsel. Permits director or head of state contracting agency to delegate duty in certain circumstances.

Requires Oregon Department of Administrative Services to develop and evaluate advice and recommendations for best practices in public contracting and to report to interim committee of Legislative Assembly.

Becomes operative January 1, 2016.

Declares emergency, effective on passage.

A BILL FOR 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 chapter 279A.

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.

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

7 (b)(A) "Contract template" means a document with terms and conditions that the At-
8 torney General and the department develop, approve and make available for state contract-
9 ing agencies to use, with appropriate alterations, as the basis for the terms and conditions
10 of a public contract.

11 (B) "Contract template" does not include specifications for a procurement, a scope of
12 work, pricing information, information that identifies parties to the public contract or simi-
13 lar or related portions of a public contract that a state contracting agency necessarily de-
14 velops or must alter as a means of achieving the results the state contracting agency intends
15 for the procurement.

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

21 (2)(a) Except as provided in paragraph (c) of this subsection, a state contracting agency
22 shall use a solicitation template in advertising and soliciting all procurements under the
23 Public Contracting Code and, as provided in paragraph (b) of this subsection, shall use a
24 contract form or a contract template, as appropriate, as the basis for all public contracts
25 into which the state contracting agency enters.

26 (b) A state contracting agency shall use a contract form or contract template for all
27 price agreements, cooperative procurements or procurements for which the Attorney Gen-
28 eral or the Director of the Oregon Department of Administrative Services determines that
29 the specifications for goods or services, the terms and conditions, the scope of work or other
30 aspects of a procurement or a class of procurements do not vary significantly among state
31 contracting agencies, or for procurements or classes of procurements in which the Attorney
32 General or the director determines that using a contract form or contract template is nec-
33 essary for the state contracting agency to avoid significant liabilities or other risks or would
34 promote best practices in public contracting. A state contracting agency may vary the terms
35 and conditions set forth in a contract template only with the advice of the Attorney General
36 or legal counsel that the Attorney General approves.

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

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

43 (B) The nature of the procurement is unique and the public contract requires specific
44 terms and conditions to accommodate the unique nature of the procurement or the state
45 contracting agency, in accordance with provisions in the solicitation documents for the pro-

1 curement, negotiated terms and conditions for the public contract that differ from the terms
2 and conditions in a contract form or contract template;

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

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

9 (d) This subsection does not apply to a procurement that a state contracting agency
10 conducts under ORS 279B.065.

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

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

20 (a) Develop and make available solicitation templates, contract forms and contract tem-
21 plates for procurements or classes of procurements that state contracting agencies require;
22 and

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

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

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

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

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

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

38 (e) Manage relations between a state contracting agency and contractors so that con-
39 tractors meet obligations to the state contracting agency and the state contracting agency
40 meets obligations to contractors;

41 (f) Recognize and investigate emerging disputes or other risks, unique requirements,
42 unusual situations or other issues that arise in connection with a procurement and formu-
43 late appropriate responses and resolutions, seeking advice from legal counsel, risk manage-
44 ment personnel or other persons when necessary;

45 (g) Understand auditing requirements and procedures that apply to procurements of the

1 scope and nature for which the person is or will be responsible and organize and maintain
2 appropriate documentation and administrative practices that meet the auditing require-
3 ments; and

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

7 (2)(a) The Oregon Department of Administrative Services by rule shall establish stan-
8 dards for the education and training or experience a person must have to conduct a pro-
9 curement or administer a public contract for a state contracting agency other than the
10 Secretary of State or State Treasurer and may specify requirements in addition to the re-
11 quirements set forth in subsection (1) of this section. The standards must describe the con-
12 tents and quality of a curriculum for an appropriate education or training program, fix a
13 passing score for an examination or assessment, if appropriate, specify requirements for
14 obtaining a certificate or other evidence of having completed the education or training pro-
15 gram and otherwise determine the skills and the level and depth of knowledge a person must
16 have obtained from the education or training program. The standards must also describe the
17 length of service or other evidence of adequate experience that a person must have in order
18 to conduct a procurement or administer a public contract for a state contracting agency.

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

22 (A) The complexity, scope or category of procurements a state contracting agency con-
23 ducts;

24 (B) The degree of responsibility a person will have for conducting a procurement or ad-
25 ministering a public contract; or

26 (C) Other appropriate criteria.

27 (c) The department may provide an education or training program that meets the stan-
28 dards the department establishes under this subsection or may approve an education or
29 training program that meets the standards.

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

38 (3) The office of the Secretary of State and the office of the State Treasurer shall each
39 establish standards for the education and training or experience a person must have to
40 conduct a procurement or administer a public contract for the Secretary of State or the
41 State Treasurer. The standards for education and training or experience must meet the re-
42 quirements set forth in subsection (1) of this section. The Secretary of State and the State
43 Treasurer may specify requirements in addition to the requirements set forth in subsection
44 (1) of this section and may elect to meet the standards that the department establishes un-
45 der subsection (2) of this section.

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

12 (2) The director or other head of a state contracting agency that enters into more than
13 12 public contracts during a calendar year may delegate to a qualified employee of the state
14 contracting agency all or a portion of the duties the director or other head of the state
15 contracting agency has under subsection (1) of this section.

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

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

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

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

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

37 (2) The Attorney General, the Director of the Oregon Department of Administrative
38 Services, the Director of Transportation and a state contracting agency that adopts rules
39 under ORS 279A.065 may adopt rules and take any other action before the operative date
40 specified in subsection (1) of this section that is necessary to enable the Attorney General,
41 the director or the state contracting agency to exercise, on and after the operative date
42 specified in subsection (1) of this section, all of the duties, functions and powers conferred
43 on the Attorney General, the director or the state contracting agency by sections 2, 3 and
44 4 of this 2015 Act.

45 **SECTION 8.** This 2015 Act being necessary for the immediate preservation of the public

1 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
2 **on its passage.**

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