

# House Bill 3322

Sponsored by COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT EFFECTIVENESS

## 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**.

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 public procurements; creat-  
3 ing new provisions; amending ORS 279B.030, 279B.220 and 279B.230; and declaring an emer-  
4 gency.

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 procurement for services  
8 with an estimated contract price that exceeds \$250,000, a contracting agency shall:

9 **(a)(A) Conduct a study to examine, for the area in which the contracting agency antic-**  
10 **ipates that work in connection with the procurement will occur, how the procurement will**  
11 **affect:**

12 **(i) Employment, worker income, social services and public assistance programs;**

13 **(ii) Other businesses;**

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

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

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

17 **(B) Provide the public with information concerning the procurement and conduct a public**  
18 **hearing to solicit responses from residents of the area described in subparagraph (A) of this**  
19 **paragraph; and**

20 **(C) Post the results of the study and all comments the contracting agency receives dur-**  
21 **ing the public hearing described in subparagraph (B) of this paragraph to the contracting**  
22 **agency's website and to the Oregon transparency website described in ORS 184.483;**

23 **[(a)] (b)(A) Demonstrate, by means of a written cost analysis in accordance with ORS 279B.033,**  
24 **that the contracting agency would [*incur less cost in*] by conducting the procurement [*than in*] incur**

**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 **at least 10 percent less in costs than the contracting agency would incur in** performing the  
 2 services with the contracting agency's own personnel and resources; or

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

5 **(c) Provide the results of the cost analysis described in paragraph (b) of this subsection**  
 6 **to employees of the contracting agency or a labor organization that is certified as the ex-**  
 7 **clusive representative for the employees' bargaining unit, give the employees or the exclusive**  
 8 **representative an opportunity to present an alternative cost analysis and consider the al-**  
 9 **ternative cost analysis on the same basis as the contracting agency's cost analysis.**

10 (2) If a local contracting agency authorizes a department, bureau, office or other subdivision of  
 11 the local contracting agency to conduct a procurement on behalf of another department, bureau,  
 12 office or subdivision of the local contracting agency, the department, bureau, office or subdivision  
 13 on whose behalf the procurement is conducted shall comply with the requirement set forth in sub-  
 14 section (1)(b) of this section.

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

16 (a) A local contracting agency or a local contract review board for a city that has a population  
 17 of not more than 15,000 or a county that has a population of not more than 30,000;

18 (b) A community college that enrolls not more than 1,000 full-time equivalent students, as de-  
 19 fined in ORS 341.005;

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

22 (d) The Port of Portland; or

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

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

26 279B.220. Every public contract [*shall contain a condition*] **must provide** that the contractor  
 27 shall:

28 (1) [*Make payment promptly, as due, to*] **Pay promptly** all persons [*supplying to the contractor*]  
 29 **that supply** labor or material **to the contractor** for [*the performance of*] **performing** the [*work*  
 30 *provided for in the*] **public** contract.

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

33 **(A) The average wage that workers receive in the local area in which the contractor**  
 34 **performs the public contract for work that is substantially similar to the work required un-**  
 35 **der the public contract; or**

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

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

42 [(2)] (3) Pay all contributions or amounts due **to** the Industrial Accident Fund **in connection**  
 43 **with work the contractor performs under the public contract** [*from the contractor or subcon-*  
 44 *tractor incurred in the performance of the contract*].

45 [(3)] (4) **Take all actions that are necessary to prevent** [*Not permit any*] a lien or claim [*to*

1 *be*] **from being** filed or prosecuted against the state or a county, school district, municipality, mu-  
 2 nicipal corporation or subdivision [*thereof*] **of the state**, on account of any labor or material fur-  
 3 nished.

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

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

7 279B.230. (1) Every public contract [*shall contain a condition that*] **must provide that the**  
 8 **contractor shall:**

9 (a) [*The contractor shall promptly, as due, make payment to*] **Pay promptly, as due**, any person,  
 10 copartnership, association or corporation [*furnishing*] **that provides** medical, surgical and hospital  
 11 care services or other needed care and attention, incident to sickness or injury, to the employees  
 12 of the contractor, [*of*] all sums that the contractor agrees to pay for the services and all moneys and  
 13 sums that the contractor collected or deducted from the wages of employees under any law, contract  
 14 or agreement for the purpose of providing or paying for the services[.]; **and**

15 (b) **Provide health insurance and other health benefits to the contractor's employees that**  
 16 **are comparable to health insurance and other health benefits that public employees receive,**  
 17 **or supplement the employees' wages in an amount that is sufficient for the employees to**  
 18 **purchase health insurance and other health benefits that are comparable to health insurance**  
 19 **and other health benefits that public employees receive.**

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

23 **SECTION 4.** The amendments to ORS 279B.030, 279B.220 and 279B.230 by sections 1 to 3  
 24 of this 2015 Act apply to procurements that a contracting agency advertises or otherwise  
 25 solicits or, if the contracting agency does not advertise or solicit the procurement, to a  
 26 public contract into which the contracting agency enters on or after the operative date  
 27 specified in section 5 of this 2015 Act.

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

30 (2) The Attorney General, the Director of the Oregon Department of Administrative  
 31 Services, the Director of Transportation or a contracting agency that adopts rules under  
 32 ORS 279A.065 may take any action before the operative date specified in subsection (1) of this  
 33 section that is necessary to enable the Attorney General, the director or the contracting  
 34 agency, on and after the operative date specified in subsection (1) of this section, to exercise  
 35 the duties, functions and powers conferred on the Attorney General, the director or the  
 36 contracting agency by the amendments to ORS 279B.030, 279B.220 and 279B.230 by sections  
 37 1 to 3 of this 2015 Act.

38 **SECTION 6.** This 2015 Act being necessary for the immediate preservation of the public  
 39 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect  
 40 on its passage.