

**PROPOSED AMENDMENTS TO
HOUSE BILL 2375**

1 On page 1 of the printed bill, delete lines 4 through 27 and delete pages
2 2 and 3 and insert:

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

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

6 **“(a)(A) ‘Contract form’ means a document with terms and condi-**
7 **tions that the Attorney General and the Oregon Department of Ad-**
8 **ministrative Services develop, approve and make available for state**
9 **contracting agencies to use without alteration, except as provided in**
10 **subparagraph (B) of this paragraph, as the terms and conditions of a**
11 **public contract.**

12 **“(B) ‘Contract form’ does not include specifications for a procure-**
13 **ment, a scope of work, pricing information, information that identifies**
14 **parties to the public contract or similar or related portions of a public**
15 **contract that a state contracting agency necessarily develops or must**
16 **alter, with approval from the Attorney General or the Oregon De-**
17 **partment of Administrative Services, as a means of achieving the re-**
18 **sults the state contracting agency intends for the procurement.**

19 **“(b)(A) ‘Contract template’ means a document with terms and**
20 **conditions that the Attorney General and the department develop,**
21 **approve and make available for state contracting agencies to use, with**
22 **appropriate alterations, as the basis for the terms and conditions of a**

1 public contract.

2 “(B) ‘Contract template’ does not include specifications for a pro-
3 curement, a scope of work, pricing information, information that
4 identifies parties to the public contract or similar or related portions
5 of a public contract that a state contracting agency necessarily de-
6 velops or must alter as a means of achieving the results the state
7 contracting agency intends for the procurement.

8 “(c) ‘Solicitation template’ means a request for information, a re-
9 quest for a quotation, an invitation to bid, a request for proposals or
10 other document for soliciting a procurement under the Public Con-
11 tracting Code in which the Attorney General and the department de-
12 velop, approve and make available standardized language that a state
13 contracting agency must use, with appropriate alterations, for a so-
14 licitation.

15 “(2)(a) Except as provided in paragraph (c) of this subsection, a
16 state contracting agency shall use a solicitation template in advertis-
17 ing and soliciting all procurements under the Public Contracting Code
18 and, as provided in paragraph (b) of this subsection, shall use a con-
19 tract form or a contract template, as appropriate, as the basis for all
20 public contracts into which the state contracting agency enters.

21 “(b) A state contracting agency shall use a contract form or con-
22 tract template for all price agreements, cooperative procurements or
23 procurements for which the Attorney General or the Director of the
24 Oregon Department of Administrative Services determines that the
25 specifications for goods or services, the terms and conditions, the
26 scope of work or other aspects of a procurement or a class of pro-
27 curements do not vary significantly among state contracting agencies,
28 or for procurements or classes of procurements in which the Attorney
29 General or the director determines that using a contract form or
30 contract template is necessary for the state contracting agency to

1 avoid significant liabilities or other risks or would promote best prac-
2 tices in public contracting. A state contracting agency may vary the
3 terms and conditions set forth in a contract template only with the
4 advice of the Attorney General or legal counsel that the Attorney
5 General approves.

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

9 “(A) The state contracting agency receives approval from the At-
10 torney General or, if the state contracting agency is subject to ORS
11 279A.140, from the Director of the Oregon Department of Administra-
12 tive Services, unless the state contracting agency determines that the
13 contract price for the public contract is unlikely to exceed \$150,000;

14 “(B) The nature of the procurement is unique and the public con-
15 tract requires specific terms and conditions to accommodate the
16 unique nature of the procurement or the state contracting agency, in
17 accordance with provisions in the solicitation documents for the pro-
18 curement, negotiated terms and conditions for the public contract that
19 differ from the terms and conditions in a contract form or contract
20 template;

21 “(C) The state contracting agency consults the Attorney General,
22 or legal counsel that the Attorney General approves, to develop ap-
23 propriate terms and conditions for the public contract and for legal
24 advice during all phases of the procurement for which the Attorney
25 General determines that legal advice is necessary and relevant; and

26 “(D) The state contracting agency submits the public contract to
27 the Attorney General for approval for legal sufficiency, if the pro-
28 visions of ORS 291.047 require the submission.

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

1 **“(3) The Attorney General and the Director of the Oregon Depart-**
2 **ment of Administrative Services shall cooperate to:**

3 **“(a) Develop and make available solicitation templates, contract**
4 **forms and contract templates for procurements or classes of procure-**
5 **ments that state contracting agencies require; and**

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

8 **“SECTION 3. (1) A person that conducts a procurement or admin-**
9 **isters a public contract for a contracting agency shall complete a**
10 **course of education and training or have professional experience that,**
11 **at a minimum and in accordance with standards established under**
12 **subsection (2) of this section, adequately prepares the person to:**

13 **“(a) Develop specifications and develop or adapt solicitation docu-**
14 **ments for a procurement;**

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

18 **“(c) Draft scopes of work, statements of work, contract amend-**
19 **ments, change orders, insurance requirements, notices and other docu-**
20 **ments and communications that are necessary to conduct a**
21 **procurement or administer a public contract of the scope and nature**
22 **for which the person is or will be responsible;**

23 **“(d) Monitor a contractor’s performance under a public contract to**
24 **ensure that the contractor performs services, provides goods or sup-**
25 **plies materials according to the schedule, pricing, specifications and**
26 **terms and conditions set forth in the public contract;**

27 **“(e) Manage relations between a contracting agency and contrac-**
28 **tors so that contractors meet obligations to the contracting agency**
29 **and the contracting agency meets obligations to contractors;**

30 **“(f) Recognize and investigate emerging disputes or other risks,**

1 unique requirements, unusual situations or other issues that arise in
2 connection with a procurement and formulate appropriate responses
3 and resolutions, seeking advice from legal counsel, risk management
4 personnel or other persons when necessary;

5 “(g) Understand auditing requirements and procedures that apply
6 to procurements of the scope and nature for which the person is or
7 will be responsible and organize and maintain appropriate documen-
8 tation and administrative practices that meet the auditing require-
9 ments; and

10 “(h) Follow regular business and office procedures, implement ap-
11 plicable contracting agency policies and procedures and otherwise
12 conduct procurements or administer public contracts for a contracting
13 agency in accordance with best practices.

14 “(2)(a) The Oregon Department of Administrative Services by rule
15 shall establish standards for the education and training or experience
16 a person must have to conduct a procurement or administer a public
17 contract for a contracting agency and may specify requirements in
18 addition to the requirements set forth in subsection (1) of this section.
19 The standards must describe the contents and quality of a curriculum
20 for an appropriate education or training program, fix a passing score
21 for an examination or assessment, if appropriate, specify requirements
22 for obtaining a certificate or other evidence of having completed the
23 education or training program and otherwise determine the skills and
24 the level and depth of knowledge a person must have obtained from
25 the education or training program. The standards must also describe
26 the length of service or other evidence of adequate experience that a
27 person must have in order to conduct a procurement or administer a
28 public contract for a contracting agency.

29 “(b) The department may establish levels or classifications of edu-
30 cation and training or experience that are necessary for a person to

1 **conduct a procurement or administer a public contract for a con-**
2 **tracting agency, according to:**

3 **“(A) The complexity, scope or category of procurements a con-**
4 **tracting agency conducts;**

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

7 **“(C) Other appropriate criteria.**

8 **“(c) The department may provide an education or training program**
9 **that meets the standards the department establishes under this sub-**
10 **section or may approve an education or training program that meets**
11 **the standards.**

12 **“(d) The department by rule shall set a date, not later than De-**
13 **cember 31, 2017, by which an education or training program must meet**
14 **the standards the department establishes under this subsection and a**
15 **date, not later than December 31, 2018, after which all persons that**
16 **conduct procurements or administer public contracts for contracting**
17 **agencies must meet the requirements specified in this section. In set-**
18 **ting dates under this paragraph, the department shall take into ac-**
19 **count the fiscal impact of the standards and requirements on**
20 **contracting agencies and may phase in or specify incremental steps for**
21 **meeting the standards and requirements.**

22 **“(e) The department may delegate to a local contract review board**
23 **responsibility under this subsection for establishing standards that will**
24 **govern education and training or experience requirements necessary**
25 **to conduct a procurement or administer a public contract for a local**
26 **contracting agency.**

27 **“SECTION 4. (1) Before a contracting agency executes a public**
28 **contract with a contract price that exceeds \$150,000, the director or**
29 **other head of the contracting agency shall review, and shall verify**
30 **that the person that will administer the public contract for the con-**

1 **tracting agency has read and understands, all advice and recommen-**
2 **dations that the Oregon Department of Administrative Services, the**
3 **Department of Justice or other legal counsel gave to the contracting**
4 **agency with respect to the public contract and the procurement that**
5 **resulted in the public contract. The director or other head of the**
6 **contracting agency shall sign and retain in the contracting agency's**
7 **records a statement that acknowledges that the director or other head**
8 **of the contracting agency reviewed the advice and recommendations**
9 **and made the verification described in this subsection.**

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

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

1 later than November 30, 2015.

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

5 **“(2) Section 3 of this 2015 Act applies to procurements that a con-**
6 **tracting agency conducts on and after the date the Oregon Department**
7 **of Administrative Services sets under section 3 (2)(d) of this 2015 Act.**

8 **“(3) Section 4 of this 2015 Act applies to public contracts into which**
9 **a contracting agency enters on and after the operative date specified**
10 **in section 7 of this 2015 Act.**

11 **“SECTION 7. (1) Sections 2, 3 and 4 of this 2015 Act become opera-**
12 **tive January 1, 2016.**

13 **“(2) The Attorney General, the Director of the Oregon Department**
14 **of Administrative Services, the Director of Transportation and a con-**
15 **tracting agency that adopts rules under ORS 279A.065 may adopt rules**
16 **and take any other action before the operative date specified in sub-**
17 **section (1) of this section that is necessary to enable the Attorney**
18 **General, the director or the contracting agency to exercise, on and**
19 **after the operative date specified in subsection (1) of this section, all**
20 **of the duties, functions and powers conferred on the Attorney General,**
21 **the director or the contracting agency by sections 2, 3 and 4 of this**
22 **2015 Act.**

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

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