

# Senate Bill 382

Sponsored by Senator HANSELL, Representative OLSON; Representative JOHNSON (Presession 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 **as introduced**.

Raises threshold of contract price at which contracting agency may directly appoint architect, engineer, photogrammetrist, transportation planner or land surveyor to \$500,000.

Becomes operative January 1, 2018.

Takes effect on 91st day after adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to procurements for certain professional services by means of personal service contracts;  
3 creating new provisions; amending ORS 279C.110; and prescribing an effective date.

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

5 **SECTION 1.** ORS 279C.110 is amended to read:

6 279C.110. (1) A contracting agency shall select consultants to provide architectural, engineering,  
7 photogrammetric mapping, transportation planning or land surveying services on the basis of the  
8 consultant's qualifications for the type of professional service required. A contracting agency may  
9 solicit or use pricing policies and proposals or other pricing information, including the number of  
10 hours proposed for the service required, expenses, hourly rates and overhead, to determine consult-  
11 ant compensation only after the contracting agency has selected a candidate [*pursuant to*] **under**  
12 subsection (2) of this section.

13 (2) Subject to the requirements of subsection (1) of this section, the procedures that a con-  
14 tracting agency creates to screen and select consultants and to select a candidate under this section  
15 are at the contracting agency's sole discretion. The contracting agency may adjust the procedures  
16 to accommodate the contracting agency's scope, schedule or objectives for a particular project if the  
17 estimated cost of the architectural, engineering, photogrammetric mapping, transportation planning  
18 or land surveying services for the project does not exceed \$250,000.

19 (3) A contracting agency's screening and selection procedures under this section, regardless of  
20 the estimated cost of the architectural, engineering, photogrammetric mapping, transportation plan-  
21 ning or land surveying services for a project, may include considering each candidate's:

22 (a) Specialized experience, capabilities and technical competence, which the candidate may  
23 demonstrate with the candidate's proposed approach and methodology to meet the project require-  
24 ments;

25 (b) Resources committed to perform the work and the proportion of the time that the candidate's  
26 staff would spend on the project, including time for specialized services, within the applicable time  
27 limits;

28 (c) Record of past performance, including but not limited to price and cost data from previous  
29 projects, quality of work, ability to meet schedules, cost control and contract administration;

30 (d) Ownership status and employment practices regarding disadvantaged business enterprises,

**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 minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own,  
2 emerging small businesses or historically underutilized businesses;

3 (e) Availability to the project locale;

4 (f) Familiarity with the project locale; and

5 (g) Proposed project management techniques.

6 (4) If the screening and selection procedures a contracting agency creates under subsection (2)  
7 of this section result in the contracting agency's determination that two or more candidates are  
8 equally qualified, the contracting agency may select a candidate through any process the contract-  
9 ing agency adopts that is not based on the candidate's pricing policies, proposals or other pricing  
10 information.

11 (5) The contracting agency and the selected candidate shall mutually discuss and refine the  
12 scope of services for the project and shall negotiate conditions, including but not limited to com-  
13 pensation level and performance schedule, based on the scope of services. The compensation level  
14 *[paid]* **the contracting agency pays** must be reasonable and fair to the contracting agency as de-  
15 termined solely by the contracting agency. Authority to negotiate a contract under this section does  
16 not supersede any provision of ORS 279A.140 or 279C.520.

17 (6) If the contracting agency and the selected candidate are unable for any reason to negotiate  
18 a contract at a compensation level that is reasonable and fair to the contracting agency, the con-  
19 tracting agency shall, either orally or in writing, formally terminate negotiations with the selected  
20 candidate. The contracting agency may then negotiate with the next most qualified candidate. The  
21 negotiation process may continue in this manner through successive candidates until **the con-**  
22 **tracting agency and the selected candidate reach** an agreement *[is reached]* or the contracting  
23 agency terminates the consultant contracting process.

24 (7) *[It is]* The goal of this state **is** to promote a sustainable economy in the rural areas of the  
25 state. In order to monitor progress toward this goal, a state contracting agency shall keep a record  
26 of the locations in which architectural, engineering, photogrammetric mapping, transportation plan-  
27 ning or land surveying services contracts and related services contracts are performed throughout  
28 the state, the locations of the selected consultants and the direct expenses on each contract. This  
29 record must include the total number of contracts awarded to each consultant firm over a 10-year  
30 period. The record of direct expenses must include all personnel travel expenses as a separate and  
31 identifiable expense on the contract. Upon request, the state contracting agency shall make these  
32 records available to the public.

33 (8) Notwithstanding the provisions of subsection (1) of this section, a contracting agency may  
34 directly appoint a consultant if the estimated cost of the architectural, engineering, photogrammet-  
35 ric mapping, transportation planning or land surveying services for the project does not exceed  
36 *[\$100,000]* **\$500,000**.

37 (9) Notwithstanding the provisions of subsections (1) and (8) of this section, a contracting agency  
38 may directly appoint a consultant for architectural, engineering, photogrammetric mapping, trans-  
39 portation planning or land surveying services in an emergency.

40 **SECTION 2. The amendments to ORS 279C.110 by section 1 of this 2017 Act apply to**  
41 **procurements that a contracting agency advertises or otherwise solicits or, if the contract-**  
42 **ing agency does not advertise or solicit the procurement, to public contracts into which the**  
43 **contracting agency enters on or after the operative date specified in section 3 of this 2017**  
44 **Act.**

45 **SECTION 3. (1) The amendments to ORS 279C.110 by section 1 of this 2017 Act become**

1 **operative January 1, 2018.**

2 **(2) The Attorney General, the Director of the Oregon Department of Administrative**  
3 **Services, the Director of Transportation and a contracting agency that adopts rules under**  
4 **ORS 279A.065 may adopt rules and take any other action that is necessary to enable the**  
5 **Attorney General, the director or the contracting agency, on and after the operative date**  
6 **specified in subsection (1) of this section, to exercise all of the duties, functions and powers**  
7 **conferred on the Attorney General, the director or the contracting agency by the amend-**  
8 **ments to ORS 279C.110 by section 1 of this 2017 Act.**

9 **SECTION 4. This 2017 Act takes effect on the 91st day after the date on which the 2017**  
10 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**

11