

SB 382-1
(LC 2678)
2/24/17 (TSB/ps)

Requested by Senator HANSELL

**PROPOSED AMENDMENTS TO
SENATE BILL 382**

1 On page 1 of the printed bill, line 3, after “ORS” insert “279A.157 and”.
2 In line 6, after “279C.110” delete the rest of the line and delete lines 7
3 through 12 and insert:
4 “(1) As used in this section, ‘price of a consultant’s services’ means:
5 “(a) The proposed amount a consultant will charge for services in ac-
6 cordance with the consultant’s pricing policies or practices, whether the
7 consultant specifies the charge as:
8 “(A) A flat fee;
9 “(B) A fee for each delivered item or component of the services;
10 “(C) An hourly rate multiplied by the anticipated hours required to per-
11 form the services; or
12 “(D) Any other denomination; and
13 “(b) Any expenses, overhead costs or other costs that the contracting
14 agency must pay.
15 “(2) Except as provided in subsections (8) and (9) of this section, a con-
16 tracting agency shall select a consultant to provide architectural, engineer-
17 ing, photogrammetric mapping, transportation planning or land surveying
18 services on the basis of the consultant’s qualifications for the type of pro-
19 fessional service required. A contracting agency may consider the price of a
20 consultant’s services only after the contracting agency has selected a candi-
21 date under subsection (3) of this section.”.

1 In line 13, delete “(2)” and insert “(3)” and delete “(1)” and insert “(2)”.

2 In line 15, after the period delete the rest of the line and lines 16 through
3 18.

4 In line 19, delete “(3)” and insert “(4)”.

5 On page 2, delete lines 6 through 10.

6 Delete lines 33 through 39 and insert:

7 “(8)(a) A contracting agency may require a prospective consultant to
8 prequalify under ORS 279B.120 before submitting a proposal to provide ar-
9 chitectural, engineering, photogrammetric mapping, transportation planning
10 or land surveying services, if the estimated cost of the services does not ex-
11 ceed \$500,000. A prospective consultant that intends to prequalify shall sub-
12 mit an application in accordance with ORS 279B.125. Notwithstanding
13 provisions in ORS 279B.120 (2) and 279B.125 (1) that require a contracting
14 agency to consider in a prequalification determination only the standards of
15 responsibility set forth in ORS 279B.110 (2), the contracting agency may also
16 consider the standards set forth in subsection (4) of this section as part of
17 the contracting agency’s prequalification determination. If a prospective
18 consultant fails to prequalify and the contracting agency has considered
19 standards set forth in subsection (4) of this section, the contracting agency
20 shall specify which of the standards in subsection (4) of this section the
21 prospective consultant failed to meet.

22 “(b) If a contracting agency requires a prospective consultant to pre-
23 qualify as provided in paragraph (a) of this subsection, the contracting
24 agency may accept proposals only from prospective consultants that have
25 prequalified and shall conduct a competitive procurement under ORS
26 279B.060 before awarding a public contract.

27 “(c) A contracting agency may not apply to the price of a consultant’s
28 services set forth in a proposal that the contracting agency evaluates under
29 paragraph (b) of this subsection more than one-third of the value of any
30 scoring the contracting agency applies in evaluating the entire proposal.

1 “(d) Subsections (5) and (6) of this section apply to a contracting agency’s
2 selection of a consultant under this subsection.

3 “(9) A contracting agency may directly appoint a consultant for archi-
4 tectural, engineering, photogrammetric mapping, transportation planning or
5 land surveying services:

6 “(a) In an emergency; or

7 “(b) If the estimated cost of the services for a project does not exceed
8 \$100,000.

9 **“SECTION 2.** ORS 279A.157 is amended to read:

10 “279A.157. (1) As used in this section:

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

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

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

27 “(B) ‘Contract template’ does not include specifications for a procurement,
28 a scope of work, pricing information, information that identifies parties to
29 the public contract or similar or related portions of a public contract that
30 a state contracting agency necessarily develops or must alter as a means of

1 achieving the results the state contracting agency intends for the procure-
2 ment.

3 “(c) ‘Solicitation template’ means a request for information, a request for
4 a quotation, an invitation to bid, a request for proposals or other document
5 for soliciting a procurement under the Public Contracting Code in which the
6 Attorney General and the department develop, approve and make available
7 standardized language that a state contracting agency must use, with ap-
8 propriate alterations, for a solicitation.

9 “(2)(a) Except as provided in paragraph (c) of this subsection, a state
10 contracting agency shall use a solicitation template in advertising and so-
11 liciting all procurements under the Public Contracting Code and, as provided
12 in paragraph (b) of this subsection, shall use a contract form or a contract
13 template, as appropriate, as the basis for all public contracts into which the
14 state contracting agency enters. A state contracting agency, in accordance
15 with the Public Contracting Code, may negotiate the terms and conditions
16 set forth in a contract form or contract template but may not vary the terms
17 and conditions without the advice of the Attorney General or legal counsel
18 that the Attorney General approves if the state contracting agency antic-
19 ipates that the contract form or contract template will be the basis for a
20 public contract with a contract price that exceeds \$150,000.

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

1 in public contracting. A state contracting agency, in accordance with the
2 Public Contracting Code, may negotiate the terms and conditions set forth
3 in a contract form or contract template but may not vary the terms and
4 conditions without the advice of the Attorney General or legal counsel that
5 the Attorney General approves if the state contracting agency anticipates
6 that the contract form or contract template will be the basis for a public
7 contract with a contract price that exceeds \$150,000.

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

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

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

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

27 “(D) The state contracting agency submits the public contract to the At-
28 torney General for approval for legal sufficiency, if the provisions of ORS
29 291.047 require the submission.

30 “(d) This subsection does not apply to a procurement that a state con-

1 tracting agency conducts under ORS 279B.065, 279B.080 or 279C.110 (9)(a).

2 “(3) Notwithstanding provisions of this section that require a state con-
3 tracting agency to use a solicitation template, contract form or contract
4 template that the Attorney General and the department develop, the office
5 of the Secretary of State and the office of the State Treasurer shall use
6 standardized forms and templates that each office develops for each office’s
7 own use in conducting procurements or entering into public contracts. The
8 Secretary of State and the State Treasurer may elect to use solicitation
9 templates, contract forms or contract templates that the Attorney General
10 and the department develop.

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

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

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

18 In line 40, delete “2” and insert “3” and delete “279C.110 by section 1”
19 and insert “279A.157 and 279C.110 by sections 1 and 2”.

20 In line 43, delete “3” and insert “4”.

21 In line 45, delete “3” and insert “4” and delete “279C.110 by section 1”
22 and insert “279A.157 and 279C.110 by sections 1 and 2”.

23 On page 3, line 8, after “ORS” insert “279A.157 and” and delete “section
24 1” and insert “sections 1 and 2”.

25 In line 9, delete “4” and insert “5”.

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