SUMMARY

Permits contracting agency, in conducting procurement for architectural, engineering, photogrammetric mapping, transportation planning and land surveying services, to consider pricing policies, proposals and other pricing information along with prospective consultant's qualifications in specified circumstances.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to a consultant selection process for a public contract for certain services; creating new provisions; amending ORS 279A.157 and 279C.110; and prescribing an effective date.

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

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

279C.110. (1) A contracting agency, in accordance with either subsection (4) or subsection (5) of this section, shall select a consultant to provide architectural, engineering, photogrammetric mapping, transportation planning or land surveying services on the basis of the consultant's qualifications for the type of professional service required. Except as provided in subsection (5) of this section, a contracting agency may solicit or use pricing policies and proposals or other pricing information, including the number of hours proposed for the service required, expenses, hourly rates and overhead, to determine consultant compensation only after the contracting agency has selected a candidate pursuant to subsection (2) of this section.

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

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

(a) Specialized experience, capabilities and technical competence, which the candidate prospective consultant may demonstrate with the candidate's prospective consultant's proposed approach and methodology to meet the project requirements;

(b) Resources committed to perform the work services and the proportion of the time that the
[candidate’s] prospective consultant’s staff would spend [on the project] to provide services to the contracting agency, including time for specialized services, within the applicable time limits;

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

(d) Ownership status and employment practices regarding disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own, emerging small businesses or historically underutilized businesses;

(e) Availability to the project locale;

(f) Familiarity with the project locale; and

(g) Proposed project management techniques.

(4)(a) After screening prospective consultants in accordance with this section, a contracting agency shall select the most qualified prospective consultant to provide the professional services the contracting agency requires. After making a selection, the contracting agency may solicit from the prospective consultant the pricing policies, proposals or other pricing information described in subsection (1) of this section.

(b) If the screening and selection procedures a contracting agency creates under subsection (2) of] follows under this section result in the contracting agency's determination that two or more candidates prospective consultants are equally qualified, the contracting agency may use any process to select a [candidate through any process the contracting agency adopts] consultant that is not based on the [candidate’s] prospective consultant’s pricing policies, proposals or other pricing information[.] described in subsection (1) of this section.

(5)(a) Notwithstanding the procedure set forth in subsection (4) of this section, a contracting agency may first issue a request for qualifications and, after receiving responsive summaries of qualifications from prospective consultants, may determine that as many as five prospective consultants are qualified to provide the professional services the contracting agency requires. The contracting agency shall notify all prospective consultants that responded to the request for qualifications of the contracting agency's determination.

(b) After making a determination under paragraph (a) of this subsection, a contracting agency may request pricing policies, proposals and other pricing information described in subsection (1) of this section from each qualified prospective consultant. The contracting agency, on the basis of each prospective consultant's qualifications and pricing policies, proposals and other pricing information, may select one or more prospective consultants with which to begin negotiations as provided in subsection (6) of this section. If the prospective consultant and the contracting agency complete negotiations successfully, the contracting agency shall notify all qualified prospective consultants of the contracting agency's intent to award a contract.

[(5)] (6) The contracting agency and [the] selected [candidate] consultant shall mutually discuss and refine the scope of services for the project and shall negotiate conditions, including but not limited to a compensation level and performance schedule, based on for the scope of services the contracting agency requires. The compensation level paid must be reasonable and fair to the contracting agency as determined solely by the contracting agency. Authority to negotiate a contract under this section does not supersede any provision of ORS 279A.140 or 279C.520.

[(6)] (7) If the contracting agency and [the] selected [candidate] consultant are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the contracting agency, the contracting agency shall, either orally or in writing, formally terminate negotiations
with the selected [candidate] consultant. The contracting agency may then negotiate with the next most qualified [candidate] prospective consultant. The [negotiation process] contracting agency may continue in this manner through successive [candidates] prospective consultants until an agreement is reached or the contracting agency terminates the [consultant contracting] selection process.

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

[(8)] (9) Notwithstanding the provisions of subsection (1) of this section, a contracting agency may directly appoint a consultant if the estimated cost of the architectural, engineering, photogrammetric mapping, transportation planning or land surveying services for the project does not exceed $100,000.

[(9)] (10) Notwithstanding the provisions of subsections (1) and [(8)] (9) of this section, a contracting agency may directly appoint a consultant for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services in an emergency.

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

279A.157. (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.

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

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

(B) “Contract template” does not include specifications for a procurement, a scope of work, pricing information, information that identifies parties to the public contract or similar or related portions of a public contract that a state contracting agency necessarily develops or must alter as a means of achieving the results the state contracting agency intends for the procurement.

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

(2)(a) Except as provided in paragraph (c) of this subsection, a state contracting agency shall
use a solicitation template in advertising and soliciting all procurements under the Public Contracting Code and, as provided in paragraph (b) of this subsection, shall use a contract form or a contract template, as appropriate, as the basis for all public contracts into which the state contracting agency enters. A state contracting agency, in accordance with the Public Contracting Code, may negotiate the terms and conditions set forth in a contract form or contract template but may not vary the terms and conditions without the advice of the Attorney General or legal counsel that the Attorney General approves if the state contracting agency anticipates that the contract form or contract template will be the basis for a public contract with a contract price that exceeds $150,000.

(b) A state contracting agency shall use a contract form or contract template for all price agreements, cooperative procurements or procurements for which the Attorney General or the Director of the Oregon Department of Administrative Services determines that the specifications for goods or services, the terms and conditions, the scope of work or other aspects of a procurement or a class of procurements do not vary significantly among state contracting agencies, or for procurements or classes of procurements in which the Attorney General or the director determines that using a contract form or contract template is necessary for the state contracting agency to avoid unreasonable liabilities or other risks or would promote best practices in public contracting. A state contracting agency, in accordance with the Public Contracting Code, may negotiate the terms and conditions set forth in a contract form or contract template but may not vary the terms and conditions without the advice of the Attorney General or legal counsel that the Attorney General approves if the state contracting agency anticipates that the contract form or contract template will be the basis for a public contract with a contract price that exceeds $150,000.

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

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

(B) The nature of the procurement is unique and the public contract requires specific terms and conditions to accommodate the unique nature of the procurement or the state contracting agency, in accordance with provisions in the solicitation documents for the procurement, negotiated terms and conditions for the public contract that differ from the terms and conditions in a contract form or contract template;

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

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

(d) This subsection does not apply to a procurement that a state contracting agency conducts under ORS 279B.065, 279B.080 or 279C.110 [(9)] (10).

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

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

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

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

SECTION 3. The amendments to ORS 279A.157 and 279C.110 by sections 1 and 2 of this
2018 Act apply to public contracts that a contracting agency first advertises or otherwise
solicits or, if the contracting agency does not advertise or otherwise solicit the public con-
tract, to public contracts into which the contracting agency enters on or after the operative
date specified in section 4 of this 2018 Act.

SECTION 4. (1) The amendments to ORS 279A.157 and 279C.110 by sections 1 and 2 of this

(2) A contracting agency may adopt rules and take any other action before the operative
date specified in subsection (1) of this section that is necessary to enable the contracting
agency, on and after the operative date specified in subsection (1) of this section, to under-
take or exercise all of the duties, functions and powers conferred on the contracting agency
by the amendments to ORS 279A.157 and 279C.110 by sections 1 and 2 of this 2018 Act.

SECTION 5. This 2018 Act takes effect on the 91st day after the date on which the 2018
regular session of the Seventy-ninth Legislative Assembly adjourns sine die.