

A-Engrossed
Senate Bill 1565

Ordered by the Senate February 14
Including Senate Amendments dated February 14

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Kate Brown)

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.

Requires Attorney General, Director of Oregon Department of Administrative Services and Director of Transportation to cooperate in adopting rules for **end-to-end** electronic procurement system. Specifies minimum contents for rules. Requires state agency to use electronic procurement system in accordance with rules in conducting procurement. Permits contracting agency that is not state agency to **choose to conduct procurement using** [*use*] electronic procurement system [*in conducting procurement*].

Requires Oregon Department of Administrative Services to establish pilot program for using reverse auction method for conducting procurement for goods and services. Specifies features that pilot program must have. Requires department [*to evaluate pilot program and report results of evaluation to Governor and committee of Legislative Assembly related to procurement not later than December 31, 2019*] **to regularly report to Governor and Joint Legislative Committee on Information Management and Technology concerning department's implementation of pilot program and to evaluate pilot program and submit final report with results of department's evaluation not later than December 31, 2019.**

Requires state contracting agency in evaluating competitive proposal to weight proposed contract price at not less than 30 percent of total weight that state contracting agency gives to all factors in final evaluation of proposals. Provides that director or other head of state contracting agency may waive requirement if director or other head determines that waiver is in best interest of state contracting agency. Requires director or other head to report each waiver to Oregon Department of Administrative Services **unless state contracting agency is Secretary of State or State Treasurer. Requires Secretary of State and State Treasurer to keep written record of each waiver in procurement file for public contract.**

Becomes operative January 1, 2019.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to methods of public procurement; creating new provisions; amending ORS 279B.060 and
3 279B.145; and prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2018 Act is added to and made a part of ORS chapter 279A.**

6 **SECTION 2. (1) The Attorney General, the Director of the Oregon Department of Ad-**
7 **ministrative Services and the Director of Transportation shall cooperate in adopting rules**
8 **for an end-to-end electronic procurement system. The rules, at a minimum, must designate**
9 **a particular electronic procurement system, specify the purposes for which and the circum-**
10 **stances in which state agencies must use the electronic procurement system and, to the**
11 **extent necessary, specify procedures for access to and use of the electronic procurement**
12 **system.**

13 **(2) A state agency shall solicit, receive bids or proposals for, award a public contract in**
14 **connection with and otherwise conduct a procurement under the Public Contracting Code in**

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 accordance with the rules described in subsection (1) of this section, notwithstanding any
2 other method specified in the code for conducting a particular type of procurement.

3 (3) A contracting agency that is not a state agency may choose to conduct a procurement
4 using the electronic procurement system described in subsection (1) of this section.

5 **SECTION 3.** Section 4 of this 2018 Act is added to and made a part of ORS chapter 279B.

6 **SECTION 4.** (1) As used in this section, “reverse auction method” means an electronic
7 procurement process in which:

8 (a) A bidder or proposer is aware that a certain number of other bidders or proposers
9 are submitting bids or price proposals for the procurement but does not know the identities
10 of the other bidders or proposers;

11 (b) Each bidder or proposer submits a bid or price proposal electronically by a specified
12 deadline; and

13 (c) Each bid or price proposal competes with all other bids or price proposals to offer the
14 lowest contract price for the procurement.

15 (2) The Oregon Department of Administrative Services shall establish a pilot program to
16 evaluate the utility and effectiveness of a reverse auction method for conducting procure-
17 ments under ORS chapter 279B. The pilot program, at a minimum, must:

18 (a) Use a reverse auction method to conduct at least 10 procurements, each with an an-
19 ticipated contract price of \$150,000 or more; and

20 (b) Require from each contracting agency that participates in the pilot program infor-
21 mation about each procurement for which the contracting agency used the reverse auction
22 method. The information must be sufficient to enable the department to evaluate the results
23 of the pilot program using at least these criteria:

24 (A) The extent and amount of cost savings to the contracting agency, if any, that are
25 attributable to using the reverse auction method;

26 (B) The extent, if any, to which contracting agencies that participate in the pilot program
27 realize other nonmonetary benefits or detriments in the procurement process as a result of
28 using the reverse auction method and the nature of the benefits or detriments; and

29 (C) The reactions of bidders or proposers to the reverse auction method and any iden-
30 tifiable benefits or detriments to bidders or proposers that result from using the reverse
31 auction method.

32 (3) The department shall report regularly to the Governor and to the Joint Legislative
33 Committee on Information Management and Technology concerning the department’s im-
34 plementation of the pilot program and shall submit, not later than December 31, 2019, a final
35 report that outlines the nature of the pilot program and the results of the department’s
36 evaluation under subsection (2)(b) of this section.

37 **SECTION 5.** ORS 279B.060 is amended to read:

38 279B.060. (1) A contracting agency may solicit and award a public contract for goods or ser-
39 vices, or may award multiple public contracts for goods or services when specified in the request
40 for proposals, by requesting and evaluating competitive sealed proposals.

41 (2) [The] A request for proposals must:

42 (a) Specify a time and date by which sealed proposals must be received, and a place at which
43 the proposals must be submitted. The contracting agency, in the contracting agency’s sole dis-
44 cretion, may receive proposals by electronic means or may direct or permit proposers to submit
45 proposals by electronic means.

1 (b) Specify the name and title of the person designated to receive proposals and the person the
2 contracting agency designates as the contact person for the procurement, if different.

3 (c) Describe the procurement. In the description, the contracting agency shall identify the scope
4 of work included within the procurement, outline the contractor's anticipated duties and set expect-
5 ations for the contractor's performance. Unless the contractor is providing architectural, engi-
6 neering, photogrammetric mapping, transportation planning or land surveying services or related
7 services, as defined in ORS 279C.100, or unless the contracting agency for good cause specifies
8 otherwise, the scope of work shall require the contractor to meet the highest standards prevalent
9 in the industry or business most closely involved in providing the appropriate goods or services.

10 (d) Specify a time, date and place for prequalification applications, if any, to be filed and the
11 classes of work, if any, for which proposers must be prequalified in accordance with ORS 279B.120.

12 (e) State that the contracting agency may cancel the procurement or reject any or all proposals
13 in accordance with ORS 279B.100.

14 (f) State that "Contractors shall use recyclable products to the maximum extent economically
15 feasible in the performance of the contract work set forth in this document." if a state contracting
16 agency issues the request for proposals.

17 (g) Require the contractor or subcontractor to possess an asbestos abatement license, if required
18 under ORS 468A.710.

19 (h) Include all contractual terms and conditions applicable to the procurement. The contract
20 terms and conditions shall specify clear consequences for a contractor's failure to perform the scope
21 of work identified in the request for proposals or the contractor's failure to meet established per-
22 formance standards. The consequences may include, but are not limited to:

23 (A) Reducing or withholding payment;

24 (B) Requiring the contractor to perform, at the contractor's expense, additional work necessary
25 to perform the identified scope of work or meet the established performance standards; or

26 (C) Declaring a default, terminating the public contract and seeking damages and other relief
27 available under the terms of the public contract or other applicable law.

28 (3) The request for proposals also may:

29 (a) Identify contractual terms or conditions that the contracting agency reserves, in the request
30 for proposals, for negotiation with proposers;

31 (b) Request that proposers propose contractual terms and conditions that relate to subject mat-
32 ter reasonably identified in the request for proposals;

33 (c) Contain or incorporate the form and content of the contract that the contracting agency will
34 accept, or suggest contract terms and conditions that nevertheless may be the subject of negoti-
35 ations with proposers;

36 (d) Announce the method the contracting agency will use to select the contractor, which may
37 include, but is not limited to, negotiating with the highest ranked proposer, competitive negotiations,
38 a multiple-tiered competition that is designed to identify a class of proposers that fall within a
39 competitive range or to otherwise eliminate from consideration a class of lower ranked proposers
40 or a combination of methods, as authorized or prescribed by rules adopted under ORS 279A.065; and

41 (e) Describe the manner in which the contracting agency will evaluate proposals, identifying the
42 relative importance of price and other factors the contracting agency will use to evaluate and rate
43 the proposals in the first tier of competition. If the contracting agency uses more than one tier of
44 competitive evaluation, the request for proposals must describe the process the contracting agency
45 will use to evaluate proposals in the subsequent tiers. **If a state contracting agency conducts the**

1 **procurement, the description under this paragraph must state that the state contracting**
 2 **agency in the evaluation shall weight the contract price that a prospective contractor pro-**
 3 **poses at not less than 30 percent of the total weight that the state contracting agency gives**
 4 **to all factors in the state contracting agency's final evaluation of a proposal.**

5 (4)(a) The contracting agency may require proposal security in any form the contracting agency
 6 deems prudent. Proposal security *[shall]* **must** serve the same function with respect to requests for
 7 proposals as bid security serves with respect to invitations to bid under ORS 279B.055.

8 (b) The contracting agency shall return the proposal security to all proposers upon the exe-
 9 cution of the contract.

10 (c) The contracting agency shall retain the proposal security if a proposer who is awarded a
 11 contract fails to promptly and properly execute the contract. For purposes of this paragraph, prompt
 12 and proper execution of the contract includes all action by a proposer that is necessary to form a
 13 contract in accordance with the request for proposals, including posting performance security and
 14 submitting proof of insurance *[when]* **if** the request for proposals requires the submission. If contract
 15 negotiations or competitive negotiations are conducted, the failure, prior to award, of a contracting
 16 agency and a proposer to reach agreement does not constitute grounds for retaining proposal secu-
 17 rity.

18 (5) **A contracting agency shall give** public notice of the request for proposals *[must be given]*
 19 in the same manner as provided for public notice of invitations to bid in ORS 279B.055 (4).

20 (6)(a) Notwithstanding ORS 192.311 to 192.478, **a contracting agency may open** proposals *[may*
 21 *be opened]* in a manner *[to avoid]* **that avoids** disclosing contents to competing proposers during,
 22 when applicable, the process of negotiation, but the contracting agency shall record and make
 23 available the identity of all proposers as part of the contracting agency's public records after the
 24 proposals are opened. Notwithstanding ORS 192.311 to 192.478, proposals are not required to be open
 25 for public inspection until after the notice of intent to award a contract is issued. The fact that
 26 proposals are opened at a meeting, as defined in ORS 192.610, does not make the contents of the
 27 proposals subject to disclosure, regardless of whether the public body opening the proposals fails to
 28 give notice of or provide for an executive session for the purpose of opening proposals.

29 (b) Notwithstanding a requirement to make proposals open to public inspection after the con-
 30 tracting agency issues notice of intent to award a contract, a contracting agency may withhold from
 31 disclosure to the public materials included in a proposal that are exempt or conditionally exempt
 32 from disclosure under ORS 192.345 or 192.355.

33 (c) If a **contracting agency cancels a** request for proposals *[is canceled]* under ORS 279B.100
 34 after **receiving or rejecting** proposals *[are received or if a proposal is rejected]*, the contracting
 35 agency may return a proposal to the proposer that made the proposal. The contracting agency shall
 36 keep a list of returned proposals in the file for the solicitation.

37 (7) As provided in the request for proposals or in written addenda issued thereunder, the con-
 38 tracting agency, **before or after opening proposals**, may conduct site tours, demonstrations, indi-
 39 vidual or group discussions and other informational activities with proposers *[before or after the*
 40 *opening of proposals]* for the purpose of clarification to ensure full understanding of, and respon-
 41 siveness to, the solicitation requirements or to consider and respond to requests for modifications
 42 of the proposal requirements. The contracting agency shall use procedures designed to accord
 43 proposers fair and equal treatment with respect to any opportunity for discussion and revision of
 44 proposals.

45 (8) For purposes of evaluation, when provided for in the request for proposals, the contracting

1 agency may employ methods of contractor selection that include, but are not limited to:

2 (a) An award or awards based solely on the ranking of proposals;

3 (b) Discussions leading to best and final offers, in which the contracting agency may not disclose
4 private discussions leading to best and final offers;

5 (c) Discussions leading to best and final offers, in which the contracting agency may not disclose
6 information derived from proposals submitted by competing proposers;

7 (d) Serial negotiations, beginning with the highest ranked proposer;

8 (e) Competitive simultaneous negotiations;

9 (f) Multiple-tiered competition designed to identify, at each level, a class of proposers that fall
10 within a competitive range or to otherwise eliminate from consideration a class of lower ranked
11 proposers;

12 (g) A multistep request for proposals requesting the submission of unpriced technical submittals,
13 and then later issuing a request for proposals limited to the proposers whose technical submittals
14 the contracting agency had determined to be qualified under the criteria set forth in the initial re-
15 quest for proposals; or

16 (h) A combination of methods described in this subsection, as authorized or prescribed by rules
17 adopted under ORS 279A.065.

18 **(9)(a) A state contracting agency, in evaluating a proposal under this section, shall**
19 **weight the contract price that a prospective contractor proposes at not less than 30 percent**
20 **of the total weight that the state contracting agency gives to all factors in the state con-**
21 **tracting agency's final evaluation of a proposal. For purposes of this paragraph, a state**
22 **contracting agency's final evaluation of a proposal is the final evaluative step the state con-**
23 **tracting agency undertakes before deciding to issue a notice of intent to award a public**
24 **contract, regardless of the specific method of contractor selection that the state contracting**
25 **agency employs under subsection (8) of this section.**

26 **(b) The director or other head of a state contracting agency may waive the weighting**
27 **requirement specified in paragraph (a) of this subsection if the director or other head de-**
28 **termines in writing that a waiver is in the best interest of the state contracting agency.**
29 **Unless the state contracting agency is the Secretary of State or the State Treasurer, the**
30 **director or other head of the state contracting agency shall report in writing to the Director**
31 **of the Oregon Department of Administrative Services each instance in which the director**
32 **or other head waived the requirement and in the report shall outline the reasons for the**
33 **waiver. The Secretary of State and the State Treasurer shall keep a written record of each**
34 **waiver and the reasons for the waiver in the procurement file for the public contract.**

35 [(9)] **(10) Revisions of proposals may be permitted after the submission of proposals and before**
36 **award for the purpose of obtaining best offers or best and final offers.**

37 [(10)] **(11) After [the] opening [of] proposals, a contracting agency may issue or electronically**
38 **post an addendum to the request for proposals that modifies the criteria, rating process and proce-**
39 **cedure for any tier of competition before the start of the tier to which the addendum applies. The**
40 **contracting agency shall send an addendum that is issued by a method other than electronic posting**
41 **to all proposers who are eligible to compete under the addendum. The contracting agency shall issue**
42 **or post the addendum at least five days before the start of the subject tier of competition or as the**
43 **contracting agency otherwise determines is adequate to allow eligible proposers to prepare for the**
44 **competition in accordance with rules adopted under ORS 279A.065.**

45 [(11)] **(12) The cancellation of requests for proposals and the rejection of proposals must be in**

1 accordance with ORS 279B.100.

2 [(12)] (13) In [the] a request for proposals, [the] a contracting agency shall describe the methods
3 by which the **contracting** agency will make the results of each tier of competitive evaluation
4 available to the proposers who competed in the tier. The contracting agency shall include a de-
5 scription of the manner in which the proposers who are eliminated from further competition may
6 protest or otherwise object to the contracting agency's decision.

7 [(13)] (14) [The] A contracting agency shall issue or electronically post the notice of intent to
8 award described in ORS 279B.135 to each proposer who was evaluated in the final competitive tier.

9 [(14)] (15) If [the] a contracting agency awards a contract, the contracting agency shall award
10 the contract to the responsible proposer whose proposal the contracting agency determines in
11 writing is the most advantageous to the contracting agency based on the evaluation process and
12 evaluation factors described in **this section and in** the request for proposals, applicable preferences
13 described in ORS 279A.120 and 279A.125 and, when applicable, the outcome of any negotiations au-
14 thorized by the request for proposals. Other factors may not be used in the evaluation. [When] **If** the
15 request for proposals specifies or authorizes awarding multiple public contracts, the contracting
16 agency shall award public contracts to the responsible proposers who qualify for the award of a
17 contract under the terms of the request for proposals.

18 [(15)] (16) [The] A contracting agency may issue a request for information, a request for interest,
19 a request for qualifications or other preliminary documents to obtain information useful in preparing
20 a request for proposals.

21 [(16)] (17) Before executing a contract solicited under this section, a contracting agency shall
22 obtain the proposer's agreement to perform the scope of work and meet the performance standards
23 set forth in the final negotiated scope of work.

24 **SECTION 6.** ORS 279B.060, as amended by section 5 of this 2018 Act, is amended to read:

25 279B.060. (1) A contracting agency may solicit and award a public contract for goods or ser-
26 vices, or may award multiple public contracts for goods or services when specified in the request
27 for proposals, by requesting and evaluating competitive sealed proposals.

28 (2) A request for proposals must:

29 (a) Specify a time and date by which sealed proposals must be received, and a place at which
30 the proposals must be submitted. The contracting agency, in the contracting agency's sole dis-
31 cretion, may receive proposals by electronic means or may direct or permit proposers to submit
32 proposals by electronic means.

33 (b) Specify the name and title of the person designated to receive proposals and the person the
34 contracting agency designates as the contact person for the procurement, if different.

35 (c) Describe the procurement. In the description, the contracting agency shall identify the scope
36 of work included within the procurement, outline the contractor's anticipated duties and set expec-
37 tations for the contractor's performance. Unless the contractor is providing architectural, engi-
38 neering, photogrammetric mapping, transportation planning or land surveying services or related
39 services, as defined in ORS 279C.100, or unless the contracting agency for good cause specifies
40 otherwise, the scope of work shall require the contractor to meet the highest standards prevalent
41 in the industry or business most closely involved in providing the appropriate goods or services.

42 (d) Specify a time, date and place for prequalification applications, if any, to be filed and the
43 classes of work, if any, for which proposers must be prequalified in accordance with ORS 279B.120.

44 (e) State that the contracting agency may cancel the procurement or reject any or all proposals
45 in accordance with ORS 279B.100.

1 (f) State that “Contractors shall use recyclable products to the maximum extent economically
2 feasible in the performance of the contract work set forth in this document.” if a state contracting
3 agency issues the request for proposals.

4 (g) Require the contractor or subcontractor to possess an asbestos abatement license, if required
5 under ORS 468A.710.

6 (h) Include all contractual terms and conditions applicable to the procurement. The contract
7 terms and conditions shall specify clear consequences for a contractor’s failure to perform the scope
8 of work identified in the request for proposals or the contractor’s failure to meet established per-
9 formance standards. The consequences may include, but are not limited to:

10 (A) Reducing or withholding payment;

11 (B) Requiring the contractor to perform, at the contractor’s expense, additional work necessary
12 to perform the identified scope of work or meet the established performance standards; or

13 (C) Declaring a default, terminating the public contract and seeking damages and other relief
14 available under the terms of the public contract or other applicable law.

15 (3) The request for proposals also may:

16 (a) Identify contractual terms or conditions that the contracting agency reserves, in the request
17 for proposals, for negotiation with proposers;

18 (b) Request that proposers propose contractual terms and conditions that relate to subject mat-
19 ter reasonably identified in the request for proposals;

20 (c) Contain or incorporate the form and content of the contract that the contracting agency will
21 accept, or suggest contract terms and conditions that nevertheless may be the subject of negoti-
22 ations with proposers;

23 (d) Announce the method the contracting agency will use to select the contractor, which may
24 include, but is not limited to, negotiating with the highest ranked proposer, competitive negotiations,
25 a multiple-tiered competition that is designed to identify a class of proposers that fall within a
26 competitive range or to otherwise eliminate from consideration a class of lower ranked proposers
27 or a combination of methods, as authorized or prescribed by rules adopted under ORS 279A.065; and

28 (e) Describe the manner in which the contracting agency will evaluate proposals, identifying the
29 relative importance of price and other factors the contracting agency will use to evaluate and rate
30 the proposals in the first tier of competition. If the contracting agency uses more than one tier of
31 competitive evaluation, the request for proposals must describe the process the contracting agency
32 will use to evaluate proposals in the subsequent tiers. *[If a state contracting agency conducts the*
33 *procurement, the description under this paragraph must state that the state contracting agency in the*
34 *evaluation shall weight the contract price that a prospective contractor proposes at not less than 30*
35 *percent of the total weight that the state contracting agency gives to all factors in the state contracting*
36 *agency’s final evaluation of a proposal.]*

37 (4)(a) The contracting agency may require proposal security in any form the contracting agency
38 deems prudent. Proposal security must serve the same function with respect to requests for pro-
39 posals as bid security serves with respect to invitations to bid under ORS 279B.055.

40 (b) The contracting agency shall return the proposal security to all proposers upon the exe-
41 cution of the contract.

42 (c) The contracting agency shall retain the proposal security if a proposer who is awarded a
43 contract fails to promptly and properly execute the contract. For purposes of this paragraph, prompt
44 and proper execution of the contract includes all action by a proposer that is necessary to form a
45 contract in accordance with the request for proposals, including posting performance security and

1 submitting proof of insurance if the request for proposals requires the submission. If contract nego-
2 tiations or competitive negotiations are conducted, the failure, prior to award, of a contracting
3 agency and a proposer to reach agreement does not constitute grounds for retaining proposal secu-
4 rity.

5 (5) A contracting agency shall give public notice of the request for proposals in the same man-
6 ner as provided for public notice of invitations to bid in ORS 279B.055 (4).

7 (6)(a) Notwithstanding ORS 192.311 to 192.478, a contracting agency may open proposals in a
8 manner that avoids disclosing contents to competing proposers during, when applicable, the process
9 of negotiation, but the contracting agency shall record and make available the identity of all
10 proposers as part of the contracting agency's public records after the proposals are opened.
11 Notwithstanding ORS 192.311 to 192.478, proposals are not required to be open for public inspection
12 until after the notice of intent to award a contract is issued. The fact that proposals are opened at
13 a meeting, as defined in ORS 192.610, does not make the contents of the proposals subject to dis-
14 closure, regardless of whether the public body opening the proposals fails to give notice of or pro-
15 vide for an executive session for the purpose of opening proposals.

16 (b) Notwithstanding a requirement to make proposals open to public inspection after the con-
17 tracting agency issues notice of intent to award a contract, a contracting agency may withhold from
18 disclosure to the public materials included in a proposal that are exempt or conditionally exempt
19 from disclosure under ORS 192.345 or 192.355.

20 (c) If a contracting agency cancels a request for proposals under ORS 279B.100 after receiving
21 or rejecting proposals, the contracting agency may return a proposal to the proposer that made the
22 proposal. The contracting agency shall keep a list of returned proposals in the file for the solici-
23 tation.

24 (7) As provided in the request for proposals or in written addenda issued thereunder, the con-
25 tracting agency, before or after opening proposals, may conduct site tours, demonstrations, individ-
26 ual or group discussions and other informational activities with proposers for the purpose of
27 clarification to ensure full understanding of, and responsiveness to, the solicitation requirements or
28 to consider and respond to requests for modifications of the proposal requirements. The contracting
29 agency shall use procedures designed to accord proposers fair and equal treatment with respect to
30 any opportunity for discussion and revision of proposals.

31 (8) For purposes of evaluation, when provided for in the request for proposals, the contracting
32 agency may employ methods of contractor selection that include, but are not limited to:

33 (a) An award or awards based solely on the ranking of proposals;

34 (b) Discussions leading to best and final offers, in which the contracting agency may not disclose
35 private discussions leading to best and final offers;

36 (c) Discussions leading to best and final offers, in which the contracting agency may not disclose
37 information derived from proposals submitted by competing proposers;

38 (d) Serial negotiations, beginning with the highest ranked proposer;

39 (e) Competitive simultaneous negotiations;

40 (f) Multiple-tiered competition designed to identify, at each level, a class of proposers that fall
41 within a competitive range or to otherwise eliminate from consideration a class of lower ranked
42 proposers;

43 (g) A multistep request for proposals requesting the submission of unpriced technical submittals,
44 and then later issuing a request for proposals limited to the proposers whose technical submittals
45 the contracting agency had determined to be qualified under the criteria set forth in the initial re-

1 quest for proposals; or

2 (h) A combination of methods described in this subsection, as authorized or prescribed by rules
3 adopted under ORS 279A.065.

4 [(9)(a) *A state contracting agency, in evaluating a proposal under this section, shall weight the*
5 *contract price that a prospective contractor proposes at not less than 30 percent of the total weight that*
6 *the state contracting agency gives to all factors in the state contracting agency's final evaluation of a*
7 *proposal. For purposes of this paragraph, a state contracting agency's final evaluation of a proposal*
8 *is the final evaluative step the state contracting agency undertakes before deciding to issue a notice of*
9 *intent to award a public contract, regardless of the specific method of contractor selection that the state*
10 *contracting agency employs under subsection (8) of this section.*]

11 [(b) *The director or other head of a state contracting agency may waive the weighting requirement*
12 *specified in paragraph (a) of this subsection if the director or other head determines in writing that a*
13 *waiver is in the best interest of the state contracting agency. Unless the state contracting agency is the*
14 *Secretary of State or the State Treasurer, the director or other head of the state contracting agency*
15 *shall report in writing to the Director of the Oregon Department of Administrative Services each in-*
16 *stance in which the director or other head waived the requirement and in the report shall outline the*
17 *reasons for the waiver. The Secretary of State and the State Treasurer shall keep a written record of*
18 *each waiver and the reasons for the waiver in the procurement file for the public contract.*]

19 [(10)] (9) Revisions of proposals may be permitted after the submission of proposals and before
20 award for the purpose of obtaining best offers or best and final offers.

21 [(11)] (10) After opening proposals, a contracting agency may issue or electronically post an
22 addendum to the request for proposals that modifies the criteria, rating process and procedure for
23 any tier of competition before the start of the tier to which the addendum applies. The contracting
24 agency shall send an addendum that is issued by a method other than electronic posting to all
25 proposers who are eligible to compete under the addendum. The contracting agency shall issue or
26 post the addendum at least five days before the start of the subject tier of competition or as the
27 contracting agency otherwise determines is adequate to allow eligible proposers to prepare for the
28 competition in accordance with rules adopted under ORS 279A.065.

29 [(12)] (11) The cancellation of requests for proposals and the rejection of proposals must be in
30 accordance with ORS 279B.100.

31 [(13)] (12) In a request for proposals, a contracting agency shall describe the methods by which
32 the contracting agency will make the results of each tier of competitive evaluation available to the
33 proposers who competed in the tier. The contracting agency shall include a description of the man-
34 ner in which the proposers who are eliminated from further competition may protest or otherwise
35 object to the contracting agency's decision.

36 [(14)] (13) A contracting agency shall issue or electronically post the notice of intent to award
37 described in ORS 279B.135 to each proposer who was evaluated in the final competitive tier.

38 [(15)] (14) If a contracting agency awards a contract, the contracting agency shall award the
39 contract to the responsible proposer whose proposal the contracting agency determines in writing
40 is the most advantageous to the contracting agency based on the evaluation process and evaluation
41 factors described in this section and in the request for proposals, applicable preferences described
42 in ORS 279A.120 and 279A.125 and, when applicable, the outcome of any negotiations authorized by
43 the request for proposals. Other factors may not be used in the evaluation. If the request for pro-
44 posals specifies or authorizes awarding multiple public contracts, the contracting agency shall
45 award public contracts to the responsible proposers who qualify for the award of a contract under

1 the terms of the request for proposals.

2 [(16)] (15) A contracting agency may issue a request for information, a request for interest, a
3 request for qualifications or other preliminary documents to obtain information useful in preparing
4 a request for proposals.

5 [(17)] (16) Before executing a contract solicited under this section, a contracting agency shall
6 obtain the proposer's agreement to perform the scope of work and meet the performance standards
7 set forth in the final negotiated scope of work.

8 **SECTION 7.** ORS 279B.145 is amended to read:

9 279B.145. [The determinations] A **determination** under ORS 279B.030, 279B.033, 279B.036,
10 279B.055 (3) and (7), 279B.060 (4) and [(14)] (15), 279B.075, 279B.080, 279B.085 and 279B.110 [are] is
11 final and conclusive unless [they are] **the determination is** clearly erroneous, arbitrary, capricious
12 or contrary to law.

13 **SECTION 8.** ORS 279B.145, as amended by section 7 of this 2018 Act, is amended to read:

14 279B.145. A determination under ORS 279B.030, 279B.033, 279B.036, 279B.055 (3) and (7),
15 279B.060 (4) and [(15)] (14), 279B.075, 279B.080, 279B.085 and 279B.110 is final and conclusive unless
16 the determination is clearly erroneous, arbitrary, capricious or contrary to law.

17 **SECTION 9.** (1) **Section 2 (2) and (3) of this 2018 Act applies to public contracts that a**
18 **contracting agency has advertised or otherwise solicited or, if the contracting agency has**
19 **not advertised or solicited the public contract, to public contracts into which the contracting**
20 **agency enters on or after the operative date specified in section 10 (1) of this 2018 Act.**

21 (2) **Section 4 of this 2018 Act and the amendments to ORS 279B.060 and 279B.145 by**
22 **sections 5 and 7 of this 2018 Act apply to public contracts that a contracting agency has ad-**
23 **vertised or otherwise solicited, or if the contracting agency has not advertised or solicited**
24 **the public contract, to public contracts into which the contracting agency enters on or after**
25 **the operative date specified in section 10 (2) of this 2018 Act and before the operative date**
26 **specified in section 10 (3) of this 2018 Act.**

27 **SECTION 10.** (1) **Section 2 (2) and (3) of this 2018 Act becomes operative on January 2,**
28 **2021.**

29 (2) **Section 4 of this 2018 Act and the amendments to ORS 279B.060 and 279B.145 by**
30 **sections 5 and 7 of this 2018 Act become operative on January 1, 2019.**

31 (3) **The amendments to ORS 279B.060 and 279B.145 by sections 6 and 8 of this 2018 Act**
32 **become operative on January 2, 2020.**

33 (4) **The Attorney General, the Director of the Oregon Department of Administrative**
34 **Services, the Director of Transportation and a contracting agency that adopts rules under**
35 **ORS 279A.065 or 279A.070 may adopt rules and take any other action before the operative**
36 **date specified in subsection (2) of this section that is necessary to enable the Attorney**
37 **General, the director or the contracting agency, on and after the operative date specified in**
38 **subsection (2) of this section, to undertake or exercise all of the duties, functions and powers**
39 **conferred on the Attorney General, the director or the contracting agency under section 4**
40 **of this 2018 Act and the amendments to ORS 279B.060 and 279B.145 by sections 5 and 7 of this**
41 **2018 Act.**

42 **SECTION 11.** Section 4 of this 2018 Act is repealed on January 2, 2020.

43 **SECTION 12.** This 2018 Act takes effect on the 91st day after the date on which the 2018
44 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.