

**B-Engrossed**  
**Senate Bill 1565**

Ordered by the Senate March 2  
Including Senate Amendments dated February 14 and March 2

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 electronic procurement system.]*

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 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. **Sunsets program on January 2, 2020.**

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 279B.**

6 **SECTION 2. (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-**

**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 **ments under ORS chapter 279B. The pilot program, at a minimum, must:**

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

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

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

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

13 (C) **The reactions of bidders or proposers to the reverse auction method and any iden-**  
14 **tifiable benefits or detriments to bidders or proposers that result from using the reverse**  
15 **auction method.**

16 (3) **The department shall report regularly to the Governor and to the Joint Legislative**  
17 **Committee on Information Management and Technology concerning the department's im-**  
18 **plementation of the pilot program and shall submit, not later than December 31, 2019, a final**  
19 **report that outlines the nature of the pilot program and the results of the department's**  
20 **evaluation under subsection (2)(b) of this section.**

21 **SECTION 3.** ORS 279B.060 is amended to read:

22 279B.060. (1) A contracting agency may solicit and award a public contract for goods or ser-  
23 vices, or may award multiple public contracts for goods or services when specified in the request  
24 for proposals, by requesting and evaluating competitive sealed proposals.

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

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

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

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

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

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

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

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

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

7 (A) Reducing or withholding payment;

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

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

12 (3) The request for proposals also may:

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

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

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

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

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

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

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

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

1 rity.

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

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

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

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

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

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

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

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

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

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

37 (e) Competitive simultaneous negotiations;

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

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

45 (h) A combination of methods described in this subsection, as authorized or prescribed by rules

1 adopted under ORS 279A.065.

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

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

19 [(9)] **(10) 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 [(10)] **(11) After [the] opening [of] proposals, a contracting agency may issue or electronically**  
 22 **post an addendum to the request for proposals that modifies the criteria, rating process and proce-**  
 23 **cedure for any tier of competition before the start of the tier to which the addendum applies. The**  
 24 **contracting agency shall send an addendum that is issued by a method other than electronic posting**  
 25 **to all proposers who are eligible to compete under the addendum. The contracting agency shall issue**  
 26 **or 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 [(11)] **(12) The cancellation of requests for proposals and the rejection of proposals must be in**  
 30 **accordance with ORS 279B.100.**

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

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

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

1 contract under the terms of the request for proposals.

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

5 [(16)] (17) 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 4.** ORS 279B.060, as amended by section 3 of this 2018 Act, is amended to read:

9 279B.060. (1) A contracting agency may solicit and award a public contract for goods or ser-  
10 vices, or may award multiple public contracts for goods or services when specified in the request  
11 for proposals, by requesting and evaluating competitive sealed proposals.

12 (2) A request for proposals must:

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

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

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

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

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

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

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

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

39 (A) Reducing or withholding payment;

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

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

44 (3) The request for proposals also may:

45 (a) Identify contractual terms or conditions that the contracting agency reserves, in the request

1 for proposals, for negotiation with proposers;

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

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

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

12 (e) Describe the manner in which the contracting agency will evaluate proposals, identifying the  
13 relative importance of price and other factors the contracting agency will use to evaluate and rate  
14 the proposals in the first tier of competition. If the contracting agency uses more than one tier of  
15 competitive evaluation, the request for proposals must describe the process the contracting agency  
16 will use to evaluate proposals in the subsequent tiers. *[If a state contracting agency conducts the  
17 procurement, the description under this paragraph must state that the state contracting agency in the  
18 evaluation shall weight the contract price that a prospective contractor proposes at not less than 30  
19 percent of the total weight that the state contracting agency gives to all factors in the state contracting  
20 agency's final evaluation of a proposal.]*

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

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

26 (c) The contracting agency shall retain the proposal security if a proposer who is awarded a  
27 contract fails to promptly and properly execute the contract. For purposes of this paragraph, prompt  
28 and proper execution of the contract includes all action by a proposer that is necessary to form a  
29 contract in accordance with the request for proposals, including posting performance security and  
30 submitting proof of insurance if the request for proposals requires the submission. If contract nego-  
31 tiations or competitive negotiations are conducted, the failure, prior to award, of a contracting  
32 agency and a proposer to reach agreement does not constitute grounds for retaining proposal secu-  
33 rity.

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

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

45 (b) Notwithstanding a requirement to make proposals open to public inspection after the con-

1     tracting agency issues notice of intent to award a contract, a contracting agency may withhold from  
 2     disclosure to the public materials included in a proposal that are exempt or conditionally exempt  
 3     from disclosure under ORS 192.345 or 192.355.

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

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

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

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

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

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

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

23    (e) Competitive simultaneous negotiations;

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

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

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

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

40    [(b) The director or other head of a state contracting agency may waive the weighting requirement  
 41    specified in paragraph (a) of this subsection if the director or other head determines in writing that a  
 42    waiver is in the best interest of the state contracting agency. Unless the state contracting agency is the  
 43    Secretary of State or the State Treasurer, the director or other head of the state contracting agency  
 44    shall report in writing to the Director of the Oregon Department of Administrative Services each in-  
 45    stance in which the director or other head waived the requirement and in the report shall outline the



1 *reasons for the waiver. The Secretary of State and the State Treasurer shall keep a written record of*  
 2 *each waiver and the reasons for the waiver in the procurement file for the public contract.]*

3 [(10)] (9) Revisions of proposals may be permitted after the submission of proposals and before  
 4 award for the purpose of obtaining best offers or best and final offers.

5 [(11)] (10) After opening proposals, a contracting agency may issue or electronically post an  
 6 addendum to the request for proposals that modifies the criteria, rating process and procedure for  
 7 any tier of competition before the start of the tier to which the addendum applies. The contracting  
 8 agency shall send an addendum that is issued by a method other than electronic posting to all  
 9 proposers who are eligible to compete under the addendum. The contracting agency shall issue or  
 10 post the addendum at least five days before the start of the subject tier of competition or as the  
 11 contracting agency otherwise determines is adequate to allow eligible proposers to prepare for the  
 12 competition in accordance with rules adopted under ORS 279A.065.

13 [(12)] (11) The cancellation of requests for proposals and the rejection of proposals must be in  
 14 accordance with ORS 279B.100.

15 [(13)] (12) In a request for proposals, a contracting agency shall describe the methods by which  
 16 the contracting agency will make the results of each tier of competitive evaluation available to the  
 17 proposers who competed in the tier. The contracting agency shall include a description of the man-  
 18 ner in which the proposers who are eliminated from further competition may protest or otherwise  
 19 object to the contracting agency's decision.

20 [(14)] (13) A contracting agency shall issue or electronically post the notice of intent to award  
 21 described in ORS 279B.135 to each proposer who was evaluated in the final competitive tier.

22 [(15)] (14) If a contracting agency awards a contract, the contracting agency shall award the  
 23 contract to the responsible proposer whose proposal the contracting agency determines in writing  
 24 is the most advantageous to the contracting agency based on the evaluation process and evaluation  
 25 factors described in this section and in the request for proposals, applicable preferences described  
 26 in ORS 279A.120 and 279A.125 and, when applicable, the outcome of any negotiations authorized by  
 27 the request for proposals. Other factors may not be used in the evaluation. If the request for pro-  
 28 posals specifies or authorizes awarding multiple public contracts, the contracting agency shall  
 29 award public contracts to the responsible proposers who qualify for the award of a contract under  
 30 the terms of the request for proposals.

31 [(16)] (15) A contracting agency may issue a request for information, a request for interest, a  
 32 request for qualifications or other preliminary documents to obtain information useful in preparing  
 33 a request for proposals.

34 [(17)] (16) Before executing a contract solicited under this section, a contracting agency shall  
 35 obtain the proposer's agreement to perform the scope of work and meet the performance standards  
 36 set forth in the final negotiated scope of work.

37 **SECTION 5.** ORS 279B.145 is amended to read:

38 279B.145. [*The determinations*] **A determination** under ORS 279B.030, 279B.033, 279B.036,  
 39 279B.055 (3) and (7), 279B.060 (4) and [(14)] (15), 279B.075, 279B.080, 279B.085 and 279B.110 [*are*] **is**  
 40 final and conclusive unless [*they are*] **the determination is** clearly erroneous, arbitrary, capricious  
 41 or contrary to law.

42 **SECTION 6.** ORS 279B.145, as amended by section 5 of this 2018 Act, is amended to read:

43 279B.145. A determination under ORS 279B.030, 279B.033, 279B.036, 279B.055 (3) and (7),  
 44 279B.060 (4) and [(15)] (14), 279B.075, 279B.080, 279B.085 and 279B.110 is final and conclusive unless  
 45 the determination is clearly erroneous, arbitrary, capricious or contrary to law.

1        **SECTION 7.** Section 2 of this 2018 Act and the amendments to ORS 279B.060 and 279B.145  
2 by sections 3 and 5 of this 2018 Act apply to public contracts that a contracting agency has  
3 advertised or otherwise solicited, or if the contracting agency has not advertised or solicited  
4 the public contract, to public contracts into which the contracting agency enters on or after  
5 the operative date specified in section 8 (1) of this 2018 Act and before the operative date  
6 specified in section 8 (2) of this 2018 Act.

7        **SECTION 8.** (1) Section 2 of this 2018 Act and the amendments to ORS 279B.060 and  
8 279B.145 by sections 3 and 5 of this 2018 Act become operative on January 1, 2019.

9        (2) The amendments to ORS 279B.060 and 279B.145 by sections 4 and 6 of this 2018 Act  
10 become operative on January 2, 2020.

11        (3) The Attorney General, the Director of the Oregon Department of Administrative  
12 Services, the Director of Transportation and a contracting agency that adopts rules under  
13 ORS 279A.065 or 279A.070 may adopt rules and take any other action before the operative  
14 date specified in subsection (1) of this section that is necessary to enable the Attorney  
15 General, the director or the contracting agency, on and after the operative date specified in  
16 subsection (1) of this section, to undertake or exercise all of the duties, functions and powers  
17 conferred on the Attorney General, the director or the contracting agency under section 2  
18 of this 2018 Act and the amendments to ORS 279B.060 and 279B.145 by sections 3 and 5 of this  
19 2018 Act.

20        **SECTION 9.** Section 2 of this 2018 Act is repealed on January 2, 2020.

21        **SECTION 10.** This 2018 Act takes effect on the 91st day after the date on which the 2018  
22 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.  
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