

SB 1565-1
(LC 245)
2/5/18 (TSB/ps)

Requested by SENATE COMMITTEE ON GENERAL GOVERNMENT AND ACCOUNTABILITY

**PROPOSED AMENDMENTS TO
SENATE BILL 1565**

1 On page 1 of the printed bill, line 8, after “an” insert “end-to-end”.

2 On page 2, delete lines 1 and 2 and insert:

3 “(a) A bidder or proposer is aware that a certain number of other bidders
4 or proposers are submitting bids or price proposals for the procurement but
5 does not know the identities of the other bidders or proposers;”.

6 Delete lines 24 through 27 and insert:

7 “(3) The department shall report regularly to the Governor and to the
8 Joint Legislative Committee on Information Management and Technology
9 concerning the department’s implementation of the pilot program and shall
10 submit a final report not later than December 31, 2019, that outlines the
11 nature of the pilot program and the results of the department’s evaluation
12 under subsection (2)(b) of this section.”.

13 On page 6, after line 11, insert:

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

16 “279B.060. (1) A contracting agency may solicit and award a public con-
17 tract for goods or services, or may award multiple public contracts for goods
18 or services when specified in the request for proposals, by requesting and
19 evaluating competitive sealed proposals.

20 “(2) A request for proposals must:

21 “(a) Specify a time and date by which sealed proposals must be received,

1 and a place at which the proposals must be submitted. The contracting
2 agency, in the contracting agency's sole discretion, may receive proposals
3 by electronic means or may direct or permit proposers to submit proposals
4 by electronic means.

5 “(b) Specify the name and title of the person designated to receive pro-
6 posals and the person the contracting agency designates as the contact per-
7 son for the procurement, if different.

8 “(c) Describe the procurement. In the description, the contracting agency
9 shall identify the scope of work included within the procurement, outline the
10 contractor's anticipated duties and set expectations for the contractor's per-
11 formance. Unless the contractor is providing architectural, engineering,
12 photogrammetric mapping, transportation planning or land surveying ser-
13 vices or related services, as defined in ORS 279C.100, or unless the con-
14 tracting agency for good cause specifies otherwise, the scope of work shall
15 require the contractor to meet the highest standards prevalent in the indus-
16 try or business most closely involved in providing the appropriate goods or
17 services.

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

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

23 “(f) State that ‘Contractors shall use recyclable products to the maximum
24 extent economically feasible in the performance of the contract work set
25 forth in this document.’ if a state contracting agency issues the request for
26 proposals.

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

29 “(h) Include all contractual terms and conditions applicable to the pro-
30 curement. The contract terms and conditions shall specify clear consequences

1 for a contractor's failure to perform the scope of work identified in the re-
2 quest for proposals or the contractor's failure to meet established perform-
3 ance standards. The consequences may include, but are not limited to:

4 "(A) Reducing or withholding payment;

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

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

11 "(3) The request for proposals also may:

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

14 "(b) Request that proposers propose contractual terms and conditions that
15 relate to subject matter reasonably identified in the request for proposals;

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

19 "(d) Announce the method the contracting agency will use to select the
20 contractor, which may include, but is not limited to, negotiating with the
21 highest ranked proposer, competitive negotiations, a multiple-tiered compe-
22 tition 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
24 lower ranked proposers or a combination of methods, as authorized or pre-
25 scribed by rules adopted under ORS 279A.065; and

26 "(e) Describe the manner in which the contracting agency will evaluate
27 proposals, identifying the relative importance of price and other factors the
28 contracting agency will use to evaluate and rate the proposals in the first
29 tier of competition. If the contracting agency uses more than one tier of
30 competitive evaluation, the request for proposals must describe the process

1 the contracting agency will use to evaluate proposals in the subsequent tiers.
2 *[If a state contracting agency conducts the procurement, the description under*
3 *this paragraph must state that the state contracting agency in the evaluation*
4 *shall weight the contract price that a prospective contractor proposes at not less*
5 *than 30 percent of the total weight that the state contracting agency gives to*
6 *all factors in the state contracting agency's final evaluation of a proposal.]*

7 “(4)(a) The contracting agency may require proposal security in any form
8 the contracting agency deems prudent. Proposal security must serve the same
9 function with respect to requests for proposals as bid security serves with
10 respect to invitations to bid under ORS 279B.055.

11 “(b) The contracting agency shall return the proposal security to all
12 proposers upon the execution of the contract.

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

23 “(5) A contracting agency shall give public notice of the request for pro-
24 posals in the same manner as provided for public notice of invitations to bid
25 in ORS 279B.055 (4).

26 “(6)(a) Notwithstanding ORS 192.311 to 192.478, a contracting agency may
27 open proposals in a manner that avoids disclosing contents to competing
28 proposers during, when applicable, the process of negotiation, but the con-
29 tracting agency shall record and make available the identity of all proposers
30 as part of the contracting agency's public records after the proposals are

1 opened. Notwithstanding ORS 192.311 to 192.478, proposals are not required
2 to be open for public inspection until after the notice of intent to award a
3 contract is issued. The fact that proposals are opened at a meeting, as de-
4 fined in ORS 192.610, does not make the contents of the proposals subject to
5 disclosure, regardless of whether the public body opening the proposals fails
6 to give notice of or provide for an executive session for the purpose of
7 opening proposals.

8 “(b) Notwithstanding a requirement to make proposals open to public in-
9 spection after the contracting agency issues notice of intent to award a
10 contract, a contracting agency may withhold from disclosure to the public
11 materials included in a proposal that are exempt or conditionally exempt
12 from disclosure under ORS 192.345 or 192.355.

13 “(c) If a contracting agency cancels a request for proposals under ORS
14 279B.100 after receiving or rejecting proposals, the contracting agency may
15 return a proposal to the proposer that made the proposal. The contracting
16 agency shall keep a list of returned proposals in the file for the solicitation.

17 “(7) As provided in the request for proposals or in written addenda issued
18 thereunder, the contracting agency, before or after opening proposals, may
19 conduct site tours, demonstrations, individual or group discussions and other
20 informational activities with proposers for the purpose of clarification to
21 ensure full understanding of, and responsiveness to, the solicitation require-
22 ments or to consider and respond to requests for modifications of the pro-
23 posal requirements. The contracting agency shall use procedures designed to
24 accord proposers fair and equal treatment with respect to any opportunity
25 for discussion and revision of proposals.

26 “(8) For purposes of evaluation, when provided for in the request for
27 proposals, the contracting agency may employ methods of contractor se-
28 lection that include, but are not limited to:

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

30 “(b) Discussions leading to best and final offers, in which the contracting

1 agency may not disclose private discussions leading to best and final offers;

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

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

6 “(e) Competitive simultaneous negotiations;

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

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

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

17 “[9)(a) *A state contracting agency, in evaluating a proposal under this*
18 *section, shall weight the contract price that a prospective contractor proposes*
19 *at not less than 30 percent of the total weight that the state contracting agency*
20 *gives to all factors in the state contracting agency’s final evaluation of a pro-*
21 *posal. For purposes of this paragraph, a state contracting agency’s final eval-*
22 *uation of a proposal is the final evaluative step the state contracting agency*
23 *undertakes before deciding to issue a notice of intent to award a contract, re-*
24 *gardless 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*
27 *weighting requirement specified in paragraph (a) of this subsection if the di-*
28 *rector or other head determines in writing that a waiver is in the best interest*
29 *of the state contracting agency. The director or other head shall report in*
30 *writing to the Director of the Oregon Department of Administrative Services*

1 *each instance in which the director or other head waived the requirement and*
2 *in the report shall outline the reasons for the waiver.]*

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

6 “[(11)] **(10)** After opening proposals, a contracting agency may issue or
7 electronically post an addendum to the request for proposals that modifies
8 the criteria, rating process and procedure for any tier of competition before
9 the start of the tier to which the addendum applies. The contracting agency
10 shall send an addendum that is issued by a method other than electronic
11 posting to all proposers who are eligible to compete under the addendum.
12 The contracting agency shall issue or post the addendum at least five days
13 before the start of the subject tier of competition or as the contracting
14 agency otherwise determines is adequate to allow eligible proposers to pre-
15 pare for the competition in accordance with rules adopted under ORS
16 279A.065.

17 “[(12)] **(11)** The cancellation of requests for proposals and the rejection
18 of proposals must be in accordance with ORS 279B.100.

19 “[(13)] **(12)** In a request for proposals, a contracting agency shall describe
20 the methods by which the contracting agency will make the results of each
21 tier of competitive evaluation available to the proposers who competed in the
22 tier. The contracting agency shall include a description of the manner in
23 which the proposers who are eliminated from further competition may pro-
24 test or otherwise object to the contracting agency’s decision.

25 “[(14)] **(13)** A contracting agency shall issue or electronically post the
26 notice of intent to award described in ORS 279B.135 to each proposer who
27 was evaluated in the final competitive tier.

28 “[(15)] **(14)** If a contracting agency awards a contract, the contracting
29 agency shall award the contract to the responsible proposer whose proposal
30 the contracting agency determines in writing is the most advantageous to the

1 contracting agency based on the evaluation process and evaluation factors
2 described in this section and in the request for proposals, applicable prefer-
3 ences described in ORS 279A.120 and 279A.125 and, when applicable, the
4 outcome of any negotiations authorized by the request for proposals. Other
5 factors may not be used in the evaluation. If the request for proposals spec-
6 ifies or authorizes awarding multiple public contracts, the contracting
7 agency shall award public contracts to the responsible proposers who qualify
8 for the award of a contract under the terms of the request for proposals.

9 “[~~(16)~~] **(15)** A contracting agency may issue a request for information, a
10 request for interest, a request for qualifications or other preliminary docu-
11 ments to obtain information useful in preparing a request for proposals.

12 “[~~(17)~~] **(16)** Before executing a contract solicited under this section, a
13 contracting agency shall obtain the proposer’s agreement to perform the
14 scope of work and meet the performance standards set forth in the final ne-
15 gotiated scope of work.”.

16 In line 12, delete “6” and insert “7”.

17 Delete lines 17 through 35 and insert:

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

20 “279B.145. A determination under ORS 279B.030, 279B.033, 279B.036,
21 279B.055 (3) and (7), 279B.060 (4) and [~~(15)~~] **(14)**, 279B.075, 279B.080, 279B.085
22 and 279B.110 is final and conclusive unless the determination is clearly er-
23 roneous, arbitrary, capricious or contrary to law.

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

30 **“(2) Section 4 of this 2018 Act and the amendments to ORS 279B.060**

1 and 279B.145 by sections 5 and 7 of this 2018 Act apply to public con-
2 tracts that a contracting agency has advertised or otherwise solicited,
3 or if the contracting agency has not advertised or solicited the public
4 contract, to public contracts into which the contracting agency enters
5 on or after the operative date specified in section 10 (2) of this 2018
6 Act and before the operative date specified in section 10 (3) of this 2018
7 Act.

8 **“SECTION 10. (1) Section 2 (2) and (3) of this 2018 Act becomes op-
9 erative on January 2, 2021.**

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

13 **“(3) The amendments to ORS 279B.060 and 279B.145 by sections 6 and
14 8 of this 2018 Act become operative on January 2, 2020.**

15 **“(4) The Attorney General, the Director of the Oregon Department
16 of Administrative Services, the Director of Transportation and a con-
17 tracting agency that adopts rules under ORS 279A.065 or 279A.070 may
18 adopt rules and take any other action before the operative date speci-
19 fied in subsection (2) of this section that is necessary to enable the
20 Attorney General, the director or the contracting agency, on and after
21 the operative date specified in subsection (2) of this section, to
22 undertake or exercise all of the duties, functions and powers conferred
23 on the Attorney General, the director or the contracting agency under
24 section 4 of this 2018 Act and the amendments to ORS 279B.060 and
25 279B.145 by sections 5 and 7 of this 2018 Act.**

26 **“SECTION 11. Section 4 of this 2018 Act is repealed on January 2,
27 2020.**

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

