

**A-Engrossed**  
**House Bill 2769**

Ordered by the House March 15  
Including House Amendments dated March 15

Sponsored by Representative MCLAIN, Senators DEMBROW, MANNING JR, HANSELL; Representatives BYNUM, DOHERTY, EVANS, HOLVEY, SOLLMAN, Senators BOQUIST, RILEY

**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.

Permits contracting agency, in conducting procurement for architectural, engineering, photogrammetric mapping, transportation planning and land surveying services, to consider pricing policies, proposals and other pricing information as part of screening and selection of consultants in specified circumstances. **Specifies allowable contents of pricing proposals. Specifies protest rights for prospective consultants.**

Becomes operative on January 1, 2020.

Takes effect on 91st day following adjournment sine die.

**A BILL FOR AN ACT**

1  
2 Relating to a consultant selection process for a public contract for certain services; creating new  
3 provisions; amending ORS 279A.157 and 279C.110; and prescribing an effective date.

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

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

6 279C.110. (1) A contracting agency shall select [*consultants*] **a consultant** to provide architec-  
7 tural, engineering, photogrammetric mapping, transportation planning or land surveying services on  
8 the basis of the consultant's qualifications for the type of professional service required. A contract-  
9 ing agency may solicit or use pricing policies and proposals or other pricing information, including  
10 the number of hours proposed for the service required, expenses, hourly rates and overhead, to de-  
11 termine consultant compensation only after the contracting agency has selected a [*candidate pursu-*  
12 *ant to subsection (2) of this section*] **consultant**.

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

20 (3) A contracting agency's screening and selection procedures under this section, regardless of  
21 the estimated cost of the architectural, engineering, photogrammetric mapping, transportation plan-  
22 ning or land surveying services for a project, may include considering each [*candidate's*] **prospec-**  
23 **tive consultant's:**

24 (a) Specialized experience, capabilities and technical competence, which the [*candidate*] **pro-**  
25 **spective consultant** may demonstrate with the [*candidate's*] **prospective consultant's** proposed

**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 approach and methodology to meet the project requirements;

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

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

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

10 (e) Availability to the project locale;

11 (f) Familiarity with the project locale; and

12 (g) Proposed project management techniques.

13 (4) If the screening and selection procedures a contracting agency **follows under this section**  
14 **or** creates under subsection (2) of this section result in the contracting agency's determination that  
15 two or more *[candidates]* **prospective consultants** are equally qualified, the contracting agency may  
16 **use any process to** select a *[candidate through any process the contracting agency adopts]* **consult-**  
17 **ant** that is not based on the *[candidate's]* **prospective consultant's** pricing policies, proposals or  
18 other pricing information.

19 (5) **Notwithstanding the requirement in subsection (1) of this section that a contracting**  
20 **agency may not solicit or use pricing policies, proposals or other pricing information until**  
21 **after the contracting agency has selected a consultant, a local contracting agency may use**  
22 **pricing policies, proposals or other pricing information as part of the local contracting**  
23 **agency's screening and selection of prospective consultants if the local contracting agency:**

24 (a) **States in solicitation documents for the procurement:**

25 (A) **That the local contracting agency will screen and select prospective consultants as**  
26 **provided in this subsection;**

27 (B) **How the local contracting agency will rank proposals from prospective consultants,**  
28 **with a specific focus on:**

29 (i) **Which factors the local contracting agency will consider in evaluating proposals, in-**  
30 **cluding pricing policies, proposals or other pricing information, if the local contracting**  
31 **agency will use pricing policies, proposals or other pricing information in the evaluation; and**

32 (ii) **The relative weight the local contracting agency will give each factor, disclosing at**  
33 **a minimum the number of available points for each factor, the percentage each factor com-**  
34 **prises in the total evaluation score and any other weighting criteria the local contracting**  
35 **agency intends to use;**

36 (C) **An estimate of the cost of professional services the local contracting agency requires**  
37 **for the procurement; and**

38 (D) **A scope of work that is sufficiently detailed to enable a prospective consultant to**  
39 **prepare a responsive proposal.**

40 (b) **Evaluates each prospective consultant on the basis of the prospective consultant's**  
41 **qualifications to perform the professional services the local contracting agency requires for**  
42 **the procurement. The local contracting agency may use the criteria set forth in subsection**  
43 **(3) of this section to conduct the evaluation.**

44 (c) **Announces the evaluation scores and rank for each prospective consultant after**  
45 **completing the evaluation described in paragraph (b) of this subsection. The local contracting**

1 agency may determine that as many as three of the top-ranked prospective consultants are  
2 qualified to perform the professional services the local contracting agency requires for the  
3 procurement and may request a pricing proposal for the scope of work stated in paragraph  
4 (a)(D) of this subsection from each of the top-ranked consultants. The pricing proposal:

5 (A) Must consist of:

6 (i) A schedule of hourly rates that the prospective consultant will charge for the work  
7 of each individual or each labor classification that will perform the professional services the  
8 local contracting agency requires for the procurement, in the form of an offer that is irrev-  
9 ocable for not less than 90 days after the date of the proposal; and

10 (ii) A reasonable estimate of hours that the prospective consultant will require to per-  
11 form the professional services the local contracting agency requires for the procurement;  
12 and

13 (B) May include, at the local contracting agency's request, additional pricing information  
14 that is limited to:

15 (i) A description of each task that the prospective consultant understands as comprising  
16 the professional services;

17 (ii) A list of each individual or labor classification that will perform each task, together  
18 with the hourly rate that applies to the individual or labor classification; and

19 (iii) A list of expenses, including travel expenses, that the prospective consultant expects  
20 to incur in connection with providing the professional services.

21 (d) Permits a prospective consultant identified as qualified under paragraph (c) of this  
22 subsection to withdraw from consideration for the procurement if the prospective consultant  
23 does not wish to provide a price proposal.

24 (e) Completes the evaluation and selects a consultant from among the top-ranked pro-  
25 spective consultants that have not withdrawn as provided under paragraph (d) of this sub-  
26 section, giving not more than 15 percent of the weight in the evaluation to each prospective  
27 consultant's price proposal.

28 *[(5) The contracting agency and the selected candidate shall mutually discuss and refine the scope*  
29 *of services for the project and shall negotiate conditions, including but not limited to compensation level*  
30 *and performance schedule, based on the scope of services. The compensation level paid must be rea-*  
31 *sonable and fair to the contracting agency as determined solely by the contracting agency. Authority*  
32 *to negotiate a contract under this section does not supersede any provision of ORS 279A.140 or*  
33 *279C.520.]*

34 (6) The contracting agency and the consultant that the contracting agency selects shall  
35 mutually discuss, refine and finalize the scope of, the rates and number of hours applicable  
36 to, and the maximum compensation level for the professional services and shall negotiate  
37 conditions including, but not limited to, a performance schedule for the project. The con-  
38 tracting agency may not pay a compensation level that exceeds a level that the contracting  
39 agency alone determines is fair and reasonable to the contracting agency. Authority to ne-  
40 gotiate a contract under this section does not supersede any provision of ORS 279A.140 or  
41 279C.520.

42 [(6)] (7) If the contracting agency and [the selected candidate] a consultant that the contract-  
43 ing agency selected are unable for any reason to negotiate a contract at a compensation level that  
44 is reasonable and fair to the contracting agency, the contracting agency shall, either orally or in  
45 writing, formally terminate negotiations with the selected [candidate] consultant. The contracting

1 agency may then negotiate with the next most qualified [*candidate*] **prospective consultant**. The  
 2 [*negotiation process*] **contracting agency** may continue in this manner through successive [*candi-*  
 3 *dates*] **prospective consultants** until an agreement is reached or the contracting agency terminates  
 4 the [*consultant contracting*] **selection** process.

5 **(8) A prospective consultant has a right to protest the contents of a contracting agency's**  
 6 **solicitation documents and the contracting agency's selection of a consultant in accordance**  
 7 **with:**

8 **(a) Protest procedures in model rules the Attorney General adopts under ORS 279A.065;**  
 9 **or**

10 **(b) Protest procedures the contracting agency must set forth in rules that the con-**  
 11 **tracting agency adopts, if the contracting agency adopts rules under ORS 279A.065 (6).**

12 [(7)] **(9) [It is the] A** goal of this state **is** to promote a sustainable economy in the rural areas  
 13 of [*the*] **this** state. In order to monitor progress toward this goal, a state contracting agency shall  
 14 keep a record of the locations in which architectural, engineering, photogrammetric mapping,  
 15 transportation planning or land surveying services contracts and related services contracts are  
 16 performed throughout [*the*] **this** state, the locations of the selected consultants and the direct ex-  
 17 penses [*on*] **of** each contract. This record must include the total number of contracts awarded to  
 18 each consultant [*firm*] over a 10-year period. The record of direct expenses must include all per-  
 19 sonnel travel expenses as a separate and identifiable expense [*on*] **of** the contract. Upon request, the  
 20 state contracting agency shall make these records available to the public.

21 [(8)] **(10)** Notwithstanding the provisions of subsection (1) of this section, a contracting agency  
 22 may directly appoint a consultant if the estimated cost of the architectural, engineering, pho-  
 23 togrammetric mapping, transportation planning or land surveying services for the project does not  
 24 exceed \$100,000.

25 [(9)] **(11)** Notwithstanding the provisions of subsections (1) and [(8)] **(10)** of this section, a con-  
 26 tracting agency may directly appoint a consultant for architectural, engineering, photogrammetric  
 27 mapping, transportation planning or land surveying services in an emergency.

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

29 279A.157. (1) As used in this section:

30 (a)(A) "Contract form" means a document with terms and conditions that the Attorney General  
 31 and the Oregon Department of Administrative Services develop, approve and make available for  
 32 state contracting agencies to use without alteration, except as provided in subparagraph (B) of this  
 33 paragraph, as the terms and conditions of a public contract.

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

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

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

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

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

16 (b) A state contracting agency shall use a contract form or contract template for all price  
17 agreements, cooperative procurements or procurements for which the Attorney General or the Di-  
18 rector of the Oregon Department of Administrative Services determines that the specifications for  
19 goods or services, the terms and conditions, the scope of work or other aspects of a procurement  
20 or a class of procurements do not vary significantly among state contracting agencies, or for pro-  
21 curements or classes of procurements in which the Attorney General or the director determines that  
22 using a contract form or contract template is necessary for the state contracting agency to avoid  
23 unreasonable liabilities or other risks or would promote best practices in public contracting. A state  
24 contracting agency, in accordance with the Public Contracting Code, may negotiate the terms and  
25 conditions set forth in a contract form or contract template but may not vary the terms and condi-  
26 tions without the advice of the Attorney General or legal counsel that the Attorney General ap-  
27 proves if the state contracting agency anticipates that the contract form or contract template will  
28 be the basis for a public contract with a contract price that exceeds \$150,000.

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

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

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

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

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

1 (d) This subsection does not apply to a procurement that a state contracting agency conducts  
2 under ORS 279B.065, 279B.080 or 279C.110 [(9)] (11).

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

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

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

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

15 **SECTION 3. The amendments to ORS 279A.157 and 279C.110 by sections 1 and 2 of this**  
16 **2019 Act apply to procurements that a contracting agency first advertises or otherwise so-**  
17 **licits or, if the contracting agency does not advertise or otherwise solicit the procurement,**  
18 **to public contracts into which the contracting agency enters on or after the operative date**  
19 **specified in section 4 of this 2019 Act.**

20 **SECTION 4. (1) The amendments to ORS 279A.157 and 279C.110 by sections 1 and 2 of this**  
21 **2019 Act become operative on January 1, 2020.**

22 **(2) A contracting agency may adopt rules and take any other action before the operative**  
23 **date specified in subsection (1) of this section that is necessary to enable the contracting**  
24 **agency, on and after the operative date specified in subsection (1) of this section, to under-**  
25 **take or exercise all of the duties, functions and powers conferred on the contracting agency**  
26 **by the amendments to ORS 279A.157 and 279C.110 by sections 1 and 2 of this 2019 Act.**

27 **SECTION 5. This 2019 Act takes effect on the 91st day after the date on which the 2019**  
28 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

29