CHAPTER 55

AN ACT

HB 2769

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

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

SECTION 1. ORS 279C.110 is amended to read:
279C.110. (1) A contracting agency shall select
[consultants] a consultant to provide architectural,
engineering, photogrammetric mapping, transporta-
tion planning or land surveying services on the basis
of the consultant’s qualifications for the type of
professional service required. A contracting agency
may solicit or use pricing policies and proposals or
other pricing information, including the number of
hours proposed for the service required, expenses,
hourly rates and overhead, to determine consultant
compensation only after the contracting agency has
selected a [candidate pursuant to subsection (2) of
this section] consultant.

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

(3) A contracting agency’s screening and selec-
tion procedures under this section, regardless of
the estimated cost of the architectural, engineering,
photogrammetric mapping, transportation planning
or land surveying services for a project, may include
considering each [candidate’s] prospective
consultant’s:
(a) Specialized experience, capabilities and tech-
nical competence, which the [candidate] prospective
consultant may demonstrate with the [candidate’s]
prospective consultant’s proposed approach and
methodology to meet the project requirements;
(b) Resources committed to perform the [work]
services and the proportion of the time that the
[candidate’s] prospective consultant’s staff would
spend on the project if the consultant were to
perform services for the contracting agency,
including time for specialized services, within the applicable time limits;
(c) Record of past performance, including but not
limited to price and cost data from previous projects,
quality of work, ability to meet schedules, cost con-
trol and contract administration;
(d) Ownership status and employment practices
regarding disadvantaged business enterprises,
minority-owned businesses, woman-owned businesses,
businesses that service-disabled veterans own,
emerging small businesses or historically underuti-
lized businesses;
(e) Availability to the project locale;
(f) Familiarity with the project locale; and
(g) Proposed project management techniques.

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

(5) Notwithstanding the requirement in sub-
section (1) of this section that a contracting
agency may not solicit or use pricing policies,
proposals or other pricing information until after
the contracting agency has selected a con-
sultant, a local contracting agency may use
pricing policies, proposals or other pricing in-
formation as part of the local contracting agency’s
screening and selection of prospective consultants if the local contracting agency:
(a) States in solicitation documents for the
procurement:
(A) That the local contracting agency will
screen and select prospective consultants as
provided in this subsection;
(B) How the local contracting agency will
rank proposals from prospective consultants,
with a specific focus on:
(i) Which factors the local contracting
agency will consider in evaluating proposals,
including pricing policies, proposals or other
pricing information, if the local contracting
agency will use pricing policies, proposals or other
pricing information in the evaluation; and
(ii) The relative weight the local contracting
agency will give each factor, disclosing at a
minimum the number of available points for
each factor, the percentage each factor com-
prises in the total evaluation score and any
other weighting criteria the local contracting
agency intends to use;
(C) An estimate of the cost of professional
services the local contracting agency requires
for the procurement; and
(D) A scope of work that is sufficiently
detailed to enable a prospective consultant to
prepare a responsive proposal.
(b) Evaluates each prospective consultant on
the basis of the prospective consultant’s quali-
fications to perform the professional services
the local contracting agency requires for the
procurement. The local contracting agency may
use the criteria set forth in subsection (3) of
this section to conduct the evaluation.
(c) Announces the evaluation scores and
rank for each prospective consultant after com-
pleting the evaluation described in paragraph (b)
of this subsection. The local contracting agency may determine that as many as three of the top-ranked prospective consultants are qualified to perform the professional services the local contracting agency requires for the procurement and may request a pricing proposal for the scope of work stated in paragraph (a)(D) of this subsection from each of the top-ranked consultants. The pricing proposal:

(A) Must consist of:
(i) A schedule of hourly rates that the prospective consultant will charge for the work of each individual or each labor classification that will perform the professional services the local contracting agency requires for the procurement, in the form of an offer that is irrevocable for not less than 90 days after the date of the proposal; and
(ii) A reasonable estimate of hours that the prospective consultant will require to perform the professional services the local contracting agency requires for the procurement, in the form of an offer that is irrevocable for not less than 90 days after the date of the proposal; and

(B) May include, at the local contracting agency's request, additional pricing information that is limited to:
(i) A description of each task that the prospective consultant understands as comprising the professional services;
(ii) A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to the individual or labor classification; and
(iii) A list of expenses, including travel expenses, that the prospective consultant expects to incur in connection with providing the professional services.

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

(e) Completes the evaluation and selects a consultant from among the top-ranked prospective consultants that have not withdrawn as provided under paragraph (d) of this subsection, giving not more than 15 percent of the weight in the evaluation to each prospective consultant’s price proposal.

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

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

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

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

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

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

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

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

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

SECTION 2. ORS 279A.157 is amended to read:
279A.157. (1) As used in this section:

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

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

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

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

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

(2)(a) Except as provided in paragraph (c) of this subsection, a state contracting agency shall use a solicitation template in advertising and soliciting all procurements under the Public Contracting Code and, as provided in paragraph (b) of this subsection, shall use a contract form or a contract template, as appropriate, as the basis for all public contracts into which the state contracting agency enters. A state contracting agency, in accordance with the Public Contracting Code, may negotiate the terms and conditions in a contract form or contract template but may not vary the terms and conditions set forth in a contract form or contract template only if:

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

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

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

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

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

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

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

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

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

SECTION 3. The amendments to ORS 279A.157 and 279C.110 by sections 1 and 2 of this 2019 Act apply to procurements that a contracting agency enters on or after the operative date specified in section 4 of this 2019 Act.


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

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

Approved by the Governor May 2, 2019
Filed in the office of Secretary of State May 6, 2019
Effective date September 29, 2019