

SENATE AMENDMENTS TO SENATE BILL 1565

By COMMITTEE ON GENERAL GOVERNMENT AND ACCOUNTABILITY

February 14

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

2 Delete lines 16 through 18 and insert:

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

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

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

9 Delete lines 24 through 27 and insert:

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

15 On page 5, line 14, before “contract” insert “public”.

16 In line 19, after the period insert “Unless the state contracting agency is the Secretary of State
17 or the State Treasurer;”.

18 In line 20, after “head” insert “of the state contracting agency”.

19 In line 22, after the period insert “The Secretary of State and the State Treasurer shall keep a
20 written record of each waiver and the reasons for the waiver in the procurement file for the public
21 contract.”.

22 On page 6, after line 11, insert:

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

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

27 “(2) A request for proposals must:

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

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

34 “(c) Describe the procurement. In the description, the contracting agency shall identify the
35 scope of work included within the procurement, outline the contractor’s anticipated duties and set

1 expectations for the contractor's performance. Unless the contractor is providing architectural,
2 engineering, photogrammetric mapping, transportation planning or land surveying services or re-
3 lated services, as defined in ORS 279C.100, or unless the contracting agency for good cause specifies
4 otherwise, the scope of work shall require the contractor to meet the highest standards prevalent
5 in the industry or business most closely involved in providing the appropriate goods or services.

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

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

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

13 "(g) Require the contractor or subcontractor to possess an asbestos abatement license, if re-
14 quired under ORS 468A.710.

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

19 "(A) Reducing or withholding payment;

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

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

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

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

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

29 "(c) Contain or incorporate the form and content of the contract that the contracting agency
30 will accept, or suggest contract terms and conditions that nevertheless may be the subject of nego-
31 tiations with proposers;

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

37 "(e) Describe the manner in which the contracting agency will evaluate proposals, identifying
38 the relative importance of price and other factors the contracting agency will use to evaluate and
39 rate the proposals in the first tier of competition. If the contracting agency uses more than one tier
40 of competitive evaluation, the request for proposals must describe the process the contracting
41 agency will use to evaluate proposals in the subsequent tiers. *[If a state contracting agency conducts*
42 *the procurement, the description under this paragraph must state that the state contracting agency in*
43 *the evaluation shall weight the contract price that a prospective contractor proposes at not less than*
44 *30 percent of the total weight that the state contracting agency gives to all factors in the state con-*
45 *tracting agency's final evaluation of a proposal.]*

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

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

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

14 “(5) A contracting agency shall give public notice of the request for proposals in the same
15 manner as provided for public notice of invitations to bid in ORS 279B.055 (4).

16 “(6)(a) Notwithstanding ORS 192.311 to 192.478, a contracting agency may open proposals in a
17 manner that avoids disclosing contents to competing proposers during, when applicable, the process
18 of negotiation, but the contracting agency shall record and make available the identity of all
19 proposers as part of the contracting agency’s public records after the proposals are opened.
20 Notwithstanding ORS 192.311 to 192.478, proposals are not required to be open for public inspection
21 until after the notice of intent to award a contract is issued. The fact that proposals are opened at
22 a meeting, as defined in ORS 192.610, does not make the contents of the proposals subject to dis-
23 closure, regardless of whether the public body opening the proposals fails to give notice of or pro-
24 vide for an executive session for the purpose of opening proposals.

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

29 “(c) If a contracting agency cancels a request for proposals under ORS 279B.100 after receiving
30 or rejecting proposals, the contracting agency may return a proposal to the proposer that made the
31 proposal. The contracting agency shall keep a list of returned proposals in the file for the solicita-
32 tion.

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

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

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

43 “(b) Discussions leading to best and final offers, in which the contracting agency may not dis-
44 close private discussions leading to best and final offers;

45 “(c) Discussions leading to best and final offers, in which the contracting agency may not dis-

1 close information derived from proposals submitted by competing proposers;

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

3 “(e) Competitive simultaneous negotiations;

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

7 “(g) A multistep request for proposals requesting the submission of unpriced technical submit-
8 tals, and then later issuing a request for proposals limited to the proposers whose technical sub-
9 mittals the contracting agency had determined to be qualified under the criteria set forth in the
10 initial request for proposals; or

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

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

20 “[~~(b)~~ *The director or other head of a state contracting agency may waive the weighting requirement*
21 *specified in paragraph (a) of this subsection if the director or other head determines in writing that a*
22 *waiver is in the best interest of the state contracting agency. Unless the state contracting agency is the*
23 *Secretary of State or the State Treasurer, the director or other head of the state contracting agency*
24 *shall report in writing to the Director of the Oregon Department of Administrative Services each in-*
25 *stance in which the director or other head waived the requirement and in the report shall outline the*
26 *reasons for the waiver. The Secretary of State and the State Treasurer shall keep a written record of*
27 *each waiver and the reasons for the waiver in the procurement file for the public contract.]*

28 “[~~(10)~~ **(9)** Revisions of proposals may be permitted after the submission of proposals and before
29 award for the purpose of obtaining best offers or best and final offers.

30 “[~~(11)~~ **(10)** After opening proposals, a contracting agency may issue or electronically post an
31 addendum to the request for proposals that modifies the criteria, rating process and procedure for
32 any tier of competition before the start of the tier to which the addendum applies. The contracting
33 agency shall send an addendum that is issued by a method other than electronic posting to all
34 proposers who are eligible to compete under the addendum. The contracting agency shall issue or
35 post the addendum at least five days before the start of the subject tier of competition or as the
36 contracting agency otherwise determines is adequate to allow eligible proposers to prepare for the
37 competition in accordance with rules adopted under ORS 279A.065.

38 “[~~(12)~~ **(11)** The cancellation of requests for proposals and the rejection of proposals must be in
39 accordance with ORS 279B.100.

40 “[~~(13)~~ **(12)** In a request for proposals, a contracting agency shall describe the methods by which
41 the contracting agency will make the results of each tier of competitive evaluation available to the
42 proposers who competed in the tier. The contracting agency shall include a description of the man-
43 ner in which the proposers who are eliminated from further competition may protest or otherwise
44 object to the contracting agency’s decision.

45 “[~~(14)~~ **(13)** A contracting agency shall issue or electronically post the notice of intent to award

1 described in ORS 279B.135 to each proposer who was evaluated in the final competitive tier.

2 “[15] (14) If a contracting agency awards a contract, the contracting agency shall award the
3 contract to the responsible proposer whose proposal the contracting agency determines in writing
4 is the most advantageous to the contracting agency based on the evaluation process and evaluation
5 factors described in this section and in the request for proposals, applicable preferences described
6 in ORS 279A.120 and 279A.125 and, when applicable, the outcome of any negotiations authorized by
7 the request for proposals. Other factors may not be used in the evaluation. If the request for pro-
8 posals specifies or authorizes awarding multiple public contracts, the contracting agency shall
9 award public contracts to the responsible proposers who qualify for the award of a contract under
10 the terms of the request for proposals.

11 “[16] (15) A contracting agency may issue a request for information, a request for interest, a
12 request for qualifications or other preliminary documents to obtain information useful in preparing
13 a request for proposals.

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

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

18 Delete lines 17 through 35 and insert:

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

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

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

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

33 **“SECTION 10. (1) Section 2 (2) and (3) of this 2018 Act becomes operative on January 2,
34 2021.**

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

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

39 **“(4) The Attorney General, the Director of the Oregon Department of Administrative
40 Services, the Director of Transportation and a contracting agency that adopts rules under
41 ORS 279A.065 or 279A.070 may adopt rules and take any other action before the operative
42 date specified in subsection (2) of this section that is necessary to enable the Attorney
43 General, the director or the contracting agency, on and after the operative date specified in
44 subsection (2) of this section, to undertake or exercise all of the duties, functions and powers
45 conferred on the Attorney General, the director or the contracting agency under section 4**

1 of this 2018 Act and the amendments to ORS 279B.060 and 279B.145 by sections 5 and 7 of this
2 2018 Act.

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

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

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