

Enrolled House Bill 2014

Sponsored by Representative SIMMONS

CHAPTER

AN ACT

Relating to personal service contracts; creating new provisions; and amending ORS 279.057.

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

SECTION 1. ORS 279.057 is amended to read:

279.057. (1) A contract entered into by a public agency for the consulting services of registered professional engineers, registered architects or registered professional land surveyors is a personal service contract.

(2) A public agency shall select consultants described in subsection (1) of this section on the basis of qualifications for the type of professional service required. A public agency may solicit or use pricing policies and proposals or other pricing information to determine consultant compensation only after the public agency has selected a candidate under subsection (3) of this section.

(3) Subject to the requirements of subsection (2) of this section, the procedures that a public agency creates for the screening and selection of consultants and the selection of a candidate under this section shall be within the sole discretion of the public agency and may be adjusted to accommodate the public agency's scope, schedule and budget objectives for a particular project. Adjustments to accommodate an agency's objectives may include provision for the direct appointment of a consultant if the value of the project does not exceed a threshold amount as determined by the agency. Screening and selection procedures may include a consideration of each candidate's:

(a) Specialized experience, capabilities and technical competence that may be demonstrated by the proposed approach and methodology to meet the project requirements;

(b) Resources available to perform the work **and the proportion of the candidate staff's time that would be spent on the project**, including any 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 control and contract administration;

(d) Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(e) Availability to the project locale;

(f) Familiarity with the project locale; and

(g) Proposed project management techniques.

(4) The public 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 public agency as determined solely by the public agency. Authority

to negotiate a contract under this section does not supersede any provision of ORS 279.316 or 279.712.

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

(6) Notwithstanding ORS 279.011, this section applies only if the public agency personal service contract is issued by an agency of the State of Oregon and not by an agency of any political subdivision thereof or any public body created by intergovernmental agreement.

(7) Notwithstanding subsection (6) of this section, this section applies to the selection of consultants by an agency of any political subdivision of this state or any public body created by intergovernmental agreement if the agency or public body receives moneys from the State Highway Fund under ORS 366.525 or 366.800 or a grant or loan from this state that will be used to pay for any portion of the design and construction of the project and:

(a) The total amount of any grants, loans or moneys from the State Highway Fund and from the state for the project exceeds 35 percent of the value of the project; and

(b) The value of the project exceeds \$400,000.

SECTION 2. The amendments to ORS 279.057 by section 1 of this 2001 Act first apply to public contracts for personal services advertised or solicited on or after July 1, 2002.

SECTION 3. ORS 279.057, as amended by section 1 of this 2001 Act, is amended to read:

279.057. (1) A contract entered into by a public agency for the consulting services of registered professional engineers, registered architects or registered professional land surveyors is a personal service contract.

(2) A public agency shall select consultants described in subsection (1) of this section on the basis of qualifications for the type of professional service required. A public agency may solicit or use pricing policies and proposals or other pricing information to determine consultant compensation only after the public agency has selected a candidate under subsection (3) of this section.

(3) Subject to the requirements of subsection (2) of this section, the procedures that a public agency creates for the screening and selection of consultants and the selection of a candidate under this section shall be within the sole discretion of the public agency and may be adjusted to accommodate the public agency's scope, schedule and budget objectives for a particular project. Adjustments to accommodate an agency's objectives may include provision for the direct appointment of a consultant if the value of the project does not exceed a threshold amount as determined by the agency. Screening and selection procedures may include a consideration of each candidate's:

(a) Specialized experience, capabilities and technical competence that may be demonstrated by the proposed approach and methodology to meet the project requirements;

(b) Resources available to perform the work [*and the proportion of the candidate staff's time that would be spent on the project*], including any 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 control and contract administration;

(d) Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(e) Availability to the project locale;

(f) Familiarity with the project locale; and

(g) Proposed project management techniques.

(4) The public 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 public agency as determined solely by the public agency. Authority

to negotiate a contract under this section does not supersede any provision of ORS 279.316 or 279.712.

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

(6) Notwithstanding ORS 279.011, this section applies only if the public agency personal service contract is issued by an agency of the State of Oregon and not by an agency of any political subdivision thereof or any public body created by intergovernmental agreement.

[(7) Notwithstanding subsection (6) of this section, this section applies to the selection of consultants by an agency of any political subdivision of this state or any public body created by intergovernmental agreement if the agency or public body receives moneys from the State Highway Fund under ORS 366.525 or 366.800 or a grant or loan from this state that will be used to pay for any portion of the design and construction of the project and.]

[(a) The total amount of any grants, loans or moneys from the State Highway Fund and from the state for the project exceeds 35 percent of the value of the project; and]

[(b) The value of the project exceeds \$400,000.]

SECTION 4. The amendments to ORS 279.057 by section 3 of this 2001 Act become operative on July 1, 2008.

SECTION 5. The amendments to ORS 279.057 by section 3 of this 2001 Act first apply to public contracts for personal services advertised or solicited on or after July 1, 2008.

Passed by House April 12, 2001

Received by Governor:

Repassed by House July 1, 2001

.....M.,....., 2001

Approved:

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Chief Clerk of House

.....M.,....., 2001

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Speaker of House

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Governor

Passed by Senate June 27, 2001

Filed in Office of Secretary of State:

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President of Senate

.....M.,....., 2001

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Secretary of State