

Enrolled House Bill 3272

Sponsored by COMMITTEE ON BUSINESS, LABOR AND CONSUMER AFFAIRS (at the request of American Council of Engineering Companies-Oregon, American Institute of Architects-Oregon)

CHAPTER

AN ACT

Relating to procedure in Public Contracting Code for selecting candidates to provide personal services; creating new provisions; and amending ORS 279C.110 and section 93, chapter 794, Oregon Laws 2003.

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

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

279C.110. (1) A state contracting agency shall select consultants to provide architectural, engineering or land surveying services on the basis of qualifications for the type of professional service required. A state contracting agency may solicit or use pricing policies and proposals or other pricing information to determine consultant compensation only after the agency has selected a candidate pursuant to subsection (3) of this section.

(2) This section applies only if the architectural, engineering or land surveying services contract is issued by a state contracting agency and does not apply to any such contract issued by a local contracting agency unless the following conditions apply:

(a) The local contracting agency receives moneys from the State Highway Fund under ORS 366.762 or 366.800 or a grant or loan from the state that will be used to pay for any portion of the design and construction of the project;

(b) The total amount of any grants, loans or moneys from the State Highway Fund and from the state for the project exceeds [35] **10** percent of the value of the project; and

(c) The value of the project exceeds [~~\$400,000~~] **\$900,000**.

(3) Subject to the requirements of subsections (1) and (2) of this section, the procedures that a contracting 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 contracting agency and may be adjusted to accommodate the contracting agency's scope, schedule and budget objectives for a particular project. Adjustments to accommodate a contracting 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 contracting 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 minority, women 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) If the screening and selection procedures created by a contracting agency under subsection (3) of this section result in the determination by the contracting agency that two or more candidates are equally qualified, the contracting agency may select a candidate through any process adopted by the contracting agency.

(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) If the contracting 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 contracting agency, the contracting agency shall, either orally or in writing, formally terminate negotiations with the selected candidate. The contracting 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 contracting agency terminates the consultant contracting process.

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

SECTION 2. ORS 279C.110, as amended by section 1 of this 2005 Act, applies only to public contracts for personal services advertised or solicited on or after the effective date of this 2005 Act.

SECTION 3. ORS 279C.110, as amended by section 92, chapter 794, Oregon Laws 2003, is amended to read:

279C.110. (1) A state contracting agency shall select consultants to provide architectural, engineering or land surveying services on the basis of qualifications for the type of professional service required. A state contracting agency may solicit or use pricing policies and proposals or other pricing information to determine consultant compensation only after the agency has selected a candidate pursuant to subsection [(2)] (3) of this section.

(2) This section applies only if the architectural, engineering or land surveying services contract is issued by a state contracting agency and does not apply to any such contract issued by a local contracting agency unless the following conditions apply:

(a) The local contracting agency receives moneys from the State Highway Fund under ORS 366.762 or 366.800 or a grant or loan from the state that will be used to pay for any portion of the design and construction of the project;

(b) The total amount of any grants, loans or moneys from the State Highway Fund and from the state for the project exceeds 10 percent of the value of the project; and

(c) The value of the project exceeds \$900,000.

[(2)] (3) Subject to the requirements of [subsection (1)] **subsections (1) and (2)** of this section, the procedures that a contracting 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 contracting agency and may be adjusted to accommodate the contracting agency's scope, schedule and budget objectives for a particular project. Adjustments to accommodate a contracting 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 contracting 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 minority, women 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.

[(3)] (4) If the screening and selection procedures created by a contracting agency under subsection [(2)] (3) of this section result in the determination by the contracting agency that two or more candidates are equally qualified, the contracting agency may select a candidate through any process adopted by the contracting agency.

[(4)] (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.

[(5)] (6) If the contracting 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 contracting agency, the contracting agency shall, either orally or in writing, formally terminate negotiations with the selected candidate. The contracting 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 contracting agency terminates the consultant contracting process.

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

SECTION 4. Section 93, chapter 794, Oregon Laws 2003, is amended to read:

Sec. 93. (1) The amendments to [section 91 of this 2003 Act] **ORS 279C.110** by section 92, **chapter 794, Oregon Laws 2003**, [of this 2003 Act] **and section 3 of this 2005 Act** become operative on [July 1, 2008] **the effective date of this 2005 Act**.

(2) [Section 91 of this 2003 Act] **ORS 279C.110**, as amended by section 92, **chapter 794, Oregon Laws 2003**, [of this 2003 Act,] **and section 3 of this 2005 Act**, applies only to public contracts for personal services advertised or solicited on or after [July 1, 2008] **the effective date of this 2005 Act**.

Passed by House May 17, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate June 27, 2005

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President of Senate

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State