

House Bill 2623

Sponsored by Representative SCHAUFLER (Presession filed.)

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 **as introduced**.

Requires contracting agency to base determination of contractor's responsibility for public improvement contract on contractor's demonstrating that contractor has provided health insurance to contractor's employees for period of two years before contractor submitted bid for public improvement contract.

Specifies exemptions for certain bidders.

A BILL FOR AN ACT

1
2 Relating to determinations of responsibility for contractors on public improvement contracts;
3 amending ORS 279C.375.

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

5 **SECTION 1.** ORS 279C.375 is amended to read:

6 279C.375. (1) After a contracting agency has opened bids and determined that the contracting
7 agency will award a public improvement contract, the contracting agency shall award the contract
8 to the lowest responsible bidder.

9 (2) At least seven days before awarding a public improvement contract, unless the contracting
10 agency determines that seven days is impractical under rules adopted under ORS 279A.065, the
11 contracting agency shall issue to each bidder or post, electronically or otherwise, a notice of the
12 contracting agency's intent to award a contract. This subsection does not apply to a contract to
13 which competitive bidding does not apply under ORS 279C.335 (1)(c) or (d). The notice and the
14 manner in which the notice is posted or issued must conform to rules adopted under ORS 279A.065.

15 (3) In determining the lowest responsible bidder, a contracting agency shall do all of the fol-
16 lowing:

17 (a) Check the list created by the Construction Contractors Board under ORS 701.227 for bidders
18 who are not qualified to hold a public improvement contract.

19 (b) Determine whether the bidder is responsible. A responsible bidder must demonstrate to the
20 contracting agency that the bidder:

21 (A) Has available the appropriate financial, material, equipment, facility and personnel resources
22 and expertise, or has the ability to obtain the resources and expertise, necessary to meet all con-
23 tractual responsibilities.

24 (B) Holds current licenses that businesses or service professionals operating in this state must
25 hold in order to undertake or perform the work specified in the contract.

26 (C) Is covered by liability insurance and other insurance in amounts the contracting agency
27 requires in the solicitation documents.

28 (D) Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has
29 elected coverage under ORS 656.128.

30 **(E) Has provided health insurance to the bidder's employees for a period of two years**

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 before the date on which the bidder submitted the bid for the public improvement contract.
2 The requirement set forth in this subparagraph does not apply to a bidder if the bidder em-
3 ploys 25 or fewer employees or if the bidder has existed for less than two years before sub-
4 mitting the bid for the public improvement contract.

5 [(E)] (F) Has made the disclosure required under ORS 279C.370.

6 [(F)] (G) Completed previous contracts of a similar nature with a satisfactory record of per-
7 formance. For purposes of this subparagraph, a satisfactory record of performance means that to the
8 extent that the costs associated with and time available to perform a previous contract remained
9 within the bidder’s control, the bidder stayed within the time and budget allotted for the procure-
10 ment and otherwise performed the contract in a satisfactory manner. The contracting agency shall
11 document the bidder’s record of performance if the contracting agency finds under this subparagraph
12 that the bidder is not responsible.

13 [(G)] (H) Has a satisfactory record of integrity. The contracting agency in evaluating the
14 bidder’s record of integrity may consider, among other things, whether the bidder has previous
15 criminal convictions for offenses related to obtaining or attempting to obtain a contract or subcon-
16 tract or in connection with the bidder’s performance of a contract or subcontract. The contracting
17 agency shall document the bidder’s record of integrity if the contracting agency finds under this
18 subparagraph that the bidder is not responsible.

19 [(H)] (I) Is legally qualified to contract with the contracting agency.

20 [(I)] (J) Supplied all necessary information in connection with the inquiry concerning responsi-
21 bility. If a bidder fails to promptly supply information concerning responsibility that the contracting
22 agency requests, the contracting agency shall determine the bidder’s responsibility based on avail-
23 able information, or may find that the bidder is not responsible.

24 (c) Document the contracting agency’s compliance with the requirements of paragraphs (a) and
25 (b) of this subsection in substantially the following form:

26 _____
27
28 RESPONSIBILITY DETERMINATION FORM

29
30 Project Name: _____

31 Bid Number: _____

32 Business Entity Name: _____

33 CCB License Number: _____

34 Form Submitted By (Contracting Agency): _____

35 Form Submitted By (Contracting Agency Representative’s Name): _____

36 Title: _____

37 Date: _____

38 (The contracting agency must submit this form with attachments, if any, to the Construction
39 Contractors Board within 30 days after the date of contract award.)

40 The contracting agency has (check all of the following):

- 41 [] Checked the list created by the
42 Construction Contractors Board
43 under ORS 701.227 for bidders who
44 are not qualified to hold a public
45 improvement contract.

- 1] Determined whether the bidder has
- 2 met the standards of responsibility.
- 3 In so doing, the contracting agency
- 4 has found that the bidder
- 5 demonstrated that the bidder:
- 6] Has available the appropriate
- 7 financial, material, equipment,
- 8 facility and personnel resources
- 9 and expertise, or the ability to
- 10 obtain the resources and
- 11 expertise, necessary to meet
- 12 all contractual responsibilities.
- 13] Holds current licenses that
- 14 businesses or service professionals
- 15 operating in this state must hold
- 16 in order to undertake or perform
- 17 the work specified in the contract.
- 18] Is covered by liability insurance
- 19 and other insurance in amounts
- 20 required in the solicitation
- 21 documents.
- 22] Qualifies as a carrier-insured
- 23 employer or a self-insured
- 24 employer under ORS 656.407 or has
- 25 elected coverage under ORS 656.128.
- 26] **Has provided health insurance**
- 27 **to the bidder's employees**
- 28 **for a period of two years before**
- 29 **submitting the bid, unless exempted**
- 30 **under ORS 279C.375 (3)(b)(E).**
- 31] Has disclosed the bidder's first-
- 32 tier subcontractors in accordance
- 33 with ORS 279C.370.
- 34] Has a satisfactory record of
- 35 performance.
- 36] Has a satisfactory record of
- 37 integrity.
- 38] Is legally qualified to contract
- 39 with the contracting agency.
- 40] Has supplied all necessary
- 41 information in connection with
- 42 the inquiry concerning
- 43 responsibility.
- 44] Determined the bidder to be
- 45 (check one of the following):

1 [] Responsible under ORS 279C.375

2 (3)(a) and (b).

3 [] Not responsible under

4 ORS 279C.375 (3)(a) and (b).

5 (Attach documentation if the contracting agency finds the bidder not to be responsible.)

6

7

8 (d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the
9 Construction Contractors Board within 30 days after the date the contracting agency awards the
10 contract.

11 (4) The successful bidder shall:

12 (a) Promptly execute a formal contract; and

13 (b) Execute and deliver to the contracting agency a performance bond and a payment bond when
14 required under ORS 279C.380.

15 (5) Based on competitive bids, a contracting agency may award a public improvement contract
16 or may award multiple public improvement contracts when specified in the invitation to bid.

17 (6) A contracting agency may not exclude a commercial contractor from competing for a public
18 contract on the basis that the license issued by the Construction Contractors Board is endorsed as
19 a level 1 or level 2 license. As used in this section, “commercial contractor” has the meaning given
20 that term in ORS 701.005.

21 **SECTION 2. The amendments to ORS 279C.375 by section 1 of this 2011 Act apply to**
22 **contracts that a contracting agency first advertises or otherwise solicits on or after the ef-**
23 **fective date of this 2011 Act or, if the contracting agency does not advertise or solicit the**
24 **contract, to contracts that the contracting agency first enters on or after the effective date**
25 **of this 2011 Act.**

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