

House Bill 2757

Sponsored by Representative HOLVEY (at the request of National Electrical Contractors Association, Associated Wall and Ceiling Contractors) (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 bidder for public improvement contract to demonstrate to contracting agency as part of responsibility determination that bidder provides health benefit plan or health insurance and retirement benefit plan to bidder's employees, if public improvement contract or subcontract related to public improvement contract has contract price that exceeds \$200,000.

Becomes operative January 1, 2022.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to requirements in contracting agencies' responsibility determinations for public improve-
3 ment contracts; creating new provisions; amending ORS 279C.375; and prescribing an effective
4 date.

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

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

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

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

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

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

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

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

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

28 (C) Is covered by liability insurance and other insurance in amounts the contracting agency

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 requires in the solicitation documents.

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

4 (E) Has made the disclosure required under ORS 279C.370.

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

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

18 (H) Is legally qualified to contract with the contracting agency.

19 (I) Possesses an unexpired certificate that the Oregon Department of Administrative Services
20 issued under ORS 279A.167, if the bidder employs 50 or more full-time workers and submitted a bid
21 for a procurement with an estimated contract price that exceeds \$500,000 in response to an adver-
22 tisement or solicitation from a state contracting agency.

23 **(J) Provides to the bidder's employees a health benefit plan or health insurance that**
24 **meets or exceeds requirements and standards the Director of the Department of Consumer**
25 **and Business Services established by rule and a retirement benefit plan that meets or ex-**
26 **ceeds the standards specified for employee pension benefit plans in the federal Employee**
27 **Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), as in effect on the effective**
28 **date of this 2021 Act, if the public improvement contract for which the bidder submitted the**
29 **bid, or a subcontract related to the public improvement contract for which a subcontractor**
30 **submitted a bid, has an estimated contract price that exceeds \$200,000.**

31 [(J)] (K) Supplied all necessary information in connection with the inquiry concerning respon-
32 sibility. If a bidder fails to promptly supply information concerning responsibility that the contract-
33 ing agency requests, the contracting agency shall determine the bidder's responsibility based on
34 available information, or may find that the bidder is not responsible.

35 (c) Document the contracting agency's compliance with the requirements of paragraphs (a) and
36 (b) of this subsection in substantially the following form:

37 _____

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39 RESPONSIBILITY DETERMINATION FORM

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41 Project Name: _____

42 Bid Number: _____

43 Business Entity Name: _____

44 CCB License Number: _____

45 Form Submitted By (Contracting Agency): _____

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

Title: _____

Date: _____

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

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

- Checked the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a public improvement contract.
- Determined whether the bidder has met the standards of responsibility. In so doing, the contracting agency has found that the bidder demonstrated that the bidder:
 - Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.
 - Holds current licenses that businesses or service professionals operating in this state must hold in order to undertake or perform the work specified in the contract.
 - Is covered by liability insurance and other insurance in amounts required in the solicitation documents.
 - Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.
 - Has disclosed the bidder's first-tier subcontractors in accordance with ORS 279C.370.
 - Has a satisfactory record of performance.
 - Has a satisfactory record of integrity.
 - Is legally qualified to contract

1 with the contracting agency.

2 [] Possesses a certificate that
3 the Oregon Department of
4 Administrative Services issued under
5 ORS 279A.167.

6 [] **Provides a health benefit plan
7 or health insurance and retirement
8 benefit plan to employees.**

9 [] Has supplied all necessary
10 information in connection with
11 the inquiry concerning
12 responsibility.

13 [] Determined the bidder to be
14 (check one of the following):

15 [] Responsible under ORS 279C.375
16 (3)(a) and (b).

17 [] Not responsible under
18 ORS 279C.375 (3)(a) and (b).

19 (Attach documentation if the contracting agency finds the bidder not to be responsible.)
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22 (d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the
23 Construction Contractors Board within 30 days after the date the contracting agency awards the
24 contract.

25 (4) The successful bidder shall:

26 (a) Promptly execute a formal contract; and

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

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

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

35 **SECTION 2. The amendments to ORS 279C.375 by section 1 of this 2021 Act apply to**
36 **public improvement contracts that a contracting agency advertises or otherwise solicits or,**
37 **if the contracting agency does not advertise or otherwise solicit the public improvement**
38 **contract, to public improvement contracts into which the contracting agency enters on or**
39 **after the operative date specified in section 3 of this 2021 Act.**

40 **SECTION 3. (1) The amendments to ORS 279C.375 by section 1 of this 2021 Act become**
41 **operative on January 1, 2022.**

42 **(2) The Attorney General, the Director of the Oregon Department of Administrative**
43 **Services, the Director of Transportation and a contracting agency that adopts rules under**
44 **ORS 279A.065 or 279A.070 may adopt rules and take any other action before the operative**
45 **date specified in subsection (1) of this section that is necessary to enable the Attorney**

1 **General, the director or the contracting agency, on and after the operative date specified in**
2 **subsection (1) of this section, to undertake and exercise all of the duties, functions and**
3 **powers conferred on the Attorney General, the director or the contracting agency by the**
4 **amendments to ORS 279C.375 by section 1 of this 2021 Act.**

5 **SECTION 4. This 2021 Act takes effect on the 91st day after the date on which the 2021**
6 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

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