

Senate Bill 420

Sponsored by Senator MANNING JR (at the request of Joe Berney) (Pre-session 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**.

Permits local contract review board or local contracting agency to enact or adopt, as appropriate, ordinance, resolution, rule, regulation or other legislative or administrative measure to designate certain public improvement contracts as community benefit contracts. Specifies elements that community benefit contract must incorporate. Specifies duties of local contract review board or local contracting agency before advertising, soliciting or awarding community benefit contract.

Permits contracting agency to prequalify bidders or proposers to submit bids or proposals for community benefit contracts.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to community benefit contracts; creating new provisions; amending ORS 279C.375 and
3 279C.430; and prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 279C.300 to**
6 **279C.470.**

7 **SECTION 2. (1) As used in this section:**

8 (a) "Apprentice" has the meaning given that term in ORS 660.010.

9 (b) "Apprenticeable occupation" has the meaning given that term in ORS 660.010.

10 (c) "Community benefit project" means a public improvement project that is subject to
11 the terms and conditions of a community benefit contract.

12 (2) As used in this section and in ORS 279C.375 and 279C.430, "community benefit con-
13 tract" means a public improvement contract that includes the elements described in sub-
14 section (3)(b) of this section.

15 (3)(a) A local contract review board or local contracting agency may enact or adopt, as
16 appropriate, an ordinance, resolution, rule, regulation or other legislative or administrative
17 measure that authorizes the local contract review board or local contracting agency to des-
18 ignate a public improvement contract as a community benefit contract.

19 (b) In addition to and not in lieu of any other requirement that applies to a public im-
20 provement contract under this chapter, a public improvement contract that a local contract
21 review board or local contracting agency designates as a community benefit contract must
22 include, as material provisions of the contract, terms and conditions that require the con-
23 tractor to:

24 (A) Qualify as a training agent, as defined in ORS 660.010, or provide apprenticeship
25 training that meets applicable federal and state standards for apprenticeship training;

26 (B) Employ apprentices to perform a specified percentage of work hours that workers in
27 apprenticeable occupations perform on the community benefit project;

28 (C) Provide coverage for each worker that the contractor employs to perform work on

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 **the community benefit project, and each of the worker’s qualified dependents, under a health**
 2 **plan that meets standards that the local contract review board or local contracting agency**
 3 **specifies; and**

4 **(D) Meet any other requirements the local contract review board or local contracting**
 5 **agency sets forth in the ordinance, resolution, rule, regulation or other legislative or ad-**
 6 **ministrative measure that authorizes procurements of community benefit contracts.**

7 **(c) A local contract review board or a local contracting agency shall:**

8 **(A) Ensure, before advertising or soliciting a community benefit contract, that all ad-**
 9 **vertisements and solicitation documents state clearly that the procurement is for a com-**
 10 **munity benefit contract and identify conspicuously all of the provisions to which a contractor**
 11 **will be subject, including the percentage of work hours for which the contractor must employ**
 12 **apprentices and the standards that will apply to the health plan the contractor must provide;**
 13 **and**

14 **(B) Require, before accepting and evaluating bids or proposals for a community benefit**
 15 **contract, that each bidder or proposer include with the bid or proposal a signed statement**
 16 **that acknowledges that the bidder or proposer understands and agrees to be bound by the**
 17 **requirements that apply to the community benefit contract.**

18 **(4) Except as otherwise provided in this section, a solicitation and award of a community**
 19 **benefit contract is subject to all applicable provisions of the Public Contracting Code.**

20 **SECTION 3.** ORS 279C.375 is amended to read:

21 279C.375. (1) After a contracting agency has opened bids and determined that the contracting
 22 agency will award a public improvement contract, the contracting agency shall award the contract
 23 to the lowest responsible bidder.

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **(J) Has agreed in the bid or proposal to be bound by the terms and conditions of a com-
20 munity benefit contract, if the contracting agency is a local contract review board or local
21 contracting agency and the public improvement contract is a community benefit contract,
22 as defined in section 2 of this 2021 Act.**

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

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

29 _____

30
31 RESPONSIBILITY DETERMINATION FORM

32
33 Project Name: _____

34 Bid Number: _____

35 Business Entity Name: _____

36 CCB License Number: _____

37 Form Submitted By (Contracting Agency):
38 _____

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

40 Title: _____

41 Date: _____

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

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

45 [] Checked the list created by the

1 Construction Contractors Board
 2 under ORS 701.227 for bidders who
 3 are not qualified to hold a public
 4 improvement contract.

5 [] Determined whether the bidder has
 6 met the standards of responsibility.
 7 In so doing, the contracting agency
 8 has found that the bidder
 9 demonstrated that the bidder:

10 [] Has available the appropriate
 11 financial, material, equipment,
 12 facility and personnel resources
 13 and expertise, or the ability to
 14 obtain the resources and
 15 expertise, necessary to meet
 16 all contractual responsibilities.

17 [] Holds current licenses that
 18 businesses or service professionals
 19 operating in this state must hold
 20 in order to undertake or perform
 21 the work specified in the contract.

22 [] Is covered by liability insurance
 23 and other insurance in amounts
 24 required in the solicitation
 25 documents.

26 [] Qualifies as a carrier-insured
 27 employer or a self-insured
 28 employer under ORS 656.407 or has
 29 elected coverage under ORS 656.128.

30 [] Has disclosed the bidder's first-
 31 tier subcontractors in accordance
 32 with ORS 279C.370.

33 [] Has a satisfactory record of
 34 performance.

35 [] Has a satisfactory record of
 36 integrity.

37 [] Is legally qualified to contract
 38 with the contracting agency.

39 [] Possesses a certificate that
 40 the Oregon Department of
 41 Administrative Services issued under
 42 ORS 279A.167.

43 [] **Agrees to be bound by the terms**
 44 **and conditions of a community**
 45 **benefit contract if the contracting**

1 **agency is a local contract review**
 2 **board or local contracting agency**
 3 **and the contract is a community**
 4 **benefit contract.**

5 [] Has supplied all necessary
 6 information in connection with
 7 the inquiry concerning
 8 responsibility.

9 [] Determined the bidder to be
 10 (check one of the following):

11 [] Responsible under ORS 279C.375
 12 (3)(a) and (b).

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

15 (Attach documentation if the contracting agency finds the bidder not to be responsible.)
 16

17
 18 (d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the
 19 Construction Contractors Board within 30 days after the date the contracting agency awards the
 20 contract.

21 (4) The successful bidder shall:

22 (a) Promptly execute a formal contract; and

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

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

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

31 **SECTION 4.** ORS 279C.430 is amended to read:

32 279C.430. (1) A contracting agency may adopt a rule, resolution, ordinance or other regulation
 33 [*requiring mandatory prequalification for all persons desiring to bid for public improvement contracts*
 34 *that are to be let by the agency*] **that permits or requires a prospective bidder or proposer to**
 35 **prequalify for public improvement contracts, including community benefit contracts, for**
 36 **which the contracting agency intends to conduct a procurement.** The rule, resolution, ordi-
 37 nance or other regulation authorized by this section must include the time for submitting prequali-
 38 fication applications and a general description of the type and nature of the contracts [*that may be*
 39 *let*] **for which the contracting agency intends to conduct a procurement.** The prequalification
 40 application must be in writing on a standard form prescribed under the authority of ORS 279A.050.

41 (2) [*When*] **If** a contracting agency permits or requires prequalification of bidders, a person who
 42 wishes to prequalify shall submit a prequalification application to the contracting agency on a
 43 standard form prescribed under subsection (1) of this section. Within 30 days after [*receipt of*] **re-**
 44 **ceiving** a prequalification application, the contracting agency shall investigate the applicant as
 45 necessary to determine if the applicant is qualified. The determination [*shall*] **must** be made in less

1 than 30 days, if practicable, if the applicant requests an early decision to allow the applicant as
2 much time as possible to prepare a bid on a contract that [*has been*] **the contracting agency** ad-
3 vertised. In making [*its*] **the** determination, the contracting agency shall consider only the applicable
4 standards of responsibility listed in ORS 279C.375 (3)(b). The agency shall promptly notify the ap-
5 plicant whether or not the applicant is qualified.

6 (3) If the contracting agency finds that the applicant is qualified, the notice must state the na-
7 ture and type of contracts [*that the person is qualified to bid on*] **for which the prospective con-**
8 **tractor may submit a bid or proposal** and the period of time for which the qualification is valid
9 under the contracting agency's rule, resolution, ordinance or other regulation. If the contracting
10 agency finds the applicant is not qualified as to any contracts covered by the rule, resolution, or-
11 dinance or other regulation, the notice must specify the reasons found under ORS 279C.375 (3)(b) for
12 not prequalifying the applicant and inform the applicant of the right to a hearing under ORS
13 279C.445 and 279C.450.

14 (4) If a contracting agency has reasonable cause to believe that [*there has been*] a substantial
15 change **has taken place** in the conditions of a prequalified person and that **because of the sub-**
16 **stantial change** the person is no longer qualified or is less qualified, the agency may revoke or may
17 revise and reissue the prequalification after reasonable notice to the prequalified person. The notice
18 shall state the reasons found under ORS 279C.375 (3)(b) for revocation or revision of the prequali-
19 fication of the person and inform the person of the right to a hearing under ORS 279C.445 and
20 279C.450. A revocation or revision does not apply to any public improvement contract for which
21 publication of an advertisement, in accordance with ORS 279C.360, commenced before the date the
22 notice of revocation or revision was received by the prequalified person.

23 **SECTION 5. Section 2 of this 2021 Act and the amendments to ORS 279C.375 and 279C.430**
24 **by sections 3 and 4 of this 2021 Act apply to procurements that a local contract review board**
25 **or local contracting agency advertises or otherwise solicits, or if the local contract review**
26 **board or local contracting agency does not solicit the procurement, to public contracts into**
27 **which the local contract review board or local contracting agency enters on or after the**
28 **operative date specified in section 6 of this 2021 Act.**

29 **SECTION 6. (1) Section 2 of this 2021 Act and the amendments to ORS 279C.375 and**
30 **279C.430 by sections 3 and 4 of this 2021 Act become operative on January 1, 2022.**

31 **(2) A local contract review board or local contracting agency may enact or adopt, as ap-**
32 **propriate, an ordinance, resolution, rule, regulation or other legislative or administrative**
33 **measure before the operative date specified in subsection (1) of this section that is necessary**
34 **to enable the local contract review board or local contracting agency, on and after the op-**
35 **erative date specified in subsection (1) of this section, to undertake or exercise all of the**
36 **duties, functions and powers conferred on the local contract review board or local contract-**
37 **ing agency by section 2 of this 2021 Act and the amendments to ORS 279C.375 and 279C.430**
38 **by sections 3 and 4 of this 2021 Act.**

39 **SECTION 7. This 2021 Act takes effect on the 91st day after the date on which the 2021**
40 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**