

Enrolled
House Bill 2731

Sponsored by COMMITTEE ON BUSINESS AND LABOR

CHAPTER

AN ACT

Relating to prequalifications for public contracts; creating new provisions; and amending ORS 279C.450.

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

SECTION 1. ORS 279C.450 is amended to read:

279C.450. (1) *[The procedure for]* **An** appeal from a **contracting agency's** disqualification or denial, revocation or revision of a prequalification *[by a contracting agency shall be in accordance with]* **is subject to the procedures set forth in** this section and is not subject to ORS chapter 183 except when specifically provided *[by]* **in** this section.

(2) Promptly upon *[receipt of]* **receiving** notice of appeal from a contracting agency as provided *[for by]* **in** ORS 279C.445, the Director of the Oregon Department of Administrative Services or the local contract review board shall notify the person appealing and the contracting agency of the time and place of the hearing. The director or board shall conduct the hearing and decide the appeal within 30 days after receiving the notification from the contracting agency **unless the person appealing and the contracting agency mutually agree to a different period of time.** The director or board shall set forth in writing the reasons for the decision.

(3) In the hearing the director or board shall consider de novo the notice of disqualification or denial, revocation or revision of a prequalification, the reasons listed in ORS 279C.440 (2) on which the contracting agency based the disqualification or the standards of responsibility listed in ORS 279C.375 (3)(b) on which the contracting agency based the denial, revocation or revision of the prequalification and any evidence provided by the parties. In all other respects, a hearing before the director shall be conducted in the same manner as a contested case under ORS 183.417 (1) to (4) and (7), 183.425, 183.440, 183.450 and 183.452.

(4) The director may allocate the director's cost for the hearing between the person appealing and the contracting agency whose disqualification or prequalification decision is being appealed. **The director shall base the** allocation *[shall be based]* upon facts *[found by]* the director **finds in the record and states** *[and stated]* in the final order that, in the director's opinion, warrant such allocation of the costs. If the final order does not allocate the director's costs for the hearing, the costs *[shall]* **must** be paid as follows:

(a) If the **director upholds the** decision to disqualify or deny, revoke or revise a prequalification of a person, *[is upheld, the director's costs shall be paid by]* the person appealing the disqualification or prequalification decision **shall pay the director's costs.**

(b) If the **director reverses the** decision to disqualify or deny, revoke or revise a prequalification of a person, *[as a bidder is reversed by the director, the director's costs shall be paid by]* the

contracting agency whose disqualification or prequalification decision is the subject of the appeal **shall pay the director's costs.**

(5) The decision of the director or board may be reviewed only upon a petition, filed within 15 days after the date of the decision, in the circuit court of the county in which the director or board has *[its]* **the director's or the board's** principal office. The circuit court shall reverse or modify the decision only if *[it]* **the court** finds:

(a) The decision was obtained through corruption, fraud or undue means.

(b) There was evident partiality or corruption on the part of the director or board or any of *[its]* **the members of the board.**

(c) There was an evident material miscalculation of figures or an evident material mistake in the description of *[any]* **a** person, thing or property referred to in the decision.

(6) The procedure provided in this section is the exclusive means of judicial review of the decision of the director or board. The judicial review provisions of ORS 183.480, *[and]* **the** writs of review and mandamus, as provided in ORS chapter 34, and other legal, declaratory and injunctive remedies[,] are not available.

(7) The circuit court may, in *[its]* **the court's** discretion, stay the letting of the contract that is the subject of the petition in the same manner as **the court may issue a stay in** a suit in equity. *[When]* **If** the court determines that *[there has been]* an improper disqualification or denial, revocation or revision of a prequalification **occurred** and the contract has been let, the court may proceed to take evidence to determine the damages, if any, *[suffered by]* the petitioner **suffered** and award such damages as the court may find as a judgment against the director or board. The court may award costs and attorney fees to the prevailing party.

SECTION 2. The amendments to ORS 279C.450 by section 1 of this 2009 Act apply to appeals from a disqualification or denial, revocation or revision of a prequalification that occur on or after the effective date of this 2009 Act.

Passed by House March 31, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate May 7, 2009

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President of Senate

Received by Governor:

.....M.,....., 2009

Approved:

.....M.,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2009

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Secretary of State