

SENATE AMENDMENTS TO RESOLVE CONFLICTS TO B-ENGROSSED HOUSE BILL 2867

By JOINT COMMITTEE ON WAYS AND MEANS

June 29

1 On page 1 of the printed B-engrossed bill, line 3, after “279C.375” insert “and section 3, chapter
2 368, Oregon Laws 2009 (Enrolled House Bill 2953); repealing section 2, chapter 368, Oregon Laws
3 2009 (Enrolled House Bill 2953)”.

4 On page 15, after line 38, insert:

5 **“SECTION 9a. If House Bill 2953 becomes law, section 2, chapter 368, Oregon Laws 2009**
6 **(Enrolled House Bill 2953) (amending ORS 279C.375), is repealed and ORS 279C.375, as**
7 **amended by section 9 of this 2009 Act, is amended to read:**

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

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

21 “(b) Determine whether the bidder **is responsible. A responsible bidder must demonstrate**
22 **to the contracting agency that the bidder:** *[has met the standards of responsibility. In making the*
23 *determination, the contracting agency shall consider whether a bidder:]*

24 “(A) Has available the appropriate financial, material, equipment, facility and personnel re-
25 sources and expertise, or **has** the ability to obtain the resources and expertise, necessary to meet
26 all contractual responsibilities.

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

29 “(C) **Is covered by liability insurance and other insurance in amounts the contracting**
30 **agency requires in the solicitation documents.**

31 “(D) **Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407**
32 **or has elected coverage under ORS 656.128.**

33 “(E) **Has made the disclosure required under ORS 279C.370.**

34 “[*B*] (F) Completed previous contracts of a similar nature with a satisfactory record of per-
35 formance. For purposes of this subparagraph, a satisfactory record of performance means that to the

1 extent that the costs associated with and time available to perform a previous contract remained
2 within the bidder's control, the bidder stayed within the time and budget allotted for the procure-
3 ment and otherwise performed the contract in a satisfactory manner. The contracting agency shall
4 document the bidder's record of performance if the contracting agency finds under this subparagraph
5 that the bidder is not responsible.

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

12 “[*(D)*] (**H**) Is legally qualified to contract with the contracting agency.

13 “[*(E)*] (**I**) Supplied all necessary information in connection with the inquiry concerning respon-
14 sibility. If a bidder fails to promptly supply information concerning responsibility that the contract-
15 ing agency requests, the contracting agency shall determine the bidder's responsibility based on
16 available information, or may find that the bidder is not responsible.

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

19 “ _____

20
21 **RESPONSIBILITY DETERMINATION FORM**

22
23 Project Name: _____

24 Bid Number: _____

25 Business Entity Name: _____

26 CCB License Number: _____

27 Form Submitted By (Contracting Agency): _____

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

29 Title: _____

30 Date: _____

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

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

34 [] Checked the list created by the
35 Construction Contractors Board
36 under ORS 701.227 for bidders who
37 are not qualified to hold a public
38 improvement contract.

39 [] Determined whether the bidder has
40 met the standards of responsibility.
41 In so doing, the contracting agency
42 has [*considered whether*]

43 **found that** the bidder
44 **demonstrated that the bidder:**

45 [] Has available the appropriate

1 financial, material, equipment,
2 facility and personnel resources
3 and expertise, or the ability to
4 obtain the resources and
5 expertise, necessary to meet
6 all contractual responsibilities.

7 **Holds current licenses that**
8 **businesses or service professionals**
9 **operating in this state must hold**
10 **in order to undertake or perform**
11 **the work specified in the contract.**

12 **Is covered by liability insurance**
13 **and other insurance in amounts**
14 **required in the solicitation documents.**

15 **Qualifies as a carrier-**
16 **insured employer or a self-insured**
17 **employer under ORS 656.407 or has**
18 **elected coverage under ORS 656.128.**

19 **Has disclosed the bidder's first-**
20 **tier subcontractors in accordance**
21 **with ORS 279C.370.**

22 Has a satisfactory record of
23 performance.

24 Has a satisfactory record of
25 integrity.

26 Is **legally** qualified [*legally*] to contract
27 with the contracting agency.

28 Has supplied all necessary
29 information in connection with
30 the inquiry concerning
31 responsibility.

32 Determined the bidder to be
33 (check one of the following):

34 Responsible under ORS 279C.375
35 (3)(a) and (b).

36 Not responsible under
37 ORS 279C.375 (3)(a) and (b).

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

39 “

40
41 “(d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the
42 Construction Contractors Board within 30 days after the date the contracting agency awards the
43 contract.

44 “(4) The successful bidder shall:

45 “(a) Promptly execute a formal contract; and

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

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

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

9 “**SECTION 9b.** If House Bill 2953 becomes law, section 3, chapter 368, Oregon Laws 2009 (En-
10 rolled House Bill 2953), is amended to read:

11 “**Sec. 3.** The amendments to ORS 279C.365 and 279C.375 [*by sections 1 and 2 of this 2009 Act*]
12 **by section 1, chapter 368, Oregon Laws 2009 (Enrolled House Bill 2953), and section 9a of this**
13 **2009 Act** apply to public improvement contracts first advertised or otherwise solicited on or after
14 the effective date of **chapter 368, Oregon Laws 2009 (Enrolled House Bill 2953)** [*this 2009 Act*].”.