

**Enrolled
House Bill 2953**

Sponsored by COMMITTEE ON BUSINESS AND LABOR

CHAPTER

AN ACT

Relating to bidding requirements for public improvement contracts; creating new provisions; and amending ORS 279C.365 and 279C.375.

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

SECTION 1. ORS 279C.365 is amended to read:

279C.365. (1) A contracting agency *[preparing]* **that prepares** solicitation documents for a public improvement contract shall, at a minimum, include **in the solicitation documents:**

- (a) **A designation for or description** of the public improvement project;
- (b) The office where the specifications for the project may be reviewed;
- (c) The date that prequalification applications must be filed under ORS 279C.430 and the class or classes of work for which bidders must be prequalified if prequalification is a requirement;
- (d) The date and time after which bids will not be received, which must be at least five days after the date of the last publication of the advertisement, and may, in the sole discretion of the contracting agency, direct or permit **bidders to submit and the contracting agency to receive bids** *[the submission and receipt of bids]* by electronic means;
- (e) The name and title of the person designated **to receive** *[for receipt of]* bids;
- (f) The date[,] **on which and the** time and place *[that]* **at which** the contracting agency will publicly open the bids;
- (g) A statement that, if the contract is for a public works project subject to the state prevailing rates of wage under ORS 279C.800 to 279C.870, the federal prevailing rates of wage under the Davis-Bacon Act (40 U.S.C. 3141 et seq.) or both the state and federal prevailing rates of wage, **[no] the contracting agency will not receive or consider a bid** *[will be received or considered by the contracting agency]* unless the bid contains a statement by the bidder that **the bidder will comply with** ORS 279C.838 or 279C.840 or 40 U.S.C. 3141 et seq. *[will be complied with]*;
- (h) A statement that each bid must identify whether the bidder is a resident bidder, as defined in ORS 279A.120;
- (i) A statement that the contracting agency may reject *[any]* **a bid that does not comply with** *[not in compliance with all]* prescribed public contracting procedures and requirements, **including the requirement to demonstrate the bidder's responsibility under ORS 279C.375 (3)(b), and that the contracting agency** may reject for good cause all bids *[upon a]* **after** finding *[of the agency]* that *[it]* **doing so** is in the public interest *[to do so]*;
- (j) Information addressing whether a contractor or subcontractor must be licensed under ORS 468A.720; and

(k) A statement that [a] **the contracting agency may not receive or consider a bid** for a public improvement contract [*may not be received or considered by the contracting agency*] unless the bidder is licensed by the Construction Contractors Board or the State Landscape Contractors Board.

(2) A contracting agency may provide solicitation documents by electronic means.

(3) [All bids] **A bid** made to the contracting agency under ORS 279C.335 or 279C.400 must be:

(a) In writing;

(b) Filed with the person **the contracting agency designates to receive bids**; [*designated for receipt of bids by the contracting agency*]; and

(c) Opened publicly by the contracting agency immediately after the deadline for [*submission of*] **submitting bids**.

(4) After **the contracting agency opens the bids, the contracting agency shall make the bids** [*having been opened, the bids must be made*] available for public inspection.

(5) A **bidder shall submit or post a** surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008, cashier's check or certified check [*of each bidder shall be submitted with or posted*] for all bids as bid security unless the **contracting agency has exempted the** contract for which **the bidder submits** a bid [*is submitted has been exempted*] from this requirement under ORS 279C.390. The security may not exceed 10 percent of the amount bid for the contract.

(6) Subsection (5) of this section applies only to public improvement contracts with a value, estimated by the contracting agency, of more than \$100,000 or, in the case of contracts for highways, bridges and other transportation projects, more than \$50,000.

SECTION 2. ORS 279C.375 is amended to read:

279C.375. (1) After **a contracting agency has opened bids** [*are opened and a determination is made that*] **and determined that the contracting agency will award** a public improvement contract [*is to be awarded*], the contracting agency shall award the contract to the lowest responsible bidder.

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

(3) In determining the lowest responsible bidder, a contracting agency shall do all of the following:

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

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

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

(B) **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.**

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

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

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

[(B)] (F) **Has** a satisfactory record of performance. The contracting agency shall document the **bidder's** record of performance [of a bidder] if the contracting agency finds **under this paragraph that** the bidder is not [to be] responsible [under this subparagraph].

[(C)] (G) **Has** a satisfactory record of integrity. The contracting agency shall document the **bidder's** record of integrity [of a bidder] if the contracting agency finds **under this paragraph that** the bidder is not [to be] responsible [under this subparagraph].

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

[(E)] (I) **Has** supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder fails to promptly supply information requested by the contracting agency concerning responsibility, the contracting agency shall [base the determination of] **determine the bidder's** responsibility [upon any] **based on** available information, or may find **that** the bidder is not [to be] responsible.

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

RESPONSIBILITY DETERMINATION FORM

Project Name: _____

Bid Number: _____

Business Entity Name: _____

CCB License Number: _____

Form Submitted By (Contracting Agency): _____

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 [considered whether]

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 [*legally*] to contract with the contracting agency.

Has supplied all necessary information in connection with the inquiry concerning responsibility.

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

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

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

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

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

(4) The successful bidder shall:

(a) Promptly execute a formal contract; and

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

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

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

SECTION 3. The amendments to ORS 279C.365 and 279C.375 by sections 1 and 2 of this 2009 Act apply to public improvement contracts first advertised or otherwise solicited on or after the effective date of this 2009 Act.

Passed by House May 6, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate May 19, 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