

House Bill 2953

Sponsored by COMMITTEE ON BUSINESS AND LABOR

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**.

Provides that contracting agency may reject bid for public improvement contract if bidder does not demonstrate that bidder is responsible. Provides that bidder must demonstrate responsibility by showing that bidder has licenses that businesses and service professionals operating in this state must have in order to undertake work specified in public improvement contract and that bidder is covered by liability and other insurance in amounts required in solicitation documents for public improvement contract.

A BILL FOR AN ACT

1
2 Relating to bidding requirements for public improvement contracts; creating new provisions; and
3 amending ORS 279C.365 and 279C.375.

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

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

6 279C.365. (1) A contracting agency [*preparing*] **that prepares** solicitation documents for a public
7 improvement contract shall, at a minimum, include **in the solicitation documents:**

8 (a) **A designation for or description of** the public improvement project;

9 (b) The office where the specifications for the project may be reviewed;

10 (c) The date that prequalification applications must be filed under ORS 279C.430 and the class
11 or classes of work for which bidders must be prequalified if prequalification is a requirement;

12 (d) The date and time after which bids will not be received, which must be at least five days
13 after the date of the last publication of the advertisement, and may, in the sole discretion of the
14 contracting agency, direct or permit **bidders to submit and the contracting agency to receive**
15 **bids** [*the submission and receipt of bids*] by electronic means;

16 (e) The name and title of the person designated **to receive** [*for receipt of*] bids;

17 (f) The date[,] **on which and the** time and place [*that*] **at which** the contracting agency will
18 publicly open the bids;

19 (g) A statement that, if the contract is for a public works project subject to the state prevailing
20 rates of wage under ORS 279C.800 to 279C.870, the federal prevailing rates of wage under the
21 Davis-Bacon Act (40 U.S.C. 3141 et seq.) or both the state and federal prevailing rates of wage,
22 [*no*] **the contracting agency will not receive or consider a bid** [*will be received or considered by*
23 *the contracting agency*] unless the bid contains a statement by the bidder that **the bidder will**
24 **comply with** ORS 279C.838 or 279C.840 or 40 U.S.C. 3141 et seq. [*will be complied with*];

25 (h) A statement that each bid must identify whether the bidder is a resident bidder, as defined
26 in ORS 279A.120;

27 (i) A statement that the contracting agency may reject [*any*] **a bid that does not comply with**
28 [*not in compliance with all*] prescribed public contracting procedures and requirements, **including**
29 **the requirement to demonstrate the bidder's responsibility under ORS 279C.375 (3)(b), and**

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 **that the contracting agency** may reject for good cause all bids *[upon a]* **after** finding *[of the*
 2 *agency]* that *[it]* **doing so** is in the public interest *[to do so]*;

3 (j) Information addressing whether a contractor or subcontractor must be licensed under ORS
 4 468A.720; and

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

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

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

10 (a) In writing;

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

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

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

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

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

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

27 279C.375. (1) After **a contracting agency has opened** bids *[are opened and a determination is*
 28 *made that]* **and determined that the contracting agency will award** a public improvement con-
 29 tract *[is to be awarded]*, the contracting agency shall award the contract to the lowest responsible
 30 bidder.

31 (2) At least seven days before *[the award of]* **awarding** a public improvement contract, unless
 32 the contracting agency determines that seven days is impractical under rules adopted under ORS
 33 279A.065, the contracting agency shall issue to each bidder or post, electronically or otherwise, a
 34 notice of the contracting agency's intent to award a contract. This subsection does not apply to a
 35 contract *[excepted or exempted from]* **to which** competitive bidding **does not apply** under ORS
 36 279C.335 (1)(c) or (d). The notice and *[its]* **the** manner *[of posting or issuance]* **in which the notice**
 37 **is posted or issued** must conform to rules adopted under ORS 279A.065.

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

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

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

45 (A) **Has** available the appropriate financial, material, equipment, facility and personnel re-

1 sources and expertise, or **has** the ability to obtain the resources and expertise, necessary to meet
2 all contractual responsibilities.

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

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

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

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

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

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

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

21 _____

22
23 **RESPONSIBILITY DETERMINATION FORM**

24
25 Project Name: _____

26 Bid Number: _____

27 Business Entity Name: _____

28 CCB License Number: _____

29 Form Submitted By (Contracting Agency): _____

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

31 Title: _____

32 Date: _____

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

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

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

41 [] Determined whether the bidder has
42 met the standards of responsibility.
43 In so doing, the contracting agency
44 has [considered whether]
45 **found that** the bidder

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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.

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

1 contract on the basis that the license issued by the Construction Contractors Board is endorsed as
2 a level 1 or level 2 license. As used in this section, "commercial contractor" has the meaning given
3 that term in ORS 701.005.

4 **SECTION 3. The amendments to ORS 279C.365 and 279C.375 by sections 1 and 2 of this**
5 **2009 Act apply to public improvement contracts first advertised or otherwise solicited on or**
6 **after the effective date of this 2009 Act.**

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