

House Bill 3143

Sponsored by Representatives KAHL, SHIELDS; Representative KOTEK, Senator CARTER

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**.

Requires person who bids for public improvement contract to demonstrate responsibility by showing that person has record of meeting or exceeding standards for workforce diversity on previous contracts.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to determinations of responsibility for contractors; creating new provisions; amending ORS
3 279C.375; and declaring an emergency.

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

5 **SECTION 1.** ORS 279C.375 is amended to read:

6 279C.375. (1) After [*bids are opened and a determination is made that*] **a contracting agency has**
7 **opened bids and determined that the contracting agency will award** a public improvement con-
8 tract [*is to be awarded*], the contracting agency shall award the contract to the lowest responsible
9 bidder.

10 (2) At least seven days before [*the award of*] **awarding** a public improvement contract, unless
11 the contracting agency determines that seven days is impractical under rules adopted under ORS
12 279A.065, the contracting agency shall issue to each bidder or post, electronically or otherwise, a
13 notice of the contracting agency's intent to award a contract. This subsection does not apply to a
14 contract [*excepted or exempted from*] **to which** competitive bidding **does not apply** under ORS
15 279C.335 (1)(c) or (d). The notice and [*its*] **the** manner [*of posting or issuance*] **in which the notice**
16 **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 bidders
20 who are not qualified to hold a public improvement contract.

21 (b) Determine whether the bidder [*has met the standards of responsibility. In making the deter-*
22 *mination, the contracting agency shall consider whether a bidder has:*] **is responsible. To be a re-**
23 **sponsible bidder, a bidder must demonstrate to the contracting agency that the 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) **Has** a satisfactory record of performance. The contracting agency shall document the **bid-**
28 **der's** record of performance [*of a bidder*] if the contracting agency finds **under this subparagraph**
29 **that** the bidder **is** not [*to be*] responsible [*under this subparagraph*].

30 (C) **Has** a satisfactory record of integrity. The contracting agency shall document the **bidder's**

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 record of integrity [of a bidder] if the contracting agency finds **under this subparagraph that** the
2 bidder **is** not [to be] responsible [under this subparagraph].

3 **(D) Has a record of completing previous public contracts, or other contracts if the bidder**
4 **has not previously bid for a public contract, in which the bidder:**

5 **(i) Met or exceeded workforce diversity goals specified in the contract or in policies the**
6 **contracting agency or other contracting party adopted, including workforce diversity goals**
7 **intended to increase the number of women and minorities in the workforce and workforce**
8 **diversity goals intended to increase the availability of apprenticeships in the bidder’s trade**
9 **or industry;**

10 **(ii) Qualified as a responsible bidder under the provisions of ORS 200.045 and made good**
11 **faith efforts to satisfy the subcontracting requirement for emerging small business enter-**
12 **prises as described in ORS 200.045; and**

13 **(iii) Did not violate the provisions of ORS 279A.110.**

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

15 [(E)] **(F) Has** supplied all necessary information in connection with the inquiry concerning re-
16 sponsibility. If a bidder fails to promptly supply information **concerning responsibility that** [re-
17 quested by] the contracting agency [concerning responsibility] **requests**, the contracting agency:

18 **(i) Shall [base the determination of] determine the bidder’s** responsibility [upon any] **based on**
19 available information[,] or

20 **(ii) May find that** the bidder **is** not [to be] responsible.

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

23 _____
24
25 RESPONSIBILITY DETERMINATION FORM

26
27 Project Name: _____

28 Bid Number: _____

29 Business Entity Name: _____

30 CCB License Number: _____

31 Form Submitted By (Contracting Agency): _____

32 Form Submitted By (Contracting Agency Representative’s Name): _____

33 Title: _____

34 Date: _____

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

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

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

- 43 [] Determined whether the bidder [has
44 met the standards of responsibility]
45 **is responsible**. In so doing, the

1 contracting agency has [*considered*
2 *whether*] **found that** the bidder
3 **demonstrated that the bidder:**

4 [] Has available the appropriate
5 financial, material, equipment,
6 facility and personnel resources
7 and expertise, or **has** the ability
8 to obtain the resources and
9 expertise, necessary to meet
10 all contractual responsibilities.

11 [] Has a satisfactory record of
12 performance.

13 [] Has a satisfactory record of
14 integrity.

15 [] **Has a record of meeting or**
16 **exceeding workforce diversity**
17 **goals in completing previous**
18 **public contracts or, if the**
19 **bidder has not previously bid**
20 **for a public contract, has a**
21 **record of meeting or exceeding**
22 **workforce diversity goals**
23 **in other contracts.**

24 [] Is **legally** qualified [*legally*] to contract
25 with the contracting agency.

26 [] Has supplied all necessary
27 information in connection with
28 the inquiry concerning
29 responsibility.

30 [] Determined the bidder to be
31 (check one of the following):

32 [] Responsible under ORS 279C.375
33 (3)(a) and (b).

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

36 (Attach documentation if the contracting agency finds the bidder not to be responsible.)
37

38
39 (d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the
40 Construction Contractors Board within 30 days after the date the contracting agency awards the
41 contract.

42 (4) The successful bidder shall:

43 (a) Promptly execute a formal contract; and

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

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

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

7 **SECTION 2. The amendments to ORS 279C.375 by section 1 of this 2009 Act apply to**
8 **contracts first advertised or otherwise solicited or, if not advertised or solicited, first en-**
9 **tered into on or after the operative date of this 2009 Act.**

10 **SECTION 3. (1) The amendments to ORS 279C.375 by section 1 of this 2009 Act become**
11 **operative on January 1, 2010.**

12 (2) The Secretary of State, the Attorney General, the Director of the Oregon Department
13 of Administrative Services and a contracting agency that has adopted rules under ORS
14 279A.065 may adopt rules and take any related actions before January 1, 2010, that are nec-
15 essary to enable the Secretary of State, the Attorney General, the director and the con-
16 tracting agency to exercise, on and after January 1, 2010, all the duties, functions and powers
17 conferred on the Secretary of State, the Attorney General, the director and the contracting
18 agency by the amendments to ORS 279C.375 by section 1 of this 2009 Act.

19 **SECTION 4. This 2009 Act being necessary for the immediate preservation of the public**
20 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
21 **on its passage.**

22 _____