

House Bill 3254

Sponsored by Representative WITT

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 bidder or proposer for public contract to demonstrate that bidder or proposer complied in previous contracts with applicable state and federal health and safety standards and applicable building codes.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to determinations of responsibility in connection with public contracts; creating new pro-
3 visions; amending ORS 279B.110 and 279C.375; and declaring an emergency.

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

5 **SECTION 1.** ORS 279B.110 is amended to read:

6 279B.110. (1) A contracting agency shall prepare a written determination of nonresponsibility for
7 a bidder or proposer if the contracting agency determines that the bidder or proposer [*does not meet*
8 *the standards of responsibility*] **is not responsible**.

9 (2) [*In determining whether a bidder or proposer has met the standards of responsibility, the con-*
10 *tracting agency shall consider whether a bidder or proposer:*] **A responsible bidder or proposer**
11 **must demonstrate to the contracting agency that the bidder or proposer:**

12 (a) Has available the appropriate financial, material, equipment, facility and personnel resources
13 and expertise, or has the ability to obtain the resources and expertise, necessary to meet all con-
14 tractual responsibilities.

15 (b) Completed previous contracts of a similar nature with a satisfactory record of performance.
16 For purposes of this paragraph, a satisfactory record of performance means that to the extent that
17 the costs associated with and time available to perform a previous contract remained within the
18 bidder's or proposer's control, the bidder or proposer stayed within the time and budget allotted for
19 the procurement and otherwise performed the contract in a satisfactory manner. The contracting
20 agency shall document the bidder's or proposer's record of performance if the contracting agency
21 finds under this paragraph that the bidder or proposer is not responsible.

22 (c) Has a satisfactory record of integrity. The contracting agency in evaluating the bidder's or
23 proposer's record of integrity may consider, among other things, whether the bidder or proposer has
24 previous criminal convictions for offenses related to obtaining or attempting to obtain a contract
25 or subcontract or in connection with the bidder's or proposer's performance of a contract or sub-
26 contract. The contracting agency shall document the bidder's or proposer's record of integrity if the
27 contracting agency finds under this paragraph that the bidder or proposer is not responsible.

28 **(d) Complied in previous contracts of a similar nature with applicable state and federal**
29 **health and safety standards, including, but not limited to, federal Occupational Safety and**
30 **Health Administration standards codified at 29 C.F.R. parts 1902 to 1990.**

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 [(d)] (e) Is legally qualified to contract with the contracting agency.

2 [(e)] (f) Supplied all necessary information in connection with the inquiry concerning responsi-
 3 bility. If a bidder or proposer fails to promptly supply information concerning responsibility that the
 4 contracting agency requests, the contracting agency shall determine the bidder’s or proposer’s re-
 5 sponsibility based on available information or may find that the bidder or proposer is not responsi-
 6 ble.

7 [(f)] (g) Was not debarred by the contracting agency under ORS 279B.130.

8 (3) A contracting agency may refuse to disclose outside of the contracting agency confidential
 9 information [*furnished by a*] **that a** bidder or proposer **has furnished** under this section [*when*] **if**
 10 the bidder or proposer has clearly identified in writing the information the bidder or proposer seeks
 11 to have treated as confidential and the contracting agency has authority under ORS 192.410 to
 12 192.505 to withhold the identified information from disclosure.

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

14 279C.375. (1) After a contracting agency has opened bids and determined that the contracting
 15 agency will award a public improvement contract, the contracting agency shall award the contract
 16 to the lowest responsible bidder.

17 (2) At least seven days before awarding a public improvement contract, unless the contracting
 18 agency determines that seven days is impractical under rules adopted under ORS 279A.065, the
 19 contracting agency shall issue to each bidder or post, electronically or otherwise, a notice of the
 20 contracting agency’s intent to award a contract. This subsection does not apply to a contract to
 21 which competitive bidding does not apply under ORS 279C.335 (1)(c) or (d). The notice and the
 22 manner in which the notice is posted or issued must conform to rules adopted under ORS 279A.065.

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

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

27 (b) Determine whether the bidder is responsible. A responsible bidder must demonstrate to the
 28 contracting agency that the bidder:

29 (A) Has available the appropriate financial, material, equipment, facility and personnel resources
 30 and expertise, or has the ability to obtain the resources and expertise, necessary to meet all con-
 31 tractual responsibilities.

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

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

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

38 (E) [*Has*] Made the disclosure required under ORS 279C.370.

39 (F) Completed previous contracts of a similar nature with a satisfactory record of performance.
 40 For purposes of this subparagraph, a satisfactory record of performance means that to the extent
 41 that the costs associated with and time available to perform a previous contract remained within
 42 the bidder’s control, the bidder stayed within the time and budget allotted for the procurement and
 43 otherwise performed the contract in a satisfactory manner. The contracting agency shall document
 44 the bidder’s record of performance if the contracting agency finds under this subparagraph that the
 45 bidder is not responsible.

(G) Complied in previous contracts of a similar nature with:

(i) Applicable state and federal health and safety standards, including, but not limited to, federal Occupational Safety and Health Administration standards codified at 29 C.F.R. parts 1902 to 1990; and

(ii) Applicable building codes.

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

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

[(I)] **(J)** Supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder fails to promptly supply information concerning responsibility that the contracting agency requests, the contracting agency shall determine the bidder's responsibility based on available information, or may find that the bidder is not 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 found that the bidder demonstrated that the bidder:

Has available the appropriate financial, material, equipment,

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

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

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

15 [] Qualifies as a carrier-insured
16 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 [] **Complied with applicable**
25 **state and federal health and**
26 **safety standards and applicable**
27 **building codes.**

28 [] Has a satisfactory record of
29 integrity.

30 [] Is legally qualified to contract
31 with the contracting agency.

32 [] [Has] Supplied all necessary
33 information in connection with
34 the inquiry concerning
35 responsibility.

36 [] Determined the bidder to be
37 (check one of the following):

38 [] Responsible under ORS 279C.375
39 (3)(a) and (b).

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

42 (Attach documentation if the contracting agency finds the bidder not to be responsible.)
43

44
45 (d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the

1 Construction Contractors Board within 30 days after the date the contracting agency awards the
2 contract.

3 (4) The successful bidder shall:

4 (a) Promptly execute a formal contract; and

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

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

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

13 **SECTION 3. The amendments to ORS 279B.110 and 279C.375 by sections 1 and 2 of this**
14 **2011 Act apply to:**

15 (1) Procurements first advertised and solicited on or after January 1, 2012; and

16 (2) Public contracts entered into on or after January 1, 2012.

17 **SECTION 4. (1) The amendments to ORS 279B.110 and 279C.375 by sections 1 and 2 of this**
18 **2011 Act become operative on January 1, 2012.**

19 (2) The Attorney General, the Director of the Oregon Department of Administrative
20 Services and a contracting agency that has adopted rules under ORS 279A.065 may adopt
21 rules and take related actions before the operative date specified in subsection (1) of this
22 section that are necessary to enable the Attorney General, the director and the contracting
23 agency to exercise, on and after the operative date specified in subsection (1) of this section,
24 all the duties, functions and powers conferred on the Attorney General, the director and the
25 contracting agency by the amendments to ORS 279B.110 and 279C.375 by sections 1 and 2 of
26 this 2011 Act.

27 **SECTION 5. This 2011 Act being necessary for the immediate preservation of the public**
28 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
29 **on its passage.**

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