

Senate Bill 770

Sponsored by COMMITTEE ON GENERAL GOVERNMENT, CONSUMER AND SMALL BUSINESS PROTECTION

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 contracting agency in certain circumstances to give preference to Oregon residents that bid on public contracts.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public contracting preferences for Oregon residents; creating new provisions; amending
3 ORS 279A.120 and 279C.400; and declaring an emergency.

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

5 **SECTION 1.** ORS 279A.120 is amended to read:

6 279A.120. (1) As used in this section:

7 (a) "Nonresident bidder" means a bidder [*who*] **that** is not a resident bidder.

8 (b) "Resident bidder" means a bidder that [*has*]:

9 (A) Paid unemployment taxes or income taxes in this state during the 12 calendar months im-
10 mediately preceding [*submission of*] the **date on which the bidder submits a bid**;

11 (B) Has a business address in this state; and

12 (C) [*has*] Stated in the bid [*whether*] **that** the bidder is a "resident bidder" under this paragraph.

13 (2) For the purposes of awarding a public contract, a contracting agency shall:

14 (a) Give a preference to goods or services that have been manufactured or produced in this state
15 if [*price,*] **the** fitness, availability and quality [*are otherwise equal*] **of the goods or services meet**
16 **the specifications set forth in the solicitation documents**; and

17 (b)(A) **Subject to subsection (3) of this section**, [*Add a percent*] increase [*to*] the **amount of**
18 **the bid of a nonresident bidder by five percent**; or

19 (B) **If a resident bidder has submitted a bid for the public contract and the state in which**
20 **a nonresident bidder resides gives a preference to the nonresident bidder, increase the**
21 **amount of the nonresident bidder's bid by a percentage that is equal to the** [*percent, if any,*]
22 **percentage** of the preference given to the **nonresident** bidder in the state in which the bidder re-
23 sides.

24 (3) **A contracting agency may increase the nonresident bidder's bid as described in sub-**
25 **section (2)(b)(A) of this section only if:**

26 (a) **The estimated revenue from income taxes, unemployment taxes and other applicable**
27 **taxes that a resident bidder would pay in connection with the public contract equals or ex-**
28 **ceeds the monetary equivalent of the increase the contracting agency would apply to the**
29 **nonresident bidder's bid;**

30 (b) **The bidder is not a nonresident bidder subject to subsection (2)(b)(B) of this section;**
31 **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 **(c) A resident bidder has submitted a bid for the public contract.**

2 [(3)] (4) When a public contract is awarded to a nonresident bidder and the contract price ex-
3 ceeds \$10,000, the bidder shall promptly report to the Department of Revenue on forms *[to be]* pro-
4 vided by the department the total contract price, terms of payment, length of contract and *[such]*
5 other information *[as]* the department may require before the bidder may receive final payment on
6 the public contract. The contracting agency shall *[satisfy itself]* **verify** that **the bidder has complied**
7 **with** the requirement of this subsection *[has been complied with]* before the contracting agency is-
8 sues a final payment on a public contract.

9 [(4)] (5) The Oregon Department of Administrative Services on or before January 1 of each year
10 shall publish a list of states that give a preference to in-state bidders with the *[percent]* **percentage**
11 **of** increase applied in each state. A contracting agency may rely on the names of states and per-
12 centages *[so published]* **the department publishes** in determining the lowest responsible bidder
13 without incurring *[any]* liability to *[any]* a bidder.

14 **SECTION 2.** ORS 279C.400 is amended to read:

15 279C.400. (1) When authorized or required by an exemption granted under ORS 279C.335, a
16 contracting agency may solicit and award a public improvement contract, or may award multiple
17 public improvement contracts when specified in the request for proposals, by requesting and evalu-
18 ating competitive proposals. A contract awarded under this section may be amended only in ac-
19 cordance with rules adopted under ORS 279A.065.

20 (2) Except as provided in ORS 279C.330 to 279C.355, 279C.360 to 279C.390, 279C.395 and 279C.430
21 to 279C.450, competitive proposals *[shall be]* **are** subject to the following requirements of competitive
22 bidding:

23 (a) Advertisement under ORS 279C.360;

24 (b) Requirements for solicitation documents under ORS 279C.365;

25 (c) Disqualification *[due to]* **because of** a Construction Contractors Board listing as described
26 in ORS 279C.375 (3)(a);

27 (d) Contract execution and bonding requirements under ORS 279C.375 and 279C.380;

28 (e) Determination of responsibility under ORS 279C.375 (3)(b);

29 (f) Rejection of bids under ORS 279C.395; and

30 (g) Disqualification and prequalification under ORS 279C.430, 279C.435 and 279C.440.

31 (3) For the purposes of applying the requirements listed in subsection (2) of this section to
32 competitive proposals, when used in the sections listed in subsection (2) of this section, "bids" in-
33 cludes proposals, and "bid documents" and "invitation to bid" include requests for proposals.

34 (4) Competitive proposals are not subject to the following requirements of competitive bidding:

35 (a) First-tier subcontractor disclosure under ORS 279C.370; and

36 (b) *[Reciprocal preference]* **Preferences** under ORS 279A.120.

37 (5) The contracting agency may require proposal security that serves the same function with
38 respect to proposals as bid security serves with respect to bids under ORS 279C.365 (5) and
39 279C.385, as follows:

40 (a) The contracting agency may require proposal security in a form and amount as may be de-
41 termined to be reasonably necessary or prudent to protect the interests of the contracting agency.

42 (b) The contracting agency shall retain the proposal security if a proposer who is awarded a
43 contract fails to promptly and properly execute the contract and provide any required bonds or in-
44 surance.

45 (c) The contracting agency shall return the proposal security to all proposers upon the exe-

1 cution of the contract, or earlier in the selection process.

2 (6) In all other respects, and subject to rules adopted under ORS 279A.065, references in this
3 chapter to invitations to bid, bids or bidders [*shall*] **are**, to the extent practicable within the pro-
4 posal process, [*be deemed*] equally applicable to requests for proposals, proposals or proposers.
5 However, notwithstanding ORS 279C.375 (1), a contracting agency may not be required to award a
6 contract advertised under the competitive proposal process based on price, but may award the con-
7 tract in accordance with ORS 279C.410 (8).

8 **SECTION 3. The amendments to ORS 279A.120 and 279C.400 by sections 1 and 2 of this**
9 **2011 Act apply to public contracts first advertised or otherwise solicited or, if not advertised**
10 **or solicited, first entered into on or after the effective date of this 2011 Act.**

11 **SECTION 4. This 2011 Act being necessary for the immediate preservation of the public**
12 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
13 **on its passage.**

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