

# House Bill 2127

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Health Care)

## 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 to base determination of contractor's responsibility for public improvement contract on contractor's demonstration that contractor provided health insurance to contractor's employees for period of two years before contractor submitted bid for public improvement contract.

Specifies exemptions for certain bidders.

Becomes operative January 2, 2014.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to determinations of responsibility for contractors on public improvement contracts; creat-  
3 ing new provisions; amending ORS 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 a contracting agency has opened bids and determined that the contracting  
7 agency will award a public improvement contract, the contracting agency shall award the contract  
8 to the lowest responsible bidder.

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

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

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

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

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

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

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

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

3 (E) **Provided health insurance to the bidder’s employees for a period of two years before**  
4 **the date on which the bidder submitted the bid for the public improvement contract. The**  
5 **requirement set forth in this subparagraph does not apply to a bidder that employs 25 or**  
6 **fewer employees or that has existed for less than two years before submitting the bid for the**  
7 **public improvement contract.**

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

9 [(F)] (G) Completed previous contracts of a similar nature with a satisfactory record of per-  
10 formance. For purposes of this subparagraph, a satisfactory record of performance means that to the  
11 extent that the costs associated with and time available to perform a previous contract remained  
12 within the bidder’s control, the bidder stayed within the time and budget allotted for the procure-  
13 ment and otherwise performed the contract in a satisfactory manner. The contracting agency shall  
14 document the bidder’s record of performance if the contracting agency finds under this subparagraph  
15 that the bidder is not responsible.

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

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

23 [(I)] (J) Supplied all necessary information in connection with the inquiry concerning responsi-  
24 bility. If a bidder fails to promptly supply information concerning responsibility that the contracting  
25 agency requests, the contracting agency shall determine the bidder’s responsibility based on avail-  
26 able information, or may find that the bidder is not responsible.

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

29 \_\_\_\_\_

30  
31 RESPONSIBILITY DETERMINATION FORM

32  
33 Project Name: \_\_\_\_\_

34 Bid Number: \_\_\_\_\_

35 Business Entity Name: \_\_\_\_\_

36 CCB License Number: \_\_\_\_\_

37 Form Submitted By (Contracting Agency): \_\_\_\_\_

38 Form Submitted By (Contracting Agency Representative’s Name): \_\_\_\_\_

39 Title: \_\_\_\_\_

40 Date: \_\_\_\_\_

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

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

44 [ ] Checked the list created by the  
45 Construction Contractors Board

1 under ORS 701.227 for bidders who  
 2 are not qualified to [*hold*] **receive** a public  
 3 improvement contract.

4 [ ] Determined whether the bidder has  
 5 met the standards of responsibility.  
 6 In so doing, the contracting agency  
 7 has found that the bidder  
 8 demonstrated that the bidder:

9 [ ] Has available the appropriate  
 10 financial, material, equipment,  
 11 facility and personnel resources  
 12 and expertise, or the ability to  
 13 obtain the resources and  
 14 expertise, necessary to meet  
 15 all contractual responsibilities.

16 [ ] Holds current licenses that  
 17 businesses or service professionals  
 18 operating in this state must hold  
 19 in order to undertake or perform  
 20 the work specified in the contract.

21 [ ] Is covered by liability insurance  
 22 and other insurance in amounts  
 23 required in the solicitation  
 24 documents.

25 [ ] Qualifies as a carrier-insured  
 26 employer or a self-insured  
 27 employer under ORS 656.407 or has  
 28 elected coverage under ORS 656.128.

29 [ ] **Provided health insurance**  
 30 **to the bidder's employees for a**  
 31 **period of two years before**  
 32 **submitting the bid, unless**  
 33 **exempted under**  
 34 **ORS 279C.375 (3)(b)(E).**

35 [ ] [*Has*] Disclosed the bidder's first-  
 36 tier subcontractors in accordance  
 37 with ORS 279C.370.

38 [ ] Has a satisfactory record of  
 39 performance.

40 [ ] Has a satisfactory record of  
 41 integrity.

42 [ ] Is legally qualified to contract  
 43 with the contracting agency.

44 [ ] [*Has*] Supplied all necessary  
 45 information in connection with

1 the inquiry concerning  
2 responsibility.

3 [ ] Determined the bidder to be  
4 (check one of the following):

5 [ ] Responsible under ORS 279C.375  
6 (3)(a) and (b).

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

9 (Attach documentation if the contracting agency finds the bidder not to be responsible.)  
10

11  
12 (d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the  
13 Construction Contractors Board within 30 days after the date the contracting agency awards the  
14 contract.

15 (4) The successful bidder shall:

16 (a) Promptly execute a formal contract; and

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

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

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

25 **SECTION 2. The amendments to ORS 279C.375 by section 1 of this 2013 Act apply to**  
26 **contracts that a contracting agency first advertises or otherwise solicits or, if the con-**  
27 **tracting agency does not advertise or solicit the contract, to a contract that the contracting**  
28 **agency first enters on or after the effective date of this 2013 Act.**

29 **SECTION 3. (1) The amendments to ORS 279C.375 by section 1 of this 2013 Act become**  
30 **operative on January 2, 2014.**

31 **(2) The Attorney General, the Director of the Oregon Department of Administrative**  
32 **Services, the Director of Transportation or a contracting agency that adopts rules under**  
33 **ORS 279A.065 may take any action before the operative date specified in subsection (1) of this**  
34 **section that is necessary for the Attorney General, the director or the contracting agency**  
35 **to exercise, on and after the operative date specified in subsection (1) of this section, all of**  
36 **the duties, functions and powers conferred on the Attorney General, the director or the**  
37 **contracting agency by the amendments to ORS 279C.375 by section 1 of this 2013 Act.**

38 **SECTION 4. This 2013 Act being necessary for the immediate preservation of the public**  
39 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
40 **on its passage.**  
41