

House Bill 2617

Sponsored by Representative HOLVEY (Pre-session filed.)

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 contractor may award subcontract only to responsible subcontractor. Requires contractor to check list that Construction Contractors Board maintains of persons that are not eligible for award of public improvement contract and to require prospective subcontractor to submit affidavit that demonstrates prospective subcontractor's responsibility. Requires contractor to provide contracting agency with copy of affidavit. Provides that contractor need not inquire into or verify truth of prospective subcontractor's affidavit.

Requires bidder to submit affidavit to show compliance with tax laws of state.

Permits contracting agency or board to bar contractor or subcontractor from award of public improvement contract if contractor or subcontractor knowingly or intentionally makes false statement on affidavit.

Becomes operative 91 days after effective date of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to responsibility requirements for public improvement contracts; creating new provisions;
3 amending ORS 279C.375 and 279C.440; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS chapter 279C.**

6 **SECTION 2. (1) A contracting agency shall provide as a material term in each public**
7 **improvement contract that a contractor may award a subcontract only to a responsible**
8 **subcontractor.**

9 **(2) In determining a subcontractor's responsibility, a contractor shall:**

10 **(a) Check the list that the Construction Contractors Board maintains under ORS 701.227**
11 **to verify whether a prospective subcontractor is eligible for an award of a public improve-**
12 **ment contract. For the purposes of this section, a prospective subcontractor that appears**
13 **on the list is not responsible.**

14 **(b) Require a prospective subcontractor to sign and submit to the contractor a signed**
15 **affidavit that states that the prospective subcontractor:**

16 **(A) Has available the appropriate financial, material, equipment, facility and personnel**
17 **resources and expertise, or has the ability to obtain the resources and expertise, necessary**
18 **to meet all responsibilities associated with the subcontract.**

19 **(B) Holds current licenses that businesses or service professionals that operate in this**
20 **state must hold in order to undertake or perform the work specified in the contract and does**
21 **not, as an owner of a construction business or as a contractor or responsible managing in-**
22 **dividual, as defined in ORS 701.005, have any outstanding construction debt, as defined in**
23 **ORS 701.005.**

24 **(C) Is covered by liability insurance and other insurance in amounts the contractor**
25 **specifies in the contractor's solicitation for the subcontract.**

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
 2 or has elected coverage under ORS 656.128.

3 (E) Completed previous contracts of a similar nature with a satisfactory record of per-
 4 formance. For purposes of this subparagraph, a satisfactory record of performance means
 5 that to the extent that the costs associated with and time available to perform a previous
 6 contract remained within the prospective subcontractor's control, the prospective subcon-
 7 tractor stayed within the time and budget allotted for the contract and otherwise performed
 8 the contract in a satisfactory manner.

9 (F) Has a satisfactory record of integrity. For the purposes of this subparagraph, a sat-
 10 isfactory record of integrity means that the prospective subcontractor does not have previ-
 11 ous criminal convictions for offenses related to obtaining or attempting to obtain a contract
 12 or subcontract or in connection with the prospective subcontractor's performance of a pre-
 13 vious contract or subcontract.

14 (G) Is legally qualified to contract with the contractor.

15 (H) Complied with the tax laws of this state or a political subdivision of this state, in-
 16 cluding ORS 305.620 and ORS chapters 316, 317 and 318.

17 (3) A contractor shall provide a contracting agency with a copy of the affidavit that the
 18 contractor receives under subsection (2)(b) of this section:

19 (a) With the disclosure required under ORS 279C.370; or

20 (b) Within 10 calendar days after awarding a subcontract.

21 (4) A contractor need not inquire into or verify the truth of an affidavit that the con-
 22 tractor receives from a prospective subcontractor under subsection (2)(b) of this section.

23 (5) The Attorney General, the Director of the Oregon Department of Administrative
 24 Services, the Director of Transportation or a contracting agency that adopts rules under
 25 ORS 279A.065 may by rule adopt a form and format for the affidavit required under sub-
 26 section (2)(b) of this section.

27 **SECTION 3.** ORS 279C.375 is amended to read:

28 279C.375. (1) After a contracting agency has opened bids and determined that the contracting
 29 agency will award a public improvement contract, the contracting agency shall award the contract
 30 to the lowest responsible bidder.

31 (2) At least seven days before awarding a public improvement contract, unless the contracting
 32 agency determines that seven days is impractical under rules adopted under ORS 279A.065, the
 33 contracting agency shall issue to each bidder or post, electronically or otherwise, a notice of the
 34 contracting agency's intent to award a contract. This subsection does not apply to a contract to
 35 which competitive bidding does not apply under ORS 279C.335 (1)(c) or (d). The notice and the
 36 manner in which the **contracting agency posts or issues the** notice [*is posted or issued*] must
 37 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*] **that** the Construction Contractors Board **maintains** under ORS
 41 701.227 for bidders who are not [*qualified to hold*] **eligible for an award of** a public improvement
 42 contract.

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

45 (A) Has available the appropriate financial, material, equipment, facility and personnel resources

1 and expertise, or has the ability to obtain the resources and expertise, necessary to meet all con-
2 tractual responsibilities.

3 (B) Holds current licenses that businesses or service professionals operating in this state must
4 hold in order to undertake or perform the work specified in the contract[.] **and does not, as an**
5 **owner of a construction business or as a contractor or responsible managing individual, as**
6 **defined in ORS 701.005, have any outstanding construction debt, as defined in ORS 701.005.**
7 **The bidder shall demonstrate compliance by providing the contracting agency with a signed**
8 **affidavit that attests that the bidder has complied with the requirements of this subpara-**
9 **graph.**

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

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

14 (E) Has made the disclosure required under ORS 279C.370.

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

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

28 (H) Is legally qualified to contract with the contracting agency.

29 (I) **Complied with the tax laws of this state or a political subdivision of this state, in-**
30 **cluding ORS 305.620 and ORS chapters 316, 317 and 318. The bidder shall demonstrate com-**
31 **pliance by providing the contracting agency with a signed affidavit that states that the bidder**
32 **has complied with the tax laws of this state or a political subdivision of this state.**

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

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

39 _____

40
41 RESPONSIBILITY DETERMINATION FORM

42
43 Project Name: _____

44 Bid Number: _____

45 Business Entity Name: _____

1 CCB License Number: _____

2 Form Submitted By (Contracting Agency):

3 _____

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

5 Title: _____

6 Date: _____

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

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

10 Checked the list created by the
11 Construction Contractors Board
12 under ORS 701.227 for bidders who
13 are not qualified to hold a public
14 improvement contract.

15 Determined whether the bidder has
16 met the standards of responsibility.
17 In so doing, the contracting agency
18 has found that the bidder
19 demonstrated that the bidder:

20 Has available the appropriate
21 financial, material, equipment,
22 facility and personnel resources
23 and expertise, or the ability to
24 obtain the resources and
25 expertise, necessary to meet
26 all contractual responsibilities.

27 Holds current licenses that
28 businesses or service professionals
29 operating in this state must hold
30 in order to undertake or perform
31 the work specified in the contract
32 **and does not, as owner of**
33 **construction business, as contractor**
34 **or as responsible managing individual,**
35 **have any outstanding construction**
36 **debt.**

37 Is covered by liability insurance
38 and other insurance in amounts
39 required in the solicitation
40 documents.

41 Qualifies as a carrier-insured
42 employer or a self-insured
43 employer under ORS 656.407 or has
44 elected coverage under ORS 656.128.

45 Has disclosed the bidder's first-

1 tier subcontractors in accordance
2 with ORS 279C.370.

3 [] Has a satisfactory record of
4 performance.

5 [] Has a satisfactory record of
6 integrity.

7 [] Is legally qualified to contract
8 with the contracting agency.

9 [] **Has complied with the tax laws
10 of this state or a political
11 subdivision of this state.**

12 [] Has supplied all necessary
13 information in connection with
14 the inquiry concerning
15 responsibility.

16 [] Determined the bidder to be
17 (check one of the following):

18 [] Responsible under ORS 279C.375
19 (3)(a) and (b).

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

22 (Attach documentation if the contracting agency finds the bidder not to be responsible.)
23

24
25 (d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the
26 Construction Contractors Board within 30 days after the date the contracting agency awards the
27 contract.

28 (4) The successful bidder shall:

29 (a) Promptly execute a formal contract; and

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

32 (5) *[Based on competitive bids]* **After conducting a competitive bidding process**, a contracting
33 agency may award a public improvement contract or may award multiple public improvement con-
34 tracts *[when specified]* **if the contracting agency specifies** in the invitation to bid **that the con-**
35 **tracting agency will award multiple public improvement contracts.**

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

40 **SECTION 4.** ORS 279C.440 is amended to read:

41 279C.440. (1)(a) A contracting agency may disqualify a person from consideration for award of
42 the contracting agency’s contracts for the reasons listed in subsection (2) of this section after pro-
43 viding the person with notice and a reasonable opportunity to be heard.

44 (b) In lieu of the disqualification *[process]* described in paragraph (a) of this subsection, a con-
45 tracting agency *[contracting for a]* **that conducts procurements for public** *[improvement]* **im-**

1 **provements** may petition the Construction Contractors Board to disqualify a person from
 2 consideration for award of the contracting agency's public improvement contracts for the reasons
 3 listed in subsection (2) of this section. The Construction Contractors Board shall provide the person
 4 with notice and a reasonable opportunity to be heard.

5 (c) A contracting agency or the Construction Contractors Board may not disqualify a person
 6 under this section for a period of more than three years.

7 (2) A **contracting agency or the Construction Contractors Board may disqualify a person**
 8 [*may be disqualified*] from consideration for award of a contracting agency's contracts for any of the
 9 following reasons:

10 (a) The person has been convicted of a criminal offense as an incident in obtaining or attempting
 11 to obtain a public or private contract or subcontract, or in [*the performance of such*] **performing a**
 12 contract or subcontract.

13 (b) The person has been convicted under state or federal statutes of embezzlement, theft, forgery,
 14 bribery, falsification or destruction of records, receiving stolen property or any other offense [*indi-*
 15 *cating*] **that indicates** a lack of business integrity or business honesty **and** that currently, seriously
 16 and directly affects the person's responsibility as a contractor.

17 (c) The person has been convicted under state or federal antitrust statutes.

18 (d) The person has committed a violation of a contract provision that [*is regarded by*] the con-
 19 tracting agency or the Construction Contractors Board [*to be*] **regard as** so serious as to justify
 20 disqualification. [A] **The** violation may include but is not limited to [*a failure*] **failing** to perform the
 21 terms of a contract or [*an unsatisfactory performance*] **failing to perform satisfactorily** in accord-
 22 ance with the terms of the contract. [*However,*] A **person's** failure to perform or an unsatisfactory
 23 performance caused by acts beyond the **person's** control [*of the contractor may not be considered to*
 24 *be*] **is not** a basis for disqualification.

25 (e) The person does not carry workers' compensation or unemployment insurance as required
 26 by statute.

27 **(f) The person knowingly or intentionally makes a false statement in an affidavit required**
 28 **under ORS 279C.375 (3)(b)(B) or (I) or under section 2 (2)(b) of this 2015 Act.**

29 (3) A contracting agency or the Construction Contractors Board shall issue a written decision
 30 to disqualify a person under this section. The decision [*shall*] **must**:

31 (a) State the reasons for the action taken; and

32 (b) Inform the disqualified person [*of the appeal right of*] **that** the person **may appeal the dis-**
 33 **qualification** under:

34 (A) ORS 279C.445 and 279C.450, if [*the decision to disqualify was issued by*] a contracting agency
 35 **issued the decision to disqualify the person;** or

36 (B) ORS chapter 183, if [*the decision to disqualify was issued by*] the Construction Contractors
 37 Board **issued the decision to disqualify the person.**

38 (4) **The contracting agency or the Construction Contractors Board must immediately mail**
 39 **or otherwise provide the disqualified person** a copy of the decision issued under subsection (3)
 40 of this section [*must be mailed or otherwise furnished immediately to the disqualified person*].

41 **SECTION 5. Section 2 of this 2015 Act and the amendments to ORS 279C.375 and 279C.440**
 42 **by sections 3 and 4 of this 2015 Act apply to public improvement contracts that a contracting**
 43 **agency first advertises or otherwise solicits or, if the contracting agency does not advertise**
 44 **or solicit the public improvement contract, to a public improvement contract the contracting**
 45 **agency enters into on or after the operative date specified in section 6 of this 2015 Act.**

1 **SECTION 6.** (1) Section 2 of this 2015 Act and the amendments to ORS 279C.375 and
2 279C.440 by sections 3 and 4 of this 2015 Act become operative 91 days after the effective date
3 of this 2015 Act.

4 (2) The Attorney General, the Director of the Oregon Department of Administrative
5 Services, the Director of Transportation and a contracting agency that adopts rules under
6 ORS 279A.065 may adopt rules and take any other action before the operative date specified
7 in subsection (1) of this section that is necessary to enable the Attorney General, the direc-
8 tor or the contracting agency to exercise, on and after the operative date specified in sub-
9 section (1) of this section, all of the duties, functions and powers conferred on the Attorney
10 General, the director or the contracting agency by section 2 of this 2015 Act and the
11 amendments to ORS 279C.375 and 279C.440 by sections 3 and 4 of this 2015 Act.

12 **SECTION 7.** This 2015 Act being necessary for the immediate preservation of the public
13 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
14 on its passage.