

Senate Bill 290

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor John A. Kitzhaber, M.D., for Oregon Department of Administrative Services)

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**.

Directs Oregon Department of Administrative Services to establish program that certifies that prospective bidder or proposer understands pay equity provisions in laws of this state. Specifies elements that program must include. Permits department to conduct training or to enter into inter-agency agreement or contract to provide training.

Provides that state contracting agency may not prequalify prospective bidder or proposer for public contract for goods or services, or for public improvement contract, if prospective bidder or proposer employs 50 or more workers and if public contract has estimated contract price that exceeds \$500,000, unless prospective bidder or proposer submits certificate that shows completion of training program for compliance with pay equity provisions of state law.

Requires bidder or proposer to demonstrate to state contracting agency that bidder or proposer has certificate from program as part of bidder's or proposer's demonstration of responsibility.

Requires all public contracts to provide that contractors must comply with prohibitions against discrimination in wage payments and compensation and that contractors may not prohibit employees from discussing with others employees' rate of wage, salary or other compensation or retaliate against employees who discuss employees' rate of wage, salary or other compensation.

Becomes operative January 1, 2016.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to requirements in public contracting for compliance with pay equity provisions of state
3 law; creating new provisions; amending ORS 279B.110, 279B.120, 279B.125, 279B.235, 279C.375,
4 279C.430 and 279C.520; and declaring an emergency.

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

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

7 **SECTION 2. (1) The Oregon Department of Administrative Services shall establish a**
8 **program to certify that a prospective bidder or proposer understands the prohibition set**
9 **forth in ORS 652.220 and in other laws or rules that prohibit discrimination in compensation**
10 **or wage payments. The program must include, but is not limited to, all of these elements:**

11 (a) **A curriculum for training prospective bidders and proposers in complying with the**
12 **prohibition described in this subsection. The curriculum must include hypothetical situ-**
13 **ations, case studies and other examples that show conduct that would violate the prohibition**
14 **and other conduct that would constitute correct and best practices.**

15 (b) **Criteria for assessing whether prospective bidders and proposers understand the**
16 **prohibition and can successfully apply best practices to a hypothetical situation that involves**
17 **discrimination in compensation or wage payments.**

18 (c) **Standards for successful completion of the curriculum and assessment that will result**
19 **in the department issuing the certificate.**

20 (2) **The department may conduct the training and assessment for the program described**
21 **in subsection (1) of this section or may enter into an interagency agreement with the Bureau**

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 **of Labor and Industries or a contract with a private entity to conduct the training and as-**
 2 **essment.**

3 **(3) The department may by rule specify a period of time during which a certificate the**
 4 **department issues under this section is valid and may adopt other rules that are necessary**
 5 **to implement the provisions of this section.**

6 **SECTION 3.** ORS 279B.110, as amended by section 3, chapter 77, Oregon Laws 2014, is amended
 7 to read:

8 279B.110. (1) As part of a contracting agency's evaluation of a bid or proposal, the contracting
 9 agency shall determine whether the bidder or proposer is responsible in accordance with the stan-
 10 dards of responsibility set forth in subsection (2) of this section. If the contracting agency deter-
 11 mines that a bidder or proposer is not responsible, the contracting agency shall provide the bidder
 12 or proposer with written notice of the contracting agency's determination.

13 (2) In order for a contracting agency to determine that a bidder or proposer is responsible, the
 14 bidder or proposer must demonstrate to the contracting agency that the bidder or proposer:

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

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

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

31 (d) Is legally qualified to contract with the contracting agency.

32 (e) Complied with the tax laws of this state or a political subdivision of this state, including ORS
 33 305.620 and ORS chapters 316, 317 and 318. The bidder or proposer shall demonstrate compliance
 34 by submitting a signed affidavit that [*attests, under penalty of perjury,*] **declares** that the bidder or
 35 proposer has complied with the tax laws of this state or a political subdivision of this state.

36 **(f) Possesses an unexpired certificate that the Oregon Department of Administrative**
 37 **Services issued under section 2 of this 2015 Act, if the bidder or proposer employs 50 or more**
 38 **full-time workers and submitted a bid or proposal for a procurement with an estimated**
 39 **contract price that exceeds \$500,000 in response to an advertisement or solicitation from a**
 40 **state contracting agency.**

41 [*f*] **(g)** Supplied all necessary information in connection with the inquiry concerning responsi-
 42 bility. If a bidder or proposer fails to promptly supply information concerning responsibility that the
 43 contracting agency requests, the contracting agency shall determine the bidder's or proposer's re-
 44 sponsibility based on available information or may find that the bidder or proposer is not responsi-
 45 ble.

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

2 (3) A contracting agency may refuse to disclose outside of the contracting agency confidential
3 information furnished by a bidder or proposer under this section when the bidder or proposer has
4 clearly identified in writing the information the bidder or proposer seeks to have treated as confi-
5 dential and the contracting agency has authority under ORS 192.410 to 192.505 to withhold the
6 identified information from disclosure.

7 **SECTION 4.** ORS 279B.120 is amended to read:

8 279B.120. (1) A contracting agency may prequalify prospective bidders or proposers to submit
9 bids or proposals for public contracts to provide particular types of goods or services. **Unless the**
10 **Director of the Oregon Department of Administrative Services prescribes otherwise by rule,**
11 **or a local contract review board prescribes otherwise by ordinance or resolution, the con-**
12 **tracting agency shall determine the method and form that prospective bidders or proposers**
13 **must use for, and the information the bidders or proposers must include in, a prequalifica-**
14 **tion application. The contracting agency, at a minimum, must base the contracting agency's**
15 **determination as to whether the prospective bidder or proposer is qualified in accordance**
16 **with subsection (2)(a) of this section and, if the contracting agency is a state contracting**
17 **agency, on the additional requirement set forth in subsection (2)(b) of this section.** [*The*
18 *method of submitting prequalification applications, the information required in order to be prequalified*
19 *and the forms to be used for submitting prequalification information shall be determined by the con-*
20 *tracting agency unless otherwise prescribed by rule adopted by the Director of the Oregon Department*
21 *of Administrative Services or the local contract review board.*]

22 (2)(a) [*The*] **A contracting agency shall**, *in response to the receipt of a prequalification application*
23 *submitted under subsection (1) of this section, notify the* **determine whether a** prospective bidder
24 or proposer **that submitted a complete application under subsection (1) of this section** [*whether*
25 *the prospective bidder or proposer*] is qualified based on the standards of responsibility listed in ORS
26 279B.110 (2)[,] **and** the type and nature of contracts [*that*] **for which** the prospective bidder or
27 proposer [*is qualified*] **intends to compete** [*for*]. **The contracting agency shall notify the pro-**
28 **spective bidder or proposer of the contracting agency's determination and, if the prospective**
29 **bidder or proposer is qualified, of** [*and*] the time period for which the prequalification is valid. If
30 the contracting agency does not prequalify a prospective bidder or proposer [*as to*] **for** any contracts
31 [*covered by the*] **that require** prequalification [*process*], the notice must specify which of the stan-
32 dards of responsibility listed in ORS 279B.110 (2) the prospective bidder or proposer failed to meet
33 **and the reasons the contracting agency determined that the prospective bidder or proposer**
34 **failed to meet the standard or standards. Unless the contracting agency specifies the reasons**
35 [*are specified*], the **contracting agency must deem the** prospective bidder or proposer [*shall be*
36 *deemed to have been prequalified in accordance with the application.*] **prequalified to submit bids**
37 **or proposals for the types of goods or services or categories of work that were specified in**
38 **the application and in accordance with any limitations or other conditions specified in the**
39 **application.**

40 (b) A state contracting agency that intends to award a contract for goods or services
41 with an estimated contract price that exceeds \$500,000 may not prequalify a prospective bid-
42 der or proposer that employs 50 or more full-time workers unless the prospective bidder or
43 proposer, in addition to qualifying as provided in paragraph (a) of this subsection, submits
44 with the prequalification application a certificate that the Oregon Department of Adminis-
45 trative Services issued under section 2 of this 2015 Act.

1 (3) If a contracting agency subsequently discovers that a prospective bidder or proposer that
 2 prequalified under subsections (1) and (2) of this section is no longer qualified, the agency may re-
 3 voke the prequalification *[upon]* **after** reasonable notice to the prospective bidder or proposer, ex-
 4 cept that a revocation is invalid as to any *[contract]* **procurement** for which **the contracting**
 5 **agency already issued** an advertisement for bids or proposals *[has already been issued]*.

6 **SECTION 5.** ORS 279B.125 is amended to read:

7 279B.125. (1) *[When]* **If** a contracting agency permits or requires prequalification of bidders or
 8 proposers, a prospective bidder or proposer *[who wishes]* **that intends** to prequalify shall submit a
 9 prequalification application to the contracting agency on a form prescribed under ORS 279B.120 (1).
 10 *[Upon receipt of]* **After receiving** a prequalification application, the contracting agency shall inves-
 11 tigate the prospective bidder or proposer as necessary to determine whether the prospective bidder
 12 or proposer is qualified. *[The determination shall be made in less than 30 days, if practicable,]* If the
 13 prospective bidder or proposer requests an early decision to allow the prospective bidder or
 14 proposer as much time as possible to prepare a bid or proposal for a contract that has been
 15 advertised[,], **the contracting agency shall make the determination in less than 30 days, if**
 16 **practicable.** *[In making its determination, the contracting agency shall consider only the applicable*
 17 *standards of responsibility listed in ORS 279B.110 (2). The contracting agency shall promptly notify*
 18 *the prospective bidder or proposer whether the prospective bidder or proposer is qualified.]* **The con-**
 19 **tracting agency may determine whether the applicant is qualified only on the basis of the**
 20 **applicable standards of responsibility listed in ORS 279B.110 (2) or, if the contracting agency**
 21 **is a state contracting agency, on the basis of the applicable standards of responsibility listed**
 22 **in ORS 279B.110 (2) and the additional requirement set forth in ORS 279B.120 (2)(b).**

23 (2) If *[the]* a contracting agency finds that a prospective bidder or proposer is qualified, **the**
 24 **contracting agency shall notify the prospective bidder or proposer promptly and in** the notice
 25 *[must]* **shall** state the type and nature of contracts *[that the prospective bidder or proposer is qualified*
 26 *to compete]* for **which the prospective bidder or proposer may submit bids or proposals** and the
 27 *[period of]* time **period** for which the prequalification is valid. If the agency finds that the prospec-
 28 tive bidder or proposer is not qualified as to any contracts *[covered by the rule, resolution, ordinance*
 29 *or other regulation, the notice must specify the reasons given under ORS 279B.120 for not prequalifying*
 30 *the prospective bidder or proposer and]* **for which the contracting agency requires prequalifica-**
 31 **tion, the contracting agency shall notify the prospective bidder or proposer of which stan-**
 32 **dards under ORS 279B.110 (2) or 279B.120 (2)(b) the prospective bidder or proposer failed to**
 33 **meet and the reasons why the contracting agency determined that the prospective bidder or**
 34 **proposer failed to meet the standard or standards. The notice must also** inform the prospective
 35 bidder or proposer of the right to a hearing under ORS 279B.425. To be entitled to a hearing under
 36 ORS 279B.425, a prospective bidder or proposer shall, within three business days after *[receipt of]*
 37 **receiving** the notice, notify the contracting agency that the prospective bidder or proposer demands
 38 a hearing under ORS 279B.425.

39 (3) If a contracting agency has reasonable cause to believe that *[there has been]* a substantial
 40 change **has occurred** in the conditions *[of]* **under which** a *[prequalified]* prospective bidder or
 41 proposer **prequalified under this section and ORS 279B.120** and that the prospective bidder or
 42 proposer is no longer qualified or is less qualified, the contracting agency may revoke or may revise
 43 and reissue the prequalification after reasonable notice to the prequalified prospective bidder or
 44 proposer. The notice must specify the reasons *[given]* **the contracting agency found** under ORS
 45 279B.120 for *[revocation or revision of]* **revoking or revising** the prequalification of the prospective

bidder or proposer and inform the prospective bidder or proposer of the right to a hearing under ORS 279B.425. To be entitled to a hearing under ORS 279B.425, a prospective bidder or proposer shall, within three business days after *[receipt of]* **receiving** the notice, notify the contracting agency that the prospective bidder or proposer demands a hearing under ORS 279B.425. A revocation or revision does not apply to any contract for which an advertisement for bids or proposals was issued before the date **on which the prospective bidder or proposer received** the notice of revocation or revision *[was received by the prequalified prospective bidder or proposer]*.

SECTION 6. ORS 279B.235 is amended to read:

279B.235. (1) Except as provided in subsections (3) to (6) of this section, every public contract subject to this chapter must *[contain a condition that a person may not be employed]* **provide that:**

(a) A contractor may not employ an employee for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires *[it]* **otherwise**, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, the *[employee shall be paid]* **contractor shall pay the employee** at least time and a half pay **for:**

[(a)(A) For] **(A)(i)** All overtime in excess of eight hours in any one day or 40 hours in any one week *[when]* **if** the work week is five consecutive days, Monday through Friday; or

[(B) For] **(ii)** All overtime in excess of 10 hours in any one day or 40 hours in any one week *[when]* **if** the work week is four consecutive days, Monday through Friday; and

[(b) For] **(B)** All work *[performed]* **the employee performs** on Saturday and on any legal holiday specified in ORS 279B.020.

(b) The contractor shall comply with the prohibition set forth in ORS 652.220, that compliance is a material element of the contract and that a failure to comply is a breach that entitles the contracting agency to terminate the contract for cause.

(c) The contractor may not prohibit any of the contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

(2) *[An employer must]* **A contractor shall** give notice in writing to employees who work on a public contract, either at the time of hire or before *[commencement of]* work **begins** on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the **contractor may require the** employees *[may be required]* to work.

(3) *[In the case of contracts]* **A public contract** for personal services, as described in ORS 279A.055, *[the contract shall contain a provision that the]* **must provide that the contractor shall pay the contractor's employees who work under the public contract** *[employee shall be paid]* at least time and a half for all overtime *[worked]* **the employees work** in excess of 40 hours in any one week, except for *[individuals]* **employees** under a personal services *[contracts]* **public contract** who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

(4) *[In the case of]* **A public contract** for services at a county fair, or for *[other events authorized by]* **another event that** a county fair board **authorizes**, *[the contract must contain a provision that]* **must provide that the contractor shall pay** employees *[must be paid]* **who work under the public contract** at least time and a half for work in excess of 10 hours in any one day or 40 hours in any one week. *[An employer shall give notice in writing to]* **A contractor shall notify** employees

1 who work *[on such a]* **under the public** contract, either at the time of hire or before *[commencement*
 2 *of]* work **begins** on the **public** contract, or by posting a notice in a location frequented by employ-
 3 ees, of the number of hours per day and days per week that **the contractor may require the** em-
 4 ployees *[may be required]* to work.

5 (5)(a) Except as provided in subsection (4) of this section, a *[contracts]* **public contract** for ser-
 6 vices must *[contain a provision that requires that persons employed under the contracts shall receive]*
 7 **provide that the contractor shall pay employees** at least time and a half pay for work
 8 *[performed]* **the employees perform under the public contract** on the legal holidays specified in
 9 a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time *[worked]* **the**
 10 **employee works** in excess of 10 hours in any one day or in excess of 40 hours in any one week,
 11 whichever is greater.

12 (b) *[An employer shall give notice in writing to]* **A contractor shall notify in writing** employees
 13 who work on a **public** contract for services, either at the time of hire or before *[commencement of]*
 14 work **begins** on the **public** contract, or by posting a notice in a location frequented by employees,
 15 of the number of hours per day and days per week that the **contractor may require the** employees
 16 *[may be required]* to work.

17 (6) This section does not apply to public contracts:

18 (a) With financial institutions as defined in ORS 706.008.

19 (b) Made pursuant to the authority of the State Forester or the State Board of Forestry under
 20 ORS 477.406 for labor performed in the prevention or suppression of fire.

21 (c) For goods or personal property.

22 **SECTION 7.** ORS 279C.375 is amended to read:

23 279C.375. (1) After a contracting agency has opened bids and determined that the contracting
 24 agency will award a public improvement contract, the contracting agency shall award the contract
 25 to the lowest responsible bidder.

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

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

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

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

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

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

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

45 (D) Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has

1 elected coverage under ORS 656.128.

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

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

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

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

17 **(I) Possesses an unexpired certificate that the Oregon Department of Administrative**
18 **Services issued under section 2 of this 2015 Act, if the bidder employs 50 or more full-time**
19 **workers and submitted a bid for a procurement with an estimated contract price that ex-**
20 **ceeds \$500,000 in response to an advertisement or solicitation from a state contracting**
21 **agency.**

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

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

28 _____
29
30 RESPONSIBILITY DETERMINATION FORM

31
32 Project Name: _____

33 Bid Number: _____

34 Business Entity Name: _____

35 CCB License Number: _____

36 Form Submitted By (Contracting Agency):
37 _____

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 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 [] Has disclosed the bidder's first-
30 tier subcontractors in accordance
31 with ORS 279C.370.
- 32 [] Has a satisfactory record of
33 performance.
- 34 [] Has a satisfactory record of
35 integrity.
- 36 [] Is legally qualified to contract
37 with the contracting agency.
- 38 [] **Possesses a certificate that**
39 **the Oregon Department of**
40 **Administrative Services issued under**
41 **section 2 of this 2015 Act.**
- 42 [] Has supplied all necessary
43 information in connection with
44 the inquiry concerning
45 responsibility.

[] Determined the bidder to be

(check one of the following):

[] Responsible under ORS 279C.375

(3)(a) and (b).

[] Not responsible under

ORS 279C.375 (3)(a) and (b).

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

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

(4) The successful bidder shall:

(a) Promptly execute a formal contract; and

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

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

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

SECTION 8. ORS 279C.430 is amended to read:

279C.430. (1) A contracting agency may adopt a rule, resolution, ordinance or other regulation *[requiring]* **to require** mandatory prequalification *[for all persons desiring to bid for public improvement contracts that are to be let by the agency]* **before a prospective bidder or proposer may submit a bid or proposal for a public improvement contract.** The rule, resolution, ordinance or other regulation *[authorized by this section]* must include the time for submitting prequalification applications and a general description of the type and nature of the contracts that *[may be let]* **require prequalification.** *[The prequalification application must be in writing on a standard form prescribed under the authority of ORS 279A.050.]*

(2)(a) *[When]* **If** a contracting agency *[permits or]* requires prequalification *[of bidders]* **under subsection (1) of this section,** a *[person who wishes to prequalify]* **prospective bidder or proposer that intends to prequalify** shall submit a prequalification application to the contracting agency *[on a standard form prescribed under subsection (1) of this section]* **using a method and form that the contracting agency prescribes and with the information the contracting agency specifies.** Within 30 days after *[receipt of]* **receiving** a prequalification application, the contracting agency shall investigate the applicant as necessary to determine if the applicant is qualified. *[The determination shall be made in less than 30 days, if practicable,]* If the applicant requests an early decision to allow the applicant as much time as possible to prepare a bid on a contract that has been advertised, **the contracting agency shall make the determination in less than 30 days, if practicable.** *[In making its determination, the contracting agency shall consider only the applicable standards of responsibility listed in ORS 279C.375 (3)(b). The agency shall promptly notify the applicant whether or not the applicant is qualified.]* **The contracting agency may determine whether the applicant is qualified only on the basis of the applicable standards of responsibility listed**

1 in ORS 279C.375 (3)(b) or, if the contracting agency is a state contracting agency, on the
 2 applicable standards of responsibility listed in ORS 279C.375 (3)(b) and the additional re-
 3 quirement set forth in paragraph (b) of this subsection.

4 (b) A state contracting agency that intends to award a public improvement contract with
 5 an estimated contract price that exceeds \$500,000 may not prequalify a prospective bidder or
 6 proposer that employs 50 or more full-time workers unless the prospective bidder or
 7 proposer, in addition to qualifying as provided in paragraph (a) of this subsection, submits
 8 with the prequalification application a certificate that the Oregon Department of Adminis-
 9 trative Services issued under section 2 of this 2015 Act.

10 (3) If *[the]* a contracting agency finds that *[the]* an applicant is qualified, the contracting
 11 agency shall notify the applicant promptly and in the notice *[must]* shall state the nature and
 12 type of contracts *[that the person is qualified to bid on]* for which the applicant may submit bids
 13 or proposals and the period of time for which the qualification is valid *[under the contracting*
 14 *agency's rule, resolution, ordinance or other regulation]*. If the contracting agency finds the applicant
 15 is not qualified as to any contracts *[covered by the rule, resolution, ordinance or other regulation, the*
 16 *notice must specify the reasons found under ORS 279C.375 (3)(b) for not prequalifying the applicant*
 17 *and]* for which the contracting agency requires prequalification, the contracting agency shall
 18 notify the applicant of which standards under ORS 279C.375 (3)(b) or subsection (2)(b) of this
 19 section the applicant failed to meet and the reasons why the contracting agency determined
 20 that the applicant failed to meet the standard or standards. The notice must also inform the
 21 applicant of the right to a hearing under ORS 279C.445 and 279C.450.

22 (4) If a contracting agency has reasonable cause to believe that *[there has been]* a substantial
 23 change has occurred in the conditions under which a person prequalified under this section
 24 *[of a prequalified person and that the person]* and that the person is no longer qualified or is less
 25 qualified, the contracting agency may revoke or may revise and reissue the prequalification after
 26 reasonable notice to the prequalified person. The notice *[shall]* must state the reasons the con-
 27 tracting agency found under ORS 279C.375 (3)(b) for *[revocation or revision of the]* revoking or
 28 revising the person's prequalification *[of the person]* and inform the person of the right to a hear-
 29 ing under ORS 279C.445 and 279C.450. A revocation or revision does not apply to any public im-
 30 provement contract for which publication of an advertisement, in accordance with ORS 279C.360,
 31 *[commenced]* began before the date on which the prequalified person received the notice of re-
 32 vocation or revision *[was received by the prequalified person]*.

33 **SECTION 9.** ORS 279C.520 is amended to read:

34 279C.520. (1) Every public contract subject to this chapter must *[contain a condition]* provide
 35 that:

36 (a) A contractor may not employ an employee *[person may not be employed]* for more than
 37 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or
 38 when the public policy absolutely requires *[it]* otherwise, and in such cases, except in cases of
 39 contracts for personal services as defined in ORS 279C.100, the contractor shall pay the employee
 40 *[shall be paid]* at least time and a half pay for:

41 *[(a)(A) For]* (A)(i) All overtime in excess of eight hours in any one day or 40 hours in any one
 42 week *[when]* if the work week is five consecutive days, Monday through Friday; or

43 *[(B) For]* (ii) All overtime in excess of 10 hours in any one day or 40 hours in any one week
 44 *[when]* if the work week is four consecutive days, Monday through Friday; and

45 *[(b) For]* (B) All work *[performed]* the employee performs on Saturday and on any legal holiday

1 specified in ORS 279C.540.

2 **(b) The contractor shall comply with the prohibition set forth in ORS 652.220, that com-**
 3 **pliance is a material element of the contract and that a failure to comply is a breach that**
 4 **entitles the contracting agency to terminate the contract for cause.**

5 **(c) The contractor may not prohibit any of the contractor's employees from discussing**
 6 **the employee's rate of wage, salary, benefits or other compensation with another employee**
 7 **or another person and may not retaliate against an employee who discusses the employee's**
 8 **rate of wage, salary, benefits or other compensation with another employee or another per-**
 9 **son.**

10 (2) *[An employer must]* **A contractor shall** give notice in writing to employees who work on a
 11 public contract, either at the time of hire or before *[commencement of]* work **begins** on the contract,
 12 or by posting a notice in a location frequented by employees, of the number of hours per day and
 13 days per week that the **contractor may require the** employees *[may be required]* to work.

14 (3) *[In the case of contracts]* **A public contract** for personal services, as defined in ORS
 15 279C.100, *[the contract shall contain a provision that the employee shall be paid]* **must provide that**
 16 **the contractor shall pay the contractor's employees who work under the public contract** at
 17 least time and a half for all overtime *[worked]* **the employees work** in excess of 40 hours in any
 18 one week, except for *[individuals]* **employees** under a personal services *[contracts]* **public contract**
 19 who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving over-
 20 time.

21 (4) *[In the case of]* **A public** contract for services at a county fair, or for *[other events authorized*
 22 *by]* **another event that** a county fair board **authorizes**, *[the contract must contain a provision*
 23 *that]* **must provide that the contractor shall pay** employees *[must be paid]* **who work under the**
 24 **public contract** at least time and a half for work in excess of 10 hours in any one day or 40 hours
 25 in any one week. *[An employer shall give notice in writing to]* **A contractor shall notify** employees
 26 who work *[on such a]* **under the public** contract, either at the time of hire or before *[commencement*
 27 *of]* work **begins** on the **public** contract, or by posting a notice in a location frequented by employ-
 28 ees, of the number of hours per day and days per week that **the contractor may require the** em-
 29 ployees *[may be required]* to work.

30 (5)(a) Except as provided in subsection (4) of this section, *[contracts]* **a public contract** for ser-
 31 vices must *[contain a provision that requires that persons employed under the contracts shall receive]*
 32 **provide that the contractor shall pay employees** at least time and a half pay for work
 33 *[performed]* **the employees perform under the public contract** on the legal holidays specified in
 34 a collective bargaining agreement or in ORS 279C.540 (1)(b)(B) to (G) and for all time *[worked]* **the**
 35 **employees work** in excess of 10 hours in any one day or in excess of 40 hours in any one week,
 36 whichever is greater.

37 (b) *[An employer shall give notice in writing to]* **A contractor shall notify in writing** employees
 38 who work on a **public** contract for services, either at the time of hire or before *[commencement of]*
 39 work **begins** on the **public** contract, or by posting a notice in a location frequented by employees,
 40 of the number of hours per day and days per week that the **contractor may require the** employees
 41 *[may be required]* to work.

42 **SECTION 10. Section 2 of this 2015 Act and the amendments to ORS 279B.110, 279B.120,**
 43 **279B.125, 279B.235, 279C.375, 279C.430 and 279C.520 by sections 3 to 9 of this 2015 Act apply**
 44 **to procurements that a contracting agency advertised or otherwise solicited or, if the con-**
 45 **tracting agency did not advertise or solicit the procurement, to contracts into which the**

1 **contracting agency entered on or after the operative date specified in section 11 of this 2015**
2 **Act.**

3 **SECTION 11. (1) Section 2 of this 2015 Act and the amendments to ORS 279B.110,**
4 **279B.120, 279B.125, 279B.235, 279C.375, 279C.430 and 279C.520 by sections 3 to 9 of this 2015**
5 **Act become operative January 1, 2016.**

6 **(2) The Director of the Oregon Department of Administrative Services, the Director of**
7 **Transportation, the Attorney General or a contracting agency that adopts rules under ORS**
8 **279A.065 may take any action before the operative date specified in subsection (1) of this**
9 **section that is necessary to enable the director, the Attorney General or the contracting**
10 **agency to exercise, on and after the operative date specified in subsection (1) of this section,**
11 **all of the duties, functions and powers conferred on the director, the Attorney General or**
12 **the contracting agency by section 2 of this 2015 Act and the amendments to ORS 279B.110,**
13 **279B.120, 279B.125, 279B.235, 279C.375, 279C.430 and 279C.520 by sections 3 to 9 of this 2015**
14 **Act.**

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

18 _____