

## SENATE AMENDMENTS TO SENATE BILL 491

By COMMITTEE ON WORKFORCE

April 3

1 On page 1 of the printed bill, line 3, after “amending” delete the rest of the line and line 4 and  
2 insert “ORS 279B.110, 279B.235, 279C.375 and 279C.520; and declaring an emergency.”.

3 Delete lines 6 through 24 and delete page 2 and insert:

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

5 **“SECTION 2. (1) The Oregon Department of Administrative Services shall establish a**  
6 **program to certify that a person that intends to submit a bid or proposal for a public con-**  
7 **tract understands the prohibition set forth in ORS 652.220 and in other laws or rules that**  
8 **prohibit discrimination in compensation or wage payments. The program must include, but**  
9 **is not limited to, all of these elements:**

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

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

17 **“(c) Standards for successful completion of the curriculum and assessment that will re-**  
18 **sult in the department issuing the certificate.**

19 **“(2) The department may conduct the training and assessment for the program described**  
20 **in subsection (1) of this section or may enter into an interagency agreement with the Bureau**  
21 **of Labor and Industries or a contract with a private entity to conduct the training and as-**  
22 **essment.**

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

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

28 **“279B.110. (1) As part of a contracting agency’s evaluation of a bid or proposal, the contracting**  
29 **agency shall determine whether the bidder or proposer is responsible in accordance with the stan-**  
30 **dards of responsibility set forth in subsection (2) of this section. If the contracting agency deter-**  
31 **mines that a bidder or proposer is not responsible, the contracting agency shall provide the bidder**  
32 **or proposer with written notice of the contracting agency’s determination.**

33 **“(2) In order for a contracting agency to determine that a bidder or proposer is responsible, the**  
34 **bidder or proposer must demonstrate to the contracting agency that the bidder or proposer:**

35 **“(a) Has available the appropriate financial, material, equipment, facility and personnel re-**

1 sources and expertise, or has the ability to obtain the resources and expertise, necessary to meet  
2 all contractual responsibilities.

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

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

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

17 “(e) Complied with the tax laws of this state or a political subdivision of this state, including  
18 ORS 305.620 and ORS chapters 316, 317 and 318. The bidder or proposer shall demonstrate compli-  
19 ance by submitting a signed affidavit that [*attests, under penalty of perjury,*] **declares** that the bidder  
20 or proposer has complied with the tax laws of this state or a political subdivision of this state.

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

26 “[*f*] (g) Supplied all necessary information in connection with the inquiry concerning respon-  
27 sibility. If a bidder or proposer fails to promptly supply information concerning responsibility that  
28 the contracting agency requests, the contracting agency shall determine the bidder’s or proposer’s  
29 responsibility based on available information or may find that the bidder or proposer is not respon-  
30 sible.

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

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

37 On page 3, delete lines 1 through 44.

38 In line 45, delete “3” and insert “4”.

39 On page 5, delete lines 14 through 45 and insert:

40 “**SECTION 5.** ORS 279C.375 is amended to read:

41 “279C.375. (1) After a contracting agency has opened bids and determined that the contracting  
42 agency will award a public improvement contract, the contracting agency shall award the contract  
43 to the lowest responsible bidder.

44 “(2) At least seven days before awarding a public improvement contract, unless the contracting  
45 agency determines that seven days is impractical under rules adopted under ORS 279A.065, the

1 contracting agency shall issue to each bidder or post, electronically or otherwise, a notice of the  
2 contracting agency's intent to award a contract. This subsection does not apply to a contract to  
3 which competitive bidding does not apply under ORS 279C.335 (1)(c) or (d). The notice and the  
4 manner in which the notice is posted or issued must conform to rules adopted under ORS 279A.065.

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

7 “(a) Check the list created by the Construction Contractors Board under ORS 701.227 for bid-  
8 ders who are not qualified to hold a public improvement contract.

9 “(b) Determine whether the bidder is responsible. A responsible bidder must demonstrate to the  
10 contracting agency that the bidder:

11 “(A) Has available the appropriate financial, material, equipment, facility and personnel re-  
12 sources and expertise, or has the ability to obtain the resources and expertise, necessary to meet  
13 all contractual responsibilities.

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

16 “(C) Is covered by liability insurance and other insurance in amounts the contracting agency  
17 requires in the solicitation documents.

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

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

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

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

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

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

40 “[I] (J) Supplied all necessary information in connection with the inquiry concerning respon-  
41 sibility. If a bidder fails to promptly supply information concerning responsibility that the contract-  
42 ing agency requests, the contracting agency shall determine the bidder's responsibility based on  
43 available information, or may find that the bidder is not responsible.

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

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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, facility and personnel resources and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.
  - Holds current licenses that businesses or service professionals operating in this state must hold in order to undertake or perform the work specified in the contract.
  - Is covered by liability insurance and other insurance in amounts required in the solicitation documents.
  - 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       [ ] Has disclosed the bidder's first-
- 3           tier subcontractors in accordance
- 4           with ORS 279C.370.
- 5       [ ] Has a satisfactory record of
- 6           performance.
- 7       [ ] Has a satisfactory record of
- 8           integrity.
- 9       [ ] Is legally qualified to contract
- 10           with the contracting agency.
- 11       [ ] **Possesses a certificate that**
- 12           **the Oregon Department of**
- 13           **Administrative Services issued under**
- 14           **section 2 of this 2015 Act.**
- 15       [ ] Has supplied all necessary
- 16           information in connection with
- 17           the inquiry concerning
- 18           responsibility.
- 19       [ ] Determined the bidder to be
- 20           (check one of the following):
- 21       [ ] Responsible under ORS 279C.375
- 22           (3)(a) and (b).
- 23       [ ] Not responsible under
- 24           ORS 279C.375 (3)(a) and (b).
- 25       (Attach documentation if the contracting agency finds the bidder not to be responsible.)

26       “ \_\_\_\_\_

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

29       Construction Contractors Board within 30 days after the date the contracting agency awards the

30       contract.

31       “(4) The successful bidder shall:

32           “(a) Promptly execute a formal contract; and

33           “(b) Execute and deliver to the contracting agency a performance bond and a payment bond

34       when required under ORS 279C.380.

35       “(5) Based on competitive bids, a contracting agency may award a public improvement contract

36       or may award multiple public improvement contracts when specified in the invitation to bid.

37       “(6) A contracting agency may not exclude a commercial contractor from competing for a public

38       contract on the basis that the license issued by the Construction Contractors Board is endorsed as

39       a level 1 or level 2 license. As used in this section, ‘commercial contractor’ has the meaning given

40       that term in ORS 701.005.”.

41       On page 6, delete lines 1 through 40.

42       In line 41, delete “5” and insert “6”.

43       On page 8, delete lines 5 through 22 and insert:

44       “**SECTION 7. The amendments to ORS 279B.110, 279B.235, 279C.375 and 279C.520 by**

45       **sections 3 to 6 of this 2015 Act apply to procurements that a contracting agency advertised**

1 or otherwise solicited or, if the contracting agency did not advertise or solicit the procure-  
2 ment, to contracts into which the contracting agency entered on or after the operative date  
3 specified in section 8 of this 2015 Act.

4 “SECTION 8. (1) The amendments to ORS 279B.110, 279B.235, 279C.375 and 279C.520 by  
5 sections 3 to 6 of this 2015 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 the amendments to ORS 279B.110, 279B.235, 279C.375 and 279C.520  
13 by sections 3 to 6 of this 2015 Act.

14 “SECTION 9. This 2015 Act being necessary for the immediate preservation of the public  
15 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect  
16 on its passage.”

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