

Enrolled
Senate Bill 675

Sponsored by COMMITTEE ON BUSINESS AND TRANSPORTATION

CHAPTER

AN ACT

Relating to requirements for responsibility determinations in public contracting; creating new provisions; amending ORS 279B.110 and sections 7 and 8, chapter ___, Oregon Laws 2015 (Enrolled Senate Bill 491); repealing section 3, chapter ___, Oregon Laws 2015 (Enrolled Senate Bill 491); and declaring an emergency.

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

SECTION 1. ORS 279B.110, as amended by section 3, chapter 77, Oregon Laws 2014, is amended to read:

279B.110. (1) As part of a contracting agency's evaluation of a bid or proposal, the contracting agency shall determine whether the bidder or proposer is responsible in accordance with the standards of responsibility set forth in subsection (2) of this section. If the contracting agency determines that a bidder or proposer is not responsible, the contracting agency shall provide the bidder or proposer with written notice of the contracting agency's determination.

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

(a) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or has the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.

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

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

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

[(e) Complied with the tax laws of this state or a political subdivision of this state, including ORS 305.620 and ORS chapters 316, 317 and 318. The bidder or proposer shall demonstrate compliance by

submitting a signed affidavit that attests, under penalty of perjury, that the bidder or proposer has complied with the tax laws of this state or a political subdivision of this state.]

(e) Complied with the tax laws of the state or a political subdivision of the state, including ORS 305.620 and ORS chapters 316, 317 and 318. The bidder or proposer shall demonstrate compliance by attesting to the bidder's or proposer's compliance in any way the contracting agency deems credible and convenient.

(f) Supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder or proposer fails to promptly supply information concerning responsibility that the contracting agency requests, the contracting agency shall determine the bidder's or proposer's responsibility based on available information or may find that the bidder or proposer is not responsible.

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

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

SECTION 2. Section 3 of this 2015 Act is added to and made a part of ORS chapter 279B.

SECTION 3. Every public contract that is subject to this chapter must include a representation and warranty from the contractor that the contractor has complied with the tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318. The public contract must also require a covenant from the contractor to continue to comply with the tax laws of this state or a political subdivision of this state during the term of the public contract and provide that a contractor's failure to comply with the tax laws of this state or a political subdivision of this state before the contractor executed the public contract or during the term of the public contract is a default for which a contracting agency may terminate the public contract and seek damages and other relief available under the terms of the public contract or under applicable law.

SECTION 4. Section 3 of this 2015 Act and the amendments to ORS 279B.110 by section 1 of this 2015 Act apply to procurements that a contracting agency first advertises or otherwise solicits or, if the contracting agency does not advertise or solicit the procurement, to public contracts that the contracting agency enters into on or after the operative date specified in section 5 of this 2015 Act.

SECTION 5. (1) Section 3 of this 2015 Act and the amendments to ORS 279B.110 by section 1 of this 2015 Act become operative 91 days after the effective date of this 2015 Act.

(2) The Attorney General, the Director of the Oregon Department of Administrative Services, the Director of Transportation or a contracting agency that adopts rules under ORS 279A.065 may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the Attorney General, the director or the contracting agency to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the Attorney General, the director or the contracting agency by section 3 of this 2015 Act and the amendments to ORS 279B.110 by section 1 of this 2015 Act.

SECTION 5a. If Senate Bill 491 becomes law, section 3, chapter ___, Oregon Laws 2015 (Enrolled Senate Bill 491) (amending ORS 279B.110), is repealed and ORS 279B.110, as amended by section 3, chapter 77, Oregon Laws 2014, and section 1 of this 2015 Act, is amended to read:

279B.110. (1) As part of a contracting agency's evaluation of a bid or proposal, the contracting agency shall determine whether the bidder or proposer is responsible in accordance with the standards of responsibility set forth in subsection (2) of this section. If the contracting agency determines that a bidder or proposer is not responsible, the contracting agency shall provide the bidder or proposer with written notice of the contracting agency's determination.

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

(a) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or has the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.

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

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

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

(e) Complied with the tax laws of the state or a political subdivision of the state, including ORS 305.620 and ORS chapters 316, 317 and 318. The bidder or proposer shall demonstrate compliance by attesting to the bidder's or proposer's compliance in any way the contracting agency deems credible and convenient.

(f) Possesses an unexpired certificate that the Oregon Department of Administrative Services issued under section 2, chapter __, Oregon Laws 2015 (Enrolled Senate Bill 491), if the bidder or proposer employs 50 or more full-time workers and submitted a bid or proposal for a procurement with an estimated contract price that exceeds \$500,000 in response to an advertisement or solicitation from a state contracting agency.

[(f)] (g) Supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder or proposer fails to promptly supply information concerning responsibility that the contracting agency requests, the contracting agency shall determine the bidder's or proposer's responsibility based on available information or may find that the bidder or proposer is not responsible.

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

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

SECTION 5b. If Senate Bill 491 becomes law, section 7, chapter __, Oregon Laws 2015 (Enrolled Senate Bill 491), is amended to read:

Sec. 7. The amendments to ORS 279B.110, 279B.235, 279C.375 and 279C.520 by **section 5a of this 2015 Act and sections [3 to 6 of this 2015 Act] 4 to 6, chapter __, Oregon Laws 2015 (Enrolled Senate Bill 491)**, apply to procurements that a contracting agency advertised or otherwise solicited or, if the contracting agency did not advertise or solicit the procurement, to contracts into which the contracting agency entered on or after the operative date specified in section 8 *[of this 2015 Act]*, **chapter __, Oregon Laws 2015 (Enrolled Senate Bill 491)**.

SECTION 5c. If Senate Bill 491 becomes law, section 8, chapter __, Oregon Laws 2015 (Enrolled Senate Bill 491), is amended to read:

Sec. 8. (1) The amendments to ORS 279B.110, 279B.235, 279C.375 and 279C.520 by **section 5a of this 2015 Act and sections [3 to 6 of this 2015 Act] 4 to 6, chapter __, Oregon Laws 2015 (Enrolled Senate Bill 491)**, become operative January 1, 2016.

(2) The Director of the Oregon Department of Administrative Services, the Director of Transportation, the Attorney General or a contracting agency that adopts rules under ORS 279A.065 may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the director, the Attorney General or the contracting agency to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the director, the Attorney General or the contracting agency by the amendments to ORS 279B.110, 279B.235, 279C.375 and 279C.520 by **section 5a of this 2015 Act** and sections [3 to 6 of this 2015 Act] **4 to 6, chapter __, Oregon Laws 2015 (Enrolled Senate Bill 491).**

SECTION 6. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Passed by Senate April 27, 2015

Received by Governor:

Repassed by Senate June 11, 2015

.....M.,....., 2015

Approved:

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Lori L. Brocker, Secretary of Senate

.....M.,....., 2015

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Peter Courtney, President of Senate

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Kate Brown, Governor

Passed by House June 4, 2015

Filed in Office of Secretary of State:

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Tina Kotek, Speaker of House

.....M.,....., 2015

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Jeanne P. Atkins, Secretary of State