

A-Engrossed
Senate Bill 675

Ordered by the Senate April 22
Including Senate Amendments dated April 22

Sponsored by COMMITTEE ON BUSINESS AND TRANSPORTATION

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.

Removes requirement that bidder or proposer for public contract **with local contracting agency** demonstrate responsibility by submitting signed affidavit that attests that bidder or proposer complied with tax laws of this state.

Requires public contract to provide that contractor attest to compliance with tax laws of this state and that contracting agency may terminate public contract if contractor fails to comply during term of public contract.

Becomes operative 91 days after effective date of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to requirements for responsibility determinations in public contracting; creating new pro-
3 visions; amending ORS 279B.110; and declaring an emergency.

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

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

7 279B.110. (1) As part of a contracting agency's evaluation of a bid or proposal, the contracting
8 agency shall determine whether the bidder or proposer is responsible in accordance with the stan-
9 dards of responsibility set forth in subsection (2) of this section. If the contracting agency deter-
10 mines that a bidder or proposer is not responsible, the contracting agency shall provide the bidder
11 or proposer with written notice of the contracting agency's determination.

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

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

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

24 (c) Has a satisfactory record of integrity. The contracting agency in evaluating the bidder's or
25 proposer's record of integrity may consider, among other things, whether the bidder or proposer has

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 previous criminal convictions for offenses related to obtaining or attempting to obtain a contract
2 or subcontract or in connection with the bidder's or proposer's performance of a contract or sub-
3 contract. The contracting agency shall document the bidder's or proposer's record of integrity if the
4 contracting agency finds under this paragraph that the bidder or proposer is not responsible.

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

6 *[(e) Complied with the tax laws of this state or a political subdivision of this state, including ORS*
7 *305.620 and ORS chapters 316, 317 and 318. The bidder or proposer shall demonstrate compliance by*
8 *submitting a signed affidavit that attests, under penalty of perjury, that the bidder or proposer has*
9 *complied with the tax laws of this state or a political subdivision of this state.]*

10 **(e)(A) Complied with the tax laws of the state or a political subdivision of the state, in-**
11 **cluding ORS 305.620 and ORS chapters 316, 317 and 318. The bidder or proposer shall demon-**
12 **strate compliance by submitting a signed affidavit that attests, under penalty of perjury, that**
13 **the bidder or proposer has complied with the tax laws of the state or a political subdivision**
14 **of the state.**

15 **(B) The requirement under subparagraph (A) of this paragraph to submit a signed affi-**
16 **davit does not apply to a bidder or proposer that submits a bid or proposal to a local con-**
17 **tracting agency, but the local contracting agency must require the bidder or proposer to**
18 **attest, in any way the local contracting agency deems credible and convenient, that the bid-**
19 **der or proposer complied with the tax laws of the state or a political subdivision of the state,**
20 **including ORS 305.620 and ORS chapters 316, 317 and 318.**

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

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

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

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

32 **SECTION 3. Every public contract that is subject to this chapter must require a con-**
33 **tractor to attest, with a signed affidavit or otherwise, to having complied with the tax laws**
34 **of the state or a political subdivision of the state, including but not limited to ORS 305.620**
35 **and ORS chapters 316, 317 and 318, before executing the public contract and must require the**
36 **contractor to continue to comply with the tax laws of the state or a political subdivision of**
37 **the state during the term of the public contract. The public contract must provide that a**
38 **contractor's failure to comply with the tax laws of the state or a political subdivision of the**
39 **state before the contractor executed the public contract or during the term of the public**
40 **contract is a default for which a contracting agency may terminate the public contract and**
41 **seek damages and other relief available under the terms of the public contract or under ap-**
42 **plicable law.**

43 **SECTION 4. Section 3 of this 2015 Act and the amendments to ORS 279B.110 by section**
44 **1 of this 2015 Act apply to procurements that a contracting agency first advertises or oth-**
45 **erwise solicits or, if the contracting agency does not advertise or solicit the procurement,**

1 to public contracts that the contracting agency enters into on or after the operative date
2 specified in section 5 of this 2015 Act.

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

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

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