

(Including Amendments to Resolve Conflicts)

B-Engrossed Senate Bill 675

Ordered by the House May 29
Including Senate Amendments dated April 22 and House Amendments
dated May 29

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] **Requires** bidder or proposer for public contract *[with local contracting agency]* **to demonstrate responsibility by** *[submitting signed affidavit that attests]* **attesting in any way contracting agency deems credible and convenient** that bidder or proposer complied with tax laws of this state.

Requires public contract to *[provide that]* **include representation and warranty from contractor** *[attest to compliance]* **that contractor has complied** 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 sections 7 and 8, chapter ___, Oregon Laws 2015 (Enrolled
4 Senate Bill 491); repealing section 3, chapter ___, Oregon Laws 2015 (Enrolled Senate Bill 491);
5 and declaring an emergency.

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

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

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

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

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

19 (b) Completed previous contracts of a similar nature with a satisfactory record of performance.
20 For purposes of this paragraph, a satisfactory record of performance means that to the extent that
21 the costs associated with and time available to perform a previous contract remained within the
22 bidder's or proposer's control, the bidder or proposer stayed within the time and budget allotted for

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 the procurement and otherwise performed the contract in a satisfactory manner. The contracting
2 agency shall document the bidder's or proposer's record of performance if the contracting agency
3 finds under this paragraph that the bidder or proposer is not responsible.

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

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

11 *[(e) Complied with the tax laws of this state or a political subdivision of this state, including ORS*
12 *305.620 and ORS chapters 316, 317 and 318. The bidder or proposer shall demonstrate compliance by*
13 *submitting a signed affidavit that attests, under penalty of perjury, that the bidder or proposer has*
14 *complied with the tax laws of this state or a political subdivision of this state.]*

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

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

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

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

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

30 **SECTION 3. Every public contract that is subject to this chapter must include a repre-**
31 **sentation and warranty from the contractor that the contractor has complied with the tax**
32 **laws of this state or a political subdivision of this state, including but not limited to ORS**
33 **305.620 and ORS chapters 316, 317 and 318. The public contract must also require a covenant**
34 **from the contractor to continue to comply with the tax laws of this state or a political sub-**
35 **division of this state during the term of the public contract and provide that a contractor's**
36 **failure to comply with the tax laws of this state or a political subdivision of this state before**
37 **the contractor executed the public contract or during the term of the public contract is a**
38 **default for which a contracting agency may terminate the public contract and seek damages**
39 **and other relief available under the terms of the public contract or under applicable law.**

40 **SECTION 4. Section 3 of this 2015 Act and the amendments to ORS 279B.110 by section**
41 **1 of this 2015 Act apply to procurements that a contracting agency first advertises or oth-**
42 **erwise solicits or, if the contracting agency does not advertise or solicit the procurement,**
43 **to public contracts that the contracting agency enters into on or after the operative date**
44 **specified in section 5 of this 2015 Act.**

45 **SECTION 5. (1) Section 3 of this 2015 Act and the amendments to ORS 279B.110 by sec-**

1 **tion 1 of this 2015 Act become operative 91 days after the effective date of this 2015 Act.**

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

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

14 279B.110. (1) As part of a contracting agency's evaluation of a bid or proposal, the contracting
15 agency shall determine whether the bidder or proposer is responsible in accordance with the stan-
16 dards of responsibility set forth in subsection (2) of this section. If the contracting agency deter-
17 mines that a bidder or proposer is not responsible, the contracting agency shall provide the bidder
18 or proposer with written notice of the contracting agency's determination.

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

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

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

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

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

38 (e) Complied with the tax laws of the state or a political subdivision of the state, including ORS
39 305.620 and ORS chapters 316, 317 and 318. The bidder or proposer shall demonstrate compliance
40 by attesting to the bidder's or proposer's compliance in any way the contracting agency deems
41 credible and convenient.

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

1 **advertisement or solicitation from a state contracting agency.**

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

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

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

13 **SECTION 5b.** If Senate Bill 491 becomes law, section 7, chapter ___, Oregon Laws 2015 (En-
14 rolled Senate Bill 491), is amended to read:

15 **Sec. 7.** The amendments to ORS 279B.110, 279B.235, 279C.375 and 279C.520 by **section 5a of**
16 **this 2015 Act and** sections [3 to 6 of this 2015 Act] **4 to 6, chapter ___, Oregon Laws 2015 (En-**
17 **rolled Senate Bill 491)**, apply to procurements that a contracting agency advertised or otherwise
18 solicited or, if the contracting agency did not advertise or solicit the procurement, to contracts into
19 which the contracting agency entered on or after the operative date specified in section 8 [of this
20 2015 Act], **chapter ___, Oregon Laws 2015 (Enrolled Senate Bill 491).**

21 **SECTION 5c.** If Senate Bill 491 becomes law, section 8, chapter ___, Oregon Laws 2015 (En-
22 rolled Senate Bill 491), is amended to read:

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

26 (2) The Director of the Oregon Department of Administrative Services, the Director of Trans-
27 portation, the Attorney General or a contracting agency that adopts rules under ORS 279A.065 may
28 take any action before the operative date specified in subsection (1) of this section that is necessary
29 to enable the director, the Attorney General or the contracting agency to exercise, on and after the
30 operative date specified in subsection (1) of this section, all of the duties, functions and powers
31 conferred on the director, the Attorney General or the contracting agency by the amendments to
32 ORS 279B.110, 279B.235, 279C.375 and 279C.520 by **section 5a of this 2015 Act and** sections [3 to
33 6 of this 2015 Act] **4 to 6, chapter ___, Oregon Laws 2015 (Enrolled Senate Bill 491).**

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

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