

SENATE AMENDMENTS TO SENATE BILL 809

By COMMITTEE ON WORKFORCE

April 24

1 On page 1 of the printed bill, line 16, delete “\$1” and insert “\$5”.

2 On page 2, line 5, delete “\$1” and insert “\$5”.

3 After line 10, insert:

4 “**SECTION 2a.** Section 2 of this 2015 Act is amended to read:

5 “**Sec. 2.** (1) The Commissioner of the Bureau of Labor and Industries, by rule and in consulta-
6 tion with affected crafts, trades and other worker associations and with contractors and subcon-
7 tractors that perform contracts for public works for public agencies, may determine:

8 “(a) The percentage of the total hours that a bidder’s employees worked on contracts during the
9 previous calendar year for which the bidder was required to employ apprentices participating in
10 programs of apprenticeship or training under ORS 660.002 to 660.210 in order for a public agency
11 to determine that the bidder is responsible under ORS 279C.375 (4), if the bidder submits a bid for
12 a contract for public works with an estimated contract price of [~~\$5~~] **\$3** million or more; or

13 “(b) The percentage of the total hours that employees of training agents approved by a local
14 joint committee worked on contracts during the previous calendar year for which the training
15 agents were required to employ apprentices participating in programs of apprenticeship or training
16 under ORS 660.002 to 660.210 in order for a public agency to determine that a bidder associated with
17 the local joint committee is responsible under ORS 279C.375 (4), if the bidder submits a bid for a
18 contract for public works with an estimated contract price of [~~\$5~~] **\$3** million or more.

19 “(2) The commissioner may not set a percentage under subsection (1) of this section that is less
20 than the percentage set forth in ORS 279C.375 (4).

21 “(3)(a) The commissioner shall review the percentages described in subsection (1) of this section
22 at least once every other year to determine whether the commissioner should set a different per-
23 centage.

24 “(b) **The commissioner shall recommend to the Legislative Assembly, not later than De-**
25 **cember 31, 2022, any reduction the commissioner deems necessary in the estimated contract**
26 **price at which bids or proposals for a contract for public works become subject to the re-**
27 **quirements of ORS 279C.375 (4).”.**

28 On page 4, line 40, delete “\$1” and insert “\$5”.

29 On page 5, after line 31, insert:

30 “**SECTION 3a.** ORS 279C.375, as amended by section 3 of this 2015 Act, is amended to read:

31 “279C.375. (1) After a contracting agency has opened bids and determined that the contracting
32 agency will award a public improvement contract, the contracting agency shall award the contract
33 to the lowest responsible bidder.

34 “(2) At least seven days before awarding a public improvement contract, unless the contracting
35 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 contracting agency issues or posts the notice must conform to rules adopted
5 under ORS 279A.065.

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

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

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

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

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

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

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

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

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

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

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

36 “(I) Supplied all necessary information in connection with the inquiry concerning responsibility.
37 If a bidder fails to promptly supply information concerning responsibility that the contracting
38 agency requests, the contracting agency shall determine the bidder's responsibility based on avail-
39 able information, or may find that the bidder is not responsible.

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

42 “

43
44 RESPONSIBILITY DETERMINATION FORM
45

1 Project Name: _____

2 Bid Number: _____

3 Business Entity Name: _____

4 CCB License Number: _____

5 Form Submitted By (Contracting Agency):

6 _____

7 Form Submitted By (Contracting Agency Representative's Name): _____

8 Title: _____

9 Date: _____

10 (The contracting agency must submit this form with attachments, if any, to the Construction
11 Contractors Board within 30 days after the date of contract award.)

12 The contracting agency has (check all of the following):

13 Checked the list created by the
14 Construction Contractors Board
15 under ORS 701.227 for bidders who
16 are not qualified to hold a public
17 improvement contract.

18 Determined whether the bidder has
19 met the standards of responsibility.
20 In so doing, the contracting agency
21 has found that the bidder
22 demonstrated that the bidder:

23 Has available the appropriate
24 financial, material, equipment,
25 facility and personnel resources
26 and expertise, or the ability to
27 obtain the resources and
28 expertise, necessary to meet
29 all contractual responsibilities.

30 Holds current licenses that
31 businesses or service professionals
32 operating in this state must hold
33 in order to undertake or perform
34 the work specified in the contract.

35 Is covered by liability insurance
36 and other insurance in amounts
37 required in the solicitation
38 documents.

39 Qualifies as a carrier-insured
40 employer or a self-insured
41 employer under ORS 656.407 or has
42 elected coverage under ORS 656.128.

43 Has disclosed the bidder's first-
44 tier subcontractors in accordance
45 with ORS 279C.370.

- 1 Has a satisfactory record of
2 performance.
3 Has a satisfactory record of
4 integrity.
5 Is legally qualified to contract
6 with the contracting agency.
7 Has supplied all necessary
8 information in connection with
9 the inquiry concerning
10 responsibility.

- 11 Determined the bidder to be
12 (check one of the following):
13 Responsible under ORS 279C.375
14 (3)(a) and (b).
15 Not responsible under
16 ORS 279C.375 (3)(a) and (b).

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

18 “ _____
19

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

23 “(4)(a) If a bidder submits a bid for a contract for public works with an estimated contract price
24 of [~~\$5~~] **\$3** million or more, a contracting agency shall require the bidder, in addition to demonstrat-
25 ing that the bidder is responsible as provided in subsection (3)(b) of this section, to show that the
26 bidder is an approved training agent under ORS 660.137 and:

27 “(A) Belongs to a local joint committee whose approved training agents, in the aggregate, em-
28 ployed apprentices for 10 percent or more of all hours that the employees of the approved training
29 agents worked in the previous calendar year; or

30 “(B) Employed apprentices for 10 percent or more of all hours that the bidder’s employees
31 worked on contracts in the previous calendar year.

32 “(b) In the circumstances described in paragraph (a) of this subsection, a contracting agency
33 shall include in the form set forth in subsection (3)(c) of this section an additional criterion for de-
34 termining responsibility that reads substantially as follows:

- 35 Belongs to a local joint
36 committee with training agents
37 that, in the aggregate, employed
38 apprentices for 10 percent or
39 more of the hours that the
40 training agents’ employees
41 worked in the previous calendar
42 year or is an approved training
43 agent and has employed apprentices
44 for 10 percent or more of the total
45 number of hours the bidder’s

1 employees worked in the previous
2 calendar year.

3 “(c) This subsection does not apply to the Department of Transportation.

4 “(5) A successful bidder shall:

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

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

8 “(6) A contracting agency may award a public improvement contract or may award multiple
9 public improvement contracts based on competitive bids if the contracting agency specifies that the
10 contracting agency will do so in the invitation to bid.

11 “(7) A contracting agency may not exclude a commercial contractor from competing for a public
12 contract on the basis that a license that the Construction Contractors Board issued is endorsed as
13 a level 1 or level 2 license. As used in this section, ‘commercial contractor’ has the meaning given
14 that term in ORS 701.005.”.

15 On page 13, line 33, after “Industries” insert “on forms and in a format that the bureau specifies
16 by rule”.

17 In line 36, after “agent” insert “and must identify apprentices and journeyworkers by craft, by
18 race or ethnicity, by gender and by the geographic location in which the apprentices reside and
19 work in accordance with standards and categories that the bureau specifies by rule”.

20 On page 14, after line 6, insert:

21 “(4) The bureau, not later than March 1 of each year, shall submit to a committee or interim
22 committee of the Legislative Assembly that deals with workforce issues a report that includes:

23 “(a) The information that the bureau publishes under subsection (3) of this section;

24 “(b) Information about the number of apprentices who become journeyworkers during the re-
25 porting period, identifying the number of apprentices by craft, by race or ethnicity, by gender and
26 by the geographic location in which the apprentices reside and work; and

27 “(c) The bureau’s evaluation of the impact that the apprenticeship requirements set forth in ORS
28 279C.375 (4) and section 2 of this 2015 Act have on rural areas within this state.”.

29 In line 7, after the period insert “(1)”.

30 In line 8, after “3” insert “and 4”.

31 In line 11, after “13” insert “(1)”.

32 After line 12, insert:

33 “(2) The amendments to section 2 of this 2015 Act by section 2a of this 2015 Act and the
34 amendments to ORS 279C.375 by section 3a of this 2015 Act apply to contracts for public works that
35 a public agency advertises or solicits or, if the public agency does not advertise or solicit the con-
36 tract for public works, that the public agency enters into on or after the operative date specified in
37 section 13 (2) of this 2015 Act.”.

38 In line 14, after “3” insert “and 4”.

39 After line 15, insert:

40 “(2) The amendments to section 2 of this 2015 Act by section 2a of this 2015 Act and the
41 amendments to ORS 279C.375 by section 3a of this 2015 Act become operative on January 1,
42 2021.”.

43 In line 16, delete “(2)” and insert “(3)”.

44 In line 25, after “3” insert “and 4”.

45