

**PROPOSED AMENDMENTS TO  
SENATE BILL 491**

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

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

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

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

13 **“(a) A curriculum for training prospective bidders and proposers in  
14 complying with the prohibition described in this subsection. The cur-  
15 riculum must include hypothetical situations, case studies and other  
16 examples that show conduct that would violate the prohibition and  
17 other conduct that would constitute correct and best practices.**

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

22 **“(c) Standards for successful completion of the curriculum and as-**

1 **assessment that will result in the department issuing the certificate.**

2 **“(2) The department may conduct the training and assessment for**  
3 **the program described in subsection (1) of this section or may enter**  
4 **into an interagency agreement with the Bureau of Labor and Indus-**  
5 **tries or a contract with a private entity to conduct the training and**  
6 **assessment.**

7 **“(3) The department may by rule specify a period of time during**  
8 **which a certificate the department issues under this section is valid**  
9 **and may adopt other rules that are necessary to implement the pro-**  
10 **visions of this section.**

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

13 “279B.110. (1) As part of a contracting agency’s evaluation of a bid or  
14 proposal, the contracting agency shall determine whether the bidder or  
15 proposer is responsible in accordance with the standards of responsibility set  
16 forth in subsection (2) of this section. If the contracting agency determines  
17 that a bidder or proposer is not responsible, the contracting agency shall  
18 provide the bidder or proposer with written notice of the contracting  
19 agency’s determination.

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

23 “(a) Has available the appropriate financial, material, equipment, facility  
24 and personnel resources and expertise, or has the ability to obtain the re-  
25 sources and expertise, necessary to meet all contractual responsibilities.

26 “(b) Completed previous contracts of a similar nature with a satisfactory  
27 record of performance. For purposes of this paragraph, a satisfactory record  
28 of performance means that to the extent that the costs associated with and  
29 time available to perform a previous contract remained within the bidder’s  
30 or proposer’s control, the bidder or proposer stayed within the time and

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

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

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

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

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

26 “[*f*] **(g)** Supplied all necessary information in connection with the in-  
27 quiry concerning responsibility. If a bidder or proposer fails to promptly  
28 supply information concerning responsibility that the contracting agency  
29 requests, the contracting agency shall determine the bidder's or proposer's  
30 responsibility based on available information or may find that the bidder or

1 proposer is not responsible.

2 “[g] (h) Was not debarred by the contracting agency under ORS  
3 279B.130.

4 “(3) A contracting agency may refuse to disclose outside of the contract-  
5 ing agency confidential information furnished by a bidder or proposer under  
6 this section when the bidder or proposer has clearly identified in writing the  
7 information the bidder or proposer seeks to have treated as confidential and  
8 the contracting agency has authority under ORS 192.410 to 192.505 to with-  
9 hold the identified information from disclosure.”.

10 On page 3, delete lines 1 through 44.

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

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

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

14 “279C.375. (1) After a contracting agency has opened bids and determined  
15 that the contracting agency will award a public improvement contract, the  
16 contracting agency shall award the contract to the lowest responsible bidder.

17 “(2) At least seven days before awarding a public improvement contract,  
18 unless the contracting agency determines that seven days is impractical un-  
19 der rules adopted under ORS 279A.065, the contracting agency shall issue to  
20 each bidder or post, electronically or otherwise, a notice of the contracting  
21 agency’s intent to award a contract. This subsection does not apply to a  
22 contract to which competitive bidding does not apply under ORS 279C.335  
23 (1)(c) or (d). The notice and the manner in which the notice is posted or is-  
24 sued must conform to rules adopted under ORS 279A.065.

25 “(3) In determining the lowest responsible bidder, a contracting agency  
26 shall do all of the following:

27 “(a) Check the list created by the Construction Contractors Board under  
28 ORS 701.227 for bidders who are not qualified to hold a public improvement  
29 contract.

30 “(b) Determine whether the bidder is responsible. A responsible bidder

1 must demonstrate to the contracting agency that the bidder:

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

5 “(B) Holds current licenses that businesses or service professionals oper-  
6 ating in this state must hold in order to undertake or perform the work  
7 specified in the contract.

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

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

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

13 “(F) Completed previous contracts of a similar nature with a satisfactory  
14 record of performance. For purposes of this subparagraph, a satisfactory re-  
15 cord of performance means that to the extent that the costs associated with  
16 and time available to perform a previous contract remained within the  
17 bidder’s control, the bidder stayed within the time and budget allotted for  
18 the procurement and otherwise performed the contract in a satisfactory  
19 manner. The contracting agency shall document the bidder’s record of per-  
20 formance if the contracting agency finds under this subparagraph that the  
21 bidder is not responsible.

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

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

30 “(I) **Possesses an unexpired certificate that the Oregon Department**

1 **of Administrative Services issued under section 2 of this 2015 Act, if**  
2 **the bidder employs 50 or more full-time workers and submitted a bid**  
3 **for a procurement with an estimated contract price that exceeds**  
4 **\$500,000 in response to an advertisement or solicitation from a state**  
5 **contracting agency.**

6 “[I] (J) Supplied all necessary information in connection with the in-  
7 quiry concerning responsibility. If a bidder fails to promptly supply infor-  
8 mation concerning responsibility that the contracting agency requests, the  
9 contracting agency shall determine the bidder’s responsibility based on  
10 available information, or may find that the bidder is not responsible.

11 “(c) Document the contracting agency’s compliance with the requirements  
12 of paragraphs (a) and (b) of this subsection in substantially the following  
13 form:

14 “ \_\_\_\_\_

15 RESPONSIBILITY DETERMINATION FORM

16

17 Project Name: \_\_\_\_\_

18 Bid Number: \_\_\_\_\_

19 Business Entity Name: \_\_\_\_\_

20 CCB License Number: \_\_\_\_\_

21 Form Submitted By (Contracting Agency):

22 \_\_\_\_\_

23 Form Submitted By (Contracting Agency Representative’s Name):

24 \_\_\_\_\_

25 Title: \_\_\_\_\_

26 Date: \_\_\_\_\_

27 (The contracting agency must submit this form with attachments, if any,  
28 to the Construction Contractors Board within 30 days after the date of con-  
29 tract award.)

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

1         Checked the list created by the  
2            Construction Contractors Board  
3            under ORS 701.227 for bidders who  
4            are not qualified to hold a public  
5            improvement contract.

6         Determined whether the bidder has  
7            met the standards of responsibility.  
8            In so doing, the contracting agency  
9            has found that the bidder  
10           demonstrated that the bidder:

11         Has available the appropriate  
12            financial, material, equipment,  
13            facility and personnel resources  
14            and expertise, or the ability to  
15            obtain the resources and  
16            expertise, necessary to meet  
17            all contractual responsibilities.

18         Holds current licenses that  
19            businesses or service professionals  
20            operating in this state must hold  
21            in order to undertake or perform  
22            the work specified in the contract.

23         Is covered by liability insurance  
24            and other insurance in amounts  
25            required in the solicitation  
26            documents.

27         Qualifies as a carrier-insured  
28            employer or a self-insured  
29            employer under ORS 656.407 or has  
30            elected coverage under ORS 656.128.

1           [ ] Has disclosed the bidder’s first-  
2           tier subcontractors in accordance  
3           with ORS 279C.370.

4           [ ] Has a satisfactory record of  
5           performance.

6           [ ] Has a satisfactory record of  
7           integrity.

8           [ ] Is legally qualified to contract  
9           with the contracting agency.

10          [ ] **Possesses a certificate that**  
11          **the Oregon Department of**  
12          **Administrative Services issued under**  
13          **section 2 of this 2015 Act.**

14          [ ] Has supplied all necessary  
15          information in connection with  
16          the inquiry concerning  
17          responsibility.

18          [ ] Determined the bidder to be  
19          (check one of the following):

20          [ ] Responsible under ORS 279C.375  
21          (3)(a) and (b).

22          [ ] Not responsible under  
23          ORS 279C.375 (3)(a) and (b).

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

26          “ \_\_\_\_\_  
27          “(d) Submit the form described in paragraph (c) of this subsection, with  
28          any attachments, to the Construction Contractors Board within 30 days after  
29          the date the contracting agency awards the contract.

30          “(4) The successful bidder shall:



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

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

4       “(5) Based on competitive bids, a contracting agency may award a public  
5 improvement contract or may award multiple public improvement contracts  
6 when specified in the invitation to bid.

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

12       On page 6, delete lines 1 through 40.

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

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

15       **“SECTION 7. The amendments to ORS 279B.110, 279B.235, 279C.375**  
16 **and 279C.520 by sections 3 to 6 of this 2015 Act apply to procurements**  
17 **that a contracting agency advertised or otherwise solicited or, if the**  
18 **contracting agency did not advertise or solicit the procurement, to**  
19 **contracts into which the contracting agency entered on or after the**  
20 **operative date specified in section 8 of this 2015 Act.**

21       **“SECTION 8. (1) The amendments to ORS 279B.110, 279B.235,**  
22 **279C.375 and 279C.520 by sections 3 to 6 of this 2015 Act become opera-**  
23 **tive January 1, 2016.**

24       **“(2) The Director of the Oregon Department of Administrative Ser-**  
25 **vices, the Director of Transportation, the Attorney General or a con-**  
26 **tracting agency that adopts rules under ORS 279A.065 may take any**  
27 **action before the operative date specified in subsection (1) of this sec-**  
28 **tion that is necessary to enable the director, the Attorney General or**  
29 **the contracting agency to exercise, on and after the operative date**  
30 **specified in subsection (1) of this section, all of the duties, functions**

1 and powers conferred on the director, the Attorney General or the  
2 contracting agency by the amendments to ORS 279B.110, 279B.235,  
3 279C.375 and 279C.520 by sections 3 to 6 of this 2015 Act.

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

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