

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 675**

1 On page 1 of the printed A-engrossed bill, line 3, after “279B.110” insert
2 “, 279C.375 and 279C.440”.

3 On page 2, delete lines 43 through 45 and delete page 3 and insert:

4 **“SECTION 4. Section 5 of this 2015 Act is added to and made a part**
5 **of ORS chapter 279C.**

6 **“SECTION 5. (1) A contracting agency shall provide as a material**
7 **term in each public improvement contract that a contractor may**
8 **award a subcontract only to a responsible subcontractor.**

9 **“(2) In determining a subcontractor’s responsibility, a contractor**
10 **shall:**

11 **“(a) Check the list that the Construction Contractors Board main-**
12 **tains under ORS 701.227 to verify whether a prospective subcontractor**
13 **is eligible for an award of a public improvement contract. For the**
14 **purposes of this section, a prospective subcontractor that appears on**
15 **the list is not responsible.**

16 **“(b) Require a prospective subcontractor to sign and submit to the**
17 **contractor a signed statement that attests that the prospective sub-**
18 **contractor:**

19 **“(A) Has available the appropriate financial, material, equipment,**
20 **facility and personnel resources and expertise, or has the ability to**
21 **obtain the resources and expertise, necessary to meet all responsibil-**
22 **ities associated with the subcontract.**

1 **“(B) Holds current licenses that businesses or service professionals**
2 **that operate in this state must hold in order to undertake or perform**
3 **the work specified in the contract and does not, as an owner of a**
4 **construction business or as a contractor or responsible managing in-**
5 **dividual, as defined in ORS 701.005, have any outstanding construction**
6 **debt, as defined in ORS 701.005.**

7 **“(C) Has a satisfactory record of integrity. For the purposes of this**
8 **subparagraph, a satisfactory record of integrity means that the pro-**
9 **spective subcontractor does not have previous criminal convictions for**
10 **offenses related to obtaining or attempting to obtain a contract or**
11 **subcontract or in connection with the prospective subcontractor’s**
12 **performance of a previous contract or subcontract.**

13 **“(D) Is legally qualified to contract with the contractor.**

14 **“(E) Complied with the tax laws of this state or a political subdivi-**
15 **sion of this state, including ORS 305.620 and ORS chapters 316, 317 and**
16 **318.**

17 **“(3) A contractor shall provide a contracting agency with a copy**
18 **of the statement that the contractor receives under subsection (2)(b)**
19 **of this section:**

20 **“(a) With the disclosure required under ORS 279C.370; or**

21 **“(b) Within 10 calendar days after awarding a subcontract.**

22 **“(4) A contractor need not inquire into or verify the truth of a**
23 **statement that the contractor receives from a prospective subcon-**
24 **tractor under subsection (2)(b) of this section.**

25 **“(5) The Attorney General, the Director of the Oregon Department**
26 **of Administrative Services, the Director of Transportation or a con-**
27 **tracting agency that adopts rules under ORS 279A.065 may by rule**
28 **adopt a form and format for the statement required under subsection**
29 **(2)(b) of this section.**

30 **“SECTION 6. ORS 279C.375 is amended to read:**

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

4 “(2) At least seven days before awarding a public improvement contract,
5 unless the contracting agency determines that seven days is impractical un-
6 der rules adopted under ORS 279A.065, the contracting agency shall issue to
7 each bidder or post, electronically or otherwise, a notice of the contracting
8 agency’s intent to award a contract. This subsection does not apply to a
9 contract to which competitive bidding does not apply under ORS 279C.335
10 (1)(c) or (d). The notice and the manner in which the **contracting agency**
11 **posts or issues the** notice [*is posted or issued*] must conform to rules
12 adopted under ORS 279A.065.

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

15 “(a) Check the list [*created by*] **that** the Construction Contractors Board
16 **maintains** under ORS 701.227 for bidders who are not [*qualified to hold*]
17 **eligible for an award of** a public improvement contract.

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

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

23 “(B) Holds current licenses that businesses or service professionals oper-
24 ating in this state must hold in order to undertake or perform the work
25 specified in the contract[.] **and does not, as an owner of a construction**
26 **business or as a contractor or responsible managing individual, as de-**
27 **defined in ORS 701.005, have any outstanding construction debt, as de-**
28 **defined in ORS 701.005. The bidder shall demonstrate compliance by**
29 **providing the contracting agency with a signed statement that attests**
30 **that the bidder has complied with the requirements of this subpara-**

1 **graph.**

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

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

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

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

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

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

24 “(I) **Complied with the tax laws of this state or a political subdivi-**
25 **sion of this state, including ORS 305.620 and ORS chapters 316, 317 and**
26 **318. The bidder shall demonstrate compliance by providing the con-**
27 **tracting agency with a signed statement that attests that the bidder**
28 **has complied with the tax laws of this state or a political subdivision**
29 **of this state.**

30 “[I] (J) Supplied all necessary information in connection with the in-

1 quiry concerning responsibility. If a bidder fails to promptly supply infor-
2 mation concerning responsibility that the contracting agency requests, the
3 contracting agency shall determine the bidder's responsibility based on
4 available information, or may find that the bidder is not responsible.

5 "(c) Document the contracting agency's compliance with the requirements
6 of paragraphs (a) and (b) of this subsection in substantially the following
7 form:

8 " _____

9 RESPONSIBILITY DETERMINATION FORM

10

11 Project Name: _____

12 Bid Number: _____

13 Business Entity Name: _____

14 CCB License Number: _____

15 Form Submitted By (Contracting Agency):

16 _____

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

18 _____

19 Title: _____

20 Date: _____

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

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

25 Checked the list created by the

26 Construction Contractors Board

27 under ORS 701.227 for bidders who

28 are not qualified to hold a public

29 improvement contract.

30 Determined whether the bidder has

1 met the standards of responsibility.
2 In so doing, the contracting agency
3 has found that the bidder
4 demonstrated that the bidder:
5 [] Has available the appropriate
6 financial, material, equipment,
7 facility and personnel resources
8 and expertise, or the ability to
9 obtain the resources and
10 expertise, necessary to meet
11 all contractual responsibilities.
12 [] Holds current licenses that
13 businesses or service professionals
14 operating in this state must hold
15 in order to undertake or perform
16 the work specified in the contract
17 **and does not, as owner of**
18 **construction business, as contractor**
19 **or as responsible managing individual,**
20 **have any outstanding construction**
21 **debt.**
22 [] Is covered by liability insurance
23 and other insurance in amounts
24 required in the solicitation
25 documents.
26 [] Qualifies as a carrier-insured
27 employer or a self-insured
28 employer under ORS 656.407 or has
29 elected coverage under ORS 656.128.
30 [] Has disclosed the bidder's first-

1 tier subcontractors in accordance
2 with ORS 279C.370.

3 [] Has a satisfactory record of
4 performance.

5 [] Has a satisfactory record of
6 integrity.

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

9 [] **Has complied with the tax laws**
10 **of this state or a political**
11 **subdivision of this state.**

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

16 [] Determined the bidder to be
17 (check one of the following):

18 [] Responsible under ORS 279C.375
19 (3)(a) and (b).

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

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

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

28 “(4) The successful bidder shall:

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

30 “(b) Execute and deliver to the contracting agency a performance bond

1 and a payment bond when required under ORS 279C.380.

2 “(5) [*Based on competitive bids*] **After conducting a competitive bidding**
3 **process**, a contracting agency may award a public improvement contract or
4 may award multiple public improvement contracts [*when specified*] **if the**
5 **contracting agency specifies** in the invitation to bid **that the contracting**
6 **agency will award multiple public improvement contracts.**

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*] **that**
9 the Construction Contractors Board **issued** is endorsed as a level 1 or level
10 2 license. As used in this section, ‘commercial contractor’ has the meaning
11 given that term in ORS 701.005.

12 **“SECTION 7.** ORS 279C.440 is amended to read:

13 “279C.440. (1)(a) A contracting agency may disqualify a person from con-
14 sideration for award of the contracting agency’s contracts for the reasons
15 listed in subsection (2) of this section after providing the person with notice
16 and a reasonable opportunity to be heard.

17 “(b) In lieu of the disqualification [*process*] described in paragraph (a) of
18 this subsection, a contracting agency [*contracting for a*] **that conducts**
19 **procurements for** public [*improvement*] **improvements** may petition the
20 Construction Contractors Board to disqualify a person from consideration for
21 award of the contracting agency’s public improvement contracts for the rea-
22 sons listed in subsection (2) of this section. The Construction Contractors
23 Board shall provide the person with notice and a reasonable opportunity to
24 be heard.

25 “(c) A contracting agency or the Construction Contractors Board may not
26 disqualify a person under this section for a period of more than three years.

27 “(2) A **contracting agency or the Construction Contractors Board**
28 **may disqualify a** person [*may be disqualified*] from consideration for award
29 of a contracting agency’s contracts for any of the following reasons:

30 “(a) The person has been convicted of a criminal offense as an incident

1 in obtaining or attempting to obtain a public or private contract or subcon-
2 tract, or in [*the performance of such*] **performing a** contract or subcontract.

3 “(b) The person has been convicted under state or federal statutes of
4 embezzlement, theft, forgery, bribery, falsification or destruction of records,
5 receiving stolen property or any other offense [*indicating*] **that indicates** a
6 lack of business integrity or business honesty **and** that currently, seriously
7 and directly affects the person’s responsibility as a contractor.

8 “(c) The person has been convicted under state or federal antitrust stat-
9 utes.

10 “(d) The person has committed a violation of a contract provision that
11 [*is regarded by*] the contracting agency or the Construction Contractors
12 Board [*to be*] **regard as** so serious as to justify disqualification. [A] **The**
13 violation may include but is not limited to [*a failure*] **failing** to perform the
14 terms of a contract or [*an unsatisfactory performance*] **failing to perform**
15 **satisfactorily** in accordance with the terms of the contract. [*However,*] A
16 **person’s** failure to perform or an unsatisfactory performance caused by acts
17 beyond the **person’s** control [*of the contractor may not be considered to be*]
18 **is not** a basis for disqualification.

19 “(e) The person does not carry workers’ compensation or unemployment
20 insurance as required by statute.

21 “(f) **The person knowingly or intentionally makes a false assertion,**
22 **declaration or other communication in a statement required under**
23 **ORS 279C.375 (3)(b)(B) or (I) or under section 5 (2)(b) of this 2015 Act.**

24 “(3) A contracting agency or the Construction Contractors Board shall
25 issue a written decision to disqualify a person under this section. The deci-
26 sion [*shall*] **must**:

27 “(a) State the reasons for the action taken; and

28 “(b) Inform the disqualified person [*of the appeal right of*] **that** the person
29 **may appeal the disqualification** under:

30 “(A) ORS 279C.445 and 279C.450, if [*the decision to disqualify was issued*]

1 by] a contracting agency **issued the decision to disqualify the person**; or
2 “(B) ORS chapter 183, if [*the decision to disqualify was issued by*] the
3 Construction Contractors Board **issued the decision to disqualify the**
4 **person.**

5 “(4) **The contracting agency or the Construction Contractors Board**
6 **must immediately mail or otherwise provide the disqualified person a**
7 copy of the decision issued under subsection (3) of this section [*must be*
8 *mailed or otherwise furnished immediately to the disqualified person*].

9 “**SECTION 8. Sections 3 and 5 of this 2015 Act and the amendments**
10 **to ORS 279B.110, 279C.375 and 279C.440 by sections 1, 6 and 7 of this 2015**
11 **Act apply to procurements that a contracting agency first advertises**
12 **or otherwise solicits or, if the contracting agency does not advertise**
13 **or solicit the procurement, to a public contract that the contracting**
14 **agency enters into on or after the operative date specified in section**
15 **9 of this 2015 Act.**

16 “**SECTION 9. (1) Sections 3 and 5 of this 2015 Act and the amend-**
17 **ments to ORS 279B.110, 279C.375 and 279C.440 by sections 1, 6 and 7 of**
18 **this 2015 Act become operative 91 days after the effective date of this**
19 **2015 Act.**

20 “(2) **The Attorney General, the Director of the Oregon Department**
21 **of Administrative Services, the Director of Transportation or a con-**
22 **tracting agency that adopts rules under ORS 279A.065 may adopt rules**
23 **and take any other action before the operative date specified in sub-**
24 **section (1) of this section that is necessary to enable the Attorney**
25 **General, the director or the contracting agency to exercise, on and**
26 **after the operative date specified in subsection (1) of this section, all**
27 **of the duties, functions and powers conferred on the Attorney General,**
28 **the director or the contracting agency by sections 3 and 5 of this 2015**
29 **Act and the amendments to ORS 279B.110, 279C.375 and 279C.440 by**
30 **sections 1, 6 and 7 of this 2015 Act.**

1 **SECTION 10. This 2015 Act being necessary for the immediate**
2 **preservation of the public peace, health and safety, an emergency is**
3 **declared to exist, and this 2015 Act takes effect on its passage.”.**

4
