

# House Bill 2184

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Business and Labor)

## 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 **as introduced**.

Provides that contractor may award subcontract only to responsible subcontractor. Requires contractor to check list that Construction Contractors Board maintains of persons that are not eligible for award of public improvement contract and to require prospective subcontractor to submit statement that demonstrates prospective subcontractor's responsibility. Requires contractor to provide contracting agency with copy of statement. Provides that contractor need not inquire into or verify truth of prospective subcontractor's statement.

Requires bidder to submit statement to show compliance with tax laws of this state.

Permits contracting agency or board to bar contractor or subcontractor from award of public improvement contract if contractor or subcontractor knowingly or intentionally makes false assertion, declaration or other communication in statement.

Becomes operative 91 days after effective date of Act.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to public contracting; creating new provisions; amending ORS 279C.375 and 279C.440; and  
3 declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS chapter 279C.**

6 **SECTION 2. (1) A contracting agency shall provide as a material term in each public**  
7 **improvement contract that a contractor may award a subcontract only to a responsible**  
8 **subcontractor.**

9 **(2) In determining a subcontractor's responsibility, a contractor shall:**

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

14 **(b) Require a prospective subcontractor to sign and submit to the contractor a signed**  
15 **statement that attests that the prospective subcontractor:**

16 **(A) Has available the appropriate financial, material, equipment, facility and personnel**  
17 **resources and expertise, or has the ability to obtain the resources and expertise, necessary**  
18 **to meet all responsibilities associated with the subcontract.**

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

24 **(C) Has a satisfactory record of integrity. For the purposes of this subparagraph, a sat-**  
25 **isfactory record of integrity means that the prospective subcontractor does not have previ-**

**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 **ous criminal convictions for offenses related to obtaining or attempting to obtain a contract**  
 2 **or subcontract or in connection with the prospective subcontractor's performance of a pre-**  
 3 **vious contract or subcontract.**

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

5 **(E) Complied with the tax laws of this state or a political subdivision of this state, in-**  
 6 **cluding ORS 305.620 and ORS chapters 316, 317 and 318.**

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

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

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

11 **(4) A contractor need not inquire into or verify the truth of a statement that the con-**  
 12 **tractor receives from a prospective subcontractor under subsection (2)(b) of this section.**

13 **(5) The Attorney General, the Director of the Oregon Department of Administrative**  
 14 **Services, the Director of Transportation or a contracting agency that adopts rules under**  
 15 **ORS 279A.065 may by rule adopt a form and format for the statement required under sub-**  
 16 **section (2)(b) of this section.**

17 **SECTION 3.** ORS 279C.375 is amended to read:

18 279C.375. (1) After a contracting agency has opened bids and determined that the contracting  
 19 agency will award a public improvement contract, the contracting agency shall award the contract  
 20 to the lowest responsible bidder.

21 (2) At least seven days before awarding a public improvement contract, unless the contracting  
 22 agency determines that seven days is impractical under rules adopted under ORS 279A.065, the  
 23 contracting agency shall issue to each bidder or post, electronically or otherwise, a notice of the  
 24 contracting agency's intent to award a contract. This subsection does not apply to a contract to  
 25 which competitive bidding does not apply under ORS 279C.335 (1)(c) or (d). The notice and the  
 26 manner in which the **contracting agency posts or issues the** notice [*is posted or issued*] must  
 27 conform to rules adopted under ORS 279A.065.

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

30 (a) Check the list [*created by*] **that** the Construction Contractors Board **maintains** under ORS  
 31 701.227 for bidders who are not [*qualified to hold*] **eligible for an award of** a public improvement  
 32 contract.

33 (b) Determine whether the bidder is responsible. A responsible bidder must demonstrate to the  
 34 contracting agency that the bidder:

35 (A) Has available the appropriate financial, material, equipment, facility and personnel resources  
 36 and expertise, or has the ability to obtain the resources and expertise, necessary to meet all con-  
 37 tractual responsibilities.

38 (B) Holds current licenses that businesses or service professionals operating in this state must  
 39 hold in order to undertake or perform the work specified in the contract[.] **and does not, as an**  
 40 **owner of a construction business or as a contractor or responsible managing individual, as**  
 41 **defined in ORS 701.005, have any outstanding construction debt, as defined in ORS 701.005.**  
 42 **The bidder shall demonstrate compliance by providing the contracting agency with a signed**  
 43 **statement that attests that the bidder has complied with the requirements of this subpara-**  
 44 **graph.**

45 (C) Is covered by liability insurance and other insurance in amounts the contracting agency

1 requires in the solicitation documents.

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

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

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

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

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

19 **(I) Complied with the tax laws of this state or a political subdivision of this state, in-**  
20 **cluding ORS 305.620 and ORS chapters 316, 317 and 318. The bidder shall demonstrate com-**  
21 **pliance by providing the contracting agency with a signed statement that attests that the**  
22 **bidder has complied with the tax laws of this state or a political subdivision of this state.**

23 [(I)] (J) Possesses an unexpired certificate that the Oregon Department of Administrative Ser-  
24 vices issued under ORS 279A.167, if the bidder employs 50 or more full-time workers and submitted  
25 a bid for a procurement with an estimated contract price that exceeds \$500,000 in response to an  
26 advertisement or solicitation from a state contracting agency.

27 [(J)] (K) Supplied all necessary information in connection with the inquiry concerning respon-  
28 sibility. If a bidder fails to promptly supply information concerning responsibility that the contract-  
29 ing agency requests, the contracting agency shall determine the bidder's responsibility based on  
30 available information, or may find that the bidder is not responsible.

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

33 \_\_\_\_\_

34  
35 RESPONSIBILITY DETERMINATION FORM

36  
37 Project Name: \_\_\_\_\_

38 Bid Number: \_\_\_\_\_

39 Business Entity Name: \_\_\_\_\_

40 CCB License Number: \_\_\_\_\_

41 Form Submitted By (Contracting Agency):

42 \_\_\_\_\_

43 Form Submitted By (Contracting Agency Representative's Name): \_\_\_\_\_

44 Title: \_\_\_\_\_

45 Date: \_\_\_\_\_

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

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

- 4  Checked the list created by the  
5 Construction Contractors Board  
6 under ORS 701.227 for bidders who  
7 are not qualified to hold a public  
8 improvement contract.
- 9  Determined whether the bidder has  
10 met the standards of responsibility.  
11 In so doing, the contracting agency  
12 has found that the bidder  
13 demonstrated that the bidder:
- 14  Has available the appropriate  
15 financial, material, equipment,  
16 facility and personnel resources  
17 and expertise, or the ability to  
18 obtain the resources and  
19 expertise, necessary to meet  
20 all contractual responsibilities.
- 21  Holds current licenses that  
22 businesses or service professionals  
23 operating in this state must hold  
24 in order to undertake or perform  
25 the work specified in the contract  
26 **and does not, as owner of**  
27 **construction business, as contractor**  
28 **or as responsible managing individual,**  
29 **have any outstanding construction**  
30 **debt.**
- 31  Is covered by liability insurance  
32 and other insurance in amounts  
33 required in the solicitation  
34 documents.
- 35  Qualifies as a carrier-insured  
36 employer or a self-insured  
37 employer under ORS 656.407 or has  
38 elected coverage under ORS 656.128.
- 39  Has disclosed the bidder's first-  
40 tier subcontractors in accordance  
41 with ORS 279C.370.
- 42  Has a satisfactory record of  
43 performance.
- 44  Has a satisfactory record of  
45 integrity.

- 1           [ ] Is legally qualified to contract
- 2                 with the contracting agency.
- 3           [ ] **Has complied with the tax laws**
- 4                 **of this state or a political**
- 5                 **subdivision of this state.**
- 6           [ ] Possesses a certificate that
- 7                 the Oregon Department of
- 8                 Administrative Services issued under
- 9                 ORS 279A.167.
- 10          [ ] Has supplied all necessary
- 11                 information in connection with
- 12                 the inquiry concerning
- 13                 responsibility.
- 14          [ ] Determined the bidder to be
- 15                 (check one of the following):
- 16            [ ] Responsible under ORS 279C.375
- 17                 (3)(a) and (b).
- 18            [ ] Not responsible under
- 19                 ORS 279C.375 (3)(a) and (b).
- 20          (Attach documentation if the contracting agency finds the bidder not to be responsible.)

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

- 26           (4) The successful bidder shall:
- 27                 (a) Promptly execute a formal contract; and
- 28                 (b) Execute and deliver to the contracting agency a performance bond and a payment bond when  
29 required under ORS 279C.380.

30           (5) *[Based on competitive bids]* **After conducting a competitive bidding process**, a contracting  
31 agency may award a public improvement contract or may award multiple public improvement con-  
32 tracts *[when specified]* **if the contracting agency specifies** in the invitation to bid **that the con-**  
33 **tracting agency will award multiple public improvement contracts.**

34           (6) A contracting agency may not exclude a commercial contractor from competing for a public  
35 contract on the basis that the license *[issued by]* **that** the Construction Contractors Board **issued**  
36 is endorsed as a level 1 or level 2 license. As used in this section, “commercial contractor” has the  
37 meaning given that term in ORS 701.005.

38           **SECTION 4.** ORS 279C.440 is amended to read:

39           279C.440. (1)(a) A contracting agency may disqualify a person from consideration for award of  
40 the contracting agency’s contracts for the reasons listed in subsection (2) of this section after pro-  
41 viding the person with notice and a reasonable opportunity to be heard.

42           (b) In lieu of the disqualification *[process]* described in paragraph (a) of this subsection, a con-  
43 tracting agency *[contracting for a]* **that conducts procurements for** public *[improvement]* **im-**  
44 **provements** may petition the Construction Contractors Board to disqualify a person from  
45 consideration for award of the contracting agency’s public improvement contracts for the reasons

1 listed in subsection (2) of this section. The Construction Contractors Board shall provide the person  
 2 with notice and a reasonable opportunity to be heard.

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

5 (2) A **contracting agency or the Construction Contractors Board may disqualify a person**  
 6 *[may be disqualified]* from consideration for award of a contracting agency's contracts for any of the  
 7 following reasons:

8 (a) The person has been convicted of a criminal offense as an incident in obtaining or attempting  
 9 to obtain a public or private contract or subcontract, or in *[the performance of such]* **performing a**  
 10 contract or subcontract.

11 (b) The person has been convicted under state or federal statutes of embezzlement, theft, forgery,  
 12 bribery, falsification or destruction of records, receiving stolen property or any other offense *[indi-*  
 13 *cating]* **that indicates** a lack of business integrity or business honesty **and** that currently, seriously  
 14 and directly affects the person's responsibility as a contractor.

15 (c) The person has been convicted under state or federal antitrust statutes.

16 (d) The person has committed a violation of a contract provision that *[is regarded by]* the con-  
 17 tracting agency or the Construction Contractors Board *[to be]* **regard as** so serious as to justify  
 18 disqualification. *[A]* **The** violation may include but is not limited to *[a failure]* **failing** to perform the  
 19 terms of a contract or *[an unsatisfactory performance]* **failing to perform satisfactorily** in accord-  
 20 ance with the terms of the contract. *[However,]* A **person's** failure to perform or an unsatisfactory  
 21 performance caused by acts beyond the **person's** control *[of the contractor may not be considered to*  
 22 *be]* **is not** a basis for disqualification.

23 (e) The person does not carry workers' compensation or unemployment insurance as required  
 24 by statute.

25 (f) **The person knowingly or intentionally makes a false assertion, declaration or other**  
 26 **communication in a statement required under ORS 279C.375 (3)(b)(B) or (I) or section 2 (2)(b)**  
 27 **of this 2017 Act.**

28 (3) A contracting agency or the Construction Contractors Board shall issue a written decision  
 29 to disqualify a person under this section. The decision *[shall]* **must**:

30 (a) State the reasons for the action taken; and

31 (b) Inform the disqualified person *[of the appeal right of]* **that** the person **may appeal the dis-**  
 32 **qualification** under:

33 (A) ORS 279C.445 and 279C.450, if *[the decision to disqualify was issued by]* a contracting agency  
 34 **issued the decision to disqualify the person;** or

35 (B) ORS chapter 183, if *[the decision to disqualify was issued by]* the Construction Contractors  
 36 Board **issued the decision to disqualify the person.**

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

40 **SECTION 5. Section 2 of this 2017 Act and the amendments to ORS 279C.375 and 279C.440**  
 41 **by sections 3 and 4 of this 2017 Act apply to public improvement contracts that a contracting**  
 42 **agency first advertises or otherwise solicits or, if the contracting agency does not advertise**  
 43 **or solicit the public improvement contract, to a public improvement contract the contracting**  
 44 **agency enters into on or after the operative date specified in section 6 of this 2017 Act.**

45 **SECTION 6. (1) Section 2 of this 2017 Act and the amendments to ORS 279C.375 and**

1 279C.440 by sections 3 and 4 of this 2017 Act become operative 91 days after the effective date  
2 of this 2017 Act.

3 (2) The Attorney General, the Director of the Oregon Department of Administrative  
4 Services, the Director of Transportation and a contracting agency that adopts rules under  
5 ORS 279A.065 may adopt rules and take any other action before the operative date specified  
6 in subsection (1) of this section that is necessary to enable the Attorney General, the direc-  
7 tor or the contracting agency to exercise, on and after the operative date specified in sub-  
8 section (1) of this section, all of the duties, functions and powers conferred on the Attorney  
9 General, the director or the contracting agency by section 2 of this 2017 Act and the  
10 amendments to ORS 279C.375 and 279C.440 by sections 3 and 4 of this 2017 Act.

11 SECTION 7. This 2017 Act being necessary for the immediate preservation of the public  
12 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect  
13 on its passage.  
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