

House Bill 2196

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**.

Requires contracting agency to base determination of contractor's responsibility for public improvement contract on contractor's demonstrating that contractor has provided health insurance to contractor's employees for period of two years before contractor submitted bid for public improvement contract. Specifies exemptions for certain bidders.

A BILL FOR AN ACT

Relating to public contracting; creating new provisions; and amending ORS 279C.375.

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

SECTION 1. ORS 279C.375 is amended to read:

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

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

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

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

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

(A) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or has the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.

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

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

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

(E) Has provided health insurance to the bidder's employees for a period of two years before the date on which the bidder submitted the bid for the public improvement contract.

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.

The requirement set forth in this subparagraph does not apply to a bidder if the bidder employs 25 or fewer employees or if the bidder has existed for less than two years before submitting the bid for the public improvement contract.

[(E)] (F) Has made the disclosure required under ORS 279C.370.

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

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

[(H)] (I) Is legally qualified to contract with the contracting agency.

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

[(J)] (K) Supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder fails to promptly supply information concerning responsibility that the contracting agency requests, the contracting agency shall determine the bidder’s responsibility based on available information, or may find that the bidder is not responsible.

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

RESPONSIBILITY DETERMINATION FORM

Project Name: _____

Bid Number: _____

Business Entity Name: _____

CCB License Number: _____

Form Submitted By (Contracting Agency):

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

Title: _____

Date: _____

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

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

[] Checked the list created by the

1 Construction Contractors Board
2 under ORS 701.227 for bidders who
3 are not qualified to hold a public
4 improvement contract.

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

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

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

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 provided health insurance**
31 **to the bidder's employees**
32 **for a period of two years before**
33 **submitting the bid, unless exempted**
34 **under ORS 279C.375 (3)(b)(E).**

35 [] Has disclosed the bidder's first-
36 tier subcontractors in accordance
37 with ORS 279C.370.

38 [] Has a satisfactory record of
39 performance.

40 [] Has a satisfactory record of
41 integrity.

42 [] Is legally qualified to contract
43 with the contracting agency.

44 [] Possesses a certificate that
45 the Oregon Department of

1 Administrative Services issued under
2 ORS 279A.167.

3 [] Has supplied all necessary
4 information in connection with
5 the inquiry concerning
6 responsibility.

7 [] Determined the bidder to be
8 (check one of the following):

9 [] Responsible under ORS 279C.375
10 (3)(a) and (b).

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

13 (Attach documentation if the contracting agency finds the bidder not to be responsible.)
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16 (d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the
17 Construction Contractors Board within 30 days after the date the contracting agency awards the
18 contract.

19 (4) The successful bidder shall:

20 (a) Promptly execute a formal contract; and

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

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

25 (6) A contracting agency may not exclude a commercial contractor from competing for a public
26 contract on the basis that the license issued by the Construction Contractors Board is endorsed as
27 a level 1 or level 2 license. As used in this section, "commercial contractor" has the meaning given
28 that term in ORS 701.005.

29 **SECTION 2. The amendments to ORS 279C.375 by section 1 of this 2017 Act apply to**
30 **contracts that a contracting agency first advertises or otherwise solicits on or after the ef-**
31 **fective date of this 2017 Act or, if the contracting agency does not advertise or solicit the**
32 **contract, to contracts that the contracting agency first enters into on or after the effective**
33 **date of this 2017 Act.**

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