

Enrolled
Senate Bill 420

Sponsored by Senator MANNING JR; Representatives KOTEK, WILDE (at the request of Joe Berney) (Pre-session filed.)

CHAPTER

AN ACT

Relating to community benefit contracts; creating new provisions; amending ORS 279C.375 and 279C.430; and prescribing an effective date.

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

SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 279C.300 to 279C.470.

SECTION 2. (1) As used in this section:

- (a) "Apprentice" has the meaning given that term in ORS 660.010.
- (b) "Apprenticeable occupation" has the meaning given that term in ORS 660.010.
- (c) "Community benefit project" means a public improvement project that is subject to the terms and conditions of a community benefit contract.

(2) As used in this section and in ORS 279C.375 and 279C.430, "community benefit contract" means a public improvement contract that includes, but is not limited to, the elements described in subsection (3)(b) of this section.

(3)(a) A contracting agency or local contract review board may enact or adopt, as appropriate, an ordinance, resolution, rule, regulation or other legislative or administrative measure that authorizes the contracting agency or local contract review board to designate a public improvement contract as a community benefit contract.

(b) In addition to and not in lieu of any other requirement that applies to a public improvement contract under this chapter, a public improvement contract that a contracting agency or local contract review board designates as a community benefit contract may include as material provisions of the contract, but need not be limited to, terms and conditions that require the contractor to:

(A) Qualify as a training agent, as defined in ORS 660.010, or provide apprenticeship training that meets applicable federal and state standards for apprenticeship training;

(B) Employ apprentices to perform a specified percentage of work hours that workers in apprenticeable occupations perform on the community benefit project;

(C) Provide employer-paid family health insurance; and

(D) Meet any other requirements that the contracting agency or local contract review board sets forth in the ordinance, resolution, rule, regulation or other legislative or administrative measure that authorizes procurements of community benefit contracts.

(c) A contracting agency or local contract review board shall:

(A) Ensure, before advertising or soliciting a community benefit contract, that all advertisements and solicitation documents state clearly that the procurement is for a com-

munity benefit contract and identify conspicuously all of the provisions to which a contractor will be subject, including the percentage of work hours for which the contractor must employ apprentices and the standards that will apply to the health plan the contractor must provide; and

(B) Require, before accepting and evaluating bids or proposals for a community benefit contract, that each bidder or proposer include with the bid or proposal a signed statement that acknowledges that the bidder or proposer understands and agrees to be bound by the requirements that apply to the community benefit contract.

(4) Except as otherwise provided in this section, a solicitation and award of a community benefit contract is subject to all applicable provisions of the Public Contracting Code.

SECTION 3. 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 made the disclosure required under ORS 279C.370.

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

(I) 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) Has agreed in the bid or proposal to be bound by the terms and conditions of a community benefit contract, if the public improvement contract is a community benefit contract.

[(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 Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a public improvement contract.
- Determined whether the bidder has met the standards of responsibility. In so doing, the contracting agency has found that the bidder demonstrated that the bidder:
 - Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.
 - 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.
 - Is covered by liability insurance and other insurance in amounts required in the solicitation documents.

- Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.
 - Has disclosed the bidder's first-tier subcontractors in accordance with ORS 279C.370.
 - Has a satisfactory record of performance.
 - Has a satisfactory record of integrity.
 - Is legally qualified to contract with the contracting agency.
 - Possesses a certificate that the Oregon Department of Administrative Services issued under ORS 279A.167.
 - Agrees to be bound by the terms and conditions of a community benefit contract if the public contract is a community benefit contract.**
 - Has supplied all necessary information in connection with the inquiry concerning responsibility.
 - Determined the bidder to be (check one of the following):
 - Responsible under ORS 279C.375 (3)(a) and (b).
 - Not responsible under ORS 279C.375 (3)(a) and (b).
- (Attach documentation if the contracting agency finds the bidder not to be responsible.)
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(d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the Construction Contractors Board within 30 days after the date the contracting agency awards the contract.

(4) The successful bidder shall:

- (a) Promptly execute a formal contract; and
- (b) Execute and deliver to the contracting agency a performance bond and a payment bond when required under ORS 279C.380.

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

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

SECTION 4. ORS 279C.430 is amended to read:

279C.430. (1) A contracting agency **or, if appropriate, a local contract review board**, may adopt a rule, resolution, ordinance or other regulation [*requiring mandatory prequalification for all persons desiring to bid for public improvement contracts that are to be let by the agency*] **that permits**

or requires a prospective bidder or proposer to prequalify for public improvement contracts, including community benefit contracts, for which the contracting agency intends to conduct a procurement. The rule, resolution, ordinance or other regulation authorized by this section must include the time for submitting prequalification applications and a general description of the type and nature of the contracts *[that may be let]* for which the contracting agency intends to conduct a procurement. The prequalification application must be in writing on a standard form prescribed under the authority of ORS 279A.050.

(2) *[When]* If a contracting agency or local contract review board permits or requires prequalification of bidders, a person who wishes to prequalify shall submit a prequalification application to the contracting agency on a standard form prescribed under subsection (1) of this section. Within 30 days after *[receipt of]* receiving a prequalification application, the contracting agency shall investigate the applicant as necessary to determine if the applicant is qualified. The determination *[shall]* **must** be made in less than 30 days, if practicable, if the applicant requests an early decision to allow the applicant as much time as possible to prepare a bid on a contract that *[has been]* the contracting agency advertised. In making *[its]* the determination, the contracting agency shall consider only the applicable standards of responsibility listed in ORS 279C.375 (3)(b). The agency shall promptly notify the applicant whether or not the applicant is qualified.

(3) If the contracting agency finds that the applicant is qualified, the notice must state the nature and type of contracts *[that the person is qualified to bid on]* for which the prospective contractor may submit a bid or proposal and the period of time for which the qualification is valid under the contracting agency's rule, resolution, ordinance or other regulation. If the contracting agency finds the applicant is not qualified as to any contracts covered by the rule, resolution, ordinance or other regulation, the notice must specify the reasons found under ORS 279C.375 (3)(b) for not prequalifying the applicant and inform the applicant of the right to a hearing under ORS 279C.445 and 279C.450.

(4) If a contracting agency has reasonable cause to believe that *[there has been]* a substantial change **has taken place** in the conditions of a prequalified person and that **because of the substantial change** the person is no longer qualified or is less qualified, the agency may revoke or may revise and reissue the prequalification after reasonable notice to the prequalified person. The notice shall state the reasons found under ORS 279C.375 (3)(b) for revocation or revision of the prequalification of the person and inform the person of the right to a hearing under ORS 279C.445 and 279C.450. A revocation or revision does not apply to any public improvement contract for which publication of an advertisement, in accordance with ORS 279C.360, commenced before the date the notice of revocation or revision was received by the prequalified person.

SECTION 5. Section 2 of this 2021 Act and the amendments to ORS 279C.375 and 279C.430 by sections 3 and 4 of this 2021 Act apply to procurements that a contracting agency or local contract review board advertises or otherwise solicits, or if the contracting agency or local contract review board does not solicit the procurement, to public contracts into which the contracting agency or local contract review board enters on or after the operative date specified in section 6 of this 2021 Act.

SECTION 6. (1) Section 2 of this 2021 Act and the amendments to ORS 279C.375 and 279C.430 by sections 3 and 4 of this 2021 Act become operative on January 1, 2022.

(2) A contracting agency or local contract review board may enact or adopt, as appropriate, an ordinance, resolution, rule, regulation or other legislative or administrative measure before the operative date specified in subsection (1) of this section that is necessary to enable the contracting agency or local contract review board, on and after the operative date specified in subsection (1) of this section, to undertake or exercise all of the duties, functions and powers conferred on the contracting agency or local contract review board by section 2 of this 2021 Act and the amendments to ORS 279C.375 and 279C.430 by sections 3 and 4 of this 2021 Act.

SECTION 7. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by Senate April 29, 2021

Repassed by Senate June 21, 2021

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 9, 2021

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2021

Approved:

.....M,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2021

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Shemia Fagan, Secretary of State