

**A-Engrossed**  
**Senate Bill 420**

Ordered by the Senate April 26  
Including Senate Amendments dated April 26

Sponsored by Senator MANNING JR (at the request of Joe Berney) (Pre-session filed.)

**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.

Permits local contract review board or local contracting agency to enact or adopt, as appropriate, ordinance, resolution, rule, regulation or other legislative or administrative measure to designate certain public improvement contracts as community benefit contracts. Specifies elements that community benefit contract must incorporate. Specifies duties of local contract review board or local contracting agency before advertising, soliciting or awarding community benefit contract.

Permits contracting agency to prequalify bidders or proposers to submit bids or proposals for community benefit contracts.

Takes effect on 91st day following adjournment sine die.

**A BILL FOR AN ACT**

1  
2 Relating to community benefit contracts; creating new provisions; amending ORS 279C.375 and  
3 279C.430; and prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 279C.300 to**  
6 **279C.470.**

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

8 (a) "Apprentice" has the meaning given that term in ORS 660.010.

9 (b) "Apprenticeable occupation" has the meaning given that term in ORS 660.010.

10 (c) "Community benefit project" means a public improvement project that is subject to  
11 the terms and conditions of a community benefit contract.

12 (2) As used in this section and in ORS 279C.375 and 279C.430, "community benefit con-  
13 tract" means a public improvement contract that includes the elements described in sub-  
14 section (3)(b) of this section.

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

19 (b) In addition to and not in lieu of any other requirement that applies to a public im-  
20 provement contract under this chapter, a public improvement contract that a local contract  
21 review board or local contracting agency designates as a community benefit contract must  
22 include, as material provisions of the contract, terms and conditions that require the con-  
23 tractor to:

24 (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;

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

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

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

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

8       **(A) Ensure, before advertising or soliciting a community benefit contract, that all ad-**  
9 **vertisements and solicitation documents state clearly that the procurement is for a com-**  
10 **munity benefit contract and identify conspicuously all of the provisions to which a contractor**  
11 **will be subject, including the percentage of work hours for which the contractor must employ**  
12 **apprentices and the standards that will apply to the health plan the contractor must provide;**  
13 **and**

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

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

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

21       279C.375. (1) After a contracting agency has opened bids and determined that the contracting  
22 agency will award a public improvement contract, the contracting agency shall award the contract  
23 to the lowest responsible bidder.

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **(J) Has agreed in the bid or proposal to be bound by the terms and conditions of a com-  
20 munity benefit contract, if the contracting agency is a local contract review board or local  
21 contracting agency and the public improvement contract is a community benefit contract,  
22 as defined in section 2 of this 2021 Act.**

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

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

29 \_\_\_\_\_

30  
31 RESPONSIBILITY DETERMINATION FORM

32  
33 Project Name: \_\_\_\_\_

34 Bid Number: \_\_\_\_\_

35 Business Entity Name: \_\_\_\_\_

36 CCB License Number: \_\_\_\_\_

37 Form Submitted By (Contracting Agency):  
38 \_\_\_\_\_

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

40 Title: \_\_\_\_\_

41 Date: \_\_\_\_\_

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

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

45 [ ] 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 disclosed the bidder's first-  
31 tier subcontractors in accordance  
32 with ORS 279C.370.
- 33 [ ] Has a satisfactory record of  
34 performance.
- 35 [ ] Has a satisfactory record of  
36 integrity.
- 37 [ ] Is legally qualified to contract  
38 with the contracting agency.
- 39 [ ] Possesses a certificate that  
40 the Oregon Department of  
41 Administrative Services issued under  
42 ORS 279A.167.
- 43 [ ] **Agrees to be bound by the terms**  
44 **and conditions of a community**  
45 **benefit contract if the contracting**

1           **agency is a local contract review**  
2           **board or local contracting agency**  
3           **and the contract is a community**  
4           **benefit contract.**

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

9           [ ] Determined the bidder to be  
10          (check one of the following):

11          [ ] Responsible under ORS 279C.375  
12               (3)(a) and (b).

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

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

21          (4) The successful bidder shall:

22               (a) Promptly execute a formal contract; and

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

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

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

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

32          279C.430. (1) A contracting agency may adopt a rule, resolution, ordinance or other regulation  
33          [*requiring mandatory prequalification for all persons desiring to bid for public improvement contracts*  
34          *that are to be let by the agency*] **that permits or requires a prospective bidder or proposer to**  
35          **prequalify for public improvement contracts, including community benefit contracts, for**  
36          **which the contracting agency intends to conduct a procurement.** The rule, resolution, ordi-  
37          nance or other regulation authorized by this section must include the time for submitting prequali-  
38          fication applications and a general description of the type and nature of the contracts [*that may be*  
39          *let*] **for which the contracting agency intends to conduct a procurement.** The prequalification  
40          application must be in writing on a standard form prescribed under the authority of ORS 279A.050.

41          (2) [*When*] **If** a contracting agency permits or requires prequalification of bidders, a person who  
42          wishes to prequalify shall submit a prequalification application to the contracting agency on a  
43          standard form prescribed under subsection (1) of this section. Within 30 days after [*receipt of*] **re-**  
44          **ceiving** a prequalification application, the contracting agency shall investigate the applicant as  
45          necessary to determine if the applicant is qualified. The determination [*shall*] **must** be made in less

1 than 30 days, if practicable, if the applicant requests an early decision to allow the applicant as  
 2 much time as possible to prepare a bid on a contract that [*has been*] **the contracting agency** ad-  
 3 vertised. In making [*its*] **the** determination, the contracting agency shall consider only the applicable  
 4 standards of responsibility listed in ORS 279C.375 (3)(b). The agency shall promptly notify the ap-  
 5 plicant whether or not the applicant is qualified.

6 (3) If the contracting agency finds that the applicant is qualified, the notice must state the na-  
 7 ture and type of contracts [*that the person is qualified to bid on*] **for which the prospective con-**  
 8 **tractor may submit a bid or proposal** and the period of time for which the qualification is valid  
 9 under the contracting agency's rule, resolution, ordinance or other regulation. If the contracting  
 10 agency finds the applicant is not qualified as to any contracts covered by the rule, resolution, or-  
 11 dinance or other regulation, the notice must specify the reasons found under ORS 279C.375 (3)(b) for  
 12 not prequalifying the applicant and inform the applicant of the right to a hearing under ORS  
 13 279C.445 and 279C.450.

14 (4) If a contracting agency has reasonable cause to believe that [*there has been*] a substantial  
 15 change **has taken place** in the conditions of a prequalified person and that **because of the sub-**  
 16 **stantial change** the person is no longer qualified or is less qualified, the agency may revoke or may  
 17 revise and reissue the prequalification after reasonable notice to the prequalified person. The notice  
 18 shall state the reasons found under ORS 279C.375 (3)(b) for revocation or revision of the prequali-  
 19 fication of the person and inform the person of the right to a hearing under ORS 279C.445 and  
 20 279C.450. A revocation or revision does not apply to any public improvement contract for which  
 21 publication of an advertisement, in accordance with ORS 279C.360, commenced before the date the  
 22 notice of revocation or revision was received by the prequalified person.

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

29 **SECTION 6. (1) Section 2 of this 2021 Act and the amendments to ORS 279C.375 and**  
 30 **279C.430 by sections 3 and 4 of this 2021 Act become operative on January 1, 2022.**

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

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