

SB 420-A4
(LC 245)
5/18/21 (TSB/ps)

Requested by HOUSE COMMITTEE ON BUSINESS AND LABOR (at the request of Representative Paul Holvey)

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 420**

1 On page 1 of the printed A-engrossed bill, delete lines 7 through 25 and
2 delete pages 2 through 6 and insert:

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

4 **“(a) ‘Apprentice’ has the meaning given that term in ORS 660.010.**

5 **“(b) ‘Apprenticeable occupation’ has the meaning given that term
6 in ORS 660.010.**

7 **“(c) ‘Community benefit project’ means a public improvement
8 project that is subject to the terms and conditions of a community
9 benefit contract.**

10 **“(2) As used in this section and in ORS 279C.375 and 279C.430,
11 ‘community benefit contract’ means a public improvement contract
12 that includes, but is not limited to, the elements described in sub-
13 section (3)(b) of this section.**

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

19 **“(b) In addition to and not in lieu of any other requirement that
20 applies to a public improvement contract under this chapter, a public
21 improvement contract that a contracting agency or local contract re-**

1 view board designates as a community benefit contract may include
2 as material provisions of the contract, but need not be limited to,
3 terms and conditions that require the contractor to:

4 “(A) Qualify as a training agent, as defined in ORS 660.010, or pro-
5 vide apprenticeship training that meets applicable federal and state
6 standards for apprenticeship training;

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

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

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

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

16 “(A) Ensure, before advertising or soliciting a community benefit
17 contract, that all advertisements and solicitation documents state
18 clearly that the procurement is for a community benefit contract and
19 identify conspicuously all of the provisions to which a contractor will
20 be subject, including the percentage of work hours for which the con-
21 tractor must employ apprentices and the standards that will apply to
22 the health plan the contractor must provide; and

23 “(B) Require, before accepting and evaluating bids or proposals for
24 a community benefit contract, that each bidder or proposer include
25 with the bid or proposal a signed statement that acknowledges that
26 the bidder or proposer understands and agrees to be bound by the re-
27 quirements that apply to the community benefit contract.

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

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

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

5 “(2) At least seven days before awarding a public improvement contract,
6 unless the contracting agency determines that seven days is impractical un-
7 der rules adopted under ORS 279A.065, the contracting agency shall issue to
8 each bidder or post, electronically or otherwise, a notice of the contracting
9 agency’s intent to award a contract. This subsection does not apply to a
10 contract to which competitive bidding does not apply under ORS 279C.335
11 (1)(c) or (d). The notice and the manner in which the notice is posted or is-
12 sued must conform to rules 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 the Construction Contractors Board under
16 ORS 701.227 for bidders who are not qualified to hold a public improvement
17 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.

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

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

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

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

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

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

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

23 “**(J) Has agreed in the bid or proposal to be bound by the terms and**
24 **conditions of a community benefit contract, if the public improvement**
25 **contract is a community benefit contract.**

26 “[*J*] **(K)** Supplied all necessary information in connection with the in-
27 quiry concerning responsibility. If a bidder fails to promptly supply infor-
28 mation concerning responsibility that the contracting agency requests, the
29 contracting agency shall determine the bidder’s responsibility based on
30 available information, or may find that the bidder is not responsible.

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

4 “ _____

5 RESPONSIBILITY DETERMINATION FORM

6

7 Project Name: _____

8 Bid Number: _____

9 Business Entity Name: _____

10 CCB License Number: _____

11 Form Submitted By (Contracting Agency):

12 _____

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

14 _____

15 Title: _____

16 Date: _____

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

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

21 Checked the list created by the

22 Construction Contractors Board

23 under ORS 701.227 for bidders who

24 are not qualified to hold a public

25 improvement contract.

26 Determined whether the bidder has

27 met the standards of responsibility.

28 In so doing, the contracting agency

29 has found that the bidder

30 demonstrated that the bidder:

- 1 [] Has available the appropriate
2 financial, material, equipment,
3 facility and personnel resources
4 and expertise, or the ability to
5 obtain the resources and
6 expertise, necessary to meet
7 all contractual responsibilities.
- 8 [] Holds current licenses that
9 businesses or service professionals
10 operating in this state must hold
11 in order to undertake or perform
12 the work specified in the contract.
- 13 [] Is covered by liability insurance
14 and other insurance in amounts
15 required in the solicitation
16 documents.
- 17 [] Qualifies as a carrier-insured
18 employer or a self-insured
19 employer under ORS 656.407 or has
20 elected coverage under ORS 656.128.
- 21 [] Has disclosed the bidder's first-
22 tier subcontractors in accordance
23 with ORS 279C.370.
- 24 [] Has a satisfactory record of
25 performance.
- 26 [] Has a satisfactory record of
27 integrity.
- 28 [] Is legally qualified to contract
29 with the contracting agency.
- 30 [] Possesses a certificate that

1 the Oregon Department of
2 Administrative Services issued under
3 ORS 279A.167.

4 **Agrees to be bound by the terms**
5 **and conditions of a community**
6 **benefit contract if the public**
7 **contract is a community**
8 **benefit contract.**

9 Has supplied all necessary
10 information in connection with
11 the inquiry concerning
12 responsibility.

13 Determined the bidder to be
14 (check one of the following):

15 Responsible under ORS 279C.375
16 (3)(a) and (b).

17 Not responsible under
18 ORS 279C.375 (3)(a) and (b).

19 (Attach documentation if the contracting agency finds the bidder not to
20 be responsible.)

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

25 “(4) The successful bidder shall:

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

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

29 “(5) Based on competitive bids, a contracting agency may award a public
30 improvement contract or may award multiple public improvement contracts

1 when specified in the invitation to bid.

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

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

8 “279C.430. (1) A contracting agency **or, if appropriate, a local contract**
9 **review board,** may adopt a rule, resolution, ordinance or other regulation
10 [*requiring mandatory prequalification for all persons desiring to bid for public*
11 *improvement contracts that are to be let by the agency*] **that permits or re-**
12 **quires a prospective bidder or proposer to prequalify for public im-**
13 **provement contracts, including community benefit contracts, for**
14 **which the contracting agency intends to conduct a procurement.** The
15 rule, resolution, ordinance or other regulation authorized by this section
16 must include the time for submitting prequalification applications and a
17 general description of the type and nature of the contracts [*that may be let*]
18 **for which the contracting agency intends to conduct a procurement.**
19 The prequalification application must be in writing on a standard form pre-
20 scribed under the authority of ORS 279A.050.

21 “(2) [*When*] **If a contracting agency or local contract review board**
22 permits or requires prequalification of bidders, a person who wishes to pre-
23 qualify shall submit a prequalification application to the contracting agency
24 on a standard form prescribed under subsection (1) of this section. Within
25 30 days after [*receipt of*] **receiving** a prequalification application, the con-
26 tracting agency shall investigate the applicant as necessary to determine if
27 the applicant is qualified. The determination [*shall*] **must** be made in less
28 than 30 days, if practicable, if the applicant requests an early decision to
29 allow the applicant as much time as possible to prepare a bid on a contract
30 that [*has been*] **the contracting agency** advertised. In making [*its*] **the de-**

1 termination, the contracting agency shall consider only the applicable stan-
2 dards of responsibility listed in ORS 279C.375 (3)(b). The agency shall
3 promptly notify the applicant whether or not the applicant is qualified.

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

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

26 **“SECTION 5. Section 2 of this 2021 Act and the amendments to ORS**
27 **279C.375 and 279C.430 by sections 3 and 4 of this 2021 Act apply to pro-**
28 **curements that a contracting agency or local contract review board**
29 **advertises or otherwise solicits, or if the contracting agency or local**
30 **contract review board does not solicit the procurement, to public**

1 **contracts into which the contracting agency or local contract review**
2 **board enters on or after the operative date specified in section 6 of this**
3 **2021 Act.**

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

7 **“(2) A contracting agency or local contract review board may enact**
8 **or adopt, as appropriate, an ordinance, resolution, rule, regulation or**
9 **other legislative or administrative measure before the operative date**
10 **specified in subsection (1) of this section that is necessary to enable**
11 **the contracting agency or local contract review board, on and after the**
12 **operative date specified in subsection (1) of this section, to undertake**
13 **or exercise all of the duties, functions and powers conferred on the**
14 **contracting agency or local contract review board by section 2 of this**
15 **2021 Act and the amendments to ORS 279C.375 and 279C.430 by sections**
16 **3 and 4 of this 2021 Act.**

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

20
