

# House Bill 2564

Sponsored by Representative WITT (Presession 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 **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

1  
2 Relating to determinations of responsibility for contractors on public improvement contracts; creat-  
3 ing new provisions; and amending ORS 279C.375.

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

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

6 279C.375. (1) After a contracting agency has opened bids and determined that the contracting  
7 agency will award a public improvement contract, the contracting agency shall award the contract  
8 to the lowest responsible bidder.

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

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

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

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

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

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

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

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

30 **(E) Has provided health insurance to the bidder's employees for a period of two years**

**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 before the date on which the bidder submitted the bid for the public improvement contract.  
2 The requirement set forth in this subparagraph does not apply to a bidder if the bidder em-  
3 ploys 25 or fewer employees or if the bidder has existed for less than two years before sub-  
4 mitting the bid for the public improvement contract.

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

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

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

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

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

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

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

30 \_\_\_\_\_  
31  
32 RESPONSIBILITY DETERMINATION FORM

33  
34 Project Name: \_\_\_\_\_

35 Bid Number: \_\_\_\_\_

36 Business Entity Name: \_\_\_\_\_

37 CCB License Number: \_\_\_\_\_

38 Form Submitted By (Contracting Agency):

39 \_\_\_\_\_

40 Form Submitted By (Contracting Agency Representative’s Name): \_\_\_\_\_

41 Title: \_\_\_\_\_

42 Date: \_\_\_\_\_

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

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

- 1       [ ] Checked the list created by the
- 2             Construction Contractors Board
- 3             under ORS 701.227 for bidders who
- 4             are not qualified to hold a public
- 5             improvement contract.
- 6       [ ] Determined whether the bidder has
- 7             met the standards of responsibility.
- 8             In so doing, the contracting agency
- 9             has found that the bidder
- 10            demonstrated that the bidder:
- 11       [ ] Has available the appropriate
- 12             financial, material, equipment,
- 13             facility and personnel resources
- 14             and expertise, or the ability to
- 15             obtain the resources and
- 16             expertise, necessary to meet
- 17             all contractual responsibilities.
- 18       [ ] Holds current licenses that
- 19             businesses or service professionals
- 20             operating in this state must hold
- 21             in order to undertake or perform
- 22             the work specified in the contract.
- 23       [ ] Is covered by liability insurance
- 24             and other insurance in amounts
- 25             required in the solicitation
- 26             documents.
- 27       [ ] Qualifies as a carrier-insured
- 28             employer or a self-insured
- 29             employer under ORS 656.407 or has
- 30             elected coverage under ORS 656.128.
- 31       [ ] **Has provided health insurance**
- 32             **to the bidder's employees**
- 33             **for a period of two years before**
- 34             **submitting the bid, unless exempted**
- 35             **under ORS 279C.375 (3)(b)(E).**
- 36       [ ] Has disclosed the bidder's first-
- 37             tier subcontractors in accordance
- 38             with ORS 279C.370.
- 39       [ ] Has a satisfactory record of
- 40             performance.
- 41       [ ] Has a satisfactory record of
- 42             integrity.
- 43       [ ] Is legally qualified to contract
- 44             with the contracting agency.
- 45       [ ] Possesses a certificate that

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

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

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

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

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

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

20 (4) The successful bidder shall:

21 (a) Promptly execute a formal contract; and

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

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

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

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

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