

Public Contracting Highlights

2015 Gathering for Conservation Oregon Conservation Partnership

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Requested Topics

1. SB 675 (2015)
2. Contracts With Private Landowners
 - Is it a public contract?
 - Is it a public improvement?
 - Is competitive bidding required?
3. Q&A

SB 675 (2015)

1. Amends requirements for determining whether a bidder is a “responsible bidder.” [ORS 279B.110].
2. Takes effect 91 days after effective date of the bill (June 22, 2015).

SB 675

PRIOR LANGUAGE:

(e) Complied with the tax laws of this state or a political subdivision of this state, including ORS 305.620 and ORS chapters 316, 317 and 318. The bidder or proposer shall demonstrate compliance by submitting a signed affidavit that attests, under penalty of perjury, that the bidder or proposer has complied with the tax laws of this state or a political subdivision of this state.

NEW LANGUAGE:

(e) Complied with the tax laws of the state or a political subdivision of the state, including ORS 305.620 and ORS chapters 316, 317 and 318. The bidder or proposer shall demonstrate compliance by attesting to the bidder's or proposer's compliance in any way the contracting agency deems credible and convenient.

SB 675

SECTION 3.

- **Every public contract *** must include a representation and warranty from the contractor that the contractor has complied with the tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620 [local income or sales taxes] and ORS chapters 316, 317 and 318 [personal income tax/corporate excise tax/corporate income tax].**
- **The public contract must also require a covenant from the contractor to continue to comply with the tax laws of this state or a political subdivision of this state during the term of the public contract and provide that a contractor's failure to comply *** is a default for which a contracting agency may terminate the public contract and seek damages and other relief available under the terms of the public contract or under applicable law.**

SB 675

Related bill [SB 491]:

- Requires the Oregon Department of Administrative Services (DAS) to establish a program for certifying contractors who bid on public contracts that they understand Oregon laws and rules prohibiting discrimination in compensation or wages.
- Effective January 1, 2016, any contractor who employs 50 or more full-time workers and submits a bid on a state contract estimated to exceed \$500,000 must provide proof of the certification.

Contracts With Private Landowners

Issues:

1. Is it a “public contract”?
2. If it is a public contract, is it a “public improvement”?
3. Is competitive bidding required?

Contracts With Private Landowners

Is it a “public contract”?

“Public contract” means a sale or other disposal, or a purchase, lease, rental or other acquisition, by a contracting agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement.

“Public contract” does not include grants.

[ORS 279A.010]

Contracts With Private Landowners

Is it a public improvement?

- “Public improvement” means a project for construction, reconstruction or major renovation on real property by or for a contracting agency. “Public improvement” does not include:
 - Projects for which no funds of a contracting agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or
 - Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.
- “Public improvement contract” means a public contract for a public improvement. “Public improvement contract” does not include a public contract for emergency work, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement.

Contracts With Private Landowners

Is competitive bidding required?

- **YES, if the District is doing the contracting itself (i.e., hiring the contractor).**
 - If the contract involves improvements to real property, it is a public improvement regardless of the location (public or private property) because it is “by” a public agency.
 - Bidding is required if over \$5,000.
 - Prevailing wage required if over \$50,000.

Contracts With Private Landowners

Is competitive bidding required?

- **YES, if the District is paying a contractor *directly* using its own funds, regardless of what the District calls the money (e.g., a “pass-through grant” or a “reimbursement”), and the landowner is hiring the contractor, because the project is “for” a public agency.**
 - Bidding is required if over \$5,000.
 - Prevailing wages required if over \$50,000.
 - Consider using prequalification process to establish a short-list of qualified bidders, and allow the landowner to select one from the list.

Contracts With Private Landowners

Is competitive bidding required?

- **NO, if the landowner is applying for available grant funding to perform work on their own property, and the District establishes the terms of the grant. This is a “grant” and not a “public contract” even if the District provides some project oversight.**
 - Because it is a grant, it is not a “public contract” and is not subject to bidding requirements.
 - This is true whether the landowner does the work him/herself, or whether he/she hires someone to do it.
 - Assumes the money is to reimburse for the landowner’s costs, and not to “compensate” the landowner.

Q&A

Thank you!

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