

Note: See notes preceding 279.005.

279.024 [Repealed by 1975 c.771 §33]

279.025 Requirements for advertisement for bids. (1) An advertisement for bids shall be published at least once in at least one newspaper of general circulation in the area where the contract is to be performed and in as many additional issues and publications as the public contracting agency may determine. The Director of the Oregon Department of Administrative Services or a local contract review board, by rule or order, may authorize advertisements for bids to be published electronically instead of in a newspaper of general circulation if the director or board determines that electronic advertisements for bids are likely to be cost effective. If the contract is for a public improvement with an estimated cost in excess of \$125,000, the advertisement for bids shall be published in at least one trade newspaper of general statewide circulation. The director or board may, by rule, require an advertisement for bids to be published more than once or in one or more additional publications.

(2) All advertisements for bids shall state:

(a) If the contract is for a public work subject to ORS 279.348 to 279.380 or the Davis-Bacon Act (40 U.S.C. 276a);

(b) The date and time after which bids will not be received, which shall be not less than five days after the date of the last publication of the advertisement;

(c) The date that prequalification applications must be filed under ORS 279.039 (1) and the class or classes of work for which bidders must be prequalified if prequalification is a requirement;

(d) The character of the work to be done or the material or things to be purchased;

(e) The office where the specifications for the work, material or things may be reviewed;

(f) The name and title of the person designated for receipt of bids; and

(g) The date, time and place that the public contracting agency will publicly open the bids. [Formerly 279.065; 1977 c.289 §1; 1979 c.282 §1; 1983 c.690 §6; 1985 c.724 §1; 1987 c.741 §18; 1987 c.776 §1; 1987 c.865 §2; 1991 c.197 §1; 1997 c.239 §2; 1997 c.802 §11; 1999 c.88 §1]

Note: 279.025 is repealed March 1, 2005. The repeal of 279.025 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.026 [Repealed by 1975 c.771 §33]

279.027 Requirements for bid documents and bids; disclosure of first-tier subcontractors. (1) A public contracting agency preparing bid documents for a public contract shall, at a minimum, include:

(a) A statement that, if the contract is for a public work subject to ORS 279.348 to 279.380 or the Davis-Bacon Act (40 U.S.C. 276a), no bid will be received or considered

by the public contracting agency unless the bid contains a statement by the bidder as a part of its bid that the provisions of ORS 279.350 or 40 U.S.C. 276a are to be complied with;

(b) The date and time after which bids will not be received, which shall be not less than five days after the date of the last publication of the advertisement;

(c) The date that prequalification applications must be filed under ORS 279.039 (1) and the class or classes of work for which bidders must be prequalified if prequalification is a requirement;

(d) The character of the work to be done or the material or things to be purchased;

(e) The office where the specifications for the work, material or things may be reviewed;

(f) The name and title of the person designated for receipt of bids;

(g) The date, time and place that the public contracting agency will publicly open the bids;

(h) A statement that each bid must identify whether the bidder is a resident bidder, as defined in ORS 279.029;

(i) A statement that the public contracting agency may reject any bid not in compliance with all prescribed public bidding procedures and requirements and may reject for good cause any or all bids upon a finding of the agency that it is in the public interest to do so;

(j) Information addressing whether a contractor or subcontractor must be licensed under ORS 468A.720; and

(k) A statement that no bid for a construction contract shall be received or considered by the public contracting agency unless the bidder is licensed by the Construction Contractors Board or licensed by the State Landscape Contractors Board as required by ORS 671.530.

(2) All bids made to the public contracting agency pursuant to ORS 279.015 and 279.025 shall be:

(a) In writing.

(b) Filed with the person designated for receipt of bids by the public contracting agency.

(c) Opened publicly by the public contracting agency immediately after the deadline for submission of bids.

(3)(a) Within two working hours after the date and time of the deadline when the bids are due to the public contracting agency for a public improvement, a bidder shall submit to the public contracting agency a disclosure of the first-tier subcontractors that:

(A) Will be furnishing labor or will be furnishing labor and materials in connection with the public improvement; and

(B) Will have a contract value that is equal to or greater than five percent of the total project bid or \$15,000, whichever is greater, or \$350,000 regardless of the percentage of the total project bid.

(b) For each contract to which this subsection applies, the public contracting agency shall designate a deadline for submission of bids that has a date on a Tuesday, Wednesday or Thursday and a time between 2 p.m. and 5 p.m., except that this paragraph does not apply to public contracts for maintenance or construction of highways, bridges or other transportation facilities.

(c) This subsection shall apply only to public improvements with a contract value of more than \$100,000.

(d) This subsection does not apply to public contracts for public improvements that have been exempted from competitive bidding requirements under ORS 279.015 (2).

(4) The disclosure of first-tier subcontractors under subsection (3) of this section shall include the name of each subcontractor, the category of work that each subcontractor will perform and the dollar value of each subcontract. The information shall be disclosed in substantially the following form:

**FIRST-TIER SUBCONTRACTOR
DISCLOSURE FORM**

PROJECT NAME: _____
BID #: _____
BID CLOSING: Date: _____ Time: _____

This form must be submitted at the location specified in the Invitation to Bid on the advertised bid closing date and within two working hours after the advertised bid closing time.

List below the name of each subcontractor that will be furnishing labor or will be furnishing labor and materials and that is required to be disclosed, the category of work that the subcontractor will be performing and the dollar value of the subcontract. Enter "NONE" if there are no subcontractors that need to be disclosed. (ATTACH ADDITIONAL SHEETS IF NEEDED.)

NAME	DOLLAR VALUE	CATEGORY OF WORK
1) _____	\$ _____	_____
_____	_____	_____
2) _____	\$ _____	_____
_____	_____	_____
3) _____	\$ _____	_____
_____	_____	_____
4) _____	\$ _____	_____
_____	_____	_____

Failure to submit this form by the disclosure deadline will result in a nonresponsive bid. A nonresponsive bid will not be considered for award.

Form submitted by (bidder name):

Contact name: _____
Phone no.: _____

(5) A public contracting agency shall accept the subcontractor disclosure. The public contracting agency shall consider the bid of any contractor that does not submit a subcontractor disclosure to the public contracting agency to be a nonresponsive bid and may not award the contract to the contractor. A public contracting agency is not required to determine the accuracy or the completeness of the subcontractor disclosure.

(6) After having been opened, the bids and the subcontractor disclosures shall be filed for public inspection.

(7) A surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008, cashier's check or certified check of each bidder shall be attached to all bids as bid security unless the contract for which a bid is submitted has been exempted from this requirement pursuant to ORS 279.033. Such security shall not exceed 10 percent of the amount bid for the contract. [Formerly 279.070; 1997 c.351 §2; 1999 c.88 §2; 1999 c.689 §3; 2001 c.104 §86; 2001 c.507 §1; 2003 c.14 §139; 2003 c.535 §1; 2003 c.794 §229a]

Note: 279.027 is repealed March 1, 2005. The repeal of 279.027 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.028 [Repealed by 1975 c.771 §33]

279.029 Award of contract; bond; waiver of bond in case of emergency. (1) After the bids are opened as required by ORS 279.027, and after a determination is made that a contract is to be awarded, the public contracting agency shall award the contract to the lowest responsible bidder.

(2) In determining the lowest responsible bidder, a public contracting agency shall:

(a) If the contract is for a public improvement, check the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a contract for a public improvement; and

(b) For the purpose of awarding the contract, add a percent increase on the bid of a nonresident bidder equal to the percent, if any, of the preference given to that bidder in the state in which the bidder resides.

(3) The Oregon Department of Administrative Services on or before January 1 of each year shall publish a list of states that give preference to in-state bidders with the percent increase applied in each such state. The public contracting agency may rely on the names of states and percentages so published in determining the lowest responsible bidder without incurring any liability to any bidder.

(4) The successful bidder shall:

(a) Promptly execute a formal contract.

(b) If the contract is for a public improvement, execute and deliver to the public contracting agency a good and sufficient bond, to be approved by the public contracting agency, in a sum equal to the contract price for the faithful performance of the contract.

In lieu of a surety bond, the public contracting agency may permit the successful bidder to submit a cashier's check or certified check in an amount equal to 100 percent of the contract price. If the public improvement contract is with a single person to provide both design and construction of a public improvement, the obligation of the surety bond, or the obligation of the bidder on the cashier's check or certified check, for the faithful performance of the contract required by this paragraph, shall be also for the preparation and completion of the design and related services covered under the contract. Notwithstanding when a cause of action, claim or demand accrues or arises, the surety or the bidder on the cashier's check or certified check shall not be liable after final completion of the contract, or longer if defined in the contract, for damages of any nature, economic or otherwise and including corrective work, attributable to the design aspect of a design-build project, or for the costs of design revisions needed to implement corrective work.

(5) In cases of emergency, or where the interest or property of the public contracting agency probably would suffer material injury by delay or other cause, the requirement of furnishing a good and sufficient bond for the faithful performance of any public contract may be excused, if a declaration of such emergency is made and concurred in by all members of the governing board of the public contracting agency.

(6) As used in this section:

(a) "Lowest responsible bidder" means the lowest bidder who is not on the list established by the Construction Contractors Board pursuant to ORS 701.227 and who has:

(A) Substantially complied with all prescribed public bidding procedures and requirements;

(B) Met the standards of responsibility. In determining if a prospective bidder has met the standards of responsibility, the public contracting agency shall consider whether a prospective bidder has:

(i) Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the prospective bidder to meet all contractual responsibilities;

(ii) A satisfactory record of performance. The public contracting agency shall document the record of performance of a prospective bidder if the public contracting agency finds the prospective bidder not to be responsible under this sub-subparagraph;

(iii) A satisfactory record of integrity. The public contracting agency shall document the record of integrity of a prospective bidder if the public contracting agency finds the prospective bidder not to be responsible under this sub-subparagraph;

(iv) Qualified legally to contract with the public contracting agency; and

(v) Supplied all necessary information in connection with the inquiry concerning responsibility. If a prospective bidder fails to promptly supply information requested by the public contracting agency concerning responsibility, the public contracting agency shall base the determination of responsibility upon any available information, or may find the prospective bidder not to be responsible; and

(C) Not been disqualified by the public contracting agency under ORS 279.037.

(b) "Resident bidder" means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of

the bid, has a business address in this state and has stated in the bid whether the bidder is a “resident bidder” pursuant to this subsection.

(c) “Nonresident bidder” means a bidder who is not a “resident bidder” as defined by paragraph (b) of this subsection. [Formerly 279.075; 1981 c.466 §2; 1987 c.865 §1; 1999 c.462 §1; 1999 c.647 §§1,1a]

Note: 279.029 is repealed March 1, 2005. The repeal of 279.029 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.