Chapter 375

(1962 reprint)

Specifications and Materials For Public Highways

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CROSS REFERENCES

375.030

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375.040

Advertisement for patented articles prohibited where would prevent competition, 279.046

Use of patented materials on state highways, competitive bidding, 366.410

375.010 Adopting specifications for hard surface pavements. (1) The State Highway Commission shall adopt standard specifications for laying and constructing the several kinds of hard surface pavements which the commission deems suited and adapted to the needs of the state, including asphaltic concrete pavement and hydraulic concrete pavement.

(2) None of these specifications shall infringe any patented pavement.

(3) All such specifications shall provide, in conformity with the best approved engineering practices to the end that the public body charged with the responsibility of improving any highway with any such pavement may secure the construction of highways in strict compliance with the specifications under which the work may be done:

(a) The quantity and proportions of the several materials and ingredients composing each of such pavements.

(b) The kind, quality and standard of the materials and ingredients.

(c) The manner of determining and testing the materials and ingredients for quality and standard.

(d) The manner of laying and constructing the pavement and mixing and preparing the materials and ingredients.

375.020 Distribution of specifications. The State Highway Commission shall furnish copies of all specifications adopted under ORS 375.010 to each county court or board of county commissioners.

375.030 Bids and letting contracts to be upon specifications. Whenever it is proposed to improve any road or highway with a hard surface pavement, including asphaltic concrete pavement and hydraulic concrete pavement, the State Highway Commission, county court or board of county commissioners shall invite bids and proposals in the manner provided by law for making the improvement upon specifications adopted by the State Highway Commission. The contract for making the improvements shall be let to the lowest responsible bidder upon the specifications set forth or referred to in the notice and advertisement for proposals and bids, except as provided in ORS 375.040 and 375.050.

375.040 Bids involving patented or specially designed pavement. (1) Any person, firm or corporation in response to the notice and advertisement for bids referred to in ORS 375.030 may, under the conditions imposed upon bidders in the notice inviting the bids or by law, submit a proposal and bid to make the improvement with a patented pavement or unpatented pavement of special design of the character and type described in the notice.

(2) Every such proposal and bid shall be accompanied by specifications for laying and constructing the patented pavement or unpatented pavement of special design, providing with the same minuteness of detail as is provided in the standard specifications of the State Highway Commission:

(a) The quantity and proportion of the several materials and ingredients composing the patented pavement or unpatented pavement of special design.

(b) The kind, quality and standard of the materials and ingredients to be used.

(c) That the quality and standard of the materials and ingredients shall be determined and tested in the manner provided by the standard specifications of the State Highway Commission.

(d) The manner of laying and constructing the pavement and mixing and preparing the materials and ingredients.

375.050 Awarding contract involving patented or special pavement; rejecting bids. (1) The State Highway Commission, county court or board of county commissioners may award the contract to the responsible person, firm or corporation submitting the best bid in the estimation of the commission, county court or board of county commissioners for making the improvement with the patented pavement or unpatented pavement of special design, if:

(a) In response to a notice or advertisement for bids for making any highway improvement any person, firm or corporation submits a bid and proposal to make the improvement with a patented pavement or unpatented pavement of special design; and

(b) After full consideration the commission, county court or board of county commissioners is of the opinion that the patented pavement or unpatented pavement of special design is as good or better than the pavement provided for in the standard specifications of the commission in durability and utility; and

(c) The bid submitted is as low or lower, in the judgment of the commission, county court or board of county commissioners, taking into consideration the utility, materials

and specifications submitted with the bid, than any bid submitted upon the standard specifications.

(2) The commission, county court or board of county commissioners may reject any bids.

375.060 Filing agreement for use of patented articles. Any owner, agent or licensee of any patented materials, patented mixtures, patented process or patented structure, who desires to have any of his patented articles used for the construction of any of the public highways of this state or any of the streets, roads or alleys of any county, city, town or public corporation existing under charter or authority of the laws of this state shall, at least 10 days prior to the time set for opening the bids for construction, file with the State Highway Commission, county court or board of county commissioners, or officers of such public corporation, a form of agreement setting forth the terms, fees, prices, royalties and conditions under which the patented articles or any part thereof may be used by any contractor desiring to undertake the construction or by the public authority in case they undertake the work with their own plant and forces.

375.070 Duration of form of agreement. The form of agreement mentioned in ORS 375.060 shall apply to the particular project upon which bids are to be received and shall remain in force until the completion or abandonment of that project. Separate forms of agreement shall be filed for subsequent projects, whether the improvements included in such projects be contiguous or noncontiguous, but any patentee, his agents or licensee may file a form of agreement, as provided in ORS 375.060, which shall remain in force until the completion or abandonment of all projects which may be undertaken during any specified time that may be stated in the form of agreement.

375.080 Filing plans for unpatented pavement before calling for patented pavement bids. Whenever the State Highway Commission, any county court or board of county commissioners, or the officers of any incorporated city, town or municipality of the state, desire to receive bids for any patented or proprietary material, mixture, specification, formula, process, kind or type of pavement for use upon the public highways of this state, the commission, county court or board of county commissioners, or the officers of the incorporated city, town or municipality shall, prior to advertising for bids, cause to be prepared and filed for public record in the office of the commission, county clerk, or municipal clerk, as the case may be, at least 10 days prior to the letting of contract for the improvement, complete plans and specifications of a nonpatented pavement of equal strength, durability and resistance to wear.

375.090 Acceptance of less than filed contract price, and rebates by patent owner, prohibited. No owner, agent or licensee of any patented material, specification, mixture, formula, process or any mixture prepared in accordance with any patented specification or formula who has filed in the office of the State Highway Commission, county court or board of county commissioners, or with the officers of any city, town or municipality, the forms of agreements referred to in ORS 375.060 shall enter into or have, prior or subsequent to the opening of bids on the work with reference to which the form of agreement was filed, any agreement, expressed or implied, written or oral, actual or arising from a course of dealing, with any contractor bidding on the work, to accept a less price than the price named in the agreement or to rebate, directly or indirectly to the contractor to whom the work is awarded, any part of the royalty or price of mixture.

375.100 to 375.980 [Reserved for expansion]

375.990 Penalties. Violation of ORS 375.090 is a felony, punishable upon conviction by imprisonment in the state penitentiary not to exceed one year, or by a fine not to exceed $5,000, or both.