

# House Bill 3063

Sponsored by Representative HANNA

## 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**.

Increases from \$50,000 to \$100,000 amount of public contract for transportation project that may be awarded under procedure for competitive quotes.

Repeals sunset on provisions that permit use of competitive quotes to award public improvement contracts.

## A BILL FOR AN ACT

1  
2 Relating to competitive quotes in public improvement contracting; creating new provisions; amend-  
3 ing ORS 279C.335 and 279C.375 and section 132, chapter 794, Oregon Laws 2003; and repealing  
4 section 332a, chapter 794, Oregon Laws 2003.

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

6 **SECTION 1.** Section 132, chapter 794, Oregon Laws 2003, is amended to read:

7 **Sec. 132.** (1) A public improvement contract estimated by the contracting agency not to exceed  
8 \$100,000[ *or not to exceed \$50,000 in the case of contracts for highways, bridges and other transpor-*  
9 *tation projects,*] may be awarded in accordance with intermediate procurement procedures for com-  
10 petitive quotes established by rules adopted under [*section 10 of this 2003 Act*] **ORS 279A.065**. A  
11 contract awarded under this section may be amended to exceed [*the thresholds set forth in this sub-*  
12 *section*] **\$100,000** only in accordance with rules adopted under [*section 10 of this 2003 Act*] **ORS**  
13 **279A.065**.

14 (2) A procurement may not be artificially divided or fragmented so as to constitute an interme-  
15 diate procurement under this section or to circumvent competitive bidding requirements under  
16 [*sections 88 to 179 of this 2003 Act*] **this chapter**.

17 (3) Intermediate procurements under this section need not be made through competitive bidding.  
18 However, nothing in this section may be construed as prohibiting a contracting agency from con-  
19 ducting a procurement that does not exceed [*the thresholds in subsection (1) of this section*] **\$100,000**  
20 under competitive bidding procedures.

21 **SECTION 2.** ORS 279C.335 is amended to read:

22 279C.335. (1) All public improvement contracts shall be based upon competitive bids except:

23 (a) Contracts made with qualified nonprofit agencies providing employment opportunities for  
24 disabled individuals under ORS 279.835 to 279.855.

25 (b) A public improvement contract exempt under subsection (2) of this section.

26 (c) A public improvement contract with a value of less than \$5,000.

27 (d) A contract not to exceed \$100,000[ *or not to exceed \$50,000 in the case of a contract for a*  
28 *highway, bridge or other transportation project,*] made under procedures for competitive quotes in  
29 sections 132 and 133, chapter 794, Oregon Laws 2003.

30 (e) Contracts for repair, maintenance, improvement or protection of property obtained by the

**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 Department of Veterans' Affairs under ORS 407.135 and 407.145 (1).

2 (f) Energy savings performance contracts entered into in accordance with rules of procedure  
3 adopted under ORS 279A.065.

4 (g) A public improvement contract awarded under subsection (6) of this section in response to  
5 an emergency.

6 (2) Subject to subsection (4)(b) of this section, the Director of the Oregon Department of Ad-  
7 ministrative Services, a local contract review board or, for contracts described in ORS 279A.050  
8 (3)(b), the Director of Transportation may exempt a public improvement contract or a class of public  
9 improvement contracts from the competitive bidding requirements of subsection (1) of this section  
10 upon approval of the following findings submitted by the contracting agency seeking the exemption:

11 (a) It is unlikely that the exemption will encourage favoritism in the awarding of public im-  
12 provement contracts or substantially diminish competition for public improvement contracts; and

13 (b) The awarding of public improvement contracts under the exemption will result in substantial  
14 cost savings to the contracting agency or, if the contracts are for public improvements described in  
15 ORS 279A.050 (3)(b), to the contracting agency or the public. In making the finding, the Director of  
16 the Oregon Department of Administrative Services, the Director of Transportation or the local  
17 contract review board may consider the type, cost and amount of the contract, the number of per-  
18 sons available to bid and such other factors as may be deemed appropriate.

19 (3) In making findings to support an exemption for a class of public improvement contracts, the  
20 contracting agency shall clearly identify the class using the class's defining characteristics. Those  
21 characteristics shall include some combination of project descriptions or locations, time periods,  
22 contract values, methods of procurement or other factors that distinguish the limited and related  
23 class of public improvement contracts from the contracting agency's overall construction program.  
24 The contracting agency may not identify a class solely by funding source, such as a particular bond  
25 fund, or by the method of procurement, but shall identify the class using characteristics that rea-  
26 sonably relate to the exemption criteria set forth in subsection (2) of this section.

27 (4) In granting exemptions under subsection (2) of this section, the Director of the Oregon De-  
28 partment of Administrative Services, the Director of Transportation or the local contract review  
29 board shall:

30 (a) When appropriate, direct the use of alternate contracting methods that take account of  
31 market realities and modern practices and are consistent with the public policy of encouraging  
32 competition.

33 (b) Require and approve or disapprove written findings by the contracting agency that support  
34 the awarding of a particular public improvement contract or a class of public improvement con-  
35 tracts, without the competitive bidding requirement of subsection (1) of this section. The findings  
36 must show that the exemption of a contract or class of contracts complies with the requirements  
37 of subsection (2) of this section.

38 (5)(a) Before final adoption of the findings required by subsection (2) of this section exempting  
39 a public improvement contract or a class of public improvement contracts from the requirement of  
40 competitive bidding, a contracting agency shall hold a public hearing.

41 (b) Notification of the public hearing shall be published in at least one trade newspaper of  
42 general statewide circulation a minimum of 14 days before the hearing.

43 (c) The notice shall state that the public hearing is for the purpose of taking comments on the  
44 contracting agency's draft findings for an exemption from the competitive bidding requirement. At  
45 the time of the notice, copies of the draft findings shall be made available to the public. At the op-

tion of the contracting agency, the notice may describe the process by which the findings are finally adopted and may indicate the opportunity for any further public comment.

(d) At the public hearing, the contracting agency shall offer an opportunity for any interested party to appear and present comment.

(e) If a contracting agency is required to act promptly due to circumstances beyond the contracting agency's control that do not constitute an emergency, notification of the public hearing may be published simultaneously with the contracting agency's solicitation of contractors for the alternative public contracting method, as long as responses to the solicitation are due at least five days after the meeting and approval of the findings.

(6) After declaring that an emergency exists in accordance with rules adopted under ORS 279A.065, a contracting agency may award a public improvement contract in response to the emergency without using a competitive solicitation.

(7) A public improvement contract awarded under the competitive bidding requirement of subsection (1) of this section may be amended only in accordance with rules adopted under ORS 279A.065.

(8) Public improvement contracts excepted from competitive bid requirements under subsection (1)(a), (c), (d), (e), (f) or (g) of this section are not subject to the exemption requirements of subsection (2) of this section.

**SECTION 3.** ORS 279C.335, as amended by section 104, chapter 794, Oregon Laws 2003, section 13, chapter 103, Oregon Laws 2005, and section 59, chapter 625, Oregon Laws 2005, is amended to read:

279C.335. (1) All public improvement contracts shall be based upon competitive bids except:

(a) Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals under ORS 279.835 to 279.855.

(b) A public improvement contract exempt under subsection (2) of this section.

(c) A public improvement contract with a value of less than \$5,000.

**(d) A contract not to exceed \$100,000 made under procedures for competitive quotes in sections 132 and 133, chapter 794, Oregon Laws 2003.**

*[(d)]* (e) Contracts for repair, maintenance, improvement or protection of property obtained by the Department of Veterans' Affairs under ORS 407.135 and 407.145 (1).

*[(e)]* (f) Energy savings performance contracts entered into in accordance with rules of procedure adopted under ORS 279A.065.

*[(f)]* (g) A public improvement contract awarded under subsection (6) of this section in response to an emergency.

(2) Subject to subsection (4)(b) of this section, the Director of the Oregon Department of Administrative Services, a local contract review board or, for contracts described in ORS 279A.050 (3)(b), the Director of Transportation may exempt a public improvement contract or a class of public improvement contracts from the competitive bidding requirements of subsection (1) of this section upon approval of the following findings submitted by the contracting agency seeking the exemption:

(a) It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and

(b) The awarding of public improvement contracts under the exemption will result in substantial cost savings to the contracting agency or, if the contracts are for public improvements described in ORS 279A.050 (3)(b), to the contracting agency or the public. In making the finding, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local

1 contract review board may consider the type, cost and amount of the contract, the number of per-  
 2 sons available to bid and such other factors as may be deemed appropriate.

3 (3) In making findings to support an exemption for a class of public improvement contracts, the  
 4 contracting agency shall clearly identify the class using the class's defining characteristics. Those  
 5 characteristics shall include some combination of project descriptions or locations, time periods,  
 6 contract values, methods of procurement or other factors that distinguish the limited and related  
 7 class of public improvement contracts from the contracting agency's overall construction program.  
 8 The contracting agency may not identify a class solely by funding source, such as a particular bond  
 9 fund, or by the method of procurement, but shall identify the class using characteristics that rea-  
 10 sonably relate to the exemption criteria set forth in subsection (2) of this section.

11 (4) In granting exemptions under subsection (2) of this section, the Director of the Oregon De-  
 12 partment of Administrative Services, the Director of Transportation or the local contract review  
 13 board shall:

14 (a) When appropriate, direct the use of alternate contracting methods that take account of  
 15 market realities and modern practices and are consistent with the public policy of encouraging  
 16 competition.

17 (b) Require and approve or disapprove written findings by the contracting agency that support  
 18 the awarding of a particular public improvement contract or a class of public improvement con-  
 19 tracts, without the competitive bidding requirement of subsection (1) of this section. The findings  
 20 must show that the exemption of a contract or class of contracts complies with the requirements  
 21 of subsection (2) of this section.

22 (5)(a) Before final adoption of the findings required by subsection (2) of this section exempting  
 23 a public improvement contract or a class of public improvement contracts from the requirement of  
 24 competitive bidding, a contracting agency shall hold a public hearing.

25 (b) Notification of the public hearing shall be published in at least one trade newspaper of  
 26 general statewide circulation a minimum of 14 days before the hearing.

27 (c) The notice shall state that the public hearing is for the purpose of taking comments on the  
 28 contracting agency's draft findings for an exemption from the competitive bidding requirement. At  
 29 the time of the notice, copies of the draft findings shall be made available to the public. At the op-  
 30 tion of the contracting agency, the notice may describe the process by which the findings are finally  
 31 adopted and may indicate the opportunity for any further public comment.

32 (d) At the public hearing, the contracting agency shall offer an opportunity for any interested  
 33 party to appear and present comment.

34 (e) If a contracting agency is required to act promptly due to circumstances beyond the con-  
 35 tracting agency's control that do not constitute an emergency, notification of the public hearing may  
 36 be published simultaneously with the contracting agency's solicitation of contractors for the alter-  
 37 native public contracting method, as long as responses to the solicitation are due at least five days  
 38 after the meeting and approval of the findings.

39 (6) After declaring that an emergency exists in accordance with rules adopted under ORS  
 40 279A.065, a contracting agency may award a public improvement contract in response to the emer-  
 41 gency without using a competitive solicitation.

42 (7) A public improvement contract awarded under the competitive bidding requirement of sub-  
 43 section (1) of this section may be amended only in accordance with rules adopted under ORS  
 44 279A.065.

45 (8) Public improvement contracts excepted from competitive bid requirements under subsection

1 (1)(a), (c), (d), (e), [or] (f) **or (g)** of this section are not subject to the exemption requirements of  
 2 subsection (2) of this section.

3 **SECTION 4.** ORS 279C.335, as amended by sections 104 and 105a, chapter 794, Oregon Laws  
 4 2003, sections 13 and 14, chapter 103, Oregon Laws 2005, and sections 59 and 60, chapter 625,  
 5 Oregon Laws 2005, is amended to read:

6 279C.335. (1) All public improvement contracts shall be based upon competitive bids except:

7 (a) Contracts made with qualified nonprofit agencies providing employment opportunities for  
 8 disabled individuals under ORS 279.835 to 279.855.

9 (b) A public improvement contract exempt under subsection (2) of this section.

10 (c) A public improvement contract with a value of less than \$5,000.

11 **(d) A contract not to exceed \$100,000 made under procedures for competitive quotes in**  
 12 **sections 132 and 133, chapter 794, Oregon Laws 2003.**

13 [(d)] (e) Contracts for repair, maintenance, improvement or protection of property obtained by  
 14 the Department of Veterans' Affairs under ORS 407.135 and 407.145 (1).

15 [(e)] (f) Energy savings performance contracts entered into in accordance with rules of proce-  
 16 dure adopted under ORS 279A.065.

17 [(f)] (g) A public improvement contract awarded under subsection (6) of this section in response  
 18 to an emergency.

19 (2) Subject to subsection (4)(b) of this section, the Director of the Oregon Department of Ad-  
 20 ministrative Services or a local contract review board may exempt a public improvement contract  
 21 or a class of public improvement contracts from the competitive bidding requirements of subsection  
 22 (1) of this section upon approval of the following findings submitted by the contracting agency  
 23 seeking the exemption:

24 (a) It is unlikely that the exemption will encourage favoritism in the awarding of public im-  
 25 provement contracts or substantially diminish competition for public improvement contracts; and

26 (b) The awarding of public improvement contracts under the exemption will result in substantial  
 27 cost savings to the contracting agency. In making the finding, the director or the local contract  
 28 review board may consider the type, cost and amount of the contract, the number of persons avail-  
 29 able to bid and such other factors as may be deemed appropriate.

30 (3) In making findings to support an exemption for a class of public improvement contracts, the  
 31 contracting agency shall clearly identify the class using the class's defining characteristics. Those  
 32 characteristics shall include some combination of project descriptions or locations, time periods,  
 33 contract values, methods of procurement or other factors that distinguish the limited and related  
 34 class of public improvement contracts from the contracting agency's overall construction program.  
 35 The contracting agency may not identify a class solely by funding source, such as a particular bond  
 36 fund, or by the method of procurement, but shall identify the class using characteristics that rea-  
 37 sonably relate to the exemption criteria set forth in subsection (2) of this section.

38 (4) In granting exemptions under subsection (2) of this section, the director or the local contract  
 39 review board shall:

40 (a) When appropriate, direct the use of alternate contracting methods that take account of  
 41 market realities and modern practices and are consistent with the public policy of encouraging  
 42 competition.

43 (b) Require and approve or disapprove written findings by the contracting agency that support  
 44 the awarding of a particular public improvement contract or a class of public improvement con-  
 45 tracts, without the competitive bidding requirement of subsection (1) of this section. The findings

1 must show that the exemption of a contract or class of contracts complies with the requirements  
2 of subsection (2) of this section.

3 (5)(a) Before final adoption of the findings required by subsection (2) of this section exempting  
4 a public improvement contract or a class of public improvement contracts from the requirement of  
5 competitive bidding, a contracting agency shall hold a public hearing.

6 (b) Notification of the public hearing shall be published in at least one trade newspaper of  
7 general statewide circulation a minimum of 14 days before the hearing.

8 (c) The notice shall state that the public hearing is for the purpose of taking comments on the  
9 contracting agency's draft findings for an exemption from the competitive bidding requirement. At  
10 the time of the notice, copies of the draft findings shall be made available to the public. At the op-  
11 tion of the contracting agency, the notice may describe the process by which the findings are finally  
12 adopted and may indicate the opportunity for any further public comment.

13 (d) At the public hearing, the contracting agency shall offer an opportunity for any interested  
14 party to appear and present comment.

15 (e) If a contracting agency is required to act promptly due to circumstances beyond the con-  
16 tracting agency's control that do not constitute an emergency, notification of the public hearing may  
17 be published simultaneously with the contracting agency's solicitation of contractors for the alter-  
18 native public contracting method, as long as responses to the solicitation are due at least five days  
19 after the meeting and approval of the findings.

20 (6) After declaring that an emergency exists in accordance with rules adopted under ORS  
21 279A.065, a contracting agency may award a public improvement contract in response to the emer-  
22 gency without using a competitive solicitation.

23 (7) A public improvement contract awarded under the competitive bidding requirement of sub-  
24 section (1) of this section may be amended only in accordance with rules adopted under ORS  
25 279A.065.

26 (8) Public improvement contracts excepted from competitive bid requirements under subsection  
27 (1)(a), (c), (d), (e), [or] (f) **or** (g) of this section are not subject to the exemption requirements of  
28 subsection (2) of this section.

29 **SECTION 5.** ORS 279C.375, as amended by section 18, chapter 103, Oregon Laws 2005, is  
30 amended to read:

31 279C.375. (1) After bids are opened and a determination is made that a public improvement  
32 contract is to be awarded, the contracting agency shall award the contract to the lowest responsible  
33 bidder.

34 (2) At least seven days before the award of a public improvement contract, unless the con-  
35 tracting agency determines that seven days is impractical under rules adopted under ORS 279A.065,  
36 the contracting agency shall issue to each bidder or post, electronically or otherwise, a notice of  
37 the contracting agency's intent to award a contract. This subsection does not apply to a contract  
38 excepted or exempted from competitive bidding under ORS 279C.335 (1)(c) **or** (d) or (6). The notice  
39 and its manner of posting or issuance must conform to rules adopted under ORS 279A.065.

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

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

44 (b) Determine whether the bidder has met the standards of responsibility. In making the deter-  
45 mination, the contracting agency shall consider whether a bidder has:

1 (A) Available the appropriate financial, material, equipment, facility and personnel resources  
2 and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual  
3 responsibilities.

4 (B) A satisfactory record of performance. The contracting agency shall document the record of  
5 performance of a bidder if the contracting agency finds the bidder not to be responsible under this  
6 subparagraph.

7 (C) A satisfactory record of integrity. The contracting agency shall document the record of in-  
8 tegrity of a bidder if the contracting agency finds the bidder not to be responsible under this sub-  
9 paragraph.

10 (D) Qualified legally to contract with the contracting agency.

11 (E) Supplied all necessary information in connection with the inquiry concerning responsibility.  
12 If a bidder fails to promptly supply information requested by the contracting agency concerning re-  
13 sponsibility, the contracting agency shall base the determination of responsibility upon any available  
14 information, or may find the bidder not to be responsible.

15 (c) Document the contracting agency's compliance with the requirements of paragraphs (a) and  
16 (b) of this subsection in substantially the following form:

17 \_\_\_\_\_

18  
19 RESPONSIBILITY DETERMINATION FORM

20 Project Name: \_\_\_\_\_

21 Bid Number: \_\_\_\_\_

22 Business Entity Name: \_\_\_\_\_

23 CCB License Number: \_\_\_\_\_

24 Form Submitted By (Contracting Agency): \_\_\_\_\_

25 Form Submitted By (Contracting Agency Representative's Name): \_\_\_\_\_

26 Title: \_\_\_\_\_

27 Date: \_\_\_\_\_

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

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

31 [ ] Checked the list created by the  
32 Construction Contractors Board  
33 under ORS 701.227 for bidders who  
34 are not qualified to hold a public  
35 improvement contract.

36 [ ] Determined whether the bidder has  
37 met the standards of responsibility.  
38 In so doing, the contracting agency  
39 has considered whether the bidder:

40 [ ] Has available the appropriate  
41 financial, material, equipment,  
42 facility and personnel resources  
43 and expertise, or the ability to  
44 obtain the resources and expertise,  
45 necessary to meet all contractual

- 1           responsibilities.
- 2           [ ] Has a satisfactory record of
- 3           performance.
- 4           [ ] Has a satisfactory record of
- 5           integrity.
- 6           [ ] Is qualified legally to contract with
- 7           the contracting agency.
- 8           [ ] Has supplied all necessary
- 9           information in connection with the
- 10          inquiry concerning responsibility.
- 11         [ ] Determined the bidder to be
- 12          (check one of the following):
- 13           [ ] Responsible under ORS 279C.375
- 14           (3)(a) and (b).
- 15           [ ] Not responsible under ORS 279C.375
- 16           (3)(a) and (b).
- 17         (Attach documentation if the contracting agency finds the bidder not to be responsible.)

18 \_\_\_\_\_

19  
20         (d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the  
21 Construction Contractors Board within 30 days after the date the contracting agency awards the  
22 contract.

- 23         (4) The successful bidder shall:
- 24           (a) Promptly execute a formal contract; and
- 25           (b) Execute and deliver to the contracting agency a performance bond and a payment bond when  
26 required under ORS 279C.380.

27         **SECTION 6. Section 332a, chapter 794, Oregon Laws 2003, is repealed.**

28         **SECTION 7. The amendments to ORS 279C.335 and section 132, chapter 794, Oregon Laws**  
 29 **2003, by sections 1 and 2 of this 2007 Act and the repeal of section 332a, chapter 794, Oregon**  
 30 **Laws 2003, by section 6 of this 2007 Act apply only to public contracts first advertised, or if**  
 31 **not advertised then entered into, on or after the effective date of this 2007 Act.**

32 \_\_\_\_\_