

**Senate Business, Transportation and Economic Development Committee
April 16, 2013 Work Session on SB 254**

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Summary of Suggested Edits to the -1 Amendment to SB 254

INTRODUCTION

Blake Underwood is the chair of the Design & Construction Practice Group within the Business Transactions Section of the Oregon Department of Justice. Mr. Underwood is also a Co-Chair of the CM/GC Sub-Committee (the "Sub-Committee"), a group of stakeholders interested in the construction manager/general contractor ("CM/GC") alternative contracting method and part of the Public Contracting Work Group originally organized by Senator Beyer. The final work product of the Sub-Committee was used to develop LC 2270 and SB 254 (2013).

The purpose of this submittal is to summarize key revisions to the provisions of the -1 Amendment to SB 254, which was made available last week, shortly before the April 9, 2013 work session for SB 254. The members of the Sub-Committee submitted their comments to Mr. Underwood and his Co-Chair, Jeremy Vermilyea, and the suggested edits to the -1 Amendment are listed in this document for consideration by the Committee.

SUGGESTED REVISIONS

- (1) **On page 1, line 8, before "(1)", insert the following:** "(1) 'Affiliate' means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person."
- (2)) **On page 1, line 8, before "1" and following the new definition of "Affiliate", insert the following:** " 'CM/GC' means an alternative contracting, project delivery method for a construction project, where the contractor provides CM/GC services to a contracting agency under a public contract which requires an exemption from the competitive bidding requirements, pursuant to ORS 279C.335."
- (3) **On page 1, line 8, remove "(1) 'Construction manager/general contractor' " and replace with the following:** "(3) 'CM/GC contractor' "
- (4) **On page 1, line 11, remove "(2)(a) 'Construction manager/general contractor services'" and replace with the following:** "(4)(a) 'CM/GC services' "

(5) **On page 1 and continuing throughout the -1 Amendment:** references to “Construction manager/general contractor” and “Construction manager/general contractor services” will need to be changed, consistent with the new forms of these defined terms, as set forth in items (2), (3) and (4) above.

(6) **On page 2, lines 10 through 13:** remove “proceeds with the public improvement after completing a design, developing a scope of work and setting a budget, a construction manager/general contractor’s:” and replace with the following: “decides to proceed with the project, a CM/GC contractor’s:”

(7) **On page 2, line 25:** remove “ ‘Construction manager/general contractor services’ ” and replace with “ ‘CM/GC services’ ”

(8) **On page 3, lines 1-3:** Remove the text in lines 1-3 and replace with the following: “A public improvement contract that requires an exemption from competitive bidding under ORS 279C.335, which results from a design-build procurement as defined in administrative rules the Attorney General or a contracting agency adopts under ORS 279A.065”

(9) **On page 3, line 5, at the end of line 5 following “project”:** add the following: “that requires an exemption from competitive bidding under ORS 279C.335”

(10) **On page 3, lines 7-9, remove all the existing text and replace with the following:** “(i) an evaluation of the contractor’s qualifications, the contractor’s price to perform the work and the amount of time the contractor will require to perform the work, but otherwise requiring the contractor to construct the project according to plans and specifications provided by a design professional under a direct contract with the contracting agency and without significant participation in the design process by the contractor, sometimes referred to as an ‘A+B contract’; or ”

(11) **On page 3, lines 10-12, remove all the existing text and replace with the following:** “(ii) an evaluation of the contractor’s qualifications, the contractor’s past experience with similar projects, the contractor’s planned approach to the current project and the contractor’s price to perform the work, but otherwise requiring the contractor to construct the project according to plans and specifications provided by a design professional under a direct contract with the contracting agency and without significant participation in the design process by the contractor, sometimes referred to as an “A+C+D contract”;

(12) **On page 3, lines 14-15, remove all the existing text and replace with the following:** “A public improvement contract that is otherwise excepted or exempt from competitive bidding requirements under ORS 279C.335.”

(13) **On page 3, line 16, remove the text in line 16 and replace with the following:** “(5) ‘Guaranteed maximum price means the total price at which a ”

(14) **On page 4, line 20, add the following at the end of the text in line 20, following “otherwise;”:** “for purposes of this paragraph, “savings” means the positive difference between the guaranteed maximum price, fixed price or other maximum price under the public improvement contract for the work and the actual costs of the work, including reimbursable costs and the CM/GC contractor’s fee.”

(15) **On page 4, lines 21-23, remove all the existing text and replace with the following:** “(f) Specify terms and conditions that govern how the guaranteed maximum price, fixed price or other maximum price will be determined and whether that price includes or is based on unit pricing or allows for work that ”


(16) **On page 4, lines 28-29, remove all the existing text in that line and replace with the following:** “results from material changes to the scope of work set forth in the public improvement contract and the parties agree in writing to those material changes.”

(17) **On page 5, lines 17-29:** remove all of the text in lines 17 through 29.

(18) **On page 7, lines 5-9, remove all of the existing text and replace with the following:** “(e) Describe the conditions under which the CM/GC contractor will discuss the subcontractor qualification and selection process described in paragraphs (a), (b) and (c) of this subsection, if the CM/GC contractor receives a request to discuss the process from a subcontractor that the CM/GC contractor did not select for a subcontract.”

(19) **On page 8, lines 7-13, remove all of the existing text and replace with the following:** “Director of the Oregon Department of Transportation, local contracting agencies, construction contractors, construction subcontractors and other knowledgeable persons.”

(20) **On page 11, lines 15-16, remove all of the existing text and replace with the following:** “(C) Public benefits that may result from the granting of the exemption; ”


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