

**House Committee on Consumer Protection and Government Efficiency  
May 9, 2013 Hearing on SB 254A**

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**Summary of Suggested Edits to SB 254A**

**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 and Chair Holvey. 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 further needed revisions to SB 254A, which were not made available to Legislative Counsel in time for an amendment to be prepared for this hearing.

These recommended edits were first submitted to the Senate Committee on Business and Transportation at the April 16, 2013 work session, which involved a discussion of further amendments to the -1 Amendment to SB 254. These edits were compiled by Mr. Underwood, after Mr. Underwood and the other Co-Chair of the Committee, Jeremy Vermilyea, received comments from members of the Sub-Committee.

These recommended revisions have been slightly revised to fit the A – Engrossed version of SB 254, and are now submitted for consideration by the House Committee on Consumer Protection and Government Efficiency.

**SUGGESTED REVISIONS**

**(1) On page 1, line 10, 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 10, before “1” and following the new definition of “Affiliate”, insert the following:** “ (2) ‘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 10, remove “(1) ‘Construction manager/general contractor’ ” and replace with the following: “(3) ‘CM/GC contractor’ ”.**

**(4) On page 1, line 13, 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 A – Engrossed form of SB 254:** 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 6 through 8, 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 17: remove “ ‘Construction manager/general contractor services’ ” and replace with the following: “ ‘CM/GC services’ ”**

**(8) On page 2, lines 21-22, Remove the text in lines 21-22 and replace with the following: “(B) 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 2, lines 24-25, remove the remaining text in line 24 following “project” and all the text on line 25, and replace that text with the following: “that requires an exemption from competitive bidding under ORS 279C.335 that a contracting agency awards on the basis of:”**

**(10) On page 2, lines 26-27, 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 2, lines 28-30, 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 2, lines 31-32, remove all the existing text and replace with the following:** “(E) A public improvement contract that is otherwise excepted or exempt from competitive bidding requirements under ORS 279C.335.”

**(13) On page 2, line 33, in order to re-number the definition in that line, remove “(3)” and replace it with the following:** “(5)”.

**(14) On page 3, line 16, add the following at the end of the text in line 16, 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 3, lines 17-19, 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 is constructed in phases; ”

**(16) On page 3, lines 22-23, remove all the existing text in those lines and replace with the following:** “contract 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 3, lines 36-45:** Remove all of the text in lines 36 through 45.

**(18) On page 4, lines 29-32, 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 5, lines 8-13, remove all of the existing text and replace with the following:** “with the Director of the Oregon Department of Administrative Services, the Director of the Oregon Department of Transportation, local contracting agencies, construction contractors, construction subcontractors and other knowledgeable persons.”

**(20) On page 7, line 34, 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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