

D R A F T

SUMMARY

Exempts energy savings performance contracts, under certain circumstances, from requirement to use competitive bidding process to award public improvement contracts. Specifies circumstances.

Becomes operative 91 days after effective date of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to energy savings performance contracts; creating new provisions;
3 amending ORS 279C.335; and declaring an emergency.

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

5 **SECTION 1.** ORS 279C.335 is amended to read:

6 279C.335. *[(1) All public improvement contracts shall be based upon com-*
7 *petitive bids except:]*

8 **(1) A contracting agency shall use a competitive bidding process as**
9 **the basis for awarding a public improvement contract, except for:**

10 (a) *[Contracts made]* **A contract with a qualified nonprofit** *[agencies pro-*
11 *viding]* **agency that provides** employment opportunities for individuals with
12 disabilities under ORS 279.835 to 279.855.

13 (b) A public improvement contract **that is** exempt under subsection (2)
14 of this section.

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

16 (d) A contract *[not to]* **with a contract price that does not** exceed
17 \$100,000 made under procedures for competitive quotes in ORS 279C.412 and
18 279C.414.

19 (e) *[Contracts for]* **A contract to** repair, *[maintenance, improvement or*

1 *protection of*] **maintain, improve or protect** property [*obtained by*] the De-
2 partment of Veterans' Affairs **obtains** under ORS 407.135 and 407.145 (1).

3 (f) **An** energy savings performance [*contracts entered into*] **contract that**
4 **a contracting agency enters into with an energy service company** in
5 accordance with rules of procedure adopted under ORS 279A.065 **or after**
6 **choosing the energy service company from among prequalified energy**
7 **service companies that appear on a list that the State Department of**
8 **Energy designates by rule.**

9 (2) Subject to subsection (4)(b) of this section, the Director of the Oregon
10 Department of Administrative Services, a local contract review board or, for
11 contracts described in ORS 279A.050 (3)(b), the Director of Transportation
12 may exempt a public improvement contract or a class of public improvement
13 contracts from the competitive bidding requirements of subsection (1) of this
14 section [*upon approval of*] **after the director or the local contract review**
15 **board approves** the following findings submitted by the contracting agency
16 or, if a state agency is not the contracting agency, the state agency
17 [*seeking*] **that seeks** the exemption:

18 (a) [*It is unlikely that*] The exemption [*will*] **is unlikely to** encourage
19 favoritism in [*the awarding of*] **awarding** public improvement contracts or
20 **to** substantially diminish competition for public improvement contracts.

21 (b) [*The*] Awarding [*of*] **a** public improvement [*contracts*] **contract** under
22 the exemption will likely result in substantial cost savings to the contracting
23 agency, to the state agency based upon the justification and information de-
24 scribed in ORS 279C.330 or, if the [*contracts are*] **contract is** for **a** public
25 [*improvements*] **improvement** described in ORS 279A.050 (3)(b), to the con-
26 tracting agency or the public. In [*making*] **approving** the finding, the Di-
27 rector of the Oregon Department of Administrative Services, the Director of
28 Transportation or the local contract review board may consider the type,
29 cost and amount of the contract, the number of persons available to bid and
30 [*such*] other **appropriate** factors [*as may be deemed appropriate*].

31 (c) As an alternative to the finding described in paragraph (b) of this

1 subsection, [*when*] **if** a contracting agency or state agency seeks an ex-
2 emption that would allow the **agency to** use [*of*] an [*alternate*] **alternative**
3 contracting method that the agency has not previously used, the agency may
4 make a finding that identifies the project as a pilot project for which the
5 agency intends to determine whether [*the use of the alternate*] **using the**
6 **alternative** contracting method actually results in substantial cost savings
7 to the contracting agency, to the state agency or, if the contract is for a
8 public improvement described in ORS 279A.050 (3)(b), to the contracting
9 agency or the public. The agency shall include an analysis and conclusion
10 regarding actual cost savings, if any, in the evaluation required under ORS
11 279C.355.

12 (3) In making findings to support an exemption for a class of public im-
13 provement contracts, the contracting agency or state agency shall clearly
14 identify the class using the class's defining characteristics. [*Those*] **The**
15 characteristics [*shall*] **must** include [*some*] **a** combination of project de-
16 scriptions or locations, time periods, contract values, methods of procure-
17 ment or other factors that distinguish the limited and related class of public
18 improvement contracts from the agency's overall construction program. The
19 agency may not identify a class solely by funding source, such as a particular
20 bond fund, or by the method of procurement, but shall identify the class us-
21 ing characteristics that reasonably relate to the exemption criteria set forth
22 in subsection (2) of this section.

23 (4) In granting exemptions under subsection (2) of this section, the Di-
24 rector of the Oregon Department of Administrative Services, the Director of
25 Transportation or the local contract review board shall:

26 (a) [*When*] **If** appropriate, direct the use of [*alternate*] **alternative** con-
27 tracting methods that take account of market realities and modern practices
28 and are consistent with the public policy of encouraging competition.

29 (b) Require and approve or disapprove written findings by the contracting
30 agency or state agency that support [*the*] awarding [*of*] a particular public
31 improvement contract or a class of public improvement contracts[,] without

1 the competitive bidding requirement of subsection (1) of this section. The
2 findings must show that the exemption of a contract or class of contracts
3 complies with the requirements of subsection (2) of this section.

4 (5)(a) **A contracting agency or state agency shall hold a public**
5 **hearing** before [*final adoption of*] **finally adopting** the findings required by
6 subsection (2) of this section **and** exempting a public improvement contract
7 or a class of public improvement contracts from the requirement of competi-
8 tive bidding[, *a contracting agency or state agency shall hold a public*
9 *hearing*].

10 (b) Notification of the public hearing [*shall*] **must** be published in at least
11 one trade newspaper of general statewide circulation a minimum of 14 days
12 before the hearing.

13 (c) The notice [*shall*] **must** state that the public hearing is for the pur-
14 pose of taking comments on the draft findings for an exemption from the
15 competitive bidding requirement. At the time of the notice, copies of the
16 draft findings [*shall*] **must** be made available to the public. At the option
17 of the contracting agency or state agency, the notice may describe the pro-
18 cess by which the findings are finally adopted and may indicate the oppor-
19 tunity for [*any*] further public comment.

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

22 (e) If a contracting agency or state agency [*is required to*] **must** act
23 promptly [*due to*] **because of** circumstances beyond the agency's control that
24 do not constitute an emergency, notification of the public hearing may be
25 published simultaneously with the agency's solicitation of contractors for the
26 alternative [*public*] contracting method, as long as responses to the solicita-
27 tion are due at least five days after the [*meeting*] **hearing** and approval of
28 the findings.

29 (6) The purpose of an exemption is to exempt one or more public im-
30 provement contracts from competitive bidding requirements. The representa-
31 tions in and the accuracy of the findings, including [*any*] **a** general

1 description of the resulting public improvement contract, are the bases for
2 approving the findings and granting the [*exception*] **exemption**. The findings
3 may describe anticipated features of the resulting public improvement con-
4 tract, but the final parameters of the contract are those characteristics or
5 specifics announced in the solicitation document.

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

9 (8) A public improvement [*contracts*] **contract that is** excepted from
10 competitive [*bid*] **bidding** requirements under subsection (1)(a), (c), (d), (e)
11 or (f) of this section [*are*] **is** not subject to the exemption requirements of
12 subsection (2) of this section.

13 **SECTION 2. The amendments to ORS 279C.335 by section 1 of this**
14 **2013 Act apply to a contract that a contracting agency enters into on**
15 **or after the operative date specified in section 3 of this 2013 Act.**

16 **SECTION 3. (1) The amendments to ORS 279C.335 by section 1 of**
17 **this 2013 Act become operative 91 days after the effective date of this**
18 **2013 Act.**

19 **(2) The Attorney General, the Director of the Oregon Department**
20 **of Administrative Services, the Director of Transportation or a con-**
21 **tracting agency that adopts rules under ORS 279A.065 may take any**
22 **action before the operative date specified in subsection (1) of this sec-**
23 **tion that is necessary to enable the Attorney General, the director or**
24 **the contracting agency to exercise, on and after the operative date**
25 **specified in subsection (1) of this section, all of the duties, functions**
26 **and powers conferred on the Attorney General, the director or the**
27 **contracting agency by the amendments to ORS 279C.335 by section 1**
28 **of this 2013 Act.**

29 **SECTION 4. This 2013 Act being necessary for the immediate pres-**
30 **ervation of the public peace, health and safety, an emergency is de-**
31 **clared to exist, and this 2013 Act takes effect on its passage.**

