

B-Engrossed
Senate Bill 254

Ordered by the House June 3
Including Senate Amendments dated April 22 and House Amendments
dated June 3

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Business, Transportation and Economic Development)

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.

Specifies conditions under which contracting agency may use alternative contracting method to award public improvement contract for construction manager/general contractor services. Requires Attorney General to adopt model rules to specify procedures for procuring construction manager/general contractor services.

Provides that contracting agency must procure construction manager/general contractor services in accordance with model rules.

Becomes operative July 1, 2014.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to requirements for alternative contracting methods; creating new provisions; amending
3 ORS 279A.065, 279A.070, 279C.307, 279C.330, 279C.335 and 279C.380; and declaring an emer-
4 gency.

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

6 **SECTION 1. Sections 2 and 3 of this 2013 Act are added to and made a part of ORS**
7 **chapter 279C.**

8 **SECTION 2. As used in this section and ORS 279A.065, 279C.307, 279C.335 and 279C.380 and**
9 **section 3 of this 2013 Act:**

10 (1) **“Affiliate” means a person that, directly or indirectly through one or more interme-**
11 **diaries, controls, is controlled by or is under common control with another person.**

12 (2) **“Construction manager/general contractor” means a person that provides con-**
13 **struction manager/general contractor services to a contracting agency under a public im-**
14 **provement contract.**

15 (3)(a) **“Construction manager/general contractor services” means construction-related**
16 **services that a contracting agency procures by means of an alternative contracting method**
17 **under ORS 279C.335 and that:**

18 (A) **Include a construction manager/general contractor’s:**

19 (i) **Functioning as a member of a project team that includes the contracting agency, the**
20 **architect or engineer that designs the public improvement under a separate contract with**
21 **the contracting agency and other contractors and consultants; and**

22 (ii) **Reviewing and analyzing a design for a public improvement in order to:**

23 (I) **Suggest changes in the design that minimize potential errors, delays, unexpected costs**

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 and other problems during construction;

2 (II) Recommend means by which the contracting agency may achieve the functions of the
3 public improvement or a component of the public improvement safely, reliably, efficiently and
4 at the lowest overall cost;

5 (III) Improve the value and quality of the public improvement; and

6 (IV) Reduce the time necessary to complete the public improvement; and

7 (B) May include, depending on the specific terms of the public improvement contract and
8 on whether the contracting agency decides to proceed with construction, a construction
9 manager/general contractor's:

10 (i) Devising a schedule for constructing the public improvement;

11 (ii) Estimating construction, materials, labor and other costs for the public improvement;

12 (iii) Establishing a fixed price, a guaranteed maximum price or other maximum price;

13 (iv) Constructing portions of the public improvement and subcontracting portions to
14 other contractors;

15 (v) Coordinating and overseeing the construction process; or

16 (vi) Performing other services related to constructing a public improvement in accord-
17 ance with the terms of the public improvement contract.

18 (b) "Construction manager/general contractor services" does not include services related
19 to constructing a public improvement under the terms of:

20 (A) A public improvement contract that a contracting agency awards on the basis of a
21 competitive bidding process that does not require an exemption under ORS 279C.335;

22 (B) A public improvement contract that results from a design-build procurement, as de-
23 fined in rules the Attorney General or a contracting agency adopts under ORS 279A.065, and
24 that is exempt from the competitive bidding requirement under ORS 279C.335;

25 (C) An energy savings performance contract;

26 (D) A public improvement contract for a transportation project that:

27 (i) Is exempt from the competitive bidding requirement under ORS 279C.335;

28 (ii) Requires the contractor to construct the project according to plans and specifications
29 that a design professional provides under a separate contract with the contracting agency
30 and without significant participation from the contractor; and

31 (iii) The contracting agency awards on the basis of the contracting agency's evaluation
32 of:

33 (I) The contractor's qualifications, the price to perform the work on the project and the
34 amount of time the contractor will take to perform the work; or

35 (II) The contractor's qualifications, past experience with similar projects, the price to
36 perform the work on the project and the contractor's planned approach to the project; or

37 (E) A public improvement contract that is otherwise exempt or excepted from the com-
38 petitive bidding requirement under ORS 279C.335.

39 (4) "Guaranteed maximum price" means the total price at which a construction
40 manager/general contractor agrees to provide construction manager/general contractor ser-
41 vices to a contracting agency in accordance with the terms and conditions and scope of work
42 for a specific public improvement contract and within which are:

43 (a) All costs the contracting agency agrees to reimburse and all fees the contracting
44 agency agrees to pay for completing the public improvement; and

45 (b) Any contingent costs, fees or other charges specifically identified in the public im-

1 **provement contract.**

2 **SECTION 3. (1) A contracting agency that intends to procure construction**
3 **manager/general contractor services shall procure the construction manager/general con-**
4 **tractor services in accordance with model rules the Attorney General adopts under ORS**
5 **279A.065 (3).**

6 **(2) A contracting agency shall, in documents the contracting agency uses to procure**
7 **construction manager/general contractor services:**

8 **(a) Describe the criteria the contracting agency will use to evaluate proposals for the**
9 **construction manager/general contractor services the contracting agency seeks and what**
10 **weight the contracting agency will give each criterion in the evaluation;**

11 **(b) Describe how the contracting agency will use interviews in the contracting agency's**
12 **procurement and how the contracting agency will evaluate information the contracting**
13 **agency obtains from interviews, if the contracting agency uses interviews in the procure-**
14 **ment;**

15 **(c) Describe any other criteria the contracting agency may consider in selecting a con-**
16 **struction manager/general contractor;**

17 **(d) Describe how the contracting agency will combine scoring from the interviews, from**
18 **evaluating the proposals and from other criteria specified in accordance with paragraph (c)**
19 **of this subsection to arrive at a proposer's final score and ranking;**

20 **(e) State that any savings the construction manager/general contractor realizes in per-**
21 **forming the public improvement contract will accrue to the contracting agency, unless the**
22 **public improvement contract provides otherwise;**

23 **(f) Specify terms and conditions that govern how the fixed price, guaranteed maximum**
24 **price or other maximum price set forth in the public improvement contract will be deter-**
25 **mined and whether the price includes or is based on unit pricing or allows for work that is**
26 **constructed in phases;**

27 **(g) State that the contracting agency will not pay any amount that exceeds a fixed price,**
28 **guaranteed maximum price or other maximum price specified in the public improvement**
29 **contract unless the amount results from material changes to the scope of work set forth in**
30 **the public improvement contract and the parties to the public improvement contract agree**
31 **in writing to the material changes;**

32 **(h) State that the contracting agency will conduct the procurement in accordance with**
33 **model rules the Attorney General adopts under ORS 279A.065 (3); and**

34 **(i) Specify deadlines and time periods for the procurement that allow prospective con-**
35 **tractors a reasonable opportunity to submit proposals, including but not limited to:**

36 **(A) The date and time by which the contracting agency must receive proposals;**

37 **(B) The dates on which or the time periods during which the contracting agency will**
38 **conduct interviews, if the contracting agency will conduct interviews for the procurement;**

39 **(C) The date by which the contracting agency plans to indicate an intent to award the**
40 **public improvement contract; and**

41 **(D) The time period during which the contracting agency will meet with proposers that**
42 **the contracting agency did not select for the public improvement contract, if a proposer re-**
43 **quests a meeting to discuss the procurement.**

44 **(3) By the earlier of the date on which a contracting agency and a construction**
45 **manager/general contractor agree on a fixed price, guaranteed maximum price or other**

1 maximum price or the date on which the construction manager/general contractor begins
2 to solicit offers for construction services from subcontractors, the public improvement con-
3 tract that the contracting agency negotiates with the construction manager/general con-
4 tractor must:

5 (a) Describe the methods the construction manager/general contractor will use to qualify
6 and select subcontractors. The methods must be competitive and should provide prospective
7 subcontractors with a reasonable opportunity to participate in the construction
8 manager/general contractor's qualification and selection process.

9 (b) Identify the portions of the construction work under the public improvement contract
10 for which the construction manager/general contractor may waive the qualification and se-
11 lection process described in paragraph (a) of this subsection and describe:

12 (A) How the construction manager/general contractor may determine the portions of the
13 construction work that will not be subject to the qualification and selection process described
14 in paragraph (a) of this subsection; and

15 (B) The process the construction manager/general contractor will use to qualify and se-
16 lect prospective subcontractors for the portions of the construction work that are not sub-
17 ject to the qualification and selection process described in paragraph (a) of this subsection.

18 (c) Identify the conditions under which the construction manager/general contractor or
19 an affiliate or subsidiary of the construction manager/general contractor may perform or
20 compete with other prospective subcontractors to perform construction work under the
21 public improvement contract and describe the methods the construction manager/general
22 contractor will use to qualify and select an affiliate or subsidiary to perform the construction
23 work.

24 (d) Describe how the construction manager/general contractor will announce which pro-
25 spective subcontractors the construction manager/general contractor has selected to per-
26 form construction services in connection with the public improvement contract.

27 (e) Describe the conditions under which the construction manager/general contractor
28 will discuss the qualification and selection process described in this subsection with a pro-
29 spective subcontractor that the construction manager/general contractor did not select for
30 a subcontract if the construction manager/general contractor receives a request from the
31 prospective subcontractor to discuss the process.

32 (4) As used in this section, "savings" means a positive difference between a fixed price,
33 a guaranteed maximum price or other maximum price set forth in a public improvement
34 contract and the actual cost of the work, including costs for which a contracting agency
35 reimburses a construction manager/general contractor and fees or profits the construction
36 manager/general contractor earns.

37 **SECTION 4.** ORS 279A.065 is amended to read:

38 279A.065. (1) The Attorney General shall prepare and maintain model rules [*of procedure*] **that**
39 **specify procedures for public contracting under the Public Contracting Code and that are**
40 appropriate for [*use by*] all contracting agencies [*governing public contracting under the Public Con-*
41 *tracting Code and*] **to use.** The Attorney General may devise and publish forms for use
42 [*therewith*] **with the model rules.** The Attorney General shall adopt the model rules in [*the manner*
43 *provided by*] **accordance with** ORS chapter 183. Before adopting or amending a model rule, the
44 Attorney General shall consult with the Director of the Oregon Department of Administrative Ser-
45 vices, the Director of Transportation, representatives of county governments, representatives of city

1 governments, representatives of school boards and other knowledgeable persons.

2 (2) The Attorney General shall adopt model rules [*appropriate for use by all contracting agencies*
3 *to govern the*] **that specify** procedures [*for entering*] **for all contracting agencies to use to enter**
4 into energy savings performance contracts. Before adopting or amending a rule under this sub-
5 section, the Attorney General shall consult with the Oregon Department of Administrative Services,
6 the State Department of Energy, the Oregon University System, local contracting agencies and other
7 knowledgeable persons. The Attorney General may develop standard contract forms for use with
8 energy savings performance contracts.

9 (3)(a) **The Attorney General shall adopt model rules that specify procedures for all con-**
10 **tracting agencies to use to procure construction manager/general contractor services. Be-**
11 **fore adopting or amending a rule under this subsection, the Attorney General shall consult**
12 **with the Director of the Oregon Department of Administrative Services, the Director of**
13 **Transportation, local contracting agencies, construction contractors, construction subcon-**
14 **tractors and other knowledgeable persons.**

15 (b) **Notwithstanding subsection (6) of this section, a contracting agency may not adopt**
16 **the contracting agency's own rules for procuring construction manager/general contractor**
17 **services.**

18 [(3)] (4) After each legislative session, the Attorney General shall review all laws [*passed by*] the
19 Legislative Assembly **passed** that affect public contracting to determine if the **Attorney General**
20 **should amend or repeal a** model [*rules*] **rule** prepared under this section [*should be modified by the*
21 *adoption of*] **or adopt** a new rule [*or by the amendment or repeal of an existing rule*]. If the Attorney
22 General determines that a modification of the model rules is necessary, the Attorney General shall
23 prepare the modification within such time as to allow the modification to take effect no later than
24 120 days after the effective date of the legislation that caused the **Attorney General to modify the**
25 rule. [*to be modified. However,*] The Attorney General may prepare a modification to take effect 121
26 or more days after the effective date of the legislation if the Attorney General [*provides notice des-*
27 *ignating the time period within which the modification will take effect to*], **in a notice to** the state
28 agencies and persons listed in subsection (1) of this section, **specifies when the modification will**
29 **take effect.**

30 [(4)] (5) A contracting agency that has not adopted [*its*] **the contracting agency's** own rules
31 of procedure in accordance with subsection [(5)] (6) of this section is subject to the model rules
32 [*adopted by*] the Attorney General **adopts** under this section, including all modifications to the
33 model rules that the Attorney General may adopt.

34 [(5)(a)] (6)(a) A contracting agency may adopt [*its*] **the contracting agency's** own rules of
35 procedure for public contracts that:

36 (A) Specifically state that the model rules [*adopted by*] the Attorney General **adopts** under this
37 section do not apply to the contracting agency; and

38 (B) Prescribe the rules of procedure that the contracting agency will use for public contracts,
39 which may include portions of the model rules [*adopted by*] the Attorney General **adopts**.

40 (b) A contracting agency that adopts rules under this [*section*] **subsection** shall review the rules
41 each time the Attorney General modifies the model rules under this section to determine whether
42 the contracting agency should modify [*its*] **the contracting agency's** rules to ensure compliance
43 with statutory changes.

44 **SECTION 5.** ORS 279A.070 is amended to read:

45 279A.070. In addition to rules adopted under ORS 279A.065 [(5)] (6), a contracting agency may,

1 in [the exercise of] **exercising** authority granted under ORS 279A.050, adopt rules necessary to carry
2 out the provisions of the Public Contracting Code, including but not limited to rules for [the pro-
3 curement, management, disposal and control of] **procuring, managing, disposing of and controlling**
4 goods, services, personal services and public improvements under the Public Contracting Code. Each
5 contracting agency authorized to enter into personal services contracts shall create procedures [for
6 the screening and selection of] **to screen and select** persons to perform personal services.

7 **SECTION 6.** ORS 279C.307 is amended to read:

8 279C.307. (1) Except as provided in subsection (2) of this section, a contracting agency that
9 procures personal services for the purpose of administering, managing, monitoring, inspecting, eval-
10 uating compliance with or otherwise overseeing a public contract that is subject to this chapter may
11 not:

12 (a) Procure the personal services from a contractor or an affiliate of a contractor who is a party
13 to the public contract that is subject to administration, management, monitoring, inspection, evalu-
14 ation or oversight by means of the personal services; or

15 (b) Procure the personal services through the public contract that is subject to administration,
16 management, monitoring, inspection, evaluation or oversight by means of the personal services.

17 (2) Subsection (1) of this section does not apply to a procurement [that qualifies as a construction
18 manager/general contractor procurement or a design-build procurement, both as defined in OAR
19 125-249-0610 or 137-049-0610] **for construction manager/general contractor services or to a**
20 **design-build procurement, as defined in rules the Attorney General or a contracting agency**
21 **adopts under ORS 279A.065.**

22 [(3) As used in this section, "affiliate" means a person that, directly or indirectly through one or
23 more intermediaries, controls, is controlled by or is under common control with the contractor described
24 in subsection (1)(a) of this section.]

25 **SECTION 7.** ORS 279C.330 is amended to read:

26 279C.330. (1) As used in ORS [279C.335,] 279C.345 and 279C.350, "findings" means the justifica-
27 tion for a contracting agency conclusion that includes, but is not limited to, information regarding:

28 [(1)] (a) Operational, budget and financial data;

29 [(2)] (b) Public benefits;

30 [(3)] (c) Value engineering;

31 [(4)] (d) Specialized expertise required;

32 [(5)] (e) Public safety;

33 [(6)] (f) Market conditions;

34 [(7)] (g) Technical complexity; and

35 [(8)] (h) Funding sources.

36 (2) **As used in ORS 279C.335, "findings" means the justification for a conclusion that a**
37 **contracting agency or state agency, in seeking an exemption from the competitive bidding**
38 **requirement of ORS 279C.335 (1), reaches based on the considerations set forth in ORS**
39 **279C.335 (2).**

40 **SECTION 8.** ORS 279C.335 is amended to read:

41 279C.335. (1) All public improvement contracts shall be based upon competitive bids except:

42 (a) [Contracts made] **A public improvement contract** with a qualified nonprofit [agencies pro-
43 viding] **agency that provides** employment opportunities for individuals with disabilities under ORS
44 279.835 to 279.855.

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

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

2 (d) A **public improvement** contract [*not to*] **with a contract price that does not** exceed
3 \$100,000 made under procedures for competitive quotes in ORS 279C.412 and 279C.414.

4 (e) [*Contracts for*] **A contract to** repair, [*maintenance, improvement or protection of*] **maintain,**
5 **improve or protect** property [*obtained by*] the Department of Veterans' Affairs **obtains** under ORS
6 407.135 and 407.145 (1).

7 (f) **An** energy savings performance [*contracts entered*] **contract that a contracting agency**
8 **enters** into in accordance with rules of procedure adopted under ORS 279A.065.

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

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

21 (b) [*The*] Awarding a [*of*] public improvement [*contracts*] **contract** under the exemption will
22 likely result in substantial cost savings **and other substantial benefits** to the contracting agency
23 **or the state agency that seeks the exemption**[, *to the state agency based upon the justification and*
24 *information described in ORS 279C.330*] or, if the [*contracts are*] **contract is** for a public [*improve-*
25 *ments*] **improvement** described in ORS 279A.050 (3)(b), to the contracting agency or the public. In
26 [*making the*] **approving a finding under this paragraph**, the Director of the Oregon Department
27 of Administrative Services, the Director of Transportation or the local contract review board
28 [*may*] **shall** consider the type, cost and amount of the contract[,] **and, to the extent applicable to**
29 **the particular public improvement contract or class of public improvement contracts, the**
30 **following:**

31 (A) **How many** [*the number of*] persons **are** available to bid [*and such other factors as may be*
32 *deemed appropriate.*];

33 (B) **The construction budget and the projected operating costs for the completed public**
34 **improvement;**

35 (C) **Public benefits that may result from granting the exemption;**

36 (D) **Whether value engineering techniques may decrease the cost of the public improve-**
37 **ment;**

38 (E) **The cost and availability of specialized expertise that is necessary for the public im-**
39 **provement;**

40 (F) **Any likely increases in public safety;**

41 (G) **Whether granting the exemption may reduce risks to the contracting agency, the**
42 **state agency or the public that are related to the public improvement;**

43 (H) **Whether granting the exemption will affect the sources of funding for the public**
44 **improvement;**

45 (I) **Whether granting the exemption will better enable the contracting agency to control**

1 **the impact that market conditions may have on the cost of and time necessary to complete**
2 **the public improvement;**

3 **(J) Whether granting the exemption will better enable the contracting agency to address**
4 **the size and technical complexity of the public improvement;**

5 **(K) Whether the public improvement involves new construction or renovates or remodels**
6 **an existing structure;**

7 **(L) Whether the public improvement will be occupied or unoccupied during construction;**

8 **(M) Whether the public improvement will require a single phase of construction work or**
9 **multiple phases of construction work to address specific project conditions; and**

10 **(N) Whether the contracting agency or state agency has, or has retained under contract,**
11 **and will use contracting agency or state agency personnel, consultants and legal counsel that**
12 **have necessary expertise and substantial experience in alternative contracting methods to**
13 **assist in developing the alternative contracting method that the contracting agency or state**
14 **agency will use to award the public improvement contract and to help negotiate, administer**
15 **and enforce the terms of the public improvement contract.**

16 (c) As an alternative to the finding described in paragraph (b) of this subsection, [*when*] if a
17 contracting agency or state agency seeks an exemption that would allow the **contracting agency**
18 **or state agency to** use [*of an alternate*] **an alternative** contracting method that the **contracting**
19 **agency or state** agency has not previously used, the **contracting agency or state** agency may
20 make a finding that identifies the project as a pilot project for which the **contracting agency or**
21 **state** agency intends to determine whether [*the use of the alternate*] **using the alternative** con-
22 tracting method actually results in substantial cost savings to the contracting agency, to the state
23 agency or, if the contract is for a public improvement described in ORS 279A.050 (3)(b), to the con-
24 tracting agency or the public. The **contracting agency or state** agency shall include an analysis
25 and conclusion regarding actual cost savings, if any, in the evaluation required under ORS 279C.355.

26 (3) In making findings to support an exemption for a class of public improvement contracts, the
27 contracting agency or state agency shall clearly identify the class using the class's defining char-
28 acteristics. [*Those*] **The** characteristics [*shall*] **must** include [*some*] **a** combination of project de-
29 scriptions or locations, time periods, contract values, methods of procurement or other factors that
30 distinguish the limited and related class of public improvement contracts from the agency's overall
31 construction program. The agency may not identify a class solely by funding source, such as a par-
32 ticular bond fund, or by the method of procurement, but shall identify the class using characteristics
33 that reasonably relate to the exemption criteria set forth in subsection (2) of this section.

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

37 (a) [*When*] **If** appropriate, direct the use of [*alternate*] **alternative** contracting methods that take
38 account of market realities and modern practices and are consistent with the public policy of en-
39 couraging competition.

40 (b) Require and approve or disapprove written findings by the contracting agency or state
41 agency that support [*the*] awarding [*of*] a particular public improvement contract or a class of public
42 improvement contracts, without the competitive bidding requirement of subsection (1) of this section.
43 The findings must show that the exemption of a contract or class of contracts complies with the
44 requirements of subsection (2) of this section.

45 **(c) Require a contracting agency or state agency that procures construction**

1 **manager/general contractor services to conduct the procurement in accordance with model**
 2 **rules the Attorney General adopts under ORS 279A.065 (3).**

3 (5)(a) **A contracting agency or state agency shall hold a public hearing** before *[final adoption*
 4 *of]* **approving** the findings required by subsection (2) of this section *[exempting]* **and before the**
 5 **Director of the Oregon Department of Administrative Services, the Director of Transporta-**
 6 **tion or the local contract review board grants an exemption from the competitive bidding**
 7 **requirement for** a public improvement contract or a class of public improvement contracts. *[from*
 8 *the requirement of competitive bidding, a contracting agency or state agency shall hold a public hear-*
 9 *ing.]*

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

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

17 (d) At the public hearing, the contracting agency or state agency shall offer an opportunity for
 18 any interested party to appear and *[present]* comment.

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

24 (6) The purpose of an exemption is to exempt one or more public improvement contracts from
 25 competitive bidding requirements. The representations in and the accuracy of the findings, including
 26 any general description of the resulting public improvement contract, are the bases for approving
 27 the findings and granting the *[exception]* **exemption**. The findings may describe anticipated features
 28 of the resulting public improvement contract, but the final parameters of the contract are those
 29 characteristics or specifics announced in the solicitation document.

30 (7) A public improvement contract awarded under the competitive bidding requirement of sub-
 31 section (1) of this section may be amended only in accordance with rules adopted under ORS
 32 279A.065.

33 (8) **A public improvement** *[contracts]* **contract that is** excepted from **the** competitive *[bid re-*
 34 *quirements]* **bidding requirement** under subsection (1)(a), (c), (d), (e) or (f) of this section *[are]* **is**
 35 not subject to the exemption requirements of subsection (2) of this section.

36 **SECTION 9.** ORS 279C.380 is amended to read:

37 279C.380. (1) Except as provided in ORS 279C.390, a successful bidder for a public improvement
 38 contract shall promptly execute and deliver to the contracting agency the following bonds:

39 (a) A performance bond in an amount equal to the full contract price conditioned on the faithful
 40 performance of the contract in accordance with the plans, specifications and conditions of the con-
 41 tract. The performance bond must be solely for the protection of the contracting agency that
 42 awarded the contract and any public agency or agencies for whose benefit the contract was
 43 awarded. If the public improvement contract is with a single person to provide both design and
 44 construction of a public improvement, the obligation of the performance bond for the faithful per-
 45 formance of the contract required by this paragraph must also be for the preparation and completion

1 of the design and related services covered under the contract. Notwithstanding when a cause of
 2 action, claim or demand accrues or arises, the surety is not liable after final completion of the
 3 contract, or longer if provided for in the contract, for damages of any nature, economic or otherwise
 4 and including corrective work, attributable to the design aspect of a design-build project, or for the
 5 costs of design revisions needed to implement corrective work. A contracting agency may waive the
 6 requirement of a performance bond. A contracting agency may permit the successful bidder to sub-
 7 mit a cashier's check or certified check in lieu of all or a portion of the required performance bond.

8 (b) A payment bond in an amount equal to the full contract price, solely for the protection of
 9 claimants under ORS 279C.600.

10 (2) If the public improvement contract is with a single person to provide [*construction manager*
 11 *and general contractor services*] **construction manager/general contractor services**, in which a
 12 guaranteed maximum price may be established by an amendment authorizing construction period
 13 services following preconstruction period services, the contractor shall provide the bonds required
 14 by subsection (1) of this section upon execution of an amendment establishing the guaranteed max-
 15 imum price. The contracting agency shall also require the contractor to provide bonds equal to the
 16 value of construction services authorized by any early work amendment in advance of the guaran-
 17 teed maximum price amendment. Such bonds must be provided before construction starts.

18 (3) Each performance bond and each payment bond must be executed solely by a surety company
 19 or companies holding a certificate of authority to transact surety business in this state. The bonds
 20 may not constitute the surety obligation of an individual or individuals. The performance and pay-
 21 ment bonds must be payable to the contracting agency or to the public agency or agencies for whose
 22 benefit the contract was awarded, as specified in the solicitation documents, and shall be in a form
 23 approved by the contracting agency.

24 (4) In cases of emergency, or when the interest or property of the contracting agency or the
 25 public agency or agencies for whose benefit the contract was awarded probably would suffer mate-
 26 rial injury by delay or other cause, the requirement of furnishing a good and sufficient performance
 27 bond and a good and sufficient payment bond for the faithful performance of any public improvement
 28 contract may be excused, if a declaration of such emergency is made in accordance with rules
 29 adopted under ORS 279A.065.

30 (5) This section applies only to public improvement contracts with a value, estimated by the
 31 contracting agency, of more than \$100,000 or, in the case of contracts for highways, bridges and
 32 other transportation projects, more than \$50,000.

33 **SECTION 10.** (1) Sections 2 and 3 of this 2013 Act and the amendments to ORS 279A.065,
 34 279A.070, 279C.307, 279C.330, 279C.335 and 279C.380 by sections 4 to 9 of this 2013 Act become
 35 operative July 1, 2014.

36 (2) **The Director of the Oregon Department of Administrative Services, the Director of**
 37 **Transportation, the Attorney General or a contracting agency that adopts rules under ORS**
 38 **279A.065 may take any action before the operative date specified in subsection (1) of this**
 39 **section that is necessary to enable the director, the Attorney General or the contracting**
 40 **agency to exercise, on and after the operative date specified in subsection (1) of this section,**
 41 **the duties, functions and powers conferred on the director, the Attorney General or the**
 42 **contracting agency by sections 2 and 3 of this 2013 Act and the amendments to ORS 279A.065,**
 43 **279A.070, 279C.307, 279C.330, 279C.335 and 279C.380 by sections 4 to 9 of this 2013 Act.**

44 **SECTION 11.** Sections 2 and 3 of this 2013 Act and the amendments to ORS 279A.065,
 45 279A.070, 279C.307, 279C.330, 279C.335 and 279C.380 by sections 4 to 9 of this 2013 Act apply

1 to procurements for which a contracting agency or, if a state agency is not the contracting
2 agency, a state agency, on or after the operative date specified in section 10 of this 2013 Act,
3 takes any affirmative step to seek an exemption from competitive bidding requirements.

4 SECTION 12. This 2013 Act being necessary for the immediate preservation of the public
5 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
6 on its passage.

7
