

**PROPOSED AMENDMENTS TO
SENATE BILL 254**

1 On page 1 of the printed bill, delete lines 6 through 27 and delete pages
2 2 through 4.

3 On page 5, delete lines 1 through 7 and insert:

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

6 **“SECTION 2. As used in this section and ORS 279A.065, 279C.307,**
7 **279C.335 and 279C.380 and section 3 of this 2013 Act:**

8 **“(1) ‘Construction manager/general contractor’ means a person that**
9 **provides construction manager/general contractor services to a con-**
10 **tracting agency under a public improvement contract.**

11 **“(2)(a) ‘Construction manager/general contractor services’ means**
12 **construction-related services that a contracting agency procures by**
13 **means of an alternative contracting method under ORS 279C.335 and**
14 **that:**

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

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

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

22 **“(I) Suggest changes in the design that minimize potential errors,**

1 **delays, unexpected costs and other problems during construction;**
2 **“(II) Recommend means by which the contracting agency may**
3 **achieve the functions of the public improvement or a component of**
4 **the public improvement safely, reliably, efficiently and at the lowest**
5 **overall cost;**
6 **“(III) Improve the value and quality of the public improvement; and**
7 **“(IV) Reduce the time necessary to complete the public improve-**
8 **ment; and**
9 **“(B) May include, depending on the specific terms of the public**
10 **improvement contract and on whether the contracting agency pro-**
11 **ceeds with the public improvement after completing a design, devel-**
12 **oping a scope of work and setting a budget, a construction**
13 **manager/general contractor’s:**
14 **“(i) Devising a schedule for constructing the public improvement;**
15 **“(ii) Estimating construction, materials, labor and other costs for**
16 **the public improvement;**
17 **“(iii) Establishing a fixed price, a guaranteed maximum price or**
18 **other maximum price;**
19 **“(iv) Constructing portions of the public improvement and subcon-**
20 **tracting portions to other contractors;**
21 **“(v) Coordinating and overseeing the construction process; or**
22 **“(vi) Performing other services related to constructing a public**
23 **improvement in accordance with the terms of the public improvement**
24 **contract.**
25 **“(b) ‘Construction manager/general contractor services’ does not**
26 **include services related to constructing a public improvement under**
27 **the terms of:**
28 **“(A) A public improvement contract that a contracting agency**
29 **awards on the basis of a competitive bidding process that does not**
30 **require an exemption under ORS 279C.335;**

1 **“(B) A public improvement contract that results from a design-**
2 **build procurement, as defined in rules the Attorney General or a con-**
3 **tracting agency adopts under ORS 279A.065;**

4 **“(C) An energy savings performance contract;**

5 **“(D) A public improvement contract for a transportation project**
6 **that a contracting agency awards on the basis of:**

7 **“(i) An evaluation of a bidder’s qualifications, the amount of the**
8 **bid and the amount of time the bidder will take to complete the public**
9 **improvement; or**

10 **“(ii) An evaluation of the bidder’s qualifications and past experience**
11 **with similar public improvements, the amount of the bid and the ap-**
12 **proach the bidder intends to use to complete the public improvement;**
13 **or**

14 **“(E) A public improvement contract that is otherwise exempt from**
15 **a requirement for competitive bidding under ORS 279C.335 (2).**

16 **“(3) ‘Guaranteed maximum price’ means the total price at which a**
17 **construction manager/general contractor agrees to provide con-**
18 **struction manager/general contractor services to a contracting agency**
19 **in accordance with the terms and conditions and scope of work for a**
20 **specific public improvement contract and within which are:**

21 **“(a) All costs the contracting agency agrees to reimburse and all**
22 **fees the contracting agency agrees to pay for completing the public**
23 **improvement; and**

24 **“(b) Any contingent costs, fees or other charges specifically identi-**
25 **fied in the public improvement contract.**

26 **“SECTION 3. (1) A contracting agency that intends to procure**
27 **construction manager/general contractor services shall procure the**
28 **construction manager/general contractor services in accordance with**
29 **model rules the Attorney General adopts under ORS 279A.065 (3).**

30 **“(2) A contracting agency shall, in documents the contracting**

1 agency uses to procure construction manager/general contractor ser-
2 vices:

3 “(a) Describe the criteria the contracting agency will use to evalu-
4 ate proposals for the construction manager/general contractor services
5 the contracting agency seeks and what weight the contracting agency
6 will give each criterion in the evaluation;

7 “(b) Describe how the contracting agency will use interviews in the
8 contracting agency’s procurement and how the contracting agency will
9 evaluate information the contracting agency obtains from interviews,
10 if the contracting agency uses interviews in the procurement;

11 “(c) Describe any other criteria the contracting agency may con-
12 sider in selecting a construction manager/general contractor;

13 “(d) Describe how the contracting agency will combine scoring from
14 the interviews, from evaluating the proposals and from other criteria
15 specified in accordance with paragraph (c) of this subsection to arrive
16 at a proposer’s final score and ranking;

17 “(e) State that any savings the construction manager/general con-
18 tractor realizes in performing the public improvement contract will
19 accrue to the contracting agency, unless the public improvement
20 contract provides otherwise;

21 “(f) Specify terms and conditions that govern how the guaranteed
22 maximum price will be determined and whether the guaranteed maxi-
23 mum price includes or is based on unit pricing or allows for work that
24 is constructed in phases;

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

30 “(h) State that the contracting agency will conduct the procure-

1 **ment in accordance with model rules the Attorney General adopts**
2 **under ORS 279A.065 (3);**

3 **“(i) Specify deadlines and time periods for the procurement that**
4 **allow prospective contractors a reasonable opportunity to submit pro-**
5 **posals, including but not limited to:**

6 **“(A) The date and time by which the contracting agency must re-**
7 **ceive proposals;**

8 **“(B) The dates on which or the time periods during which the con-**
9 **tracting agency will conduct interviews, if the contracting agency will**
10 **conduct interviews for the procurement;**

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

13 **“(D) The time period during which the contracting agency will meet**
14 **with proposers that the contracting agency did not select for the**
15 **public improvement contract, if a proposer requests a meeting to dis-**
16 **cuss the procurement;**

17 **“(j) State whether the contracting agency will discuss the procure-**
18 **ment with prospective bidders or proposers before establishing a com-**
19 **petitive range or before awarding a public improvement contract;**

20 **“(k) Identify any terms and conditions the contracting agency will**
21 **discuss or negotiate before entering into the public improvement con-**
22 **tract;**

23 **“(L) State whether the contracting agency will allow a proposer to**
24 **submit a revised proposal and identify the elements of the proposal**
25 **that the proposer may revise; and**

26 **“(m) Describe the process, if any, that the contracting agency in-**
27 **tends to use to discuss and negotiate terms and conditions for the**
28 **public improvement contract, accept and evaluate revisions to a pro-**
29 **posal and establish a competitive range.**

30 **“(3) By the earlier of the date on which a contracting agency and**

1 a construction manager/general contractor agree on a fixed price,
2 guaranteed maximum price or other maximum price or the date on
3 which the construction manager/general contractor begins to solicit
4 offers for construction services from subcontractors, the public im-
5 provement contract that the contracting agency negotiates with the
6 construction manager/general contractor must:

7 “(a) Describe the methods the construction manager/general con-
8 tractor will use to qualify and select subcontractors. The methods
9 must be competitive and should provide prospective subcontractors
10 with a reasonable opportunity to participate in the construction
11 manager/general contractor’s qualification and selection process.

12 “(b) Identify the portions of the construction work under the public
13 improvement contract for which the construction manager/general
14 contractor may waive the qualification and selection process described
15 in paragraph (a) of this subsection and describe:

16 “(A) How the construction manager/general contractor may deter-
17 mine the portions of the construction work that will not be subject to
18 the qualification and selection process described in paragraph (a) of
19 this subsection; and

20 “(B) The process the construction manager/general contractor will
21 use to qualify and select prospective subcontractors for the portions
22 of the construction work that are not subject to the qualification and
23 selection process described in paragraph (a) of this subsection.

24 “(c) Identify the conditions under which the construction
25 manager/general contractor or an affiliate or subsidiary of the con-
26 struction manager/general contractor may perform or compete with
27 other prospective subcontractors to perform construction work under
28 the public improvement contract and describe the methods the con-
29 struction manager/general contractor will use to qualify and select an
30 affiliate or subsidiary to perform the construction work.

1 “(d) Describe how the construction manager/general contractor will
2 announce which prospective subcontractors the construction
3 manager/general contractor has selected to perform construction ser-
4 vices in connection with the public improvement contract.

5 “(e) Describe the conditions under which the construction
6 manager/general contractor will discuss the qualification and selection
7 process described in paragraph (a) of this subsection in response to a
8 request from a prospective subcontractor that the construction
9 manager/general contractor did not select for a subcontract.

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

11 “279A.065. (1) The Attorney General shall prepare and maintain model
12 rules [*of procedure*] **that specify procedures for public contracting under**
13 **the Public Contracting Code and that are** appropriate for [*use by*] all
14 contracting agencies [*governing public contracting under the Public Con-*
15 *tracting Code and*] **to use. The Attorney General** may devise and publish
16 forms for use [*therewith*] **with the model rules.** The Attorney General shall
17 adopt the model rules in [*the manner provided by*] **accordance with** ORS
18 chapter 183. Before adopting or amending a model rule, the Attorney General
19 shall consult with the Director of the Oregon Department of Administrative
20 Services, the Director of Transportation, representatives of county govern-
21 ments, representatives of city governments, representatives of school boards
22 and other knowledgeable persons.

23 “(2) The Attorney General shall adopt model rules [*appropriate for use by*
24 *all contracting agencies to govern the*] **that specify** procedures [*for entering*]
25 **for all contracting agencies to use to enter** into energy savings perform-
26 ance contracts. Before adopting or amending a rule under this subsection,
27 the Attorney General shall consult with the Oregon Department of Admin-
28 istrative Services, the State Department of Energy, the Oregon University
29 System, local contracting agencies and other knowledgeable persons. The
30 Attorney General may develop standard contract forms for use with energy

1 savings performance contracts.

2 “(3)(a) **The Attorney General shall adopt model rules that specify**
3 **procedures for all contracting agencies to use to procure construction**
4 **manager/general contractor services. Before adopting or amending a**
5 **rule under this subsection, the Attorney General shall consult with the**
6 **Director of the Oregon Department of Administrative Services, the**
7 **Director of Transportation, the Director of the Department of Cor-**
8 **rections, representatives of county governments, representatives of**
9 **city governments, representatives of contracting agencies that procure**
10 **construction manager/general contractor services, construction con-**
11 **tractors and subcontractors, architects, engineers and project manag-**
12 **ers that participate in providing construction manager/general**
13 **contractor services and other knowledgeable persons.**

14 “(b) **Notwithstanding subsection (6) of this section, a contracting**
15 **agency may not adopt the contracting agency’s own rules for procur-**
16 **ing construction manager/general contractor services.**

17 “[3] (4) After each legislative session, the Attorney General shall review
18 all laws *[passed by]* the Legislative Assembly **passed** that affect public con-
19 tracting to determine if the **Attorney General should amend or repeal a**
20 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 ex-*
22 *isting rule]*. If the Attorney General determines that a modification of the
23 model rules is necessary, the Attorney General shall prepare the modification
24 within such time as to allow the modification to take effect no later than
25 120 days after the effective date of the legislation that caused the **Attorney**
26 **General to modify the rule.** *[to be modified. However,]* The Attorney Gen-
27 eral may prepare a modification to take effect 121 or more days after the
28 effective date of the legislation if the Attorney General *[provides notice des-*
29 *ignating the time period within which the modification will take effect to]*, **in**
30 **a notice to** the state agencies and persons listed in subsection (1) of this

1 section, **specifies when the modification will take effect.**

2 “[~~4~~] **(5)** A contracting agency that has not adopted [*its*] **the contracting**
3 **agency’s** own rules of procedure in accordance with subsection [~~5~~] **(6)** of
4 this section is subject to the model rules [*adopted by*] the Attorney General
5 **adopts** under this section, including all modifications to the model rules that
6 the Attorney General may adopt.

7 “[~~5(a)~~] **(6)(a)** A contracting agency may adopt [*its*] **the contracting**
8 **agency’s** own rules of procedure for public contracts that:

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

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

15 “(b) A contracting agency that adopts rules under this [*section*] **sub-**
16 **section** shall review the rules each time the Attorney General modifies the
17 model rules under this section to determine whether the contracting agency
18 should modify [*its*] **the contracting agency’s** rules to ensure compliance
19 with statutory changes.”.

20 In line 8, delete “4” and insert “5”.

21 In line 16, delete “5” and insert “6”.

22 In line 28, delete “, as defined”.

23 In line 29, delete “in section 2 of this 2013 Act.”.

24 In line 34, delete “6” and insert “7”.

25 On page 6, delete lines 4 through 45 and delete pages 7 and 8.

26 On page 9, delete lines 1 through 9 and insert:

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

28 “279C.335. (1) All public improvement contracts shall be based upon com-
29 petitive bids except:

30 “(a) [*Contracts made*] **A public improvement contract** with a qualified

1 nonprofit [*agencies providing*] **agency that provides** employment opportu-
2 nities for individuals with disabilities under ORS 279.835 to 279.855.

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

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

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

9 “(e) [*Contracts for*] **A contract to** repair, [*maintenance, improvement or*
10 *protection of*] **maintain, improve or protect** property [*obtained by*] the De-
11 partment of Veterans’ Affairs **obtains** under ORS 407.135 and 407.145 (1).

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

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

26 “(a) [*It is unlikely that*] The exemption [*will*] **is unlikely to** encourage
27 favoritism in [*the*] awarding [*of*] public improvement contracts or substan-
28 tially diminish competition for public improvement contracts.

29 “(b) [*The*] Awarding a [*of*] public improvement [*contracts*] **contract** under
30 the exemption will likely result in substantial cost savings **and other sub-**

1 **stantial benefits** to the contracting agency **or the state agency that seeks**
2 **the exemption**[, *to the state agency based upon the justification and infor-*
3 *mation described in ORS 279C.330*] or, if the [*contracts are*] **contract is** for
4 **a public** [*improvements*] **improvement** described in ORS 279A.050 (3)(b), to
5 the contracting agency or the public. In [*making the*] **approving a finding**
6 **under this paragraph**, the Director of the Oregon Department of Adminis-
7 trative Services, the Director of Transportation or the local contract review
8 board [*may*] **shall** consider the type, cost and amount of the contract[,]
9 **and, to the extent applicable to the particular public improvement contract**
10 **or class of public improvement contracts, the following:**

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

13 “(B) **The construction budget and the projected operating costs for**
14 **the completed public improvement;**

15 “(C) **Public benefits that may result from the public improvement**
16 **contract;**

17 “(D) **Whether value engineering techniques may decrease the cost**
18 **of the public improvement;**

19 “(E) **The cost and availability of specialized expertise that is neces-**
20 **sary for the public improvement;**

21 “(F) **Any likely increases in public safety;**

22 “(G) **Whether granting the exemption may reduce risks to the**
23 **contracting agency, the state agency or the public that are related to**
24 **the public improvement;**

25 “(H) **Whether granting the exemption will affect the sources of**
26 **funding for the public improvement;**

27 “(I) **Whether granting the exemption will better enable the con-**
28 **tracting agency to control the impact that market conditions may**
29 **have on the cost of and time necessary to complete the public im-**
30 **provement;**

1 “(J) Whether granting the exemption will better enable the con-
2 tracting agency to address the size and technical complexity of the
3 public improvement;

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

6 “(L) Whether the public improvement will be occupied or unoccu-
7 pied during construction;

8 “(M) Whether the public improvement will require a single phase
9 of construction work or multiple phases of construction work to ad-
10 dress specific project conditions; and

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

19 “(c) As an alternative to the finding described in paragraph (b) of this
20 subsection, [*when*] **if** a contracting agency or state agency seeks an ex-
21 emption that would allow the **contracting agency or state agency** to use
22 [*of an alternate*] **an alternative** contracting method that the **contracting**
23 **agency or state** agency has not previously used, the **contracting agency**
24 **or state** agency may make a finding that identifies the project as a pilot
25 project for which the **contracting agency or state** agency intends to de-
26 termine whether [*the use of the alternate*] **using the alternative** contracting
27 method actually results in substantial cost savings to the contracting agency,
28 to the state agency or, if the contract is for a public improvement described
29 in ORS 279A.050 (3)(b), to the contracting agency or the public. The **con-**
30 **tracting agency or state** agency shall include an analysis and conclusion

1 regarding actual cost savings, if any, in the evaluation required under ORS
2 279C.355.

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

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

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

20 “(b) Require and approve or disapprove written findings by the contract-
21 ing agency or state agency that support [*the*] awarding [*of*] a particular
22 public improvement contract or a class of public improvement contracts,
23 without the competitive bidding requirement of subsection (1) of this section.
24 The findings must show that the exemption of a contract or class of con-
25 tracts complies with the requirements of subsection (2) of this section.

26 “(c) **Require a contracting agency or state agency that procures**
27 **construction manager/general contractor services to conduct the pro-**
28 **curement in accordance with model rules the Attorney General adopts**
29 **under ORS 279A.065 (3).**

30 “(5)(a) **A contracting agency or state agency shall hold a public**

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

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

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

19 “(d) At the public hearing, the contracting agency or state agency shall
20 offer an opportunity for any interested party to appear and [*present*] com-
21 ment.

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-

1 tions in and the accuracy of the findings, including any general description
2 of the resulting public improvement contract, are the bases for approving the
3 findings and granting the [exception] **exemption**. The findings may describe
4 anticipated features of the resulting public improvement contract, but the
5 final parameters of the contract are those characteristics or specifics an-
6 nounced in the solicitation document.

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

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

14 In line 10, delete “8” and insert “9”.

15 In line 30, delete “as defined in”.

16 In line 31, delete the boldfaced material.

17 In line 32, delete the boldfaced material.

18 On page 10, line 8, delete “9” and insert “10” and delete “Section 2” and
19 insert “Sections 2 and 3”.

20 In line 9, delete “3 to 8” and insert “4 to 9”.

21 In line 17, delete “section 2” and insert “sections 2 and 3”.

22 In line 18, delete “3 to 8” and insert “4 to 9”.

23 In line 19, delete “10” and insert “11” and delete “Section 2” and insert
24 “Sections 2 and 3”.

25 In line 20, delete “3 to 8” and insert “4 to 9”.

26 In line 22, delete “9” and insert “10”.

27 In line 24, delete “11” and insert “12”.

28