

Senate Bill 1501

Sponsored by Senator MONROE (Pre-session filed.)

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 **as introduced**.

Exempts energy savings performance contracts, under certain circumstances, from requirement to use competitive bidding process to award public improvement contracts. Specifies circumstances. Becomes operative July 1, 2014. Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to energy savings performance contracts; creating new provisions; amending ORS 279C.335;
3 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 competitive bids except:]*

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

9 (a) A public improvement contract with a qualified nonprofit agency that provides employment
10 opportunities for individuals with disabilities under ORS 279.835 to 279.855.

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

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

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

15 (e) A contract to repair, maintain, improve or protect property the Department of Veterans'
16 Affairs obtains under ORS 407.135 and 407.145 (1).

17 (f) An energy savings performance contract that a contracting agency enters into **with an en-**
18 **ergy service company** in accordance with rules of procedure adopted under ORS 279A.065 **or after**
19 **choosing the energy service company from among prequalified energy service companies that**
20 **appear on a list that the State Department of Energy designates by rule.**

21 (2) Subject to subsection (4)(b) and (c) of this section, the Director of the Oregon Department
22 of Administrative Services, a local contract review board or, for contracts described in ORS
23 279A.050 (3)(b), the Director of Transportation may exempt a public improvement contract or a class
24 of public improvement contracts from the competitive bidding requirement of subsection (1) of this
25 section after the Director of the Oregon Department of Administrative Services, the Director of
26 Transportation or the local contract review board approves the following findings that the con-
27 tracting agency submits or, if a state agency is not the contracting agency, that the state agency
28 that is seeking the exemption submits:

29 (a) The exemption is unlikely to encourage favoritism in awarding public improvement contracts
30 or substantially diminish competition for public improvement contracts.

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 (b) Awarding a public improvement contract under the exemption will likely result in substantial
2 cost savings and other substantial benefits to the contracting agency or the state agency that seeks
3 the exemption or, if the contract is for a public improvement described in ORS 279A.050 (3)(b), to
4 the contracting agency or the public. In approving a finding under this paragraph, the Director of
5 the Oregon Department of Administrative Services, the Director of Transportation or the local
6 contract review board shall consider the type, cost and amount of the contract and, to the extent
7 applicable to the particular public improvement contract or class of public improvement contracts,
8 the following:

9 (A) How many persons are available to bid;

10 (B) The construction budget and the projected operating costs for the completed public im-
11 provement;

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

13 (D) Whether value engineering techniques may decrease the cost of the public improvement;

14 (E) The cost and availability of specialized expertise that is necessary for the public improve-
15 ment;

16 (F) Any likely increases in public safety;

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

19 (H) Whether granting the exemption will affect the sources of funding for the public improve-
20 ment;

21 (I) Whether granting the exemption will better enable the contracting agency to control the
22 impact that market conditions may have on the cost of and time necessary to complete the public
23 improvement;

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

26 (K) Whether the public improvement involves new construction or renovates or remodels an
27 existing structure;

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

29 (M) Whether the public improvement will require a single phase of construction work or multi-
30 ple phases of construction work to address specific project conditions; and

31 (N) Whether the contracting agency or state agency has, or has retained under contract, and
32 will use contracting agency or state agency personnel, consultants and legal counsel that have
33 necessary expertise and substantial experience in alternative contracting methods to assist in de-
34 veloping the alternative contracting method that the contracting agency or state agency will use to
35 award the public improvement contract and to help negotiate, administer and enforce the terms of
36 the public improvement contract.

37 (c) As an alternative to the finding described in paragraph (b) of this subsection, if a contracting
38 agency or state agency seeks an exemption that would allow the contracting agency or state agency
39 to use an alternative contracting method that the contracting agency or state agency has not pre-
40 viously used, the contracting agency or state agency may make a finding that identifies the project
41 as a pilot project for which the contracting agency or state agency intends to determine whether
42 using the alternative contracting method actually results in substantial cost savings to the con-
43 tracting agency, to the state agency or, if the contract is for a public improvement described in ORS
44 279A.050 (3)(b), to the contracting agency or the public. The contracting agency or state agency
45 shall include an analysis and conclusion regarding actual cost savings, if any, in the evaluation re-

1 quired under ORS 279C.355.

2 (3) In making findings to support an exemption for a class of public improvement contracts, the
3 contracting agency or state agency shall clearly identify the class using the class's defining char-
4 acteristics. The characteristics must include a combination of project descriptions or locations, time
5 periods, contract values, methods of procurement or other factors that distinguish the limited and
6 related class of public improvement contracts from the agency's overall construction program. The
7 agency may not identify a class solely by funding source, such as a particular bond fund, or by the
8 method of procurement, but shall identify the class using characteristics that reasonably relate to
9 the exemption criteria set forth in subsection (2) of this section.

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

13 (a) If appropriate, direct the use of alternative contracting methods that take account of market
14 realities and modern practices and are consistent with the public policy of encouraging competition.

15 (b) Require and approve or disapprove written findings by the contracting agency or state
16 agency that support awarding a particular public improvement contract or a class of public im-
17 provement contracts, without the competitive bidding requirement of subsection (1) of this section.
18 The findings must show that the exemption of a contract or class of contracts complies with the
19 requirements of subsection (2) of this section.

20 (c) Require a contracting agency or state agency that procures construction manager/general
21 contractor services to conduct the procurement in accordance with model rules the Attorney Gen-
22 eral adopts under ORS 279A.065 (3).

23 (5)(a) A contracting agency or state agency shall hold a public hearing before approving the
24 findings required by subsection (2) of this section and before the Director of the Oregon Department
25 of Administrative Services, the Director of Transportation or the local contract review board grants
26 an exemption from the competitive bidding requirement for a public improvement contract or a class
27 of public improvement contracts.

28 (b) Notification of the public hearing must be published in at least one trade newspaper of
29 general statewide circulation a minimum of 14 days before the hearing.

30 (c) The notice must state that the public hearing is for the purpose of taking comments on the
31 draft findings for an exemption from the competitive bidding requirement. At the time of the notice,
32 copies of the draft findings must be made available to the public. At the option of the contracting
33 agency or state agency, the notice may describe the process by which the findings are finally
34 adopted and may indicate the opportunity for further public comment.

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

37 (e) If a contracting agency or state agency must act promptly because of circumstances beyond
38 the agency's control that do not constitute an emergency, notification of the public hearing may be
39 published simultaneously with the agency's solicitation of contractors for the alternative public
40 contracting method, as long as responses to the solicitation are due at least five days after the
41 hearing and approval of the findings.

42 (6) The purpose of an exemption is to exempt one or more public improvement contracts from
43 competitive bidding requirements. The representations in and the accuracy of the findings, including
44 any general description of the resulting public improvement contract, are the bases for approving
45 the findings and granting the exemption. The findings may describe anticipated features of the re-

1 sulting public improvement contract, but the final parameters of the contract are those character-
 2 istics or specifics announced in the solicitation document.

3 (7) A public improvement contract awarded under the competitive bidding requirement of sub-
 4 section (1) of this section may be amended only in accordance with rules adopted under ORS
 5 279A.065.

6 (8) A public improvement contract that is excepted from the competitive bidding requirement
 7 under subsection (1)(a), (c), (d), (e) or (f) of this section is not subject to the exemption requirements
 8 of subsection (2) of this section.

9 **SECTION 2. The amendments to ORS 279C.335 by section 1 of this 2014 Act apply to a**
 10 **contract that a contracting agency enters into on or after the operative date specified in**
 11 **section 3 of this 2014 Act.**

12 **SECTION 3. (1) The amendments to ORS 279C.335 by section 1 of this 2014 Act become**
 13 **operative July 1, 2014.**

14 (2) The Attorney General, the Director of the Oregon Department of Administrative
 15 Services, the Director of Transportation or a contracting agency that adopts rules under
 16 ORS 279A.065 may take any action before the operative date specified in subsection (1) of this
 17 section that is necessary to enable the Attorney General, the director or the contracting
 18 agency to exercise, on and after the operative date specified in subsection (1) of this section,
 19 all of the duties, functions and powers conferred on the Attorney General, the director or
 20 the contracting agency by the amendments to ORS 279C.335 by section 1 of this 2014 Act.

21 **SECTION 4. This 2014 Act being necessary for the immediate preservation of the public**
 22 **peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect**
 23 **on its passage.**

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