Please accept the following comments on proposed House Bill 3203 and amendments:

1. **The proposed bill will add costs to both the contracting agencies and to the Bureau of Labor and industry (BOLI) through additional administrative costs and enforcement.** The bill is proclaimed to be in the best interests of the taxpayer by providing oversite to contracting agencies to ensure they are installing public improvements at least cost. However the only provisions given for enforcement in the bill are provided to contractors and the contractor associations. Furthermore the bill <u>requires</u> the BOLI Commissioner to force a contracting agency into an agreement with a complaining contractor if more than one violation has occurred.(Section 3.3.b) This bill makes no provisions for the contractor to prove that they were in any way damaged, or that they were likely to win a competitive bid, or that they even had the ability to complete the work. Enforcement of an Oregon Statute through the use of the very organizations that will profit from the proposed bill is poor policy as is not in the best interests of either the taxpayer nor BOLI and the contracting agencies.

2. **The proposed bill will add costs and delays to projects by adding administrative tasks the agencies would not otherwise occur, and causing agencies to do detailed cost analysis before project budgets are approved.** The proposed bill requires contracting agencies to included detailed costs analysis of projects they may perform work on in the coming fiscal year, before the adoption of the agencies budget. It is a simple exercise to provide assurance that the contracting agency will follow the least cost provisions of ORS 279C, however to do a detailed cost analysis <u>before</u> the budget is approved for a project is both costly and unfeasible. Not only does it add costs, but it will cause project delays because it will force contracting agencies to budget all work over at least 2 fiscal years to comply with the rule. Cost analysis require a level of engineering design and survey, and may require the contracting of a consultant(s).

3. **The proposed bill is unclear if the extra analysis required for projects that exceed $125,000 apply when the contracting agency does a minor amount of work on a project or only if the contracting agency intends to self-perform all of the work.** It is not unusual for a contracting agency to upgrade services, fix catch basins, or replace manhole castings etc. in advance of a proposed project. These are regular daily activities for public works agencies to perform. Furthermore it is not uncommon for contracting agencies to do minor excavation or demolition for the purposes of locating utilities and preforming engineering design and survey in advance of a future project. The proposed bill gives no guidance regarding where the line is drawn between maintenance, system upgrades and design compared to when a project is actually being "constructed." The proposed bill gives the decision making authority in this instance to the contractor to file a complaint with BOLI. This requires the contracting agency to defend itself against these claims, regardless if the work performed was part of the public improvement, or was conducted as part of maintenance or design.

4. **The proposed bill attempts to "level the playing field" between contracting agencies and contractors by making contracting agencies account for costs that they do not actually occur.** Contracting agencies and contractors are not the same type of organization and costs that contractors incur as part of a for profit business are not necessarily transferable to the public sector. Contracting agencies should not have to account for costs that the taxpayer will not actually see. The bill proposes to require contracting agencies to account for "insurance" attributable to the project and "warranties" that a typical contractor would have to bear. The contracting agency does not have these costs and self-warrants and insures the work because the agency is responsible for perpetual upkeep on the improvement anyway. Any proposed analysis should only include costs that the taxpayer will actually see.

5. **The proposed bill adds layers of administrative work to both the contracting agency and BOLI.** An analysis should be performed comparing the projected added costs to both BOLI and the contracting agencies compared with the estimated cost savings to be realized by the implementation of this proposed bill. If a real cost savings to the taxpayer cannot be shown, then the bill should be rejected. Likely results of the added administrative costs of this proposed bill include:
   a. Small Contracting agencies will likely contract all work, regardless if it is more cost effective to self-perform, for the purposes of avoiding excessive administrative work they are not equipped to handle, and to avoid liability associated with punitive actions taken by disgruntled contractors.
   b. Less projects will be built because contracting agencies limited fiscal resources will be diverted to administrative rather than construction costs.
6. **The proposed bill in inconsistent in how it proposes to require additional cost analysis.** Section 1.6.a proposes that any project that exceeds 2" in depth of asphalt would be subject to the additional analysis rules. Why is this particular type of work broken out? All work regardless of the classification should be handled the same, subject to the $125,000 project cost threshold if the bill is truly intended to ensure least cost contracting.
7. **The $125,000 project threshold should be adjusted annually to account for inflation.** Construction estimating is adjusted annually based upon the Construction Cost Index to ensure accurate estimate. The $125,000 project threshold should be also be adjusted annually to account for inflation based upon this industry accepted index.

Thank you for your thoughtful consideration of these comments.

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