

# D R A F T

## SUMMARY

Raises contract price at which public improvement contract solicitations are exempt from competitive bidding requirement from \$5,000 to \$10,000.

Becomes operative on January 1, 2022.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to the contract price required for an exemption from competitive  
3 bidding requirements for public improvement contracts; amending ORS  
4 279C.335; and prescribing an effective date.

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

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

7 279C.335. (1) [*All public improvement contracts shall be based upon com-*  
8 *petitive bids except*] **A contracting agency may award a public improve-**  
9 **ment contract only in response to competitive bids, except for:**

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

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

15 (c) A public improvement contract with a value of less than [*\$5,000*]  
16 **\$10,000.**

17 (d) A public improvement contract with a contract price that does not  
18 exceed \$100,000 made under procedures for competitive quotes in ORS  
19 279C.412 and 279C.414.

20 (e) A contract to repair, maintain, improve or protect property the De-

1 partment of Veterans' Affairs obtains under ORS 407.135 and 407.145 (1).

2 (f) An energy savings performance contract that a contracting agency  
3 enters into in accordance with rules of procedure adopted under ORS  
4 279A.065.

5 (2) Subject to subsection (4)(b) and (c) of this section, the Director of the  
6 Oregon Department of Administrative Services, a local contract review board  
7 or, for contracts described in ORS 279A.050 (3)(b), the Director of Transpor-  
8 tation may exempt a public improvement contract or a class of public im-  
9 provement contracts from the competitive bidding requirement of subsection  
10 (1) of this section after the Director of the Oregon Department of Adminis-  
11 trative Services, the Director of Transportation or the local contract review  
12 board approves the following findings that the contracting agency submits  
13 or, if a state agency is not the contracting agency, that the state agency that  
14 is seeking the exemption submits:

15 (a) The exemption is unlikely to encourage favoritism in awarding public  
16 improvement contracts or substantially diminish competition for public im-  
17 provement contracts.

18 (b) Awarding a public improvement contract under the exemption will  
19 likely result in substantial cost savings and other substantial benefits to the  
20 contracting agency or the state agency that seeks the exemption or, if the  
21 contract is for a public improvement described in ORS 279A.050 (3)(b), to the  
22 contracting agency or the public. In approving a finding under this para-  
23 graph, the Director of the Oregon Department of Administrative Services, the  
24 Director of Transportation or the local contract review board shall consider  
25 the type, cost and amount of the contract and, to the extent applicable to the  
26 particular public improvement contract or class of public improvement con-  
27 tracts, the following:

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

29 (B) The construction budget and the projected operating costs for the  
30 completed public improvement;

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

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

3 (E) The cost and availability of specialized expertise that is necessary for  
4 the public improvement;

5 (F) Any likely increases in public safety;

6 (G) Whether granting the exemption may reduce risks to the contracting  
7 agency, the state agency or the public that are related to the public im-  
8 provement;

9 (H) Whether granting the exemption will affect the sources of funding for  
10 the public improvement;

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

14 (J) Whether granting the exemption will better enable the contracting  
15 agency to address the size and technical complexity of the public improve-  
16 ment;

17 (K) Whether the public improvement involves new construction or reno-  
18 vates or remodels an existing structure;

19 (L) Whether the public improvement will be occupied or unoccupied dur-  
20 ing construction;

21 (M) Whether the public improvement will require a single phase of con-  
22 struction work or multiple phases of construction work to address specific  
23 project conditions; and

24 (N) Whether the contracting agency or state agency has, or has retained  
25 under contract, and will use contracting agency or state agency personnel,  
26 consultants and legal counsel that have necessary expertise and substantial  
27 experience in alternative contracting methods to assist in developing the al-  
28 ternative contracting method that the contracting agency or state agency  
29 will use to award the public improvement contract and to help negotiate,  
30 administer and enforce the terms of the public improvement contract.

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

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

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

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

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

30 (b) Require and approve or disapprove written findings by the contracting  
31 agency or state agency that support awarding a particular public improve-

1 ment contract or a class of public improvement contracts, without the com-  
2 petitive bidding requirement of subsection (1) of this section. The findings  
3 must show that the exemption of a contract or class of contracts complies  
4 with the requirements of subsection (2) of this section.

5 (c) Require a contracting agency or state agency that procures con-  
6 struction manager/general contractor services to conduct the procurement in  
7 accordance with model rules the Attorney General adopts under ORS  
8 279A.065 (3).

9 (5)(a) A contracting agency or state agency shall hold a public hearing  
10 before approving the findings required by subsection (2) of this section and  
11 before the Director of the Oregon Department of Administrative Services, the  
12 Director of Transportation or the local contract review board grants an ex-  
13 emption from the competitive bidding requirement for a public improvement  
14 contract or a class of public improvement contracts.

15 (b) Notification of the public hearing must be published in at least one  
16 trade newspaper of general statewide circulation a minimum of 14 days be-  
17 fore the hearing.

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

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

27 (e) If a contracting agency or state agency must act promptly because of  
28 circumstances beyond the agency's control that do not constitute an emer-  
29 gency, notification of the public hearing may be published simultaneously  
30 with the agency's solicitation of contractors for the alternative public con-  
31 tracting method, as long as responses to the solicitation are due at least five

1 days after the hearing and approval of the findings.

2 (6) The purpose of an exemption is to exempt one or more public im-  
3 provement contracts from competitive bidding requirements. The representa-  
4 tions in and the accuracy of the findings, including any general description  
5 of the resulting public improvement contract, are the bases for approving the  
6 findings and granting the exemption. The findings may describe anticipated  
7 features of the resulting public improvement contract, but the final parame-  
8 ters of the contract are those characteristics or specifics announced in the  
9 solicitation document.

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

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

16 **SECTION 2. The amendments to ORS 279C.335 by section 1 of this**  
17 **2021 Act apply to public improvement contracts that a contracting**  
18 **agency advertises or otherwise solicits or, if the contracting agency**  
19 **does not advertise or otherwise solicit the public improvement con-**  
20 **tract, to a public improvement contract into which the contracting**  
21 **agency enters on or after the operative date specified in section 3 of**  
22 **this 2021 Act.**

23 **SECTION 3. (1) The amendments to ORS 279C.335 by section 1 of**  
24 **this 2021 Act become operative on January 1, 2022.**

25 **(2) The Attorney General, the Director of the Oregon Department**  
26 **of Administrative Services, the Director of Transportation and a con-**  
27 **tracting agency that adopts rules under ORS 279A.065 or 279A.070 may**  
28 **adopt rules and take any other action before the operative date speci-**  
29 **fied in subsection (1) of this section that is necessary to enable the**  
30 **Attorney General, the director or the contracting agency, on and after**  
31 **the operative date specified in subsection (1) of this section, to**

1 **undertake or exercise all of the duties, functions and powers conferred**  
2 **on the Attorney General, the director or the contracting agency by the**  
3 **amendments to ORS 279C.335 by section 1 of this 2021 Act.**

4 **SECTION 4. This 2021 Act takes effect on the 91st day after the date**  
5 **on which the 2021 regular session of the Eighty-first Legislative As-**  
6 **sembly adjourns sine die.**

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