

House Bill 3082

Sponsored by COMMITTEE ON BUSINESS AND LABOR (at the request of Oregon Public Purchasing Association)

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**.

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 bidding requirements for
3 public improvement contracts; creating new provisions; amending ORS 279C.335; and prescribing
4 an effective date.

5 **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 competitive bids except*] **A**
8 **contracting agency may award a public improvement contract only in response to compet-**
9 **itive bids, except for:**

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

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

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

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

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

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

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

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

30 (b) Awarding a public improvement contract under the exemption will likely result in substantial

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

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

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

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

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

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

15 (F) Any likely increases in public safety;

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

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

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

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

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

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

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

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

36 (c) As an alternative to the finding described in paragraph (b) of this subsection, if a contracting
 37 agency or state agency seeks an exemption that would allow the contracting agency or state agency
 38 to use an alternative contracting method that the contracting agency or state agency has not pre-
 39 viously used, the contracting agency or state agency may make a finding that identifies the project
 40 as a pilot project for which the contracting agency or state agency intends to determine whether
 41 using the alternative contracting method actually results in substantial cost savings to the con-
 42 tracting agency, to the state agency or, if the contract is for a public improvement described in ORS
 43 279A.050 (3)(b), to the contracting agency or the public. The contracting agency or state agency
 44 shall include an analysis and conclusion regarding actual cost savings, if any, in the evaluation re-
 45 quired under ORS 279C.355.

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

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

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

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

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

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

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

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

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

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

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

1 istics or specifics announced in the solicitation document.

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

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

8 **SECTION 2. The amendments to ORS 279C.335 by section 1 of this 2021 Act apply to**
 9 **public improvement contracts that a contracting agency advertises or otherwise solicits or,**
 10 **if the contracting agency does not advertise or otherwise solicit the public improvement**
 11 **contract, to a public improvement contract into which the contracting agency enters on or**
 12 **after the operative date specified in section 3 of this 2021 Act.**

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

15 **(2) The Attorney General, the Director of the Oregon Department of Administrative**
 16 **Services, the Director of Transportation and a contracting agency that adopts rules under**
 17 **ORS 279A.065 or 279A.070 may adopt rules and take any other action before the operative**
 18 **date specified in subsection (1) of this section that is necessary to enable the Attorney**
 19 **General, the director or the contracting agency, on and after the operative date specified in**
 20 **subsection (1) of this section, to undertake or exercise all of the duties, functions and powers**
 21 **conferred on the Attorney General, the director or the contracting agency by the amend-**
 22 **ments to ORS 279C.335 by section 1 of this 2021 Act.**

23 **SECTION 4. This 2021 Act takes effect on the 91st day after the date on which the 2021**
 24 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

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