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

Relating to the contract price required for an exemption from competitive bidding requirements for public improvement contracts; creating new provisions; amending ORS 279C.335; and prescribing an effective date.

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

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

279C.335. (1) [All public improvement contracts shall be based upon competitive bids except]

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

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

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

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

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

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

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

(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.

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

(A) How many persons are available to bid;

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

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

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

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

(F) Any likely increases in public safety;

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

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

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

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

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

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

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

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

(c) As an alternative to the finding described in paragraph (b) of this subsection, if a contracting
agency or state agency seeks an exemption that would allow the contracting agency or state agency
to use an alternative contracting method that the contracting agency or state agency has not pre-
viously used, the contracting agency or state agency may make a finding that identifies the project
as a pilot project for which the contracting agency or state agency intends to determine whether
using the alternative contracting method actually results in substantial cost savings to the con-
tracting agency, to the state agency or, if the contract is for a public improvement described in ORS
279A.050 (3)(b), to the contracting agency or the public. The contracting agency or state agency
shall include an analysis and conclusion regarding actual cost savings, if any, in the evaluation re-
quired under ORS 279C.355.
(3) In making findings to support an exemption for a class of public improvement contracts, the
contracting agency or state agency shall clearly identify the class using the class's defining char-
acteristics. The characteristics must include a combination of project descriptions or locations, time
periods, contract values, methods of procurement or other factors that distinguish the limited and
related class of public improvement contracts from the agency's overall construction program. The
agency may not identify a class solely by funding source, such as a particular bond fund, or by the
method of procurement, but shall identify the class using characteristics that reasonably relate to
the exemption criteria set forth in subsection (2) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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