

HB 3055-B24
(LC 2448)
6/25/21 (HE/ps)

Requested by JOINT COMMITTEE ON WAYS AND MEANS

**PROPOSED AMENDMENTS TO RESOLVE CONFLICTS TO
B-ENGROSSED HOUSE BILL 3055**

1 On page 27 of the printed B-engrossed bill, after line 33, insert:

2 **“SECTION 49a. If House Bill 3082 becomes law, section 49 of this**
3 **2021 Act (amending ORS 279C.335) is repealed and ORS 279C.335, as**
4 **amended by section 1, chapter 127, Oregon Laws 2021 (Enrolled House**
5 **Bill 3082), is amended to read:**

6 “279C.335. (1) A contracting agency may award a public improvement
7 contract only in response to competitive bids, except for:

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

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

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

14 “(d) A public improvement contract with a contract price that does not
15 exceed \$100,000 made under procedures for competitive quotes in ORS
16 279C.412 and 279C.414.

17 “(e) A contract to repair, maintain, improve or protect property the De-
18 partment of Veterans’ Affairs obtains under ORS 407.135 and 407.145 (1).

19 “(f) An energy savings performance contract that a contracting agency
20 enters into in accordance with rules of procedure adopted under ORS
21 279A.065.

1 “(g) A public improvement contract with an estimated contract
2 price of \$250,000 or less that a contracting agency awards to an
3 emerging small business certified under ORS 200.055 and funds with
4 moneys from the Emerging Small Business Account established under
5 ORS 200.180. A contracting agency that awards a public contract ex-
6 empted from competitive bidding under this paragraph shall solicit
7 competitive quotes as provided in ORS 279C.414 before making the
8 award.

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

19 “(a) The exemption is unlikely to encourage favoritism in awarding public
20 improvement contracts or substantially diminish competition for public im-
21 provement contracts.

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

1 tracts, the following:

2 “(A) How many persons are available to bid;

3 “(B) The construction budget and the projected operating costs for the
4 completed public improvement;

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

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

8 “(E) The cost and availability of specialized expertise that is necessary
9 for the public improvement;

10 “(F) Any likely increases in public safety;

11 “(G) Whether granting the exemption may reduce risks to the contracting
12 agency, the state agency or the public that are related to the public im-
13 provement;

14 “(H) Whether granting the exemption will affect the sources of funding
15 for the public improvement;

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

19 “(J) Whether granting the exemption will better enable the contracting
20 agency to address the size and technical complexity of the public improve-
21 ment;

22 “(K) Whether the public improvement involves new construction or reno-
23 vates or remodels an existing structure;

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

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

29 “(N) Whether the contracting agency or state agency has, or has retained
30 under contract, and will use contracting agency or state agency personnel,

1 consultants and legal counsel that have necessary expertise and substantial
2 experience in alternative contracting methods to assist in developing the al-
3 ternative contracting method that the contracting agency or state agency
4 will use to award the public improvement contract and to help negotiate,
5 administer and enforce the terms of the public improvement contract.

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

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

30 “(4) In granting exemptions under subsection (2) of this section, the Di-

1 rector of the Oregon Department of Administrative Services, the Director of
2 Transportation or the local contract review board shall:

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

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

12 “(c) Require a contracting agency or state agency that procures con-
13 struction manager/general contractor services to conduct the procurement in
14 accordance with model rules the Attorney General adopts under ORS
15 279A.065 (3).

16 “(5)(a) A contracting agency or state agency [*shall*] **may** hold a public
17 hearing before approving the findings required by subsection (2) of this sec-
18 tion and before the Director of the Oregon Department of Administrative
19 Services, the Director of Transportation or the local contract review board
20 grants an exemption from the competitive bidding requirement for a public
21 improvement contract or a class of public improvement contracts.

22 “(b) Notification of [*the public hearing*] **a proposed exemption under**
23 **subsection (2) of this section** must be published in at least one trade
24 newspaper of general statewide circulation a minimum of 14 days before the
25 [*hearing*] **date on which the contracting agency intends to take action**
26 **to approve or disapprove the exemption.**

27 “(c) The notice must state that **in response to a written request**, the
28 **contracting agency or state agency will hold a** public hearing [*is*] for the
29 purpose of taking comments on the draft findings for an exemption from the
30 competitive bidding requirement. [*At the time of the notice, copies of the draft*

1 *findings must be made available to the public. At the option of the contracting*
2 *agency or state agency, the notice may describe the process by which the*
3 *findings are finally adopted and may indicate the opportunity for further*
4 *public comment.]*

5 “(d) [At the] **If the contracting agency or state agency conducts a**
6 public hearing, the contracting agency or state agency shall offer an oppor-
7 tunity for any interested party to appear and comment.

8 “(e) If a contracting agency or state agency must act promptly because
9 of circumstances beyond the agency’s control that do not constitute an
10 emergency, notification of the [*public hearing*] **proposed exemption** may be
11 published simultaneously with the agency’s solicitation of contractors for the
12 alternative public contracting method, as long as responses to the solicita-
13 tion are due at least five days after the [*hearing and approval of the*
14 *findings*] **agency intends to take action to approve or disapprove the**
15 **proposed exemption.**

16 “(6) The purpose of an exemption is to exempt one or more public im-
17 provement contracts from competitive bidding requirements. The representa-
18 tions in and the accuracy of the findings, including any general description
19 of the resulting public improvement contract, are the bases for approving the
20 findings and granting the exemption. The findings may describe anticipated
21 features of the resulting public improvement contract, but the final parame-
22 ters of the contract are those characteristics or specifics announced in the
23 solicitation document.

24 “(7) A public improvement contract awarded under the competitive bid-
25 ding requirement of subsection (1) of this section may be amended only in
26 accordance with rules adopted under ORS 279A.065.

27 “(8) A public improvement contract that is excepted from the competitive
28 bidding requirement under subsection (1)(a), (c), (d), (e), [*or*] (f) **or (g)** of this
29 section is not subject to the exemption requirements of subsection (2) of this
30 section.”.

1 On page 34, after line 28, insert:

2 **“SECTION 85a. Notwithstanding sections 34 (amending ORS 809.020)**
3 **and 35 (amending ORS 809.050), chapter __, Oregon Laws 2021 (En-**
4 **rolled House Bill 3050), if House Bill 3050 becomes law, ORS 809.020 and**
5 **809.050 are repealed by section 85 of this 2021 Act.”.**

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