P.O. Box 301251 • Portland, OR 97294-9251 Phone (503) 328-9725 • Fax (503) 489-5812
Email nucaorswwa@aol.com
Web www.nwuca.com

June 5, 2017

House Democratic Leader Jennifer Williamson, Chair
House Committee on Rules
900 Court Street NE
Salem, OR 97301

Dear Chair Williamson, Vice Chairs McLane and Rayfield, and Members of the Committee:

The Northwest Utility Contractors Association ("NWUCA") represents most of the largest Oregon based heavy civil public works contractors, who are contractor-members. NWUCA's associate members are vendors to its contractor-members, supplying materials such as pipe, steel, rock, asphalt, and concrete, equipment such as excavators, paving machines, and trench shoring, and services such as insurance and accounting. Together, NWUCA's contractor and associate members employ thousands of Oregon taxpayers, who earn at least a living wage. Many earn better than a living wage, since they are paid over $50.00 an hour for straight time work on public works projects throughout the state.

NWUCA strongly supports Accountability in Public Contracting for Local Governments. So do other organizations, such as AGC, ABC, OCAPA, and APAO. Unions support the law too, as does ODOT and BOLI. Here is why:

- ***ORS 279C.305 does not stop any public agency from self-performing even public improvements. It just seeks to ensure that public agencies show their rate and taxpayers that when they self-perform, they do so at least cost.*** Current law, ORS 279C.305, has long required public agencies to perform public improvements at least cost to the taxpayer, whether they bid the work out to private firms or perform the work with their own forces ("self-perform"). ORS 279C.305 does not apply to emergency work or preventative maintenance work, as provided in ORS 279A.010(1)(cc) (defining "public improvement" not to include emergency or preventative maintenance to a public improvement).

- ***ORS 279C.305 only requires public agencies to track their costs and compare them, over a certain threshold, with private firms.*** When a public agency self-performs a public improvement, it has to keep track of its unit costs. ORS 279C.305(3)(b). If an agency plans to self-perform a project estimated to cost more than $125,000 as indicated on a form filed with BOLI under ORS 279C.305(2), public agencies have to use those previously tracked unit costs to show that the plan to self-perform will allow it to save the public money. ORS 279C.305(3)(a). ***If the plan saves the public money, the agency can self-perform. If the plan costs the public money, the agency cannot self-perform, and should not want to.***
- ***The primary amendments to ORS 279C.305 change none of this.*** Instead, they merely ensure that agencies comply with the current law. The real ***change*** to ORS 279C.305 is BOLI can receive and investigate complaints that a public agency is not complying with the provisions of the current law.
- ***Since the primary change to the current law is BOLI enforcement, any agency that complies with current law has nothing to fear from the amendments to it***. Simply put, agencies that keep track of their costs and self-perform only projects that save the public's money will not have to change a single thing they do today. Even agencies that do not comply currently have little to fear, since the amendments require: (1) a complaint; (2) an investigation by BOLI; (3) a BOLI warning letter for first violations; (4) a BOLI mediated settlement agreement for second violations within five years of the first; and (5) only after those items fail, any significant enforcement action by BOLI.
- ***Everyone, even agencies, are better off with the amendments***. Taxpayers and ratepayers will have a transparent process allowing them to be sure that public agencies are providing the ***most public improvement bang for their hard earned buck***. Public agencies will have the accounting of costs that allows them to plan preventative maintenance and public improvement at least cost to taxpayers and ratepayers. If more public improvement work is contracted out, the State will be better off because contractors pay taxes. If more public improvement work is contracted out, employees will be better off since they will earn prevailing wage, which is frequently ***twice*** what public agencies pay their employees for the same work.

Those opposing the bill make two primary objections, neither of which have any merit:

- ***Agencies claim the $125,000 cost comparison threshold should go way up***. Agencies claim that this threshold stops them from performing some projects at least cost, because the cost of performing a cost comparison for a $125,000 project is prohibitively expensive. ***First***, this argument simply misses the factual mark: Current law requires agencies to know their unit costs. If the agencies know their unit costs, determining how much a particular project will cost should be very inexpensive, since the agency just counts the units that make up the project, which they have to know to perform the work at all, and multiplies those units by their known unit costs. It's a simple calculation that any 6th grader should be able to perform. So agencies making this argument are really

just saying that they don't know their costs, and thus have no idea whether or not they are saving the public money or not. ***Second***, this argument simply misses the ***good policy*** mark. At a 9% income tax rate and a $55,000 median income, $125,000 represents ***a year's worth of income tax dollars for 25 Oregonians***. Agencies should be ashamed to say they are not willing to know their unit costs and perform a simple multiplication problem before they spend a year's worth of 25 Oregonians' income tax dollars.

- ***Agencies object to closing a perceived loophole regarding paving streets as a "public improvement."*** Current law defines paving projects two inches or more deep and costing $125,000 or more to be a "public improvement." *See* ORS 279C.305(5). Agencies that self-perform pavement projects interpret this as a meaning that any paving project less than two inches deep is ***not*** a public improvement. This is contrary to law, which defines a public improvement at ORS 279A.010(1)(cc). A paving project that is necessary to resolve an emergency or to preserve a public improvement is not a public improvement. All others are. When an agency grinds away the top wearing course of a road and replaces it because it is worn out, it is performing a public improvement. Compare paving a road to replacing an asphalt shingle (standard) roof: If you patch a few shingles to stop a minor leak that has developed over time, you are maintaining your roof. If you tear off all the shingles and the felt below and replace them both that is because the top, non-structural layer of your roof has served its useful life, and you are improving your house. Streets are no different – grinding and replacing more than a little of the top layer of asphalt is a public improvement.

Regards,

Melinda Dailey
Executive Director
Northwest Utility Contractors Association