

SENATE AMENDMENTS TO RESOLVE CONFLICTS TO B-ENGROSSED HOUSE BILL 3055

By COMMITTEE ON RULES

June 26

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 2021 Act (amending ORS**
3 **279C.335) is repealed and ORS 279C.335, as amended by section 1, chapter 127, Oregon Laws**
4 **2021 (Enrolled House Bill 3082), is amended to read:**

5 “279C.335. (1) A contracting agency may award a public improvement contract only in response
6 to competitive bids, except for:

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

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

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

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

13 “(e) A contract to repair, maintain, improve or protect property the Department of Veterans’
14 Affairs obtains under ORS 407.135 and 407.145 (1).

15 “(f) An energy savings performance contract that a contracting agency enters into in accord-
16 ance with rules of procedure adopted under ORS 279A.065.

17 **“(g) A public improvement contract with an estimated contract price of \$250,000 or less**
18 **that a contracting agency awards to an emerging small business certified under ORS 200.055**
19 **and funds with moneys from the Emerging Small Business Account established under ORS**
20 **200.180. A contracting agency that awards a public contract exempted from competitive bid-**
21 **ding under this paragraph shall solicit competitive quotes as provided in ORS 279C.414 before**
22 **making the award.**

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

31 “(a) The exemption is unlikely to encourage favoritism in awarding public improvement con-
32 tracts or substantially diminish competition for public improvement contracts.

33 “(b) Awarding a public improvement contract under the exemption will likely result in substan-
34 tial cost savings and other substantial benefits to the contracting agency or the state agency that
35 seeks the exemption or, if the contract is for a public improvement described in ORS 279A.050 (3)(b),

1 to the contracting agency or the public. In approving a finding under this paragraph, the Director
2 of the Oregon Department of Administrative Services, the Director of Transportation or the local
3 contract review board shall consider the type, cost and amount of the contract and, to the extent
4 applicable to the particular public improvement contract or class of public improvement contracts,
5 the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 “(3) In making findings to support an exemption for a class of public improvement contracts, the
45 contracting agency or state agency shall clearly identify the class using the class’s defining char-

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

7 “(4) In granting exemptions under subsection (2) of this section, the Director of the Oregon
8 Department of Administrative Services, the Director of Transportation or the local contract review
9 board shall:

10 “(a) If appropriate, direct the use of alternative contracting methods that take account of mar-
11 ket realities and modern practices and are consistent with the public policy of encouraging compe-
12 tition.

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

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

21 “(5)(a) A contracting agency or state agency [*shall*] **may** hold a public hearing before approving
22 the findings required by subsection (2) of this section and before the Director of the Oregon De-
23 partment of Administrative Services, the Director of Transportation or the local contract review
24 board grants an exemption from the competitive bidding requirement for a public improvement con-
25 tract or a class of public improvement contracts.

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

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

36 “(d) [*At the*] **If the contracting agency or state agency conducts a** public hearing, the con-
37 tracting agency or state agency shall offer an opportunity for any interested party to appear and
38 comment.

39 “(e) If a contracting agency or state agency must act promptly because of circumstances beyond
40 the agency’s control that do not constitute an emergency, notification of the [*public hearing*] **pro-**
41 **posed exemption** may be published simultaneously with the agency’s solicitation of contractors for
42 the alternative public contracting method, as long as responses to the solicitation are due at least
43 five days after the [*hearing and approval of the findings*] **agency intends to take action to approve**
44 **or disapprove the proposed exemption.**

45 “(6) The purpose of an exemption is to exempt one or more public improvement contracts from

1 competitive bidding requirements. The representations in and the accuracy of the findings, including
2 any general description of the resulting public improvement contract, are the bases for approving
3 the findings and granting the exemption. The findings may describe anticipated features of the re-
4 sulting public improvement contract, but the final parameters of the contract are those character-
5 istics or specifics announced in the solicitation document.

6 “(7) A public improvement contract awarded under the competitive bidding requirement of sub-
7 section (1) of this section may be amended only in accordance with rules adopted under ORS
8 279A.065.

9 “(8) A public improvement contract that is excepted from the competitive bidding requirement
10 under subsection (1)(a), (c), (d), (e), [or] (f) **or (g)** of this section is not subject to the exemption re-
11 quirements of subsection (2) of this section.”.

12 On page 34, after line 28, insert:

13 “**SECTION 85a. Notwithstanding sections 34 (amending ORS 809.020) and 35 (amending**
14 **ORS 809.050), chapter __, Oregon Laws 2021 (Enrolled House Bill 3050), if House Bill 3050**
15 **becomes law, ORS 809.020 and 809.050 are repealed by section 85 of this 2021 Act.**”.