

Sweeping Changes to Oregon's Public Contracting Laws

The "Oregon Innovation in Infrastructure Task Force" (formed by the passage of HB 2345 during the 2013 session) is considering sweeping legislation for introduction during the upcoming February 2014 session. At its **third** task force meeting on November 14th, the task force discussed a proposal that would create a *new semi-autonomous agency of state government, initially funded by the state, with new exclusive contracting authority to issue and manage "performance-based, life-cycle procurements" on all public works projects in Oregon utilizing over \$20 million in state funds and over \$50 million in total capital costs*. This proposal raises a number of serious public policy issues including, but not limited to, the following issues:

- A complete circumvention of ORS Chapter 279C, the section of Oregon's Public Contracting Code that governs public works projects. The Code has been developed and refined over many decades, with the direct involvement of a wide variety of stakeholder groups who have **not** been a party to the task force proceedings. Any major changes require deliberate and careful consideration, which cannot be completed in time to inform legislation for the upcoming short session.
- The lengthy, complex and expensive procurement process associated with this model potentially undermines the principle of public contracting in Oregon, which requires competition to ensure the best value for the best price. This is accomplished in part by ensuring the largest number of Oregon construction companies the ability to compete on a level field.
- This new procurement method, like all procurement methods, should be thoroughly reviewed and analyzed before institutionalizing a model untested in Oregon. While Canada has been cited as a leader in utilizing this new method, studies have indicated numerous projects across Canada have run into unforeseen troubles. They include cost overruns, public bailouts, and protracted conflict.
- This procurement model relies on the public sector utilizing private sector financing. The financing often includes a financial premium to pay for the transfer of risk to the private sector partner and the additional cost associated with the use of private capital versus the lower interest rates associated with public borrowing.

The Associated General Contractors (AGC) has been a strategic partner and stakeholder in the development of Oregon's public contracting laws, procurement methods and public infrastructure funding for decades. While we appreciate any and all concepts on how to address the overwhelming infrastructure needs facing Oregon, **AGC cannot support a**

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bill in 2014 that has not undergone the vigorous due diligence that has produced fair, balanced and openly competitive public works contracting and procurement laws in the best interest of the public and the industry.

AGC understands that public-private partnerships/innovative procurements represent one method to meet Oregon's future infrastructure funding needs. In fact, current law (ORS 279C.335(2)(c)) specifically allows for pilot projects of this type and other alternative procurements. AGC is urging policymakers to consider testing a **pilot project** utilizing this procurement method, rather than the wholesale change of current law. If such a pilot is undertaken it will be critical that all stakeholders be involved in the selection and evaluation of such a pilot.

Please contact John Rakowitz with any questions regarding AGC's involvement with the Task Force and/or the potential legislation associated with the Task Force. He can be reached at 503-317-1781 or johnr@agc-oregon.org.

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