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RULES:
731-070-0005, 731-070-0010, 731-070-0020, 731-070-0040, 731-070-0042, 731-070-0044, 731-070-0046, 731-070-0048, 731-070-0050, 731-070-0055, 731-070-0060, 731-070-0065, 731-070-0080, 731-070-0110, 731-070-0120, 731-070-0130, 731-070-0140, 731-070-0145, 731-070-0160, 731-070-0170, 731-070-0180, 731-070-0200, 731-070-0210, 731-070-0220, 731-070-0230, 731-070-0280, 731-070-0290, 731-070-0295, 731-070-0300, 731-070-0310, 731-070-0320, 731-070-0330, 731-070-0350

AMEND: 731-070-0005

RULE TITLE: Purpose and Intent of the Oregon Innovative Partnerships Program

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: Applied Plain Language principles for clarity and readability.

RULE TEXT:
(1) The primary purpose of the Oregon Innovative Partnerships Program is to maximize innovation in project design, financing, or delivery by encouraging Public-Private Partnerships.
(2) Public-Private Partnerships succeed when all parties benefit and when the outcome of the partnerships exceeds what any of the parties could accomplish on their own.
(3) When properly designed and implemented, Public-Private Partnerships can supplement limited state transportation revenues with a wide range of other sources.
(4) ODOT will operate the Oregon Innovative Partnerships Program in an environment that encourages innovation and cooperative partnerships between and among public and private sectors.
(5) While recognizing that other jurisdictions have undertaken Public-Private Partnerships, ODOT intends to be a leader in its approach to fostering cooperation amongst the parties for the public good.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

AMEND: 731-070-0010

RULE TITLE: Definitions for the Oregon Innovative Partnerships Program

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: Reordered the list alphabetically; added definitions for new term "Project Team; " deleted terms "Detailed Proposal" and "Competing Proposal;" changed reference to definition of "Tollway" to statutory definition; moved sentence describing what a "Public-Private Partnership is not to its definition.

RULE TEXT:

As used in OAR 731-070-0005 to 731-070-0340:

(1) “Agency” means any agency of the State of Oregon or any political subdivision thereof authorized by law to enter into public contracts, as defined in ORS 279A.010(1), and any public body created by intergovernmental agreement.

(2) “Commission” or “OTC” means the Oregon Transportation Commission created by ORS 184.612 and any person or persons authorized or directed by the Commission to take any action or make any decision authorized by these rules on the Commission’s behalf.

(3) “Department” or “ODOT” means the Oregon Department of Transportation created by ORS 184.615.

(4) “Director” means the Director of Transportation appointed under ORS 184.620 and any person or persons authorized or directed by the Director to take any action or make any decision authorized by these rules on the Director’s behalf.

(5) “Key Persons” means key officials of the proposing entity who play a critical role in running the enterprise and whose loss or unavailability could jeopardize the success of the venture. Any change or addition of Key Persons is subject to the provisions of OAR 731-0080.

(6) “Local government” has the meaning given that term in ORS 174.116.

(7) “Major Partner” means, with respect to a limited liability company or joint venture, each firm, business organization or person that has an ownership interest therein in excess of 5%.

(8) “Major Subcontractor” is any subcontractor designated in the proposal to perform 10% or more of the scope of work for a proposed Project.

(9) “Private Contribution” means resources supplied by a private entity to accomplish all or any part of the work on a transportation system project, including funds, financing, income, revenue, cost sharing, technology, staff, materials, equipment, expertise, data, or engineering, construction, or maintenance services, or other items of value.

(10) “Program” or “OIPP” means the Oregon Innovative Partnerships Program established under ORS 367.800 to 367.826.

(11) "Project Team" means the group of Key Persons and staff of the proposer or consortium of proposers who will lead the project.

(12) “Public-Private Partnerships” or “PPP” means a nontraditional arrangement between the Department and one or more private or public entities that provides for the implementation of a Transportation Project. “Public-Private Partnership” or “P3” does not have the meaning, attributes or incidents of a “partnership” as used in ORS chapters 68 and 70 or in common law. Attributes may include:

(a) Acceptance of a private contribution to a transportation system project or service in exchange for a public benefit concerning that project or service;

(b) Sharing of resources and the means of providing transportation system projects or services;

(c) Cooperation in researching, developing, and implementing transportation system projects or services;

(d) Use of innovative funding methods; or

(e) Expedited project delivery.

(13) “Sensitive business, commercial or financial information that is not customarily provided to business competitors” includes records or information pertaining to activities of the proposer that are commercial in nature, are intended to be treated with a high degree of discretion and which would not be provided to the proposer’s competitors.

(14) “Tollway” has the meaning given that term in ORS 383.003.

(15) “Transportation Project” or “Project” has the meaning given that term in ORS 367.802.

(16) “Unsolicited Proposal” means any proposal from a pre-qualified proposer under OAR 731-070-0340 for a Project submitted under OAR 731-070-0050.

(17) Terms not otherwise defined herein shall have the meaning given them in ORS 367.800 to 367.826.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

AMEND: 731-070-0020

RULE TITLE: General Selection Policies

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: Updated citations; applied Plain Language principles for clarity and readability.

RULE TEXT:

(1) The Department may exercise broad discretion, subject to the ultimate approval of the Commission, in evaluating proposals in accordance with the criteria stated in OAR 731-070-0010 to 731-070-0360. To conduct a meaningful evaluation of a proposal, ODOT may refine its examination of the proposal so that the features offered by a particular proposal are examined in light of the general criteria identified in section (3) of this rule.

(2) In light of the exemption from the public contracting requirements of ORS Chapters 279A, 279B and 279C contained in ORS 367.806(6), the Department may consider factors including public need, technical and financial feasibility, transportation efficiency, cost effectiveness, and acceleration of project delivery when evaluating proposals for Transportation Projects. Instead of a lowest responsible bidder determination, ODOT's proposal selection is determined on a best-value basis, taking into consideration:

(a) Economy and potential savings to the public;

(b) Policies described in this rule; and

(c) Applicable criteria identified in OAR 731070-0110 and 731-070-0140.

(3) In evaluating Unsolicited Proposals and in selecting projects for which to solicit proposals under OAR 731-070-0042, the Department may give precedence to proposals and projects that will satisfy one or more of the following policies:

(a) Projects that address an urgent or state-identified transportation need in a manner that materially advances the project delivery time-frame in light of current or anticipated levels of funding and existing transportation plans.

(b) Projects that use primarily rights-of-way and publicly-owned real property that already are owned or under the long-term control of ODOT or other public entities that have authority to put the real property to the use proposed.

(c) Projects for which planning, reliable feasibility determinations, comparable, successful prior projects or case studies demonstrate a strong potential to attract or generate a substantial contribution of non-state or non-tax resources to pay project cost items like capital, operation and maintenance, and provide a reasonable return on that investment in terms of:

(A) A private partner's investment, if any; and

(B) Transportation benefits to the public.

(d) Projects for which planning, reliable feasibility determinations, comparable, successful prior projects or case studies demonstrate a low risk of failure (in terms of the completion of infrastructure improvements), practicable means of mitigating the risk of failure, or a high reward-to-risk ratio (in terms both of the benefits to the public and the private partner's investment incentive).

(e) Proposals that identify specific, reliable, confirmable and economically-viable, non-state or non-traditional sources of funding that will be available to supplement or replace state funding or other state resources for the project.

(f) Projects for which there is a demonstration of clear and substantial public support.

(g) Proposals that identify innovative construction approaches that will result in shorter build time, reduced construction cost or improved function in comparison to conventional approaches.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

AMEND: 731-070-0040

RULE TITLE: Protection of ODOT from Proposer “Monopolization” of Site Claims

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: Eliminated words not part of plain language.

RULE TEXT:

(1) By submitting a proposal, a proposer waives any claim, right in or expectation that the proposer may assert against the State of Oregon, the Commission, ODOT, or their members, officers and employees, that the proposer may occupy, use, profit from, or otherwise exercise any prerogative with respect to any route, corridor, right of way or public property identified in the proposal as being involved in or related to the proposed Transportation Project. A proposer may obtain no right to claim exclusivity or the right of use with respect to any such route, corridor, right of way or public property by virtue of having submitted a proposal that proposes to use or otherwise involve or affect it.

(2) By submitting a proposal, a proposer thereby waives as against the State of Oregon, the Commission, ODOT, and their members, officers and employees, any right, claim, copyright, proprietary interest or other right in any proposed location, site, route, corridor, right of way or alignment or transportation mode or configuration identified in the proposal as being involved in or related to the proposed Transportation Project. This waiver does not apply, however, to a proposer’s rights in any documents, designs and other information and records that constitute “sensitive business, commercial or financial information that is not customarily provided to business competitors” as specified in OAR 731-070-0280 and 731-070-0290.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

AMEND: 731-070-0042

RULE TITLE: Solicitation of Proposals for OIPP Projects

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: Clarified language to clearly state when the Agency may solicit program proposals or enter negotiations for a program project.

RULE TEXT:
ODOT may solicit proposals or enter into negotiations with one or more legal entities, as described in OAR 731-070-0044, to develop a public-private partnership approach to planning, acquiring, financing, developing, designing, managing, constructing, reconstructing, replacing, improving, maintaining, repairing, leasing or operating a Transportation Project.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

AMEND: 731-070-0044

RULE TITLE: Negotiations

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: Applied Plain Language principles for clarity and readability. Clarified authority of Agency to enter negotiations.

RULE TEXT:

(1) ODOT Authority to Elect Direct Negotiations. ODOT may elect to enter into direct negotiations for a Public-Private Partnership with a private entity or unit of Local Government. ODOT may request a proposal from the entity or unit of Local Government, and may specify requirements for proposal content, and the criteria and procedures under which ODOT will evaluate the proposal for further negotiations towards a final agreement.

(2) ODOT Authority to Elect Competitive Negotiations. ODOT may elect to enter competitive negotiations with multiple proposers to select from among proposals solicited under section (1) of this rule or OAR 731-070-0020. Negotiations under this section are part of the proposal evaluation process and do not constitute the negotiation of a Transportation Project agreement.

(a) The object of competitive negotiations is to maximize ODOT's ability to obtain best value and to permit proposers to develop revised proposals.

(b) ODOT may conduct competitive negotiations serially or concurrently with more than one proposer. Negotiations may include, but are not limited to:

(A) Informing proposers of deficiencies in their proposals;

(B) Notifying proposers of parts of their proposals for which ODOT would like additional information; and

(C) Allowing proposers to develop revised proposals to permit ODOT to obtain the best proposal based on the requirements and evaluation criteria set forth in the notice or request. The scope, manner and extent of negotiations with any proposer are subject to ODOT's discretion. To prevent the disclosure of proposal information to a proposer's competitors, ODOT may conduct negotiations with proposers before information about the subject proposals is shared with other government entities under ORS 367.804(5)(a).

(c) In conducting negotiations, ODOT:

(A) Shall treat all proposers fairly and shall not engage in conduct that favors any proposer over another;

(B) Shall not reveal to another proposer a proposer's unique technology, unique or innovative approaches to Transportation Project design, management or financing, or any information that would compromise the proposer's intellectual property, trade secrets or sensitive business information; or

(C) Shall not reveal the pricing information of one proposer to another proposer except to indicate the proposal price is too high or too low relative to other proposals.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

AMEND: 731-070-0046

RULE TITLE: Solicitation Documents

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: Applied Plain Language principles for clarity and readability.

RULE TEXT:

(1) In a solicitation for proposals, ODOT will specify requirements for proposal content, and for criteria and procedures used to evaluate selected proposals. These requirements, criteria and procedures will comply with the requirements of ORS 367.800 to 367.826.

(2) Nothing in this rule is intended to limit the scope of ODOT's discretion or authority to develop proposal and evaluation criteria and processes for any project as long as those criteria and processes comply with the requirements of ORS 367.800 to 367.826.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

AMEND: 731-070-0048

RULE TITLE: Public Notice of Solicitation

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: Applied Plain Language principles for clarity and readability. Eliminated fee for distribution of solicitation documents. Updated the references to DAS procurement platform and minority, woman-owned, and small businesses.

RULE TEXT:

(1) ODOT will furnish notice to a number of entities deemed by ODOT to be sufficient for the purpose of fostering and promoting competition. The notice will indicate where, when, how, and for how long the solicitation document may be obtained and generally describe the work. The notice may contain any other appropriate information. ODOT may furnish notice using any method determined to foster and promote competition, including:

(a) Mailing the notice to any party that has expressed an interest in ODOT's OIPP procurements;

(b) Placing the notice on the Oregon the Department of Administrative Services' electronic procurement system; or

(c) Placing notice on ODOT's external website.

(2) ODOT will provide timely notice of all solicitations to the Advocate for Minority, Women and Emerging Small Business as required by law.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

AMEND: 731-070-0050

RULE TITLE: Submission of Unsolicited Proposals for OIPP Projects

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: Created a new step for Unsolicited Proposals--an application for prequalification. Further explained process for submission. Updated the submission requirements from paper copies to electronic files. Clarified when Agency will consider proposals that include local governments or other states.

RULE TEXT:

(1) A private entity wishing to submit an Unsolicited Proposal for a Transportation Project to ODOT for consideration under the OIPP must first submit an Application for Prequalification as described in OAR 731-070-0340. A unit of Local Government may submit an Unsolicited Proposal without prior prequalification.

(2) An application evaluation fee in the amount prescribed by OAR 731-070-0055 must accompany any Application for Prequalification.

(3) A pre-qualified private entity that submits an Unsolicited Proposal must include a proposal evaluation fee in the amount prescribed by OAR 731-070-0055. The proposal evaluation fee is waived for a state Agency or unit of Local Government.

(4) ODOT will publish the requirements for contents and format of an Unsolicited Proposal on its external website. The proposer must submit the original Unsolicited Proposal bearing the signature of the authorized representative, two hard copies and an electronic copy of the Unsolicited Proposal in a format not to exceed the file size indicated in the application form. The original signed proposal, required copies and evaluation fee must be delivered to the Director according to the instructions provided in the application form.

(5) The proposer shall include a list of any proprietary information included in the proposal that the proposer considers protected trade secrets or other information exempted from disclosure under ORS 367.804, OAR 731-070-0280, and 731-070-0290. ODOT may consider an Unsolicited Proposal for a project involving an Oregon unit of Local Government or an agency of another state only if the proposal clearly demonstrates ongoing engagement regarding the project with the state or Local Government unit. The Unsolicited Proposal must provide the name and contact information of an official representative knowledgeable of the proposed project.

(6) ODOT may consider an Unsolicited Proposal only if the proposal is properly formatted as described in, and includes all information required by, this rule.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

AMEND: 731-070-0055

RULE TITLE: Fees to Accompany Applications for Prequalification and Unsolicited Proposals

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: Created an additional fee category for smaller project proposals. Removed reference to competing proposals because that step has been eliminated. See OAR 731-070-0130.

RULE TEXT:

(1) The non-refundable fee for evaluation of an application for prequalification, as required by OAR 731-070-0050 is $2,500.

(2) The non-refundable evaluation fee for an Unsolicited Proposal required by OAR 731-070-0050 is:

(a) $5,000 for a project valued under $500,000;

(b) $15,000 for a project valued from $500,000 to $100 million; and

(c) $50,000 for a project valued above $100 million.

(3) If the cost of evaluating an Unsolicited Proposal exceeds the evaluation fee, the Director may assess an additional fee that reflect the reasonable expected costs to ODOT that may be incurred in excess of the amount deposited pursuant to section (2) of this rule for evaluation of the Unsolicited Proposal.

(4) The Director may waive the fees specified in sections (1) and (2) of this rule if the interests of the state or the specific merits of the project would warrant such a waiver. In considering whether to grant a waiver the Director will consider the magnitude of costs versus benefits of such a waiver.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 367.822, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

REPEAL: 731-070-0060

RULE TITLE: Contents and Format of Detailed or Competing Proposals

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: This rule was repealed because the solicitation process no longer requires the submission of "detailed" or "competing" proposals.

RULE TEXT:

(1) A Detailed unsolicited or Competing Proposal shall include the following information, except as expressly waived by the Department, separated by tabs as herein described:

(a) TAB 1: Qualifications and Experience.

(A) Identify the legal structure of the private entity or consortium of private entities or of private and public entities (the "Team") submitting the proposal. Identify the organizational structure of the Team for the Project, the Team's management approach and how each Major Partner and Major Subcontractor identified as being a part of the Team as of the date of submission of the proposal fits into the overall Team.

(B) Describe the experience of each private entity involved in the proposed Project. Describe the length of time in business, business experience, public sector transportation experience, PPP experience, development experience, design-build experience and other similarly sized engagements of each Major Partner and Major Subcontractor. The lead entity must be identified.

(C) Provide the names, addresses and telephone numbers of persons within the Team who may be contacted for further information.

(D) Include the address, telephone number, and the name of a specific contact person at a public entity for which the private entity or the Team or the primary members of the Team have completed a development project, public-private partnership project or design-build project.

(E) Include the resumes for those managerial persons within the Team that will likely be associated in a significant way with the Project development and implementation.

(F) Provide financial information regarding the private entity or Team and each Major Partner that includes, if available, the most recent independently audited financial statement of the private entity or Team and of each Major Partner, and which demonstrates their ability to perform the work and Project as set forth in the Detailed Proposal, including ability to obtain appropriate payment and performance bonds.

(G) Submit executed conflict of interest disclosure forms, prescribed by ODOT, for the Team, each Major Partner and any Major Subcontractor.

(b) TAB 2: Project Characteristics.

(A) Provide a detailed description of the Transportation Project or Projects, including all proposed interconnections with other existing transportation facilities or known publicly identified projects. Describe the Project in sufficient detail so the type and intent of the Project, the general location of the Project, and the communities that may be affected by the Project are clearly identified. Describe the assumptions used in developing the Project.

(B) Identify any significant local, state or federal services or practical assistance that the proposer contemplates requesting for the Project. In particular, identify and describe any significant services that will need to be performed by the Department such as right-of-way acquisition or operation and maintenance of the completed Project.

(C) Include a preliminary list of all significant federal, state, regional and local permits and approvals required for the Project. Identify which, if any, permits or approvals are planned to be obtained by ODOT.

(D) List the critical factors for the Project's success.

(E) Identify the proposed preliminary schedule for implementation of the Project.

(F) Describe the assumptions related to ownership, law enforcement and operation of the Project and any facility that is part of the Project.

(G) Describe the payment and performance bonds and guarantees that the Team will provide for the Project.

(H) Identify any public improvements that will be part of the proposed Transportation Project that will constitute

“public works” under ORS 279C.800(5), the workers on which must be paid in accordance with Oregon’s Prevailing Rate of Wage Law, ORS 279C.800 to 279C.870, and any public improvements the workers on which must be paid in accordance with the federal Davis-Bacon Act, 40 USC sections 3141 to 3148.

(c) TAB 3: Project Financing.

(A) Provide a projected budget for the Project based on proposer’s prior experience on other projects or other cost projection factors and information.

(B) Include a list and discussion of assumptions (e.g., user fees, toll rates and usage of the facility) underlying all major elements of the plan for the Project.

(C) Identify the proposed risk factors relating to the proposed Project financing and methods for dealing with these factors.

(D) Identify any significant local, state or federal resources that the proposer contemplates requesting for the Project. Describe the total commitment (financial, services, property, etc.), if any, expected from governmental sources; the timing of any anticipated commitment; and its impact on project delivery.

(E) Identify any aspect of the financial model for the Transportation Project that implicates or potentially implicates restrictions on the use of highway-related revenues under Article IX, section 3a of the Oregon Constitution, and explain how the financial model avoids conflicting with those restrictions.

(F) Identify the form of the Private Contribution and the members of the Team that will make the Private Contribution and the proposed compensation for such Private Contribution.

(G) Provide an explanation of how funds for the Transportation Project will be segregated, accounted for and expended in a manner that ensures that any moneys from the state highway fund will be expended exclusively for the construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads, streets and roadside rest areas in Oregon, as required by Article IX, section 3a(1), of the Oregon Constitution.

(H) Identify, to the extent possible, proposed financing Team members, including banks, investment banks, equity investors, credit enhancement providers, bond trustees and legal counsel to the same.

(d) TAB 4: Public Support/Project Benefit/Compatibility.

(A) Identify who will benefit from the Project, how they will benefit and how the Project will benefit the overall transportation system.

(B) Identify any anticipated government support or opposition, or general public support or opposition, for the Project.

(C) Explain the strategy and plans that will be carried out to involve and inform the agencies and the public in areas affected by the Project.

(D) Describe the significant social and economic benefits of the Project to the community, region or state and identify who will benefit from the Project and how they will benefit. Identify any state benefits resulting from the Project including the achievement of state transportation policies or other state goals.

(f) TAB 5: Special Deliverables.

(A) Provide a statement setting out the plan for securing all necessary real property, including proposed timeline for any necessary acquisitions.

(B) Provide proposed design, construction and completion guarantees and warranties.

(C) Include traffic studies, forecasts and related materials that establish Project revenue assumptions, including, if any, user fees or toll rates, and usage of the facility.

(D) Provide such additional material and information as ODOT may reasonably request.

(2) All pages of a proposal shall be numbered. Each copy of the proposal will be bound or otherwise contained in a single volume where practicable. All documentation submitted with the proposal will be contained in that single volume.

(3) A proposal submitted by a Private Entity must be signed by an authorized representative of the Private Entity submitting the proposal.

(4) The proposer shall include a list of any proprietary information included in the proposal which the proposer considers protected trade secrets or other information exempted from disclosure under ORS 367.804 and OAR 731-070-0280 and 731-070-0290.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

ADOPT: 731-070-0065

RULE TITLE: Prequalification of Proposers of Unsolicited Proposals

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: This rule replaced parts of 731-040-0350 (repealed) and creates a prequalification requirement for any private entity that wishes to propose an unsolicited proposal.

RULE TEXT:
To submit an Unsolicited Proposal, an entity must first submit a completed Application for Prequalification and receive notice of approval for prequalification from ODOT.
(1) ODOT may establish the required content and format of the application and criteria used to evaluate Applications for Prequalification. ODOT will publish on its external website:
(a) The location at which interested entities may obtain prequalification application forms, information about prequalification criteria and other related documents, if any; and
(b) The name, title, and address of the person designated to receive the prequalification applications.
(2) Each Application for Prequalification must be in writing and must substantially comply with the instructions given by ODOT in a prequalification application form and in OAR 731-070-0145.
(3) An Application for Prequalification must be accompanied by:
(a) A non-refundable application evaluation fee as designated in OAR 731-070-0055.
(b) An executed conflict of interest disclosure forms provided by ODOT for the Project Team, each Major Partner and any Major Subcontractor.
(c) Any additional information described and required by the prequalification application form or by ODOT necessary to evaluate the application.
(4) After reviewing a prequalification application submitted in accordance with this rule, ODOT will notify the applicant whether the applicant is qualified to submit an Unsolicited Proposal.
(a) If ODOT determines that the applicant is not qualified, ODOT shall provide the applicant written notice of that determination that contains a statement of the reason or reasons for the determination.
(b) An entity that ODOT determines not to be qualified may, within 5 business days after its receipt of ODOT's written notice of determination, submit to ODOT a written protest of the decision. The protest must state facts and argument to demonstrate that ODOT's decision constituted an abuse of ODOT's discretion.
(5) If an entity timely submits a protest that complies with section (4) of this rule, ODOT will issue a written decision that resolves the issues raised in the protest. ODOT's written decision under this subsection shall constitute a final order under ORS 183.484.
(6) Unless otherwise specified, an ODOT determination that an applicant is prequalified to submit proposals for any particular kind or kinds of project shall have an effective term of three years from the date of ODOT's written notice of the determination.
(7) Notwithstanding any specification of a term during which an entity's prequalification is effective, ODOT may terminate or revise an entity’s prequalified status upon ODOT's discovery of information that adversely reflects on the applicant's prequalified status. Prior to any termination or adverse revision of an applicant's prequalification, ODOT will provide the applicant written notice of that determination that contains a statement of the reason or reasons for that determination and inform the entity that it may protest the proposed action under section (4) of this rule.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: 367.800 - 367.824

AMEND: 731-070-0080

RULE TITLE: Additional Unsolicited Proposal Disclosure Requirements

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: Clarified the disclosures required of proposers and applied Plain Language principles for clarity and readability.

RULE TEXT:

(1) After submission of an unsolicited proposal as described in OAR 731-070-0050, the Director may impose any other special disclosure requirements the Director determines to be reasonably necessary to evaluate the expertise, experience, financial backing, integrity, ownership and control of the business.

(2) ODOT may reject, or require the supplementation of, an incomplete proposal. ODOT will reject any proposal that contains false, untruthful or misleading information. A proposer's failure or refusal to properly execute, fully complete, or accurately report any information required in OAR 731-070-0050 is sufficient grounds for rejection of the proposal.

(3) If, during the evaluation process, there is any change in the status of the proposer, the identity of any Key Person, or the addition of any Key Person, the proposer must report the change to the Department within 30 calendar days of the known change. For purposes of this section, a “change in the status of a proposer” means a reorganization of the business structure or corporate structure of the proposer or a Major Partner, or a change in ownership of the proposer or a Major Partner amounting to a transfer of over twenty percent of the entity’s ownership.

(4) The burden of satisfying ODOT’s disclosure requirements for Unsolicited Proposals, both in terms of producing the disclosures and assuring the accuracy and completeness of such information, resides with each proposer.

(5) A proposer, by submitting a proposal, accepts all risk of adverse public notice, damages, financial loss, criticism or embarrassment that may result from any disclosure or publication of any material or information required or requested by the Department in connection with the proposer’s submission of a proposal. In submitting a proposal, the proposer expressly waives, on behalf of itself, its partners, joint venturers, officers, employees and agents, any claim against the Director, the state of Oregon, the Oregon Transportation Commission, ODOT, and their officers and employees, for any damages that may arise therefrom.

(6) An Agency of the state of Oregon that submits a proposal may, prior to submission, request ODOT to waive the disclosure requirements of this rule with respect to the Agency and its officers. However, if the Agency proposes to enter into or establish a partnership or joint venture with a private entity to perform any substantial portion of the proposed Project (as opposed to the engagement of only a prime contractor or subcontractors), then disclosure of the private entity must be made and the proposal must include all information regarding the private entity as required under these rules, to the same extent as if the private entity is a proposer.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

REPEAL: 731-070-0110

RULE TITLE: Initial Review of Unsolicited Proposals

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: This rule was repealed because the process for evaluation of unsolicited proposals has been streamlined and this step removed. See OAR 731-040-0145.

RULE TEXT:

(1) An unsolicited proposal submitted under OAR 731-070-0050 will be reviewed by an Initial Review Committee (IRC), which shall be appointed by the Director from Department personnel.

(2) The IRC will assess:

(a) Whether the proposal is complete;

(b) Whether the proposer is qualified;

(c) If the proposal is submitted as a Detailed Proposal, whether the proposal appears to satisfy the requirement of OAR 731-070-0060 for Detailed Proposals;

(d) Whether the Project as proposed appears to be technically and financially feasible;

(e) Whether the Project as proposed appears to have the potential of enhancing the state transportation system; and

(f) Whether the Project as proposed appears to be in the public interest.

(3) The IRC will report the results of its assessment to the Director. Based on this assessment, the Director will determine whether the proposal satisfies the requirements of section (2) of this rule. If the Director determines that the proposal satisfies the requirements set out in section (2) of this rule, the Director will forward a recommendation concerning the proposal to the Commission for preliminary review and approval. The recommendation will not include sensitive business, commercial or financial information or trade secrets as described in 731-070-0290.

STATUTORY/OTHER AUTHORITY: ORS 184.616, 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

REPEAL: 731-070-0120

RULE TITLE: Commission Preliminary Review of Unsolicited Proposals

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: This rule was repealed because the process for evaluation unsolicited proposals has been streamlined and this step removed. See OAR 731-040-0145.

RULE TEXT:
At the first regular meeting of the Oregon Transportation Commission following a determination by the Director under OAR 731-070-0110 that an unsolicited proposal merits further review, the Commission will review the recommendation and approve or disapprove the proposal for further evaluation and action by ODOT under ORS 367.800 to 367.826 and OAR chapter 731, division 70.

STATUTORY/OTHER AUTHORITY: ORS 184.616, 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

REPEAL: 731-070-0130

RULE TITLE: Competing Proposals

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: This rule was repealed because the process has been streamlined and no longer requires this step.

RULE TEXT:

(1) Within 30 calendar days of the Commission's preliminary approval of an unsolicited proposal under OAR 731-070-0120, ODOT shall provide public notice of the proposed Project. This notice shall:

(a) Be published in a newspaper of general circulation and upon such electronic website providing for general public access as ODOT may develop for such purpose;

(b) Be provided to any county, city, metropolitan service district, or transportation district in which the Project will be located;

(c) Be provided to any person or entity that expresses in writing to ODOT an interest in the subject matter of the unsolicited proposal and to any member of the Legislature whose House or Senate district would be affected by such proposal;

(d) Outline the general nature and scope of the unsolicited proposal, including the location of the Transportation Project and the work to be performed on the Project;

(e) Specify the Competing Proposal must satisfy the requirements for a Detailed Proposal under OAR 731-070-0060; and

(f) Specify the address to which any Competing Proposal must be submitted.

(2) Any entity that elects to submit a Competing Proposal for the proposed Project shall submit a written letter of intent to do so not later than 30 calendar days after ODOT's initial publication of notice. Any letter of intent received by ODOT after the expiration of the 30-calendar day period shall not be valid and any Competing Proposal submitted thereafter by a private or governmental entity that has not submitted a timely letter of intent shall not be considered by ODOT.

(3) An entity that has submitted a timely letter of intent must submit its Competing Proposal to ODOT not later than 90 calendar days after ODOT's initial publication of notice under section (1) of this rule, or such other time as ODOT states in the notice. The Competing Proposal must:

(a) Be signed by an authorized representative of the proposer;

(b) If the notice issued under paragraph (1) specifies that the Competing Proposal must satisfy the requirements for a Detailed Proposal:

(A) Be accompanied by the processing fee for Detailed Proposals required under OAR 731-070-0055(1); and

(B) Include the information and be organized in the manner required of an unsolicited Detailed Proposal under OAR 731-070-0060.

STATUTORY/OTHER AUTHORITY: ORS 184.616, 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

REPEAL: 731-070-0140

RULE TITLE: Evaluation of Unsolicited and Competing Proposals

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: This rule was repealed because the evaluation process for unsolicited proposals has changed enough that editing the existing rule will bring more confusion than clarity. A new rule has been written -- see OAR 731-040-0145.

RULE TEXT:

(1) Evaluation Panel. An Evaluation Panel shall be appointed by the Director and shall consist of not fewer than five nor more than nine members, at least three of whom shall be employees of the Department.

(2) Evaluation Panel Review. After expiration of the time to submit Competing Proposals to an unsolicited Proposal, the Evaluation Panel will review the Competing Proposals to determine whether they satisfy the requirements of OAR 731-070-0050 and qualify for full evaluation.

(3) Competing or Non-Competing Proposals. As part of its initial review of Competing Proposals under section (2) of this rule, the Evaluation Panel shall make a preliminary assessment whether any of the Competing Proposals differ from the original unsolicited proposal in such a significant and meaningful manner that they should be treated as an original unsolicited proposal. If the Evaluation Panel believes that a proposal submitted as a Competing Proposal should be treated as an original unsolicited proposal and that it satisfies the requirements of OAR 731-070-0050, the Evaluation Panel shall forward the proposal to the Director, who shall determine whether the proposal should be submitted to the Commission for preliminary review and approval under OAR 731-070-0120, and the proposal shall thereafter be processed under these rules in the same manner as an unsolicited Proposal.

(4) Proposer Presentations. At any time during this evaluation process, the Evaluation Panel may request proposers to make presentations to the Evaluation Panel. Proposers shall be afforded not less than 10 business days following written notification from the Evaluation Panel to prepare such presentations. The format of these presentations will include a formal presentation by the proposer, followed by any questions the Evaluation Panel may have pertaining to the Project, proposal or the presentation. These meetings will allow the Evaluation Panel to seek clarification of Project elements and complete deliverable requirements, and provide proposers with the opportunity to further explain their proposed Projects. If there is an issue to which the proposer is unable to respond during the formal presentation, the Evaluation Panel may, at its discretion, grant the proposer a reasonable period of time in which to submit a written response.

(5) Evaluation Factors. When assessing any original unsolicited Proposal or qualifying Competing Proposal, the Evaluation Panel may take into consideration any or all of the following factors:

(a) Qualifications and Experience. Does the proposer propose a Team that is qualified, managed, and structured in a manner that will enable the Team to complete the proposed Project?

(A) Experience with Similar Infrastructure Projects. Have members of this Team previously worked together or in a substantially similar consortium or partnership arrangement constructing, improving or managing transportation infrastructure? Has the lead firm managed, or any of the member firms worked on, a similar privatization project?

(B) Demonstration of Ability to Perform Work. Does the Team possess the necessary financial, staffing, equipment, and technical resources to successfully complete the Project? Do the Team or member firms have competing financial or workforce commitments that may inhibit success and follow-through on the Project?

(C) Leadership Structure. Is one firm designated as lead on the Project? Does the organization of the Team indicate a well thought out approach to managing the Project? Is there an agreement/document in place between members?

(D) Project Manager's Experience. Is a Project Manager identified, and does this person work for the principal firm? If not, is there a clear definition of the role and responsibility of the Project Manager relative to the member firms? Does the Project Manager have experience leading this type and magnitude of project?

(E) Management Approach. Have the primary functions and responsibilities of the management team been identified? Have the members of the Team developed an approach to facilitate communication among the Project participants? Has

the firm adequately described its approach to communicating with and meeting the expectations of the state?
(F) Financial Condition. Is the financial information submitted on the firms sufficient to determine the firms' capability to fulfill its obligations described in the proposal, and is that capability demonstrated by the submitted information?
(G) Project Ownership. Does the proposal identify the proposed ownership arrangements for each phase of the Project and clearly state assumptions on legal liabilities and responsibilities during each phase of the Project?
(H) Participation of Small Businesses and Businesses Owned by Women and Minorities. What is the level of commitment by the proposers to use small, minority-, and women-owned business enterprises in developing and implementing the Project?
(I) Competitive Subcontracting. To what extent have adequate and transparent procurement policies been adopted by the proposer to maximize opportunities for competitive procurement of work, services, materials and supplies that the proposer will outsource?
(b) Project Characteristics. Is the proposed transportation facility technically feasible?
(A) Project Definition. Is the Project described in sufficient detail to determine the type and size of the Project, the location, all proposed interconnections with other transportation facilities, the communities that may be affected, and alternatives (e.g. alignments) that may need to be evaluated?
(B) Proposed Project Schedule. Is the time frame for Project completion clearly outlined? Is the proposed schedule reasonable given the scope and complexity of the Project?
(C) Operation. Does the proposer present a reasonable statement setting forth plans for operation of the Project or facilities that are included in the Project?
(D) Technology. Is the proposal based on proven technology? What is the degree of technical innovation associated with the proposal? Will the knowledge or technology gained from the Project benefit other areas of the state or nation? Does the technology proposed maximize interoperability with relevant local and statewide transportation technology? Can the proposed Project upgrade relevant local technology?
(E) Conforms to Laws, Regulations, and Standards. Is the proposed Project consistent with applicable state and federal statutes and regulations, or reasonably anticipated modifications of state or federal statutes, regulations or standards? Does the proposed design meet applicable state and federal standards?
(F) Federal Permits. Is the Project outside the purview of federal oversight, or will it require some level of federal involvement due to its location on the National Highway System or Federal Interstate System or because federal permits are required? Does the proposal identify the primary federal permits and agencies that will be involved in review and oversight of the Project?
(G) Meets/Exceeds Environmental Standards. Is the proposed Project consistent with applicable state and federal environmental statutes and regulations? Does the proposed design meet applicable state environmental standards? Does the proposal adequately address air quality issues?
(H) State and Local Permits. Does the proposal list the required permits and provide a schedule for obtaining them? Are there known or foreseeable negative impacts arising from the Project? If so, is there a mitigation plan identified? Are alternatives to standards or regulations needed to avoid those impacts that cannot be mitigated?
(I) Right of Way. Does the proposal set forth a method or plan to secure all property interests required for the Transportation Project?
(J) Maintenance. Does the proposer have a plan to maintain any facilities that are part of the proposed Transportation Project in conformance with Department standards? Does the proposal clearly define assumptions or responsibilities during the operational phase including law enforcement, toll collection and maintenance? Under the proposal, will maintenance and operation of any new facilities be consistent with standards applied throughout the highway system and use the same work-forces and methods?
(c) Project Financing. Has the proposer provided a financial plan which will allow for access to the necessary capital to make a substantial contribution of non-state, private-sector, or other innovative financing resources to the financing of the facility or Project?
(A) Financing. Did the proposer demonstrate evidence of its experience, ability and commitment to provide a sufficient

private-sector contribution or other innovative financing contribution of funds or resources to the Project as well as the ability to obtain the other necessary financing?
(B) Financial Plan. Does the financial plan demonstrate a reasonable basis for funding Project development and operations? Are the assumptions on which the plan is based well defined and reasonable in nature? Are the plan's risk factors identified and dealt with sufficiently? Are the planned sources of funding and financing realistic? Is the proposer prepared to make a financial contribution to the Project? Does the proposer adequately identify sources of non-state funding that it anticipates including in the Project financing, and does the proposer provide adequate assurance of the availability of those funds and the reliability of the funding sources?
(C) Estimated Cost. Is the estimated cost of the Project reasonable in relation to the cost of similar projects?
(D) Life Cycle Cost Analysis. Does the proposal include an appropriately conducted analysis of projected rate of return and life-cycle cost estimate of the proposed Project or facility?
(E) Business Objective. Does the proposer clearly articulate its reasons for pursuing the Project? Do its assumptions appear reasonable?
(d) Public Support. Has the proposer demonstrated sufficient public support for the proposed Project or proposed a reasonable plan for garnering that support?
(A) Community Benefits. Will the Project bring a significant transportation and economic benefit to the community, the region, or the state? Are there ancillary benefits to the communities because of the Project?
(B) Community Support. What is the extent of known support or opposition for the Project? Does the Project proposal demonstrate an understanding of the national and regional transportation issues and needs, as well as the impacts the Project may have on those needs? Is there a demonstrated ability to work with the community? Have affected local jurisdictions expressed support for the Project?
(C) Public Involvement Strategy. What strategies are proposed to involve local and state elected officials in developing the Project? What level of community involvement is contemplated for the Project? Is there a clear strategy for informing and educating the public and for obtaining community input throughout the development and life of the Project?
(e) Project Compatibility. Is the proposed Project compatible with, or can it be made compatible with state and local comprehensive transportation plans?
(A) Compatibility with the Existing Transportation System. Does the Project propose improvements that are compatible with, or that can be made compatible with, the present and planned transportation system? Does the Project provide continuity with existing and planned state and local facilities?
(B) Fulfills Policies and Goals. Does the proposed Project help achieve performance, safety, mobility or transportation demand management goals? Does the Project improve connections among the transportation modes?
(C) Enhance Community-Wide Transportation System. Has the proposer identified the specific way in which the Project benefits affected community transportation systems? Does the Project enhance adjacent transportation facilities?
(D) Conformity with Local, Regional and State Transportation Plans. Does the Project conform with, or can it achieve conformity with, city and county comprehensive plans and regional transportation plans? Does the Project conform with, or can it achieve conformity with, plans developed by the Oregon Transportation Commission under ORS 184.618 and any applicable regional transportation plans or local transportation programs? If not, are the steps proposed under OAR 731-070-0060(1)(b) to achieve conformity with such plans adequate and appropriate to provide a high likelihood that the Project and the applicable plans can be brought into conformity?
(E) Economic Development. Will the proposed Project enhance the state's economic development efforts? Is the Project critical to attracting or maintaining competitive industries and businesses to the region, consistent with stated objectives?
(6) Factors for Proposals that Include Tolling. If the Project financing component of a proposal includes a plan to impose tolls, the Evaluation Panel shall specifically consider:
(a) The opinions and interests of units of government encompassing or adjacent to the path of the proposed Tollway Project in having the Tollway installed;

(b) The probable impact of the proposed Tollway Project on local environmental, aesthetic and economic conditions and on the economy of the state in general;
(c) The extent to which funding other than state funding is available for the proposed Tollway Project and the extent to which resources other than tolls would be required to be established or maintained as necessary security to support such a financing;
(d) The likelihood that the estimated use of the Tollway Project will provide sufficient revenues to independently finance the costs related to the construction and future maintenance, repair and reconstruction of the Tollway Project, including the repayment of any loans to be made from moneys in the State Tollway Account or other accounts;
(e) With respect to Tollway Projects, any portion of which will be financed with state funds or department loans or grants:
(A) The relative importance of the proposed Tollway Project compared to other proposed Tollways; and
(B) Traffic congestion and economic conditions in the communities that will be affected by competing Tollway Projects;
(f) The effects of Tollway implementation on other major highways in the state system and on community and local street traffic;
(g) The amount and classification of the traffic using, or anticipated to use, the Tollway;
(h) The amount of the toll proposed to be established for each class or category of Tollway user and, if applicable, the different amounts of the toll depending on time and day of use;
(i) The extent of the Tollway, including improvements necessary for Tollway operation and improvements necessary to support the flow of traffic onto or off of the Tollway;
(j) The location of toll plazas or toll collection devices to collect the toll for the Tollway;
(k) The cost of constructing, reconstructing, improving, installing, maintaining, repairing and operating the Tollway;
(L) The amount of indebtedness incurred for the construction of the Tollway and debt service requirements, if any;
(m) The value of assets, equipment and services required for the operation of the Tollway;
(n) The period of time during which the toll will be in effect;
(o) The process for altering the amount of the toll during the period of operation of the Tollway;
(p) The method of collecting the toll;
(q) The rate of return that would be fair and reasonable for a private equity holder, if any, in the Tollway; and
(r) Tolling policies adopted by the Oregon Transportation Commission.
(7) Evaluation Panel Recommendation For Detailed and Competing Proposals. For any Detailed Proposal that receives a favorable evaluation, the Evaluation Panel will prepare a written recommendation, based on facts and circumstances presented in the proposal or known to ODOT, that the proposal merits consideration for negotiation of a final agreement. The Evaluation Panel will report its assessments and recommendations to the Director. The Director will review the Evaluation Panel's assessments and recommendations and based on that review shall:
(a) Select one Detailed Proposal and forward the selection to the Commission with a recommendation that the Detailed Proposal constitutes an acceptable basis for an agreement to enter into a public-private partnership with the proposer; or
(b) Reject all Detailed Proposals.

STATUTORY/OTHER AUTHORITY: ORS 184.616, 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

ADOPT: 731-070-0145

RULE TITLE: Evaluation of Unsolicited Proposals

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: This rule describes the evaluation of Unsolicited Proposals, and is a reordered and abbreviated version of 731-070-0040, which was repealed in these revisions.

RULE TEXT:
(1) ODOT will review and make a preliminary assessment that the Unsolicited Proposal does or does not meet the requirements of OAR 731-070-0050.
(2) An Evaluation Panel will independently evaluate each proposal that meets all requirement. Members of the Evaluation Panel may change and ODOT may have additional or fewer evaluators for optional rounds of competition.
(3) Proposer Presentations. At any time during the evaluation process, the Evaluation Panel may require that a proposer make a presentation to the Evaluation Panel. The presentation is to allow the Evaluation Panel to seek clarification of Project elements and provide proposers with an opportunity to explain their proposed Project further. The Evaluation Panel will provide written notice to a proposer and give the proposer a minimum of 10 business days from the date of the notice to prepare the presentation. The format of the presentation may include a formal presentation by the proposer, followed by questions from the Evaluation Panel pertaining to the Project, proposal, or presentation.
(4) Evaluation Factors. ODOT will publish on its external website the general criteria for evaluation of an Unsolicited Proposal, including but not limited to any of the following factors:
(a) Qualifications, experience, and structure of the Project Team;
(b) Project description in sufficient detail to determine the type and size of the Project, the location, and all proposed interconnections with other transportation facilities;
(c) The point in the Transportation Project at which the public and private sector partners enter the Project and the responsibility to be assumed by each partner for specific Project elements, including shared risk management, costs of development, and allocation of financial responsibility for overruns;
(d) Reasonableness of proposed project schedule;
(e) Degree of technical innovation associated with the proposal and if the knowledge or technology gained from the Project benefit other areas of this state or the United States;
(f) Whether the Project meets or exceeds state and federal environmental standards;
(g) Right of Way considerations and plans for acquisitions;
(h) Ongoing maintenance of the project;
(i) Financial Plan demonstrating a reasonable basis for funding Project development and operations, based on well-defined and reasonable assumptions;
(j) Estimated cost of the Project;
(k) Life cycle cost analysis;
(L) Public support, community benefit and engagement; and
(m) Compatibility with the existing transportation system and support of transportation policies and goals.
(5) Based on the Evaluation Panel's assessments, ODOT will:
(a) Accept the proposal and enter into discussions and negotiations with the proposing entity or entities;
(b) Request additional information from the proposing entity or entities; or
(c) Reject the proposal.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: 367.800 - 367.824

REPEAL: 731-070-0160

RULE TITLE: Use of a Process that Permits ODOT Feedback and Ability of Proponents to Supplement or Refine Proposals after Initial Submission

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: This rule was repealed because the process for evaluation unsolicited proposals has been streamlined and this step removed. See OAR 731-040-0145.

RULE TEXT:

(1) For Original Unsolicited Proposals: ODOT reserves the right, to be exercised in its sole and absolute discretion, to require or to permit proposers to submit, at any time, revisions, clarifications to, or supplements of their previously submitted proposals. ODOT may, in the exercise of this authority, require proposers to add features, concepts, elements, information or explanations that were not included in their initial proposals, and may require them to delete features, concepts, elements, information or explanations that were included in their initial proposals. A proposer will not be legally bound to accept a request to add to or delete from a proposal any feature, concept, element or information, but its refusal to do so in response to a request by ODOT shall constitute sufficient grounds for ODOT to elect to terminate consideration of its proposal.

(2) For Competing Proposals:

(a) After ODOT's opening and review of Competing Proposals, ODOT may issue or post on its website an addendum to the request for Competing Proposals that:

(A) Requires proposers to address or add physical features or elements, and information or explanations that were not included in their initial proposals; or

(B) Requires proposers to delete physical features or elements that were included in their initial proposals.

(b) ODOT will send any such addendum that it issues by a method other than posting on its website to all proposers who are eligible to compete under the particular Competing Proposal process.

(c) ODOT will issue or electronically post an addendum issued under this section. The addendum will contain a deadline by which the proposers must submit to ODOT any additions to, modifications of or deletions from their proposals.

(d) A proposer will not be legally bound to accept a request to add to or delete from a proposal any feature, element or information or explanation, but its refusal to do so in response to an addendum issued by ODOT shall constitute sufficient grounds for ODOT to elect to terminate consideration of the proposer's Competing Proposal and also may be considered by ODOT in determining the proposer to be selected as the result of the Competing Proposals process.

STATUTORY/OTHER AUTHORITY: ORS 184.616, 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

REPEAL: 731-070-0170

RULE TITLE: Commission Review and Selection of Proposals

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: This rule was repealed because the process for evaluation of unsolicited proposals has been streamlined and this step removed. See OAR 731-040-0145.

RULE TEXT:
The Commission shall review the Detailed or Competing Proposal selected and forwarded by the Director under OAR 731-070-0140(7)(d). Based on that review the Commission shall approve or disapprove the Detailed Proposal selected by the Director for negotiation of a final agreement under OAR 731-070-0200.

STATUTORY/OTHER AUTHORITY: ORS 184.616, 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

REPEAL: 731-070-0180

RULE TITLE: Protests of Rejection of Proposal/Award of Contract to Competitor in Competing Proposals Context

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: This rule was repealed because the process for evaluation of unsolicited proposals has been streamlined and this step removed. See OAR 731-040-0145.

RULE TEXT:

(1) At least 14 calendar days prior to the final selection of the successful proposer in any competitive proposal selection process, ODOT will give, electronically or otherwise, written notice to all participating proposers of ODOT's apparent selection of the successful proposer. A proposer who would be adversely affected by the selection announced in the notice may, within the 14-calendar day period, submit to ODOT a written protest of the selection of the apparent successful proposer.

(2) For purposes of this rule, a protesting proposer is adversely affected by a selection only if the proposer has submitted a responsive Competing Proposal and is next-in-line for selection. In other words, the protesting proposer must demonstrate that all higher-scoring proposers are ineligible for selection because either:

(a) The higher-scoring proposals were not responsive to the requirements stated in ODOT's notice requesting Competing Proposals; or

(b) ODOT committed a substantial violation of a provision in ODOT's notice requesting Competing Proposals, in these rules, or in ORS 367.800 to 367.826, or otherwise abused its discretion, in evaluating the Competing Proposals.

(3) A proposer's written protest must state facts and argument that demonstrate how the selection process was flawed or how ODOT's selection of the apparent successful proposer constituted an abuse of ODOT's discretion. If ODOT receives no written protest concerning the proposed selection listing within the 14-calendar day period, then the selection of the successful proposer automatically shall become effective on the 15th calendar day after ODOT first transmitted or otherwise delivered its written notice of the apparent successful proposer.

(4) In response to a proposer's timely filed protest that complies with this rule, ODOT will issue a written decision that resolves the issues raised in the protest. In considering a timely protest, ODOT may request further information from the protesting proposer and from the apparent successful proposer identified in ODOT's notice issued under subsection (1) of this rule. ODOT will make its written determination available, by mail or by electronic means, to the protesting proposer and to the apparent successful proposer identified in ODOT's notice issued under subsection (1) of this rule. ODOT's written decision under this subsection shall constitute a final order under ORS 183.484.

STATUTORY/OTHER AUTHORITY: ORS 184.616, 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

AMEND: 731-070-0200

RULE TITLE: Negotiation of Agreements for Transportation Projects

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: Applied Plain Language principles for clarity and readability. References to repealed rules were removed.

RULE TEXT:

(1) The Director will refer a proposal selected for negotiation of a final agreement to a working group. The working group is responsible for negotiating the final agreement with the proposer. Each final agreement will define the rights and obligations of ODOT and the respective proposer with regard to the Transportation Project. The final agreement must include provisions specifying at least the following:

(a) At what point in the Transportation Project public and private sector partners will enter the Project and which partners will assume responsibility for specific Project elements;

(b) How the partners will share management of the risks of the Project;

(c) How the partners will share the costs of development of the Project;

(d) How the partners will allocate financial responsibility for cost overruns;

(e) The penalties for nonperformance;

(f) The incentives for performance;

(g) The invoicing and payment procedures and schedules to be followed, and the accounting and auditing standards to be used to evaluate work on the Project; and

(h) Whether the Project is consistent with the plan developed by the Oregon Transportation Commission under ORS 184.618 and any applicable regional transportation plans or local transportation programs and, if not consistent, how and when the Project will become consistent with applicable plans and programs.

(2) If public moneys are used to pay any costs of construction of public works that is part of a Transportation Project, the construction contract shall contain provisions that require payment of workers under the contract in accordance with ORS 279C.520 and 279C.800 to 279C.870.

(3) An agreement for the construction of a public improvement as part of a Transportation Project shall approved for bonding, financial guarantees, deposits or the posting of other security to secure the payment of laborers, subcontractors and suppliers who perform work or provide materials as part of the Project.

(4) The working group shall consider whether to implement procedures to promote competition among subcontractors for any subcontracts to be let in connection with the Transportation Project.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

AMEND: 731-070-0210

RULE TITLE: ODOT Objection to Subcontractors

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: Applied Plain Language principles for clarity and readability. Clarified requirements for subcontractors and for revising contracts after substitution of subcontractors at ODOT's direction.

RULE TEXT:

(1) Prior to the execution of any contract with a proposer, the proposer must provide ODOT a list of all Major Subcontractors identified in its proposal who will perform work in the construction, operation or maintenance of the Project. All subcontractors must be legally eligible to perform or work on public contracts under federal and Oregon law and regulations. Subcontractors who are ineligible to receive public works contracts under ORS 279C.860 are not eligible to receive contracts on OIPP projects. During performance of the contract, the proposer shall promptly notify ODOT of the engagement or disengagement of any Major Subcontractor. If ODOT has reasonable objection to any proposed subcontractor, ODOT may require, before the execution of a contract, an apparently successful proposer to submit an acceptable substitute, as determined by ODOT.

(2) The resulting contract may be modified at ODOT's discretion to equitably account for any difference in cost resulting from the substitution. An apparently successful proposer has 14 calendar days from the date of ODOT's written demand for substitution in which to make an acceptable substitution. An apparently successful proposer's failure to make an acceptable substitution at the end of the 14-calendar day period constitutes sufficient grounds for ODOT to refuse to execute a contract without incurring any liability for the refusal.

(3) If the apparently successful proposer identified a Major Subcontractor in its proposal as an equity contributor to the Project, or the Major Subcontractor had committed other financial support relied on by the proposer, the apparently successful proposer shall be granted 60 business days to identify an acceptable substitute Major Subcontractor. Following identification of the Major Subcontractor, the apparently successful proposer shall be granted an additional 30 business days to conclude negotiations of acceptable terms and conditions with that substitute Major Subcontractor.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

AMEND: 731-070-0220

RULE TITLE: Legal Sufficiency Review of Final Agreement

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: Corrected rule references.

RULE TEXT:

On completion of a final agreement, the Attorney General will review it for legal sufficiency under ORS 291.047 and OAR chapter 137, division 045. When conducting that review, the Attorney General shall:

(1) Recognize that the agreement is the product of a partnership; and

(2) Defer to the business judgment of the Department and the Oregon Transportation Commission concerning the assignment of risks and the incentives provided within the agreement.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

AMEND: 731-070-0230

RULE TITLE: Commission Review of Final Agreement

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: Corrected rule references.

RULE TEXT:

On completion of the Attorney General's legal sufficiency review of the final agreement, the Commission shall:

(1) Approve the final agreement;

(2) Reject the final agreement; or

(3) Return the final agreement to the working group for further negotiation on issues the Commission specifies.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

AMEND: 731-070-0280

RULE TITLE: Public Records Requests

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: Deleted paragraphs that attempted to paraphrase the Public Records statutes.

RULE TEXT:

(1) Upon written request and within a reasonable time, the Director will provide records relating to Transportation Project proposals for inspection in accordance with ORS Chapter 192, ORS 367.804, and OAR 731-001-0025.

(2) ODOT may charge fees to cover its reasonable and actual costs in responding to public records requests. Such costs may include but are not limited to costs associated with locating records, separating exempt from nonexempt records, monitoring the requester's inspection of requested records, copying records and delivering copies of requested records. In accordance with OAR 731-001-0025, ODOT may charge fees calculated to reimburse it for its reasonable and actual costs as authorized by the relevant provisions of the Public Records Law.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

AMEND: 731-070-0290

RULE TITLE: Designation of Sensitive Business, Commercial or Financial Information and Trade Secrets

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: Deleted paragraphs that attempted to paraphrase the Public Records statutes.

RULE TEXT:

(1) The following procedure shall be followed by proposers to designate information as “sensitive business, commercial or financial information” under ORS 367.804(6): each individual page of a proposal that contains sensitive business, commercial or financial information must be clearly marked “Sensitive Business, Commercial or Financial Information.”

(2) If a proposer considers certain information "trade secret" information for purposes of the public records exemption from disclosure set out in ORS 192.345 (2), the proposer must clearly mark each individual page of a plan or progress report that contains trade secret information as “Trade Secret.”

STATUTORY/OTHER AUTHORITY: ORS 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

AMEND: 731-070-0295

RULE TITLE: Consultation with Local Government, Metropolitan Planning Organization or Area Commission on Transportation

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: Deleted instructions that are more appropriate as policy than rules.

RULE TEXT:
As part of its evaluation of a proposal submitted under these rules, ODOT will consult with appropriate local governments, metropolitan planning organizations and area commissions on transportation. Consultation under this rule will occur in such manner and at such time as ODOT considers appropriate in the particular circumstance.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

AMEND: 731-070-0300

RULE TITLE: ODOT Rights Reserved

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: Applied Plain Language principles for clarity and readability. Added right to extend any deadline -- see (1)(f).

RULE TEXT:

(1) ODOT reserves all rights available to it by law in administering these rules, including without limitation, the right in its sole discretion to:

(a) Prioritize proposals to be reviewed and determine the order of review.

(b) Reject any proposal at any time.

(c) Terminate evaluation of any proposal at any time.

(d) Suspend, discontinue, or terminate agreement negotiations with any proposer at any time prior to the actual authorized execution of such agreement by all parties.

(e) Negotiate with a proposer without being bound by any provision in its proposal.

(f) Extend any deadline or time within which a proposer or ODOT must take any action required or permitted under OAR chapter 731, division 70

(g) Request or obtain additional information about any proposals.

(h) Issue addenda to or cancel any Request For Proposals.

(i) Decline to return any fees required to be paid by proposers hereunder.

(j) Request revisions to proposals.

(2) Except as otherwise provided for in a solicitation of proposals or in an order pertaining to an unsolicited proposal, neither the state, the Oregon Transportation Commission or ODOT is liable for, or obligated to reimburse the costs incurred by proposers in developing proposals or in negotiating agreements. In its sole discretion, ODOT may, in a solicitation of proposals or in an order, provide for the possibility of payment for work product developed by a proposer in the course of developing a proposal.

(3) Any information ODOT makes available to proposers is as a convenience to the proposer and without representation or warranty of any kind. Proposers may not rely upon any oral responses to inquiries. If a proposer has a question regarding application of these rules, the proposer may submit the question in writing to the Director.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

REPEAL: 731-070-0310

RULE TITLE: Extensions of Time: Waivers

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: This rule was repealed because the process for evaluation of unsolicited proposals has been streamlined and this step no longer applies. See 731-070-0145

RULE TEXT:

(1) ODOT reserves the right to extend any deadline or time within which a proposer or ODOT must take any action required or permitted under OAR chapter 731, division 70 if the affected proposer applies in writing for relief to ODOT and demonstrates in that application that special circumstances warrant the grant of such relief. For the purpose of this subsection, special circumstances that warrant the grant of relief include practical exigencies that reasonably can be regarded as imposing a substantial, practical impediment to the proposer's ability to meet the deadline or achieve the correction of a violation of rules. Special circumstances are circumstances beyond the reasonable control of the proposer organization and include, but are not limited to, the illness or other incapacity of key officers of the organization seeking relief, emergency reorganizations or replacements of the corporate structure, board of directors or executive officers of the organization, acts of God, and comparable practical impediments to a person's or organization's ability to meet a deadline or achieve the correction of a violation of rules. However, no such extension will be afforded to any single proposer for the requirements identified under sections OAR 731-070-0130(2) and (3).
(2) The grant or denial of relief under this rule must be determined by the Director or his designee. ODOT also reserves the right to waive or to permit the correction of minor or technical violations of rules in this Division. ODOT will not grant relief under this section in any case that involves the submission of competitive proposals or competitive responses in which granting the relief would give the entity or person applying for relief a material competitive advantage that is not made available to its competitors.

STATUTORY/OTHER AUTHORITY: ORS 184.616, 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

REPEAL: 731-070-0320

RULE TITLE: ODOT's Authority to Suspend, by "Order," the Acceptance of Specified Categories of Unsolicited Proposals

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: This rule was repealed because the process for evaluation of unsolicited proposals has been streamlined and this step no longer applies. See 731-070-0145.

RULE TEXT:

(1) ODOT may, at any time, suspend its receipt and consideration of all unsolicited proposals, of any class, category or description of unsolicited proposals, or of unsolicited proposals to undertake any class, category or description of Transportation Project (such as, by way of illustration only, proposals to perform the maintenance of existing ODOT transportation facilities, proposals within certain cost categories, proposals that relate to certain geographic areas or proposals to repair state secondary highway surfaces) by issuing a written order that:

(a) Declares that ODOT has suspended the acceptance and consideration of all unsolicited proposals or of unsolicited proposals for certain types of Projects;

(b) Describes the proposals or the class or character of the Projects that are subject to the suspension; and

(c) Specifies either the term of the suspension or that the suspension will continue until recalled by a subsequent order of ODOT.

(2) Commencing on the effective date of the suspension order, ODOT will refuse to accept unsolicited proposals or unsolicited proposals for Transportation Projects of the class, category or description contained in the order, and may, as stated in the order, cease further processing and consideration of any such unsolicited proposals then currently under consideration by ODOT.

(3) By submitting an unsolicited proposal, each proposer thereby waives and relinquishes every claim of right, entitlement or expectation that the processing and consideration of its proposal will not be subject to suspension under this rule.

(4) The State of Oregon, ODOT, the Oregon Transportation Commission, and their officers and employees, shall have no responsibility or liability of any nature for the preservation, confidentiality or safekeeping of any proposal that is subject to a suspension order under this rule and is submitted to ODOT while that suspension order is in effect.

STATUTORY/OTHER AUTHORITY: ORS 184.616, 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

REPEAL: 731-070-0330

RULE TITLE: ODOT's Authority to Prioritize the Processing of Submitted Proposals in Accordance with ODOT's Assessment of Need and Urgency.

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: This rule was repealed because the process for evaluation of unsolicited proposals has been streamlined and these steps no longer apply. See 731-070-0145 (Evaluation of Unsolicited Proposals) and 731-040-0300 (ODOT's Rights Reserved)

RULE TEXT:

(1) ODOT may, at any time, select any class, category or description of proposal or Transportation Project, including any individual proposal or Project, for the purpose of giving priority to the processing and consideration of unsolicited proposals by issuing a written order that declares that ODOT will give priority to the processing and consideration of unsolicited proposals for certain types of Projects (or to a particular proposal), and describes the class or character of the proposals or Projects (or the particular proposal or Project) that are given priority. The priority order may either specify the term of the priority order, identify the submitted proposals (or proposal) that are subject to the priority order, or provide that the priority order will continue in effect until recalled by a subsequent order of ODOT.

(2) Commencing on the effective date of the order giving priority, ODOT may undertake expedited processing and consideration of unsolicited proposals (or a particular unsolicited proposal) for Transportation Projects of the class, category or description contained in the order. The limited resources of the Department, in such cases, will require either the postponement of, or delay in, the processing and consideration of unsolicited proposals for Projects that are not within a class, category or description that is subject to a priority order.

(3) By submitting an unsolicited proposal, each proposer thereby waives and relinquishes every claim of right, entitlement or expectation that:

(a) Its proposal will enjoy the benefit of a priority order; and

(b) The processing and consideration of its proposal will not be subject to postponement or delay arising out of ODOT's issuance of an order that gives priority to another proposal or to proposals for different classes, categories or descriptions of Projects.

STATUTORY/OTHER AUTHORITY: ORS 184.616, 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824

REPEAL: 731-070-0350

RULE TITLE: Discretionary Order Requiring the Prequalification of Proposers — Detailed Unsolicited or Competing Proposals

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: This rule was repealed because the process for evaluation of unsolicited proposals has been streamlined. The prequalification step now applies to all private entities that wish to submit an unsolicited proposals. The refined process is less burdensome on the proposer and ODOT. See 731-070-0065.

RULE TEXT:

(1) ODOT may, at any time, issue a written order that requires any entity that wishes to submit a Detailed unsolicited or Competing proposal to apply for prequalification to submit a proposal. The order must describe the character or class of the Project or Projects, and the size of the Projects in terms of estimated implementation or construction cost, that are subject to the prequalification requirement. The order also must provide that each proposer must be prequalified by ODOT in order to submit a proposal for the kind or kinds of Project described in the order, and that ODOT will reject proposals received for the kind or kinds of Projects described in the order from proposers who are not prequalified.

(2) The prequalification order also shall contain:

(a) The location at which interested entities may obtain prequalification applications, information about prequalification criteria and other related documents, if any; and

(b) The name, title, and address of the person designated to receive the prequalification applications.

(3) Each prequalification application shall be in writing and must substantially comply with the instructions given by ODOT in a prequalification application questionnaire or prequalification form issued by ODOT.

(4) ODOT may establish the criteria used to evaluate prequalification applications in light of the features and demands of the kind or kinds of Project for which prequalification is required as a condition of an entity's ability to submit an unsolicited proposal. The criteria may include, but shall not be limited to:

(a) The applicant's financial resources, including:

(A) Bonding capacity;

(B) Solvency; and

(C) Past payment history with employees, suppliers and subcontractors;

(b) The applicant's equipment and technology available to perform the Project, including whether the applicant has or reasonably can obtain, either itself, through subcontractors, or otherwise, all licenses and registrations necessary for use and operation of any technology or equipment involved in the Project, and all licenses and permits necessary to the lawful completion of the Project;

(c) The applicant's key personnel available to work on the Project, including:

(A) The specific capabilities of the applicant and its key personnel, as demonstrated by work on past projects which are comparable in size, nature, and technical and managerial complexity to the Project and to the scope of any construction services that may be required by the Project; and

(B) The identity and experience of the key personnel planned to be assigned to the Project;

(d) The applicant's performance history on other projects or contracts, including the applicant's approach to comparable projects and the planning, phasing and scheduling techniques employed by the applicant in those projects in general, and to the extent possible, particularly as applicable to the kind or kinds of Project for which prequalification is required;

(e) The applicant's safety programs and safety record including, where applicable, evidence of the applicant's experience modifier issued by the Department of Consumer and Business Services, Workers' Compensation Division;

(f) The applicant's experience or ability to provide the services of key persons with experience in design-build projects and similar innovative approaches to project completion;

(g) References from owners, architects and engineers with whom the applicant has worked in the past;

(h) The histories of the applicant and its Major Partners concerning their involvement, within the five years immediately

preceding the issuance date of the Department's prequalification order (or such shorter period as ODOT may specify in the order), in claims and litigation, including mediated or arbitrated construction claims and governmental administrative proceedings, arising out of past projects or under contracts to which they were parties in which the proceedings exceeded $1,000,000 in liability exposure or claim amount;
(i) Information concerning whether the applicant, any Major Partner, and any key person of either has been, within the five years immediately preceding the issuance date of the Department's prequalification order (or such shorter period as ODOT may specify in the order):
(A) Convicted of any criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
(B) Convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the person's responsibility as a contractor; or
(C) Convicted or determined to be liable under state or federal antitrust statutes.
(5) ODOT will, after receiving a prequalification application submitted in accordance with section (3) of this rule, notify the applicant whether the applicant is qualified to submit an unsolicited proposal for a Project of the kind or kinds described in ODOT's order issued under section (1) of this rule.
(6) If ODOT determines that the applicant is not qualified, ODOT shall provide the applicant written notice of that determination that contains a statement of the reason or reasons for that determination.
(7) An entity that ODOT determines not to be qualified may, within five (5) business days after its receipt of ODOT's written notice of that determination, submit to ODOT a written protest of the decision. The protest must state facts and argument to demonstrate that ODOT's decision was incorrect or constituted an abuse of ODOT's discretion.
(8) If an entity timely submits a protest that complies with section (7) of this rule, ODOT will issue a written decision that resolves the issues raised in the protest. ODOT's written decision under this subsection shall constitute a final order under ORS 183.484.
(9) Unless otherwise specified in ODOT's order issued under section (1) of this rule, an ODOT determination that an applicant is prequalified to submit proposals for any particular kind or kinds of Project shall have an effective term of three years from the date of ODOT's written notice of the determination.
(10) Notwithstanding any specification of a term during which an entity's prequalification is effective, ODOT may terminate or revise an entity's prequalified status upon ODOT's discovery of information that adversely reflects on the applicant's prequalified status. Prior to any termination or adverse revision of an applicant's prequalification, ODOT will provide the applicant written notice of that determination that contains a statement of the reason or reasons for that determination and advise that entity that it may protest the proposed action under section (7) of this rule.
(11) On the written request of an entity that previously has been prequalified for a Project or for kinds of Projects similar in size and character to the kind or kinds of Projects described in the order issued under section (1) of this rule (as determined in the discretion of ODOT), or on the written request of a unit of local government, ODOT may waive the requirement that the entity or unit of local government must submit a prequalification application under this rule.

STATUTORY/OTHER AUTHORITY: ORS 184.616, 184.619, 367.824

STATUTES/OTHER IMPLEMENTED: ORS 367.800 - 367.824