



# ***New Innovations at Oregon DOT***

**TRB 44<sup>th</sup> Annual Workshop  
on Transportation Law  
Portland, Oregon  
July 20, 2005**

***James Whitty, Manager  
Office of Innovative Partnerships  
and Alternative Funding***





# New Oregon Innovations

1. Nature of the Oregon Innovative Partnerships Program (OIPP)
2. Procurement Innovations Underway for Transportation Projects



**ENABLING STATUTES – ORS 367.800 et seq.**

**2003 Legislature Created**

**Oregon Innovative Partnerships Program**

Statutory Program Goals –

- Develop Partnerships with Private Entities and Units of Government;
- Expedite Delivery of Transportation Projects; and
- Maximize Project Innovation (**ORS 367.804**)
- Leverage Public Financing with Private Sources of Capital

(Legislative history of enabling statute)



## The OIPP statute defines:

“Transportation project” as “any proposed or existing undertaking that facilitates any mode of transportation in this state.” (ORS 367.802(3))

- Very broad application authority could be applied to Roads, Bridges, Rail, Ports, Ancillary Facilities, Telecommunications, Transmissions . . .

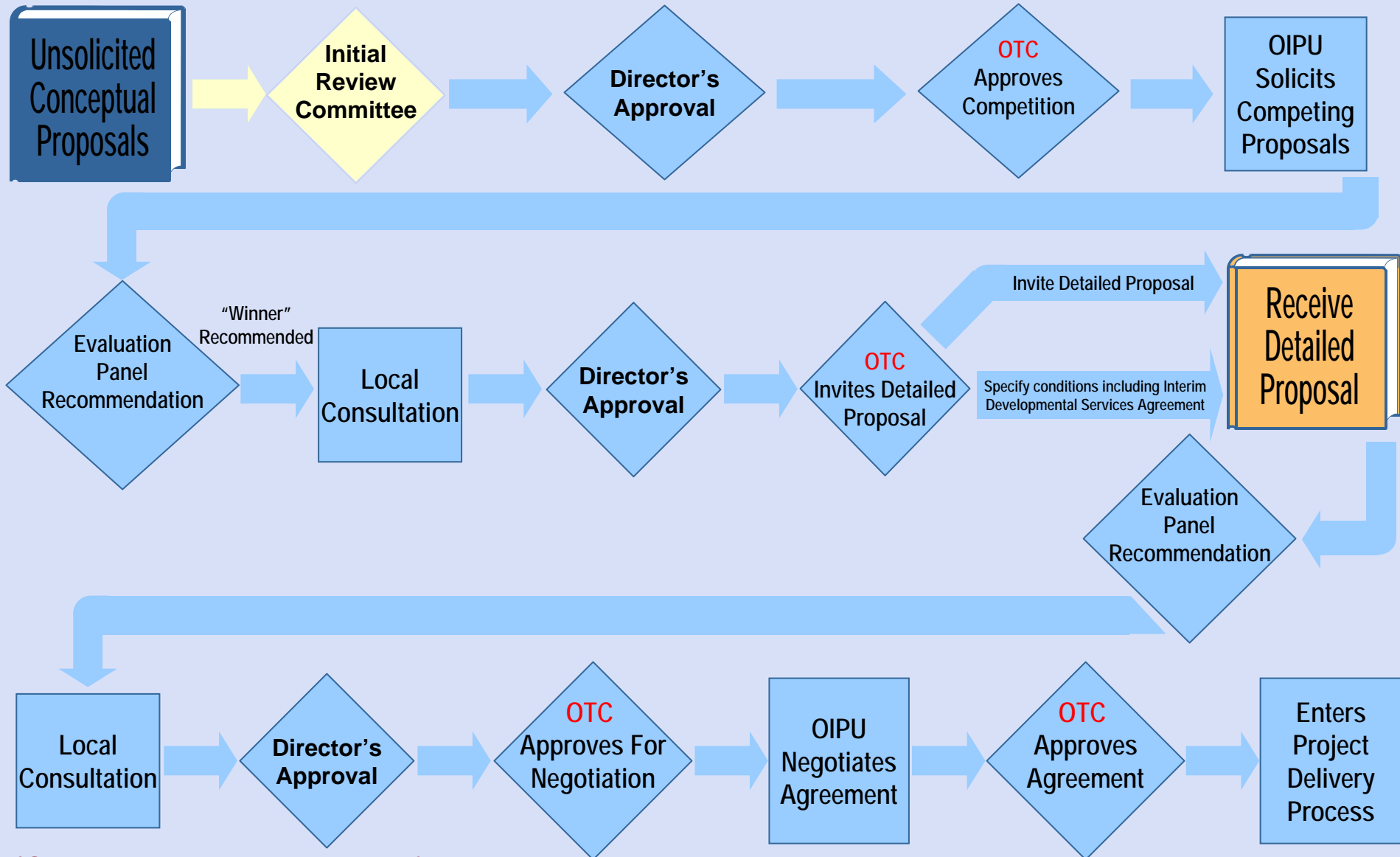


## **Oregon Innovative Partnerships Program allows ODOT to Solicit Proposals and Accept Unsolicited Proposals for Transportation Projects (ORS 367.804(3))**

- **From Private Firms** (“Any ... legal entity or natural person ...”) (ORS 367.802(2))
- **From Units of Government** (“... any department or agency ... federal, ... state, ... city, county, district, commission, authority, entity, port or other public corporation ... and any intergovernmental entity ...”). (ORS 367.802(2))
- **OIPP procurements outside processes of Oregon government procurement law of ORS Chapter 279** (ORS 367.806(5))
  - Projects Selected by Best Value instead of Lowest Bid
  - Allows Entry of Private Partners at Conceptual Stages of Project

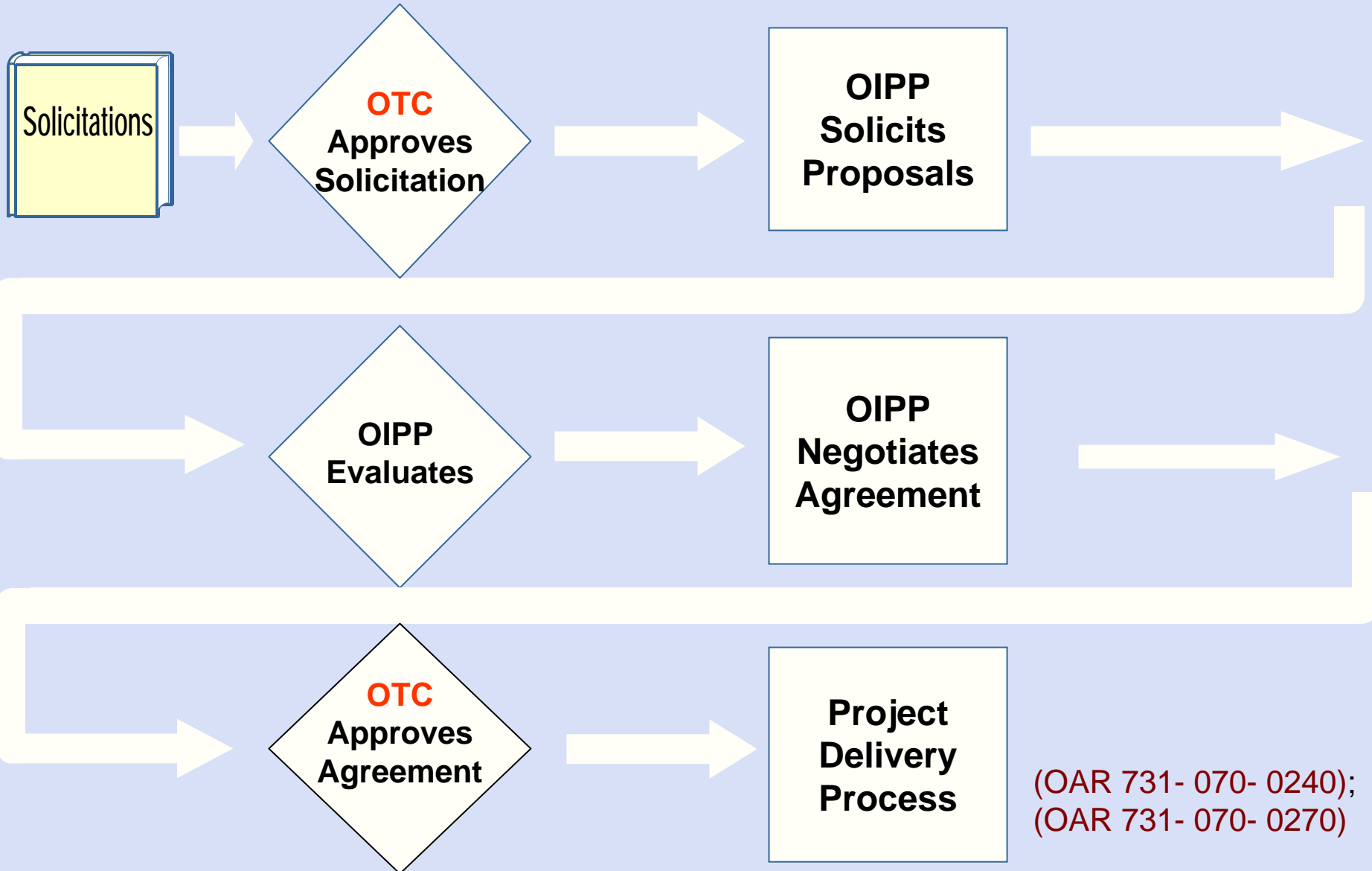


## OREGON INNOVATIVE PARTNERSHIPS PROGRAM





## OREGON INNOVATIVE PARTNERSHIPS PROGRAM



(OAR 731- 070- 0240);  
(OAR 731- 070- 0270)



# OIPP Agreements

Under OIPP authority, ODOT may enter into agreements - if approved by Oregon Transportation Commission - relating to transportation projects the subject of which may include, but need not be limited to:

Planning

Acquisition

Financing

Development

Design

Construction

Reconstruction

Replacement

Improvement

Maintenance

Management

Repair

Leasing

Operation

Any Financing Mechanism (franchise & user fees)

(ORS 367.806)



# OIPP Public Records Disclosure Exemptions

- **Submitted Proposals** ... until selection for negotiation or sharing with local governments, MPOs and Area Commissions on Transportation (ORS 367.804(6))
- **Sensitive Business, Commercial or Financial Information** not customarily provided to business competitors ... until submitted to Oregon Transportation Commission (OTC) in connection with review and approval (ORS 367.804(6))
- **Documents, Communications and Information Developed in Negotiations** ... until submitted to OTC in connection with review and approval (ORS 367.806(7))
- **Terms of Proposed and Final Agreements** submitted to OTC are NOT exempt from disclosure (ORS 367.806(8))



## Other Relevant Provisions of OIPP Law

- State Transportation Enterprise Fund  
(ORS 367.810)
- Labor & Subcontracting Provisions  
(ORS 367.806(5),(6))
- Expanded Eminent Domain Authority  
(ORS 367.818)
- Local Consultations (ORS 367.804(3)(c))
- Consistency with Local, Regional and State Transportation Planning (ORS 367.806(2)(h))



# **OIPP Currently Soliciting Proposals In One Procurement For Multiple Projects**

**1.The Sunrise Corridor** - New limited-access 4-lane facility

**2.South I-205 Corridor Improvements** – Possible tolled expressway in SE Portland

**3.Newberg-Dundee** - Bypass of congested state highway

- **Two Phase Procurement Process**: Pre-development Agreement followed by Implementation Agreement
- **RFP allows Enhancements and Modifications** beyond project descriptions



## **FHWA Special Experimental Project No. 15 (SEP-15)**

On May 6, 2005, FHWA granted ODOT exemptions from certain federal requirements of CFR Title 23 for the current OIPP procurement for three highway projects, ...

... subject to negotiation of Early Development Agreement (EDA).



# FHWA Special Experimental Project No. 15 (SEP-15)

FHWA Approval of OIPP Experimental Feature

#1 A modified procurement approach.

(a) Ability to accept and review  
proposal modifications requested  
by ODOT



# FHWA Special Experimental Project No. 15 (SEP-15)

## FHWA Approval of OIPP Experimental Feature

#1(b) Price negotiations occur after selection of best proposer. Other proposal ideas may be shared with successful proposer during Negotiations. If negotiations fail with best proposer, negotiations may proceed with second best proposer.



# FHWA Special Experimental Project No. 15 (SEP-15)

FHWA Approval of OIPP Experimental Feature

#1(c) Authority to issue RFP and  
execute OIPP Pre-Development  
Agreements prior to receiving final  
NEPA approval



# FHWA Special Experimental Project No. 15 (SEP-15)

FHWA Approval of OIPP Experimental Feature

#2 In lieu of FHWA approval of RFP, FHWA reviews for further processing the OIPP procurement and contract documents and facility implementation and finance plans. Project authorization to follow completion of NEPA analysis.



# FHWA Special Experimental Project No. 15 (SEP-15)

FHWA Approval of OIPP Experimental Feature

#3 Project developer to undertake  
responsibility for maintenance services  
for toll facilities



# FHWA Special Experimental Project No. 15 (SEP-15)

## FHWA Approval of OIPP Experimental Feature

#4 The combined two step procurement and price reasonableness assessment process prior to project authorization constitutes a competitive process for title 23 purposes, provided there is compliance with state and local laws



# FHWA Special Experimental Project No. 15 (SEP-15)

FHWA Approval of OIPP Experimental Feature

- #5 Developer may provide NEPA support for the project, provided (a) unaffiliated consultant compiles NEPA documents, (b) all services are subject to control and direction by ODOT and FHWA; and (c) ODOT and FHWA are responsible for preparation, content and conclusions of NEPA documents



# Future OIPP Procurements

- Real Property for Services Transactions.  
**(House Bill 2115 (2005))**
  - ODOT Maintenance Station Land Swaps
  - Overpass Construction for ODOT Real Property



# *Website for Oregon Innovative Partnerships Program*

**[www.oregon.gov/ODOT/HWY/OIPP/innovative.shtml](http://www.oregon.gov/ODOT/HWY/OIPP/innovative.shtml)**

