Text to be added in **bold**
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731-070-0010
Definitions for the Oregon Innovative Partnerships Program

As used in OAR 731-070-0005 to 731-070-0360:

(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) "Competing Proposal" means a written submission to the Department that a proposer submits in response to a notice issued by the Department under OAR 731-070-0130.

[*(4) "Conceptual Proposal" means a written submission to the Department satisfying the requirements set forth in OAR 730-070-0060.*]

[*(5)*]**(4)** "Department" or "ODOT" means the Oregon Department of Transportation created by ORS 184.615.

[*(6)*]**(5)** "Detailed Proposal" means a written submission to the Department satisfying the requirements set forth in OAR 730-070-0195.

[*(7)*]**(6)** "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.

(7) "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.

(8) "Local government" has the meaning given that term in ORS 174.116.

(9) "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%.

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

(11) "Program" or "OIPP" means the Oregon Innovative Partnerships Program established under ORS 367.800 to 367.826.

(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 that 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. The use of the word “partnership” to describe such an arrangement does not confer on the relationship formed any of the attributes or incidents of a partnership under common law or under ORS chapters 68 and 70.

(13) “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.

(14) “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.

(15) “Tollway” means any roadway, path, highway, bridge, tunnel, railroad track, bicycle path or other paved surface or structure specifically designed as a land vehicle transportation route, the construction, operation or maintenance of which is wholly or partially funded with toll revenues resulting from an agreement with the Department pursuant to ORS 383.005 or with a city, county, or other local government pursuant to ORS 810.010 or other law.

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

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

Stat. Auth.: ORS 184.616, 184.619, 367.824
Stat. Implemented: ORS 367.800 - 367.824

731-070-0020
General Selection Policies

(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 translated into, or 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(5), 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. The evaluation process must appreciate economy and potential savings to the public, but proposal selection will be determined on a best-value basis, taking into account the policies described in this rule and the applicable criteria identified in OAR 731-070-0110 and 731-070-0140, rather than on a lowest responsible bidder determination.

(3) In evaluating unsolicited proposals and in selecting projects for which to solicit proposals under OAR 731-070-[*0240*]**0042**, the Department may give precedence to proposals and projects that will satisfy one or more of the following policies:

(a) Projects that will address an urgent or state-identified transportation need in a manner that will materially advance 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 [*and the attraction or generation of a substantial contribution of non-state or non-tax resources*]), 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.

Stat. Auth.: ORS 184.616, 184.619, 367.824
Stat. Implemented: ORS 367.800 - 367.824

This rule is repealed in its entirety.

[*731-070-0030*
Conflict of Interest and Improper Proposer Conduct

(1) By submitting a proposal, the proposer certifies that the proposer, to the best of its knowledge, is not aware of any information bearing on the existence of any potential Organizational Conflict of Interest. If the proposer is aware of information bearing on whether a potential Organizational Conflict of Interest may exist, the proposer shall provide, as an exception to the certification, a disclosure statement describing this information, in a form suitable to ODOT, as part of its proposal. For purposes of this section, "Organizational Conflict of Interest" means that because of other activities or relationships with other persons or entities, including activities or relationships of its principal officers, its owners or its subcontractors, a

firm is unable or potentially unable to render impartial assistance or advice to ODOT, or the person's objectivity in performing the proposed contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(2) Warranty Against Contingent Fees. By submitting a proposal, the proposer warrants that the proposer, except for a bona fide employee or agency working solely for the proposer:

(a) Has not employed or retained any person or agency to solicit or obtain the contract that might result from submission of the proposal; and

(b) Has not paid upon agreement or understanding to any person or agency employed or retained to solicit or obtain a Transportation Project agreement any contingent fee. For breach or violation of this warranty, the Department shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(c) As used in this rule:

(A) "Bona fide agency" means an established commercial or selling agency, maintained by a proposer for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain federal or state contracts nor holds itself out as being able to obtain any federal or state contract or contracts through improper influence.

(B) "Bona fide employee" means a person or firm employed by a proposer and subject to the proposer's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain federal or state contracts nor holds itself out as being able to obtain any federal or state contract or contracts through improper influence.

(C) "Contingent fee" means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a federal or state contract.

(D) "Improper influence" means any influence that induces or intends to induce a federal or state officer or employee to give consideration or to act regarding a federal or state contract on any basis other than the merits of the matter.

(3) By submitting a proposal, the proposer certifies, to the best of its knowledge and belief, that on or after December 23, 1989:

(a) No federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan, or cooperative agreement;

(b) If any funds other than federal appropriated funds (including profit or fee received under a covered federal transaction) have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with its proposal, the proposer shall complete and submit, with its proposal, OMB standard form LLL, Disclosure of Lobbying Activities, to the Department; and

(c) The proposer shall include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of $100,000 shall certify and disclose accordingly.

(4) Certification -- Debarment, Suspension, Proposed Debarment and Responsibility Factors. By submitting a proposal, the proposer certifies, to the best of its knowledge and belief, that neither the proposer, a Major Partner, a Major Subcontractor, nor any principal officer of a proposer, Major Partner or Major Subcontractor, who is proposed to perform construction or design work on a proposed Transportation Project:

(a) Is presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency or agency of the State of Oregon;

(b) Has, within a three-year period preceding the submission of its proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of bids or proposals; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;

(c) Is presently indicted for, or otherwise criminally or civilly charged by a governmental entity with the commission of any of the offenses enumerated in subsection (b) of this section; or

(d) Has had, within a three-year period preceding the submission of its proposal, one or more contracts terminated for default by any federal, state or local government agency.

(5) For the purposes of this rule, a "principal officer of a proposer, Major Partner or Major Subcontractor," means an officer, director, owner, and partner and any person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

(6) In addition to requiring the certification of compliance with the foregoing provisions of this rule, in any Transportation Project that involves funding provided by or through the federal government, ODOT shall be entitled to require, as a requirement of any contract for a Transportation Project with a proposer, that proposer make such additional certifications, warranties or commitments as may be required by the laws, rules, regulations or policies that govern the funding source or which are conditions of the receipt of such funding.

Stat. Auth.: ORS 184.616, 184.619 & 367.824
Stat. Implemented: ORS 367.800 - 367.824]

Solicitation of Proposals for OIPP Projects

This rule has been moved from 731-070-0240 and amended.

731-070-**0042**[*0240*]
Commission Selection of Projects for Solicitation of Proposals

ODOT either may solicit proposals or, as approved by the Commission, enter into direct negotiations **or competitive negotiations** with a legal entity for a public-private partnership approach to planning, acquiring, financing, developing, designing, managing, constructing, reconstructing, replacing, improving, maintaining, repairing, leasing [*and/*]or operating a

Transportation Project if the Commission has determined that such an approach has the potential to accelerate cost-effective delivery of the Project or promote innovative approaches to carrying out the Project.

Stat. Auth.: ORS 184.616, 184.619, 367.824
Stat. Implemented: ORS 367.800 - 367.824

This rule has been moved from 731-070-0245 and amended.

731-070-**0044**[*0245*]
[*Direct*] Negotiations

(1) Direct Negotiations

When ODOT chooses to enter into direct negotiations for a public-private partnership approach, it may include a request for a proposal from the entity and may specify requirements for proposal content, as well as criteria and procedures under which the proposal will be evaluated and selected for further negotiations towards a final agreement.

(2) ODOT Authority to Elect Competitive Negotiations:

(a) ODOT may authorize, at its option, competitive negotiations with multiple proposers as a means of selecting from among Competing Proposals solicited under OAR 731-070-0130, or from among Detailed Proposals requested under OAR 731-070-0060. Negotiations under this section are part of the proposal evaluation process and do not constitute the negotiation of a Transportation Project agreement.

(b) The object of competitive negotiations, which ODOT may conduct concurrently with more than one proposer or serially, is to maximize ODOT's ability to obtain best value and to permit proposers to develop revised proposals. Therefore, the negotiations may include, but shall not be 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) Otherwise allowing proposers to develop revised proposals that will permit ODOT to obtain the best proposal based on the requirements and evaluation criteria set forth in the notice or request for the scope, manner and extent of negotiations with any proposer are subject to the discretion of ODOT. 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 to another proposer a proposer's price or pricing information, provided, however, that ODOT may inform a proposer that ODOT considers a proposer's price or pricing information to be too high or too low.

Stat. Auth.: ORS 184.616, 184.619, 367.824
Stat. Implemented: ORS 367.800 - 367.824

This rule has been moved from 731-070-0250 without amendment.

731-070-**0046**[*0250*]
Solicitation Documents

(1) In a solicitation for proposals, ODOT will specify requirements for proposal content, and for criteria and procedures under which the proposals will be evaluated and selected. These requirements, criteria and procedures will comply with the requirements of ORS 367.800 to 367.826. Examples include:

(a) Selecting a proposal for development into a final agreement based on a unitary proposal instead of a two-step Conceptual/Detailed Proposal process; and

(b) Evaluating Conceptual Proposals to rank proposers and select one to perform development services necessary to refine the ultimate character and scope of the Project, after which the highly ranked proposers would be asked to submit Detailed Proposals from which one would be selected for negotiation of a final agreement.

(2) These examples are offered for illustrative purposes only, and do not 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.

Stat. Auth.: ORS 184.616, 184.619, 367.824
Stat. Implemented: ORS 367.800 - 367.824

This rule has been moved from 731-070-0260 and amended.

731-070-**0048**[*0260*]
Public Notice of Solicitation

(1) Notice and Distribution Fee. ODOT will furnish notice to a sufficient number of entities 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 charge a fee or require a deposit for the Solicitation Document. ODOT may furnish notice using any method determined to foster and promote competition, including:

(a) Mail notice of the availability of Solicitation Documents ("notice") to Entities that have expressed an interest in ODOT's procurements;

(b) Place notice on the Oregon the Department of Administrative Services' electronic procurement system known as the Oregon Procurement Information Network ("ORPIN"); or

(c) Place notice on ODOT's internet web site.

(3) Posting Advertisement for Proposals. ODOT will post a copy of each advertisement for proposals at the principal business office of ODOT. A proposer may obtain a copy of the advertisement for proposals upon request from Contractor Plans Unit, **3930 Fairview Industrial Drive SE, MS#2-2, Salem, OR 97302** [*455 Airport Road SE, Building K, Salem, Oregon 97301-5348*] or on the Internet at www.oregon.gov/ODOT/CS/CONSTRUCTION .

(4) Minority, Women Emerging Small Business. ODOT will provide timely notice of all solicitations to the Advocate for Minority, Women and Emerging Small Business if the estimated Project cost exceeds $5,000.

Stat. Auth.: ORS 184.616, 184.619, 367.824
Stat. Implemented: ORS 367.800 - 367.824

Unsolicited Proposals for OIPP Projects

731-070-0050
Submission of Unsolicited Proposal

(1) [*Unless prequalification is required under OAR 731-070-0350, a*]**A**ny private entity or unit of government may submit an unsolicited [*Conceptual or*] Detailed Proposal for a Transportation Project to ODOT for consideration under the OIPP. [*The proposer shall prominently label the proposal as either a Conceptual Proposal or Detailed Proposal, as appropriate.*]

(2)[*(a) A proposal review fee in the amount prescribed by OAR 731-070-0055(1)(a) must accompany any unsolicited Conceptual Proposal submitted by a private entity or unit of government.*

(b)]A proposal review fee in the amount prescribed by OAR 731-070-0055(1)(c) must accompany any unsolicited Detailed Proposal submitted by a private entity or unit of government.

(3) The proposer shall submit 20 copies, individually identified, of any unsolicited proposal in addition to the proposal bearing the signature of the authorized representative. The original proposal, required copies and processing fee shall be delivered to the Director or his designee.

(4) ODOT will consider an unsolicited proposal only if the proposal:

(a) Is unique or innovative in comparison with and is not substantially duplicative of other transportation system projects included in the state transportation improvement program within the Department or, if it is similar to a project in the state transportation improvement program, the project has not been fully funded by ODOT or any other public entity as of the date the proposal is submitted, or the proposal offers an opportunity to materially advance or accelerate the implementation of the project. Unique or innovative features which may be considered by ODOT in evaluating such a proposal may include but are not limited to unique or innovative financing, construction, design, schedule or other project components as compared with other projects or as otherwise defined by ODOT rules or regulations; and

(b) Includes all information required by and is presented in the format set out in OAR 731-070-0060. Such information 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 367.803(5) and (6) and OAR 731-070-0280 and 0290.

(5) ODOT will not consider an unsolicited proposal for a project involving another state or local government unit of another state unless ODOT and the appropriate representative of the other state or of the local government unit of the other state have entered into an agreement that permits the acceptance of unsolicited proposals for such a project.

(6) ODOT will not consider an unsolicited proposal for a project that has been incorporated in the Statewide Transportation Improvement Program (STIP) as approved by the Oregon Transportation Commission, and for which funding is fully committed, if the proposal is submitted later than July 1 of the design year designated in the STIP or, if no design year is designated, July 1 of the year that is two years prior to the construction year designated in the STIP.

Stat. Auth.: ORS 184.616, 184.619, 367.824
Stat. Implemented: ORS 367.800 - 367.824

731-070-0055
Fees to Accompany Unsolicited Proposals

(1) The **unsolicited** proposal review fees required by OAR 731-070-0050(2) are as follows, unless otherwise specified in sections (2) or (3) of this rule:

[*(a) For Conceptual Proposals, as defined in OAR 731-070-0010(4):*

(A) A $5,000 non-refundable fee for a project under $100 million; and

(B) A $20,000 non-refundable fee for a project $100 million or more.

(b) If ODOT invites Competing Conceptual Proposals as described in OAR 731-070-0130, each Competing Conceptual Proposal shall be accompanied by the fees described in (1)(a).

(c)]**(a)** For Detailed Proposals, as defined in OAR 731-070-0010(6):

(A) A $10,000 non-refundable fee for a project under $100 million; and

(B) A $40,000 non-refundable fee for a project $100 million or more.

(b) If ODOT invites Competing Conceptual Proposals as described in OAR 731-070-0130, each Competing Conceptual Proposal shall be accompanied by the fees described in (1)(a).

[*(d) If ODOT invites Competing Detailed Proposals as described in OAR 731-070-0130, each Competing Detailed Proposal shall be accompanied by the fees described in (1)(c).*]

(2) If the cost of evaluating an unsolicited proposal exceeds the fees assessed under section (1) of this rule, the Director may assess additional fees that reflect the reasonable expected costs to be incurred by ODOT in evaluating the unsolicited proposal that exceed the amount deposited in section (1) of this rule.

(3) 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.

Stat. Auth.: ORS 184.616, 184.619, 367.822, 367.824
Stat. Implemented: ORS 367.800 - 367.824

This rule is rewritten in its entirety. Current text follows proposed text for the reader's convenience.

731-070-0060
Contents and Format of **Detailed** [*Conceptual*] or Competing Proposals

(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**,** [*and/or*] 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.

[*(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) Provide financial information regarding the private entity or consortium and each Major Partner demonstrating their ability to perform the proposed Project.

(E) If the proposer is a limited liability company, all members and managers, if any (as those terms are defined in ORS 63.001), as well as any assignee of an ownership interest, regardless of whether the assignee has also acquired the voting and other rights appurtenant to membership.

(F) If the proposer is a trust, the trustee and all persons entitled to receive income or benefit from the trust.

(G) If the proposer is an association other than a limited liability company, all members, officers and directors of the association.

(H) If the proposer is a partnership or joint venture, all of the general partners, limited partners or joint venturers.

(I) On the written request of an entity that previously has been prequalified under OAR 731-070-00350 or 731-070-0360, ODOT may waive any requirement of this subsection (a) for which ODOT determines that the entity has provided sufficient information in the prequalification process.

(b) TAB 2: Project Characteristics.

(A) Provide a topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed Project.

(B) Provide a description of the Transportation Project or Projects, including all proposed interconnections with other existing transportation facilities or known publicly identified projects.

(C) 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.

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

(E) If the proposed Project does not conform with the state and local transportation plans or local comprehensive plans, outline the proposer's approach for securing the Project's conformity with state and local transportation plans and local comprehensive plans or indicate the steps required for acceptance into such plans.

(F) When a proposed Project is sited, in whole or in part, within the jurisdiction of a metropolitan planning organization or area commission on transportation, identify applicable regional and local approvals required for the Project.

(G) Provide an explanation of how the proposed Transportation Project would impact local transportation plans of each affected locality.

(H) Provide a list of public transportation facilities and major apparent public utility facilities that will be crossed or affected by the Transportation Project and a statement of the proposer's plans to accommodate such facilities.

(I) Describe the role the proposer anticipates ODOT will have in the development, construction, operation, maintenance, financing, or any other aspect of the Transportation Project.

(c) TAB 3: Project Financing.

(A) Include a list and discussion of assumptions (user fees or toll rates, and usage of the facility) underlying all major elements of the proposed financing plan for the Project.

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

(C) Identify any 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.

(D) Identify any aspect of the financial model for the Transportation Project that implicates or potentially implicates the restrictions on 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.

(E) Provide a conceptual estimate of the total cost of the Transportation Project.

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

(A) Describe the significant 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.

(B) Describe significant benefits of the Project to the state's economic condition. Discuss whether the Project is critical to attracting or maintaining competitive industries and businesses to the state or region.

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

(D) Identify all major environmental, social and land use issues that the proposer knows or anticipates must be addressed.

(2) All pages of a Conceptual 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 Conceptual Proposal submitted by a Private Entity must be signed by an authorized representative of the Private Entity submitting the unsolicited Conceptual 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 0290.]

Stat. Auth.: ORS 184.616, 184.619, 367.824
Stat. Implemented: ORS 367.800 - 367.824

731-070-0080
Additional Proposer Organizational Disclosure Requirements

(1) In addition to the disclosure requirements of OAR 731-070-0060(1)(a) [*and 731-070-0195(1)(a)*], the Director or the Director's designee may impose, after the submission of a proposal, any other special disclosure requirements the Director determines to be reasonably necessary to evaluate the expertise, experience, financial backing, integrity, ownership and control of any proposer.

(2) All proposers must provide all the information required by this rule [*and the Director*]. All proposers and Key Persons must complete and submit the required disclosure form, prescribed by ODOT, within the deadlines set by the Director or the Director's designee. All proposers and Key Persons must provide any documents required in the disclosure process, or other documents as determined by the Director, or their proposals may be rejected by ODOT.

(3) ODOT may reject, or require the supplementation of, a proposal if the proposer has not provided all information required in the disclosure form or if any information provided is not accurate, current or truthful. The failure or refusal of any proposer to properly execute, fully complete, or accurately report any information required by the required disclosure shall be sufficient grounds for rejection of the proposal.

(4) Any change in the status of the proposer, in the identity of any of the Key Persons, or the addition of any Key Persons must be reported to the Department within 30 calendar days of the known change, and those whose status has changed or who have been added as Key Persons will be required to submit the required disclosure information. 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.

(5) The burden of satisfying ODOT's disclosure requirements, both in terms of producing the disclosures and assuring their accuracy and completeness, resides with each proposer.

(6) Each proposer, by submitting a proposal, thereby 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.

(7) An Agency that submits a proposal may, prior to submission, request ODOT to waive the disclosure requirements of this rule with respect to the corporate public entity and its officers. However, if the Agency proposes to enter into or establish a partnership or joint venture with a private party 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 party must be made as if the private party is a proposer, in accordance with this rule.

Stat. Auth.: ORS 184.616, 184.619, 367.824
Stat. Implemented: ORS 367.800 - 367.824

731-070-0110
Initial Review of Unsolicited Proposals

(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)(A) If the proposal is submitted as a Conceptual Proposal, whether the proposal appears to satisfy the requirements of OAR 731-070-0060 for Conceptual Proposals; or*

(B)]**(c)** If the proposal is submitted as a Detailed Proposal, whether the proposal appears to satisfy the requirement of OAR 731-070-[*0195*]**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.

Stat. Auth.: ORS 184.616, 184.619, 367.824
Stat. Implemented: ORS 367.800 - 367.824

731-070-0130
Competing Proposals

(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 [*whether*] the Competing Proposal must satisfy the requirements for a [*Conceptual Proposal under OAR 731-070-0050 or for a*] Detailed Proposal under OAR 731-070-[*0195*] **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 Conceptual Proposal:*

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

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

[*(c)*]**(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-[*0195*]**0060**.

Stat. Auth.: ORS 184.616, 184.619, 367.824
Stat. Implemented: ORS 367.800 - 367.824

731-070-0140
Evaluation of Unsolicited and Competing Proposals

(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 [*and/*]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 [*and/*]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, [*and/*]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 [*and/*]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.*

(a) For Conceptual Proposals. For any Conceptual Proposal that receives a favorable evaluation, the Evaluation Panel will prepare a written determination, based on facts and circumstances presented in the proposal or known to ODOT, that the proposal merits development into a Detailed Proposal.

(b) In its written determination regarding any Conceptual Proposal, the Evaluation Panel may specify conditions that it recommends the proposer be required to satisfy before proceeding to develop a Detailed Proposal. By way of example, such conditions may include, but are not limited to:

(A) Requiring the proposer to provide additional information or clarification concerning elements or parts of its Conceptual Proposal;

(B) Requiring the proposer to develop and submit additional information confirming the technical feasibility of the proposed Transportation Project;

(C) Requiring the proposer to develop and submit additional information confirming that the proposed Transportation Project complies with or can be brought into compliance with relevant local and state transportation plans, restrictions on property use, and environmental laws, or that the Transportation Project and the applicable plans, restrictions and environmental laws can otherwise be brought into conformity;

(D) Requiring the proposer to commit in writing, to ODOT, to undertake good faith efforts to modify or adjust in specific ways, in the Detailed Proposal, the Transportation Project that was the subject of the Conceptual Proposal to incorporate steps, characteristics or features that ODOT identifies as necessary or desirable to enhance the feasibility, public acceptance, transportation efficiency, or economy in execution or operation, of the Transportation Project;

(E) Otherwise requiring the proposer to develop and present revisions to, or alternatives within, the Detailed Proposal that will permit ODOT to obtain best value based on the requirements and evaluation criteria set forth in the notice or request for Conceptual Proposals and based on knowledge obtained by ODOT by virtue of its review and evaluation of the Conceptual Proposals; and

(F) Requiring the proposer to enter into an interim agreement, on terms satisfactory to the proposer and ODOT, under which the proposer will provide services to ODOT in connection with the development of the Detailed Proposal or further development of the Project, including assistance to ODOT in obtaining any necessary regulatory approvals.

(c) 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 Conceptual Proposal for development of a Detailed Proposal and forward the selection to the Commission for approval or disapproval;

(B) Select one Conceptual Proposal for development of a Detailed Proposal subject to the proposer's satisfaction of specified conditions and forward the selection to the Commission for approval or disapproval;

(C) Select one Conceptual Proposal for direct negotiations under OAR 731-070-0240 and -0245; or

(D) Reject all Conceptual Proposals.]

[*(d)*]**(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)*]**(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)*]**(b)** Reject all Detailed Proposals.

Stat. Auth.: ORS 184.616, 184.619, 367.824
Stat. Implemented: ORS 367.800 - 367.824

731-070-0160
Use of a Process that Permits ODOT Feedback and Ability of Proponents to Supplement or Refine Proposals after Initial Submission[*; ODOT Authority to Elect Competitive Negotiations*]

(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.

[*(3) ODOT Authority to Elect Competitive Negotiations:*

(a) In addition to ODOT's ability to exercise any alternative selection or contracting process permitted under this rule or OAR 731-070-0270(2), ODOT may authorize, at its option, competitive negotiations with multiple proposers as a means of selecting from among Competing Proposals solicited under OAR 731-070-0130, or from among Detailed Proposals requested

under OAR 731-070-0270(2)(b). Negotiations under this section are part of the proposal evaluation process and do not constitute the negotiation of a Transportation Project agreement.

(b) ODOT may announce its election to conduct competitive negotiations:

(A) In any notice issued for Competing Proposals under OAR 731-070-0130;

(B) In any request for the submission of Detailed Proposals under OAR 731-070-0270(2); or

(C) By written notice, by mail or by electronic means, to the proposers, issued at any time following ODOT's receipt of proposals under OAR 731-070-0130 or 731-070-0270(2).

(c) In any communication under subsection (3)(b) of this rule, or by notice to the proposers issued by mail or by electronic means at any time after the receipt of proposals, ODOT may announce that it will initiate competitive negotiations with all proposers who submitted responsive proposals, or only with proposers who qualify to negotiate because ODOT has determined that their proposals fall within a competitive range.

(d) When ODOT elects to negotiate only with proposers within a competitive range, then after ODOT's evaluation of proposals in accordance with the criteria set forth in the notice or request for proposals, ODOT will determine the proposers in the competitive range.

(A) For purposes of this section (3), the proposers in the competitive range consist of those proposers whose proposals, as determined by ODOT in its discretion, have a reasonable chance of being determined the best proposal as the result of the preliminary evaluation conducted under subsection (3)(d). In determining which proposals fall within the competitive range, ODOT may consider whether its preliminary evaluation of proposals establishes a natural break in the preliminary scores of the proposals that suggests those proposals that are sufficiently competitive to be included in the competitive range.

(B) ODOT will provide written notice to all proposers, by mail or by electronic means, of the proposals ODOT determines to fall within the competitive range. A proposer whose proposal is not within the competitive range may submit a written protest of ODOT's evaluation and determination of the competitive range within 14 calendar days after the date of ODOT's notice. A proposer's written protest must state facts and argument that demonstrate how the competitive range determination was flawed or how ODOT's determination constituted an abuse of discretion. If ODOT receives no written protest concerning the proposed selection listing within the 14 calendar day period, then ODOT will proceed with negotiations with the proposers whose proposals fell within the competitive range.

(C) In response to a timely filed protest, ODOT will issue a written decision that resolves the issues raised in the protest. ODOT will make its written determination available, by mail or by electronic means, to the protesting proposer and to the proposers falling within the competitive range. ODOT's written decision under this subsection shall constitute a final order under ORS 183.484.

(e) The object of competitive negotiations, which ODOT may conduct concurrently with more than one proposer or serially, is to maximize ODOT's ability to obtain best value and to permit proposers to develop revised proposals. Therefore, the negotiations may include, but shall not be 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) Otherwise allowing proposers to develop revised proposals that will permit ODOT to obtain the best proposal based on the requirements and evaluation criteria set forth in the notice or request for proposals.

(f) The scope, manner and extent of negotiations with any proposer are subject to the discretion of ODOT. 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). 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 to another proposer a proposer's price or pricing information, provided, however, that ODOT may inform a proposer that ODOT considers a proposer's price or pricing information to be too high or too low.]

Stat. Auth.: ORS 184.616, 184.619, 367.824
Stat. Implemented: ORS 367.800 - 367.824

731-070-0170
Commission Review and Selection of Proposals

[*(1) The Commission shall review the Conceptual Proposal selected and forwarded by the Director under OAR 731-070-0140(7)(c). Based on that review the Commission shall approve or disapprove the Director's selection for development of a Detailed Proposal under OAR 731-070-0190.*

(2)] 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.

Stat. Auth.: ORS 184.616, 184.619, 367.824
Stat. Implemented: ORS 367.800 - 367.824

This rule is repealed in its entirety.

[*731-070-0190*
Detailed Proposal

(1) Upon the Commission's approval of the Director's selection of a Conceptual Proposal under OAR 731-070-0140(7)(c)(1) and on expiration of the protest period, ODOT shall notify the proposer to submit a Detailed Proposal complying with the requirements of OAR 731-070-0195.

(2) Upon the Commission's approval of the Director's provisional selection subject to satisfaction of conditions of a Conceptual Proposal under OAR 731-070-0140(7)(c)(2) for development of a Detailed Proposal and on expiration of the protest period, ODOT shall notify the proposer of the conditions. The proposer shall have 21 calendar days from receipt of ODOT's notification to elect to proceed under specified conditions. If the proposer elects to proceed, ODOT shall work with the proposer to develop a plan for satisfying the conditions. If the plan entails entry into an interim "agreement" within the meaning of ORS 367.802(1), the agreement will conform to all relevant requirements of ORS 367.800 to 367.826.

(3) After the Commission's approval of the Director's selection or provisional selection of a Conceptual Proposal and until submission of the Detailed Proposal, ODOT and the proposer may confer on any matter pertinent to development of the Detailed Proposal.

(4) The Evaluation Panel, as supplemented by consultants retained by ODOT, shall review the Detailed Proposal to ensure compliance with the requirements of ORS 731-070-0195. When reviewing a Detailed Proposal, the Evaluation Panel may take into consideration any or all of the factors set forth in ORS 731-070-0140(5) and any additional factors consistent with the intent and goals of the OIPP legislation, but the weighting of factors and final decision is in the sole discretion of the Evaluation Panel.

(5) Upon completion of its review of the Detailed Proposal, the Evaluation Panel will recommend to the Director whether the Detailed Proposal should be advanced to a final agreement.

(6) After receipt of the Evaluation Panel's recommendation, the Director shall either accept or reject the Evaluation Panel's recommendation, and if accepted, the Director shall submit to the Oregon Transportation Commission the Detailed Proposal, as modified, if applicable, with a recommendation that the Detailed Proposal constitutes an acceptable basis for an agreement to enter into a public-private partnership with the proposer.

(7) After receipt of the selection from the Director, the Oregon Transportation Commission shall either approve or disapprove the Detailed Proposal selected by the Director for negotiation of a final agreement.

Stat. Auth.: ORS 184.616, 184.619 & 367.824
Stat. Implemented: ORS 367.800 - 367.824]

This rule is repealed in its entirety.

[*731-070-0195*
Contents and Format of Detailed Proposal

(1) A Detailed 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 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 and/or 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.

Stat. Auth.: ORS 184.616, 184.619 & 367.824
Stat. Implemented: ORS 367.800 - 367.824]

731-070-0350
Discretionary Order Requiring the Prequalification of Proposers – **Detailed** Unsolicited **or Competing** Proposals

(1) ODOT may, at any time, issue a written order that requires any entity that wishes to submit [*an*] **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.

Stat. Auth.: ORS 184.616, 184.619, 367.824
Stat. Implemented: ORS 367.800 - 367.824

This rule is repealed in its entirety.

[*731-070-0360*
Discretionary Notice Requiring the Prequalification of Proposers -- Competing Proposals

(1) Prior to furnishing public notice of a request for Competing Proposals, ODOT may issue written notice that any entity that wishes to submit a Competing Proposal in response to that request must be prequalified by ODOT. The notice must provide that each proposer must be prequalified by ODOT in order to submit a proposal in response to the particular request for

Competing Proposals, and that ODOT will reject proposals received from proposers who are not prequalified.

(2) ODOT will publish each notice that prequalification is required in the same manner that it issues public notice of a solicitation under OAR 731-070-0260(2). Additionally, each notice shall contain:

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

(b) The date and time by which entities must submit their prequalification applications to ODOT, which generally will be a reasonable time prior to ODOT's issuance of the request for Competing Proposals, and the location at which they must be filed; and

(c) 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 will establish the criteria used to evaluate prequalification applications prior to the advertised notice of required prequalification. The criteria may include, but need 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 can reasonably 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 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 on 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 notice (or such shorter period as ODOT may specify in the notice), 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 notice (or such shorter period as ODOT may specify in the notice):

(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;

(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 a proposal in response to ODOT's request for Competing Proposals.

(6) If ODOT determines that the applicant is not qualified, ODOT will provide the applicant written notice of that determination that contains a statement of the reason or reasons for that determination.

(7) An entity whom ODOT determines not to be qualified may, within five 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 notice issued under section (1) of this rule, an ODOT determination that an applicant is prequalified under this section for the Projects or kinds of Projects specified in the notice 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 Project or kinds of Projects described in the notice 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.

Stat. Auth.: ORS 184.616, 184.619 & 367.824
Stat. Implemented: ORS 367.800 - 367.824]