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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 259
DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

FILED
08/20/2020 9:25 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Adopting Department procedures for purchases through federal programs under ORS 279A.180.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/21/2020 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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Filed By:
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Rules Coordinator

NEED FOR THE RULE(S):

This rule is needed to establish procedures for the Department to follow when making purchases through federal programs. The rule is needed for compliance with the Public Contracting Code.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

The Executive Committee of the Board on Public Safety Standards and Training (Board) meeting minutes are available on the Department of Public Safety Standards and Training website, www.oregon.gov/dpsst. The memo and meeting materials are available by submitting a records request to DPSST.

FISCAL AND ECONOMIC IMPACT:

This rule is needed to establish procedures for the Department to follow when making purchases through federal programs. The rule is needed for compliance with the Public Contracting Code. The Department estimates that adoption of the rule does not create a fiscal impact or change any fiscal impacts with regard to procurement.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

This rule change specifically addresses the Department's processes for procurement. Because the rule is specific the Department, there are no state agencies, units of local government or members of the public likely to be economically affected by the rule change. Because the rule is specific the Department, there were no small businesses identified as subject to the rule change.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses, as well as public and private safety agencies, law enforcement units, state agencies, units of local government and the public are invited to submit written comments to the agency rules coordinator during the public comment period on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact on business.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

ADOPT: 259-007-0150

RULE SUMMARY: OAR 259-007-0150 establishes procedures for the Department to follow when making purchases through federal programs.

CHANGES TO RULE:

259-007-0150

Purchases Through Federal Programs

(1) The Department of Public Safety Standards and Training (Department) may purchase goods or services under the federal programs identified in ORS 279A.180, without competitive sealed bidding, competitive sealed proposals or other competition required under ORS 279B.050 to 279B.085, provided that the Department has federal authorization to purchase through the program and follows the procedures set forth in this rule.¶

(2) The federal programs named in ORS 279A.180 are accessible to the Department for purchasing goods or services. The Department hereby makes the determination according to ORS 279A.180 that the Local Preparedness Acquisition Act (Public Law 110-248), the GSA Order of 2000, and any subsequent revisions or updating of either of these programs describe other federal programs that, under federal law, are similar to 10 U.S.C. 381 or Section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to the Department.¶

(3) To purchase through a federal program, the Department must document the following in the procurement file:¶

(a) The federal authority for the Department to purchase through the federal program:¶

(b) The acquisition meets the Department's needs:¶

(c) The price and other terms of the acquisition are advantageous to the State:¶

(d) No other price agreement for the goods or services exists based on the Department's inquiry through the Oregon Procurement Information Network (ORPIN) or other applicable electronic procurement system:¶

(e) The Department has considered the acquisition's impact upon local business as follows:¶

(A) If the procurement is in excess of \$10,000, the Department has given timely notice through ORPIN, or other applicable electronic procurement system, of its needs, reasons, and intent to procure through a federal program:¶

(B) The Department has provided a reasonable time period under the circumstances for individuals to respond to the notice and send written comments to the Department; and¶

(C) The Department has considered any comments and replied, if appropriate, before proceeding with its procurement through a federal program. This rule provides for an informal opportunity to comment to and be considered by the Department, instead of the formal notice requirements for solicitations in excess of \$10,000 according to ORS 200.035.¶

(f) State and local preference programs, including but not limited to Inmate Labor in accordance with the Oregon Constitution, Article I, Section 41 and Products of Disabled Individuals Program of ORS 279.835 to 850, are not waived or otherwise adversely affected by an acquisition through a federal program:¶

(g) The Department has complied with OAR 137-045-0010 to 137-045-0090, and if it is required, obtained a legal sufficiency review or exemption from the Department of Justice; and¶

(h) The Department is informed of its federal program's procurement process, including:¶

(A) Voluntary and Direct Contract. The Department and contractors participate voluntarily. The contractors make direct deliveries to the Department and retain the right to decline orders on a case-by-case basis, for any reason, within a five-day period of receipt of that order;¶

(B) Funding Fee. The price of a federal program contract includes a GSA industrial funding fee to cover GSA administrative costs to operate the federal program;¶

(C) New Contract. When a contractor accepts an order from the Department, a new contract is formed. The contract's terms and conditions are incorporated by reference; and¶

(D) Additional Terms and Conditions. The Department may add to its contract such significant, substantial contract terms and conditions as are required by State statutes or rules, if such additions do not conflict with the federal program's contract terms and conditions. Examples of such terms and conditions include, but are not limited to:¶

(i) Prompt Payment. The Department may apply the terms and conditions of Oregon's prompt payment law to its contracts, but if the Department fails to make this addition, then the Department may be subject to the Federal Prompt Payment Act, 31 U.S.C. sec. 3901 et seq., as implemented at subpart 32.9 of the Federal Acquisition Regulation (FAR);¶

(ii) Commercial Terms. Patent indemnity and other commercial terms and conditions may be added if they do not conflict with the federal program's terms and conditions; and¶

(iii) Conflict Resolution. The Department may revise the contract's dispute resolution provision to use alternative dispute resolution to the extent authorized by law.

Statutory/Other Authority: ORS 181A.410, ORS 279A.070, ORS 279A.050, ORS 279A.180

Statutes/Other Implemented: ORS 181A.410, ORS 279A.180