



## PERMANENT ADMINISTRATIVE ORDER

**DOT 3-2020**  
CHAPTER 731  
DEPARTMENT OF TRANSPORTATION

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### RULES:

731-146-0150, 731-146-0160, 731-146-0210, 731-146-0220, 731-147-0010, 731-147-0055, 731-147-0070, 731-148-0100, 731-148-0110, 731-148-0130, 731-148-0200, 731-148-0205, 731-148-0210, 731-148-0215, 731-148-0220, 731-148-0240, 731-148-0260, 731-148-0270

AMEND: 731-146-0150

NOTICE FILED DATE: 05/28/2020

RULE SUMMARY: Revised to fix typo and add "Bid" term in (2)(d), such that ODOT can use that subsection to protect itself during both Invitation to Bid and Request for Proposal settings.

### CHANGES TO RULE:

#### 731-146-0150

##### Electronic Procurement and Submittals

(1) The following terms have the meaning given below when capitalized in this Rule:¶

(a) "Electronic Advertisement" means the Solicitation Document, RFQ or other document inviting participation in the procurements made available electronically, including but not limited to, via:¶

(A) The World Wide Web; ¶

(B) ORPIN or other electronic procurement system approved by the Chief Procurement Officer; or ¶

(C) Electronic mail. ¶

(b) "Electronic Offer" means a response to the Solicitation Document, RFQ or other document inviting participation submitted to ODOT via:¶

(A) The World Wide Web; ¶

(B) ORPIN or other electronic procurement system approved by the Chief Procurement Officer; or ¶

(C) Electronic mail. ¶

(c) "Electronic Submittal" means an Electronic Offer or a response to an RFQ.¶

(d) "ORPIN" The Oregon Procurement Information Network, known as ORPIN, is an Internet-based, on-line system used by state agencies for procurement notices and advertisements, as functionality allows. ¶

(2) Electronic Procurement and Submittals Authorized:¶

(a) ODOT may conduct all phases of a procurement under these Rules, including without limitation the posting of

Electronic Advertisements and the receipt of Electronic Submittals, by electronic methods if and to the extent the Department specifies in a Solicitation Document or RFQ, or any other Written instructions on how to participate in the procurement; ¶

(b) ODOT shall open Electronic Submittals in accordance with electronic security measures in effect at the time of its receipt of the Electronic Submittal. Unless ODOT provides procedures for the secure receipt of Electronic Submittal, the Person submitting the Electronic Submittal assumes the risk of premature disclosure due to submission in unsealed form; ¶

(c) ODOT's use of electronic or digital Signatures shall be consistent with applicable statutes and rules. ¶

(d) If ODOT determines that Bid or Proposal security is or will be required, ODOT shall not authorize Electronic Offers unless it has established methods for receipt of such security. ¶

(3) Receipt of Electronic Submittals: ¶

(a) If ODOT permits Electronic Submittals in the Solicitation Document or RFQ, the Offeror may submit Electronic Submittal in accordance with the Solicitation Document or RFQ. ODOT shall not consider Facsimile or Electronic Submittals unless authorized by the Solicitation Document or RFQ; ¶

(b) When ODOT conducts an electronic procurement, all Electronic Submittals must be submitted by the particular date and time identified in the Solicitation Document or RFQ; ¶

(c) A person may withdraw an Electronic Submittal at any time prior to the specified date and time in accordance with Solicitation Document or RFQ. ¶

(4) Failure of the Electronic Procurement System. In the event of a failure of an Electronic Procurement System or electronic mail system that interferes with the ability of Persons to submit Electronic Submittals, to protest or to otherwise participate in the procurement, ODOT may cancel the procurement or may extend the date and time for receipt of Electronic Submittals by providing notice of the extension immediately after the Electronic Procurement System or electronic mail systems becomes available.

Statutory/Other Authority: ORS 184.619, 279A.065(6)(a), 279A.070

Statutes/Other Implemented: ORS 279A.050(3), 279A.065, 279A.070

RULE SUMMARY: Housekeeping revisions to fix grammar errors and numbering errors. Clarification edits to make clear that this rule allows Reinstatement and Retroactive Approval to occur simultaneously. Clarification edits to make clear that this rule applies to terminated or expired contracts.

CHANGES TO RULE:

731-146-0160

Reinstatement of Expired or Terminated Contract; Retroactive Approval of Existing Contract

(1) Application. This ~~R~~rule applies to the Reinstatement of expired or terminated Contracts (~~expired Contracts~~) and the Retroactive Approval of existing Contracts. This ~~R~~rule does not apply to mistakes that may occur in the solicitation process.¶

~~(2) Definitions.¶~~

~~(a) "ODOT's Chief Procurement Officer" mean ODOT's Chief Procurement Officer or delegate~~ This rule allows Reinstatement of expired or terminated Contracts and Retroactive Approval to occur simultaneously.¶

~~(2) Definitions.¶~~

~~(b)~~ "Procurement Authority" means a person within ODOT with delegated authority to execute a Contract.¶

~~(e)~~ "Reinstatement" means the restoration of an expired or terminated Contract in order to:¶

(A) Complete one or more deliverables within the scope of the Contract at the time of its expiration or termination, or¶

(B) Fulfill its term, up to the maximum time period provided in the Contract before its expiration or termination.¶

~~(d)~~ "Retroactive Approval" means ~~t~~he documentation of Procurement Authority approval on an existing Contract which was previously signed by all parties except the required Procurement Authority.¶

(3) Requirements to Reinstatement an Expired or Terminated Contract.¶

(a) Before expiration or termination, the Contract was properly signed by all parties;¶

(b) Then the signed Contract expired or was terminated;¶

(c) No more than one year has passed since the Contract expiration or termination date;¶

(d) ODOT reinstates the Contract by amendment;¶

(A) To fulfill its term, up to the maximum time period provided in the Contract; or¶

(B) To complete one or more deliverable(s) included within the Contract's scope at the time of its expiration or termination;¶

(e) ODOT documents in the Procurement File the deliverable(s) to be completed at the time of the ~~expired~~ Contract's Reinstatement; and¶

(f) If the Contractor has performed work under the Contract, the Reinstatement does not apply to payments made for work performed between the expiration or termination of the Contract and the date of any Reinstatement.¶

(4) Requirements to Retroactively Approve an Existing Contract.¶

(a) The Contract exists and has not expired;¶

(b) The Contract was signed by all parties except the required Procurement Authority approval was lacking;¶

(c) If the Contractor has performed work under the Contract, the ~~r~~Retroactive ~~a~~Approval does not apply to payments made for work performed between the start of the Contract and the date of any ~~r~~Retroactive ~~a~~Approval.¶

~~(5) Terminated Contracts. If ODOT or both parties to the Contract have terminated the Contract for any reason, ODOT may enter into a new Contract with the same party to perform the obligations not completed under the former Contract.¶~~

~~(6)~~ Process. The following must be met for either a Reinstatement or Retroactive Approval of a Contract, or both:¶

(a) The Contract Administrator must submit a Written request to the ODOT Chief Procurement Officer or delegate. The request must explain the following:¶

- (A) ~~¶~~Either the proposed Reinstatement or Retroactive Approval of the Contract, or both.¶
- (B) The background facts that led to the request;¶
- (C) The good faith basis for making the request;¶
- (D) The need for either Reinstatement or Retroactive Approval of a Contract, or both, due to unforeseen or unavoidable conditions;¶
- (E) The steps to prevent a reoccurrence. For example:¶
  - (i) Improvement of internal policies and procedures; and¶
  - (ii) Provision of new training or retraining; and¶
- (F) Acknowledgement that the request is in the best interest of ODOT.¶
  - (b) ODOT must obtain all other approvals required for the Contract, including but not limited to: Attorney General's approval of legal sufficiency under ORS 291.047 or ratification under 291.049. All approvals required for the Contract must be obtained before any Reinstatement or Retroactive Approval becomes binding.¶
  - (c) The ODOT Chief Procurement Officer or delegate must approve the request before the Contract Reinstatement amendment or Retroactive Approval becomes effective.¶
- (86) Effect of Approval.¶
  - (a) With the exception of subsection ~~3(3)~~(f), an approved Reinstatement makes the Contract in full force and effect, as if it had not expired.¶
  - (b) With the exception of subsection ~~4(4)~~(c), an approved Retroactive Approval makes the Contract in full force and effect, as if it had been approved by the Procurement Authority when the Contract was formed.¶
  - (c) ODOT may make an approved payment after any related Contract documents are signed by the necessary parties.¶
- (97) ODOT may combine ~~in one document a Reinstatement~~ in one document a Reinstatement of a Contract and a Retroactive Approval of that Contract in accordance with this ~~Rule and its amendm.~~¶
- (8) Terminated Contracts. If a Contract has been terminated for any reason, ODOT may enter in accordance with OAR 731-146-0200, as needed to a new Contract with the same party to perform the obligations not completed under the former Contract.

Statutory/Other Authority: ORS 184.619, 279A.065(6)(a), 279A.070

Statutes/Other Implemented: ORS 279A.050(3), 279A.065, 279A.070

REPEAL: 731-146-0210

NOTICE FILED DATE: 05/28/2020

RULE SUMMARY: This rule was moved to 731-147-0070 as it pertains to Goods or Services which are addressed in chapter 731, division 147.

CHANGES TO RULE:

~~731-146-0210~~

~~Mandatory Use Contracts~~

~~ODOT is exempt from mandatory use contracts for acquisitions when purchasing goods or services from the federal government pursuant to ORS 279A.180.~~

~~Statutory/Other Authority: ORS 184.619, 279A.065, 279A.070~~

~~Statutes/Other Implemented: ORS 279A.050(3), 279A.065(6), 279A.070, 279A.180~~

ADOPT: 731-146-0220

NOTICE FILED DATE: 05/28/2020

RULE SUMMARY: Created an Emergency Procurement rule within Division 146, similar to DAS rule.

CHANGES TO RULE:

731-146-0220

Emergency Procurement

Procedures. Regardless of the dollar value of the Contract, ODOT entering into an Emergency Contract must, either before or promptly after entering into an Emergency Contract, make and retain in its Procurement File documentation of the nature of the Emergency that includes:¶

(1) A brief description of the Supplies and Services to be provided under the Contract, together with its cost or anticipated cost;¶

(2) A brief explanation of how the Contract, in terms of duration and Services provided under it, was restricted to the Scope reasonably necessary to adequately deal only with the risk created or anticipated to be created by the Emergency circumstances;¶

(3) A description of the emergency circumstances that require the prompt performance of the Contract, stating the anticipated harm from failure to establish the Contract on an expedited basis; and¶

(4) Documentation of the measures taken, regardless of the dollar value of the Contract, to encourage competition that is reasonable and appropriate under the Emergency circumstances.

Statutory/Other Authority: ORS 184.619, 279A.065(6), 279A.070

Statutes/Other Implemented: ORS 279A.050(3), 279B.015, 279B.080, 279C.110(9), 279C.320

AMEND: 731-147-0010

NOTICE FILED DATE: 05/28/2020

RULE SUMMARY: Housekeeping changes: capitalization, punctuation. Added "(ODOT)" to section (1) and 279A.070 to Statutory Authority.

CHANGES TO RULE:

731-147-0010

Application ¶

(1) The Oregon Department of Transportation (ODOT) adopts OAR 137-047-0000 through 137-047-0810 in effect as of April 15, 2017, with the exception of OAR 137-047-0275, 137-047-0330, 137-047-0460, 137-047-0470, 137-047-0710, and 137-047-0800. Any reference to OAR 137-047-0330 is replaced by a reference to OAR 731-146-0150 and any reference to OAR 137-047-0800 is replaced by a reference to OAR 731-146-0200.¶

(2) In addition to the general requirements set forth in ~~d~~Division 146 of these ~~R~~rules, applicable to all Public Contracting by ODOT under OAR ~~e~~Chapter 731, ~~d~~Divisions 147, 148, and 149, the ~~R~~rules in this ~~d~~Division 147 apply to ~~p~~Procurements conducted by ODOT under ORS ~~e~~Chapter 279B.¶

(3) If a conflict arises between these rules and the Department of Justice Model Rules, General Provisions Related to Public Contracting (OAR ~~e~~Chapter 137, ~~d~~Division 046), these rules take precedence.

Statutory/Other Authority: ORS 184.619, 279A.065(6), 279A.070

Statutes/Other Implemented: ORS 279B.015

AMEND: 731-147-0055

NOTICE FILED DATE: 05/28/2020

RULE SUMMARY: Housekeeping: capitalization.

CHANGES TO RULE:

731-147-0055

Sole-Source Procurements ¶

(1) Generally. ODOT may Award a Public Contract without competition as a sSole-sSource Procurement pursuant to the requirements of ORS 279B.075 and this rule.¶

(2) Public Notice. If the value of the resulting pPublic eContract exceeds \$150,000, ODOT shall publish a pPublic n Notice in a manner similar to a pPublic n Notice for a solicitation for eCompetitive sSealed bBids or eCompetitive s Sealed pProposals. The pPublic n Notice must describe the Goods or Services, or both, to be acquired by the sSole-sSource Procurement; identify the prospective Contractor; and state the date, time and place that protests are due. ODOT will advertise the pPublic n Notice at least seven (7) Days before Award of the Contract.¶

(3) Protest. For sSole-sSource Procurements requiring pPublic n Notice under this Rrule, an Affected Person may protest the determination of ODOT that the Goods or Services or class of Goods or Services are available from only one source. Pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Person must file a Written protest with ODOT and exhaust all administrative remedies.¶

(a) Delivery. Unless otherwise specified in the pPublic n Notice of the sSole-sSource Procurement, an Affected Person must deliver a Written protest to ODOT within seven (7) Days after the first date of pPublic n Notice of the sSole-sSource Procurement, unless a different protest period is provided in the pPublic n Notice of a sSole-sSource Procurement.¶

(b) Content of Protest. The Written protest must include:¶

(A) A detailed statement of the legal and factual grounds for the protest;¶

(B) A description of the resulting harm to the Affected Person; and¶

(C) The relief requested.¶

(c) ODOT Response. ODOT shall not consider an Affected Person's sSole-sSource Procurement protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the pPublic n Notice of the sSole-sSource Procurement. ODOT shall issue a Written disposition of the protest in a timely manner. If ODOT upholds the protest, in whole or in part, the Contracting Agency shall not enter into a sSole-sSource Contract.¶

(d) Judicial Review. Judicial review of ODOT disposition of a sSole-sSource Procurement protest shall be in accordance with ORS 279B.420.

Statutory/Other Authority: ORS 184.619, ~~ORS 279A.065, ORS(6),~~ 279B.075

Statutes/Other Implemented: ORS 279B.075

ADOPT: 731-147-0070

NOTICE FILED DATE: 05/28/2020

RULE SUMMARY: Moved from 731-146-0210 (General Provisions) as it pertains to Goods or Services which are addressed in chapter 731, division 147.

CHANGES TO RULE:

731-147-0070

Mandatory Use Contracts

For Contracts entered into pursuant to ORS 279A.050(3), ODOT is exempt from Mandatory Use Contracts entered into pursuant to OAR 125-247-0296 when purchasing Goods or Services through federal programs pursuant to ORS 279A.180.

Statutory/Other Authority: ORS 184.619, 279A.065(6), 279A.070

Statutes/Other Implemented: ORS 279A.050(3), 279A.180

AMEND: 731-148-0100

NOTICE FILED DATE: 05/28/2020

RULE SUMMARY: Housekeeping only.

CHANGES TO RULE:

731-148-0100

Application

(1) In addition to the general requirements set forth in ~~Division 146~~ of these ~~R~~rules applicable to all Public Contracting by ODOT under Divisions 147, 148 and 149, the ~~R~~rules in this ~~Division 148~~ apply to:

(a) The screening and selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors, and Providers of Related Services under Contracts, and set forth the procedures through which ODOT selects Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning and Land Surveying Services or Related Services; and

(b) Two-tiered procedures for selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and Providers of Related Services for certain Public Improvements owned and maintained by a Local Government.

(2) In the event of conflict or ambiguity, the more specific requirements of the ~~R~~rules in this ~~Division 148~~ take precedence over the more general requirements of the ~~R~~rules in ~~Division 146~~.

(3) The ~~R~~rules as a whole implement the Oregon Public Contracting Code, as defined in ORS 279A.010, and this ~~Division 148~~ of the ~~R~~rules specifically addresses matters covered in ORS Chapter 279C.100 through 279C.125.

(4) The dollar threshold amounts that are applicable to OAR 731-148-0200 (Direct Appointment Procedure), OAR 731-148-0205 (Small Purchase Procedure), ~~OAR 731-148-0210 (Informal Selection Procedure)~~, and OAR 731-148-0220 (Formal Selection Procedure), are independent from and have no effect on the dollar threshold amounts that trigger the legal sufficiency review requirement under ORS 291.047.

Statutory/Other Authority: ORS 184.619, 279A.065(6)(a), 279A.070

Statutes/Other Implemented: ORS 279A.050(3), 279A.065

AMEND: 731-148-0110

NOTICE FILED DATE: 05/28/2020

RULE SUMMARY: Housekeeping only.

CHANGES TO RULE:

731-148-0110

#### Definitions

In addition to the definitions set forth in ORS 279A.010 and ORS 279C.100, the following definitions apply to these Division 148 rules:

- (1) "Consultant" means an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or provider of Related Services. A Consultant includes a business entity that employs Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors or providers of Related Services, or any combination of the foregoing. Provided, however, when ODOT is entering into a direct Contract under OAR 731-148-0200(1)(c) or (d), the "Consultant" must be an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor, as required by ORS 279C.115(1).
- (2) "Estimated Fee" means ODOT's reasonably projected fee to be paid for a Consultant's services under the anticipated Contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable Contract solicitation method and is distinct from the total amount payable under the Contract. The Estimated Fee shall not be used as a basis to resolve other Public Contracting issues, including without limitation, direct purchasing authority or Public Contract review and approval under ORS 291.047.
- (3) "Evaluate" means to review and score or rank, or both, Proposals submitted by Consultants in response to a solicitation or RFQ or interviews conducted during a solicitation or RFQ. Unless otherwise stated in the solicitation or RFQ, if Proposals or interviews, or both, are scored, the Consultant with the highest score is the highest ranked proposer. The remaining Consultants are ranked in descending order according to their scores.
- (4) "ODOT" means the Oregon Department of Transportation.
- (5) "Price Agreement," for purposes of this Division 148, is limited to mean an agreement related to the procurement of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under agreed-upon terms and conditions, including, but not limited to terms and conditions of later work orders for Project-specific services, and which may include Consultant compensation information, with:
  - (a) No guarantee of a minimum or maximum purchase; or
  - (b) An initial work order, task order or minimum purchase, combined with a continuing Consultant obligation to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services in which ODOT does not guarantee a minimum or maximum additional purchase.
- (6) "Project" means all components of ODOT's planned undertaking that gives rise to the need for a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under a Contract.
- (7) "Transportation Planning Services" are defined in ORS 279C.100. Transportation Planning Services include only Project-specific transportation planning involved in the preparation of categorical exclusions, environmental assessments, environmental impact statements and other documents required for compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans and other transportation plans not directly associated with an individual Project that will require compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services also do not include transportation planning for Projects not subject to the National Environmental Policy Act, 42 USC 4321 et. seq. Statutory/Other Authority: ORS 184.619, 279A.065(6)(a), 279A.070 Statutes/Other Implemented: ORS 279A.050(3), 279A.065



AMEND: 731-148-0130

NOTICE FILED DATE: 05/28/2020

RULE SUMMARY: Removed reference to repealed rule for informal selection 731-148-0210.

CHANGES TO RULE:

731-148-0130

Source Selection; Pricing Information; Conflicts of Interest

(1) ODOT shall Award a Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services following the applicable selection procedures under OAR 731-148-0200 (Direct Appointment Procedure), OAR 731-148-0205 (Small Purchase Procedure), ~~OAR 731-148-0210 (Informal Selection Procedure)~~ or OAR 731-148-0220 (Formal Selection Procedure).¶

(2) ODOT is not required to follow the procedures in §section (1) of this rule, when ODOT has established Price Agreements with more than one Consultant and is selecting a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under an individual work order. Provided, however, the criteria and procedures ODOT uses to select a single Consultant, when ODOT has established Price Agreements with more than one Consultant, must meet the requirements of OAR 731-148-0270 (Price Agreements).¶

(3) ODOT may solicit and use pricing policies, pricing Proposals, or other pricing information when procuring:¶

(a) Related Services; and¶

(b) Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services under sections (a) and (b) of OAR 731-148-0200 (Direct Appointment Procedure).¶

(4) As required by ORS 279C.307, pertaining to requirements to ensure the objectivity and independence of providers of certain Personal Services which are procured under ORS chapter 279C, ODOT may not:¶

(a) Procure the Personal Services identified in ORS 279C.307 from a Contractor or an affiliate of a Contractor who is a party to the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Personal Services; or¶

(b) Procure the Personal Services identified in ORS 279C.307 through the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Personal Services.¶

(5) The requirements of ORS 279C.307 and section (4) of this rule apply in the following circumstances, except as provided in section (6) of this rule:¶

(a) ODOT requires the Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Public Contract or performance under a Public Contract that is subject to ORS chapter 279C. A Public Contract that is "subject to ORS chapter 279C" includes a Public Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, a Public Contract for Related Services or a Public Contract for construction services under ORS chapter 279C.¶

(b) The Procurements of Personal Services subject to the restrictions of ORS 279C.307 include, but are not limited to, the following:¶

(A) Procurements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, which involve overseeing or monitoring the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;¶

(B) Procurements for commissioning services, which involve monitoring, inspecting, evaluating or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;¶

(C) Procurements for project management services, which involve administration, management, monitoring, inspecting, evaluating compliance with or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, construction services subject to ORS chapter 279C, commissioning services or other Related Services for a

Project;¶¶

(D) Procurements for special inspections and testing services, which involve inspecting, testing or otherwise overseeing the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C; and¶¶

(E) Procurements for other Related Services or Personal Services, which involve administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing the Public Contracts described in Section (5)(a) of this rule.¶¶

(6) The restrictions of ORS 279C.307 do not apply in the following circumstances, except as further specified below:¶¶

(a) To ODOT's Procurement of both design services and construction services through a single "Design-Build" Procurement, as that term is defined in OAR 137-049-0610. Such a Design-Build Procurement includes a Procurement under an Energy Savings Performance Contract, as defined in ORS 279A.010. Provided, however, the restrictions of ORS 279C.307 do apply to a ODOT's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build Procurement; and¶¶

(b) To ODOT's Procurement of both pre-construction services and construction services through a single Procurement of Construction Manager/General Contractor Services, as that term is defined in ORS 279C.332(3). Provided, however, the restrictions of ORS 279C.307 do apply to a ODOT's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Construction Manager/General Contractor Services Contract or performance under such a Contract resulting from a Procurement of Construction Manager/General Contractor Services.

Statutory/Other Authority: ORS 184.619, 279A.065(6)(a), 279A.070

Statutes/Other Implemented: ORS 279A.050(3), 279C.100-279C.125, 279C.307

AMEND: 731-148-0200

NOTICE FILED DATE: 05/28/2020

RULE SUMMARY: Housekeeping only.

CHANGES TO RULE:

731-148-0200

Direct Appointment Procedure

(1) ODOT may enter into a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these rules if:

(a) Emergency. ODOT finds that an Emergency exists; or

(b) Small Estimated Fee. The Estimated Fee to be paid under the Contract does not exceed \$100,000; or

(c) Continuation of Project ~~W~~with Intermediate Estimated Fee. For ODOT where a Project is being continued, as more particularly described below, and where the Estimated Fee will not exceed \$250,000, the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services to be performed under the Contract must meet the following requirements:

(A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services rendered under the earlier Contract;

(B) The Estimated Fee to be made under the Contract does not exceed \$250,000; and

(C) ODOT used either the formal selection procedure under OAR 731-148-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection to select the Consultant for the earlier Contract; or

(d) Continuation of Project ~~W~~with Extensive Estimated Fee. For ODOT where a Project is being continued, as more particularly described below, and where the Estimated Fee is expected to exceed \$250,000, the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services to be performed under the Contract must meet the following requirements:

(A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied under an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services rendered under the earlier Contract;

(B) ODOT used either the formal selection procedure under OAR 731-148-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection to select the Consultant for the earlier Contract; and

(C) ODOT makes written findings that entering into a Contract with the Consultant, whether in the form of an amendment to an existing Contract or a separate Contract for the additional scope of services, will:

(i) Promote efficient use of public funds and resources and result in substantial cost savings to ODOT; and,

(ii) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.

(2) ODOT may select a Consultant for a Contract under this rule from the following sources:

(a) A list of Consultants created and maintained by ODOT under OAR 731-148-0215 (Request for Qualifications);

(b) A list of Consultants awarded Price Agreements under OAR 731-148-0270 (Price Agreements);

(c) Any Consultants that ODOT reasonably can locate that offer the desired services; or

(d) Any combination of (a) through (c) above.

(3) ODOT shall direct negotiations with a Consultant selected under this rule toward obtaining written agreement on:

(a) The Consultant's performance obligations and performance schedule;¶¶

(b) Payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to ODOT as determined solely by ODOT, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and¶¶

(c) Any other conditions or provisions ODOT believes to be in ODOT's best interest to negotiate.

Statutory/Other Authority: ORS 184.619, 279A.065(6)(a), 279A.070

Statutes/Other Implemented: ORS 279A.050(3), 279C.110, 279C.115, 279C.120

AMEND: 731-148-0205

NOTICE FILED DATE: 05/28/2020

RULE SUMMARY: Housekeeping and increase in threshold from \$150,000 to \$250,000.

CHANGES TO RULE:

731-148-0205

Small Purchase Procedure

(1) ODOT may use the Small Purchase Procedure described in this rule to award a Contract if the Estimated Fee does not exceed ~~\$1250,000.~~¶

(2) ODOT ~~must~~ shall consider the qualifications of at least three prospective Consultants. If fewer than three ~~(3)~~ Consultants are available, ODOT shall consider the qualifications of all available prospective Consultants and shall maintain a written record of ODOT's efforts to locate available prospective Consultants. ODOT may draw prospective Consultants from:¶

(a) A list of Consultants created and maintained by ODOT under OAR 731-148-0215 (Request for Qualifications); ¶

(b) A list of Consultants awarded Price Agreements under OAR 731-148-0270 (Price Agreements); ¶

(c) Any Consultants that ODOT reasonably can locate that offer the desired services; or ¶

(d) Any combination of (a) through (c) above. ¶

(3) ODOT shall select a Consultant using criteria appropriate for the services. ¶

(4) ODOT shall direct negotiations with a Consultant selected under this rule toward obtaining written agreement on: ¶

(a) The Consultant's performance obligations and performance schedule; ¶

(b) Payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to ODOT as determined solely by ODOT, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and ¶

(c) Any other conditions or provisions ODOT believes to be in ODOT's best interest to negotiate. ¶

(5) ODOT shall terminate the small purchase procedure and proceed under OAR ~~731-148-0210 (Informal Selection Procedure)~~ or OAR 731-148-0220 (Formal Selection Procedure) if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed ~~\$1250,000~~.

Statutory/Other Authority: ORS 184.619, 279A.065(6)(a), 279A.070

Statutes/Other Implemented: ORS 279A.050(3), 279C.110, 279C.115

REPEAL: 731-148-0210

NOTICE FILED DATE: 05/28/2020

RULE SUMMARY: Repealed rule no longer needed because of increase in threshold to \$250,000 in rule 731-148-0205.

CHANGES TO RULE:

#### ~~731-148-0210~~

##### ~~Informal Selection Procedure~~

~~(1) ODOT may use the informal selection procedure described in this rule to obtain a Contract if the Estimated Fee is expected not to exceed \$250,000.¶¶~~

~~(2) If using the informal selection procedure on the basis of qualifications alone or, for Related Services, on the basis of price and qualifications, ODOT shall:¶¶~~

~~(a) Create a request for Proposals ("RFP") that includes at a minimum the following:¶¶~~

~~(A) A description of the Project for which a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services are needed and a description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that will be required under the resulting Contract;¶¶~~

~~(B) The anticipated Contract performance schedule;¶¶~~

~~(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;¶¶~~

~~(D) The date and time Proposals are due and other directions for submitting Proposals;¶¶~~

~~(E) Criteria upon which the most qualified Consultant will be selected. Selection criteria may include, but are not limited to, the following:¶¶~~

~~(i) The amount and type of resources and number of experienced staff the Consultant has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services;¶¶~~

~~(ii) Proposed management techniques for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;¶¶~~

~~(iii) A Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, including but not limited to quality of work, ability to meet schedules, cost control methods and Contract administration practices;¶¶~~

~~(iv) A Consultant's approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP and design philosophy, if applicable;¶¶~~

~~(v) A Consultant's geographic proximity to and familiarity with the physical location of the Project;¶¶~~

~~(vi) Volume of work, if any, previously awarded to a Consultant, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;¶¶~~

~~(vii) A Consultant's ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;¶¶~~

~~(viii) If ODOT is selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead.¶¶~~

~~(F) A Statement that Proposers responding to the RFP do so solely at their expense, and ODOT is not responsible for any Proposer expenses associated with the RFP;¶¶~~

~~(G) A statement directing Proposers to the protest procedures set forth in these Division 148 rules; and¶¶~~

~~(H) A sample form of the Contract.¶¶~~

(b) ODOT shall provide the RFP to a minimum of three (3) prospective Consultants. If fewer than three (3) prospective Consultants are available, ODOT shall provide the RFP to all available prospective Consultants and shall maintain a written record of the efforts to locate available prospective Consultants for the RFP. ODOT shall draw prospective Consultants from:¶

(A) A list of Consultants created and maintained by ODOT under OAR 731-148-0215 (Request for Qualifications); ¶

(B) A list of Consultants awarded Price Agreements under OAR 731-148-0270 (Price Agreements); ¶

(C) Any Consultants that ODOT reasonably can locate that offer the desired services; or ¶

(D) Any combination of (A) through (C) above. ¶

(c) ODOT shall Evaluate all Proposals received according to the criteria set forth in the RFP. ¶

(3) If using the informal selection procedure for Related Services on the basis of price Proposals and other pricing information alone, ODOT shall: ¶

(a) Create an RFP that includes at a minimum the following: ¶

(A) A description of the Project for which a Consultant's Related Services are needed and a description of the Related Services that will be required under the resulting Contract; ¶

(B) The anticipated Contract performance schedule; ¶

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services; ¶

(D) The date and time Proposals are due and other directions for submitting Proposals; ¶

(E) Any minimum or pass-fail qualifications that the Proposers must meet, including but not limited to any such qualifications in the subject matter areas described in section (2)(a)(E)(i) through section (2)(a)(E)(vii) of this rule that are related to the Related Services described in the RFP; ¶

(F) Pricing criteria upon which the highest ranked Consultant will be selected. Pricing criteria may include, but are not limited to, the total price for the Related Services described in the RFP, Consultant pricing policies and other pricing information such as the Consultant's estimated number of staff hours needed to perform the Related Services described in the RFP, expenses, hourly rates and overhead; ¶

(G) A statement directing Proposers to the protest procedures set forth in these Division 148 rules; and ¶

(H) A sample form of the Contract. ¶

(b) ODOT shall provide the RFP to a minimum of three (3) prospective Consultants. If fewer than three (3) prospective Consultants are available, ODOT shall provide the RFP to all available prospective Consultants and shall maintain a written record of the efforts to locate available prospective Consultants for the RFP. ODOT shall draw prospective Consultants from: ¶

(A) A list of Consultants created and maintained by ODOT under OAR 731-148-0215 (Request for Qualifications); ¶

(B) A list of Consultants awarded Price Agreements under OAR 731-148-0270 (Price Agreements); ¶

(C) Any Consultants that ODOT reasonably can locate that offer the desired services; or ¶

(D) Any combination of (A) through (C) above. ¶

(c) ODOT shall Evaluate all Proposals received according to the criteria set forth in the RFP. ¶

(4) If ODOT does not cancel the RFP after it reviews the Proposals and ranks each Proposer, ODOT will begin negotiating a Contract with the highest ranked Proposer. ODOT shall direct Contract negotiations toward obtaining written agreement on the following: ¶

(a) The Consultant's performance obligations and performance schedule; ¶

(b) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to ODOT as determined solely by ODOT, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and ¶

(c) Any other provisions ODOT believes to be in ODOT's best interest to negotiate. ¶

(5) ODOT shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer, if

ODOT and the Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. ODOT may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, in accordance with section (4) of this rule, until negotiations result in a Contract. If negotiations with any of the top three Proposers do not result in a Contract within a reasonable amount of time, ODOT may end the particular informal solicitation and thereafter may proceed with a new informal solicitation under this rule or proceed with a formal solicitation under OAR 731-148-0220 (Formal Selection Procedure).¶

(6) ODOT shall terminate the informal selection procedure and proceed with the formal selection procedure under OAR 731-148-0220 if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed \$250,000.

Statutory/Other Authority: ~~ORS 184.619, 279A.065(6)(a), 279A.070~~

Statutes/Other Implemented: ~~ORS 279A.050(3), 279C.110~~

AMEND: 731-148-0215

NOTICE FILED DATE: 05/28/2020

RULE SUMMARY: Housekeeping only.

CHANGES TO RULE:

### 731-148-0215

#### Requests for Qualifications

(1) ODOT may use this Request for Qualifications ("RFQ") procedure to Evaluate potential Consultants and establish a short list of qualified Consultants for some or all of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ. This RFQ procedure will be used as the first step in a two-step procurement process, with the second step in the process being a selection by ODOT under OAR 731-148-0200 (Direct Appointment), a selection under OAR 731-148-0205 (Small Purchase Procedure) or an RFP processed under ~~OAR 731-148-0210 (Informal Selection Procedure)~~ or OAR 731-148-0220 (Formal Selection Procedure).¶

(2)-(a) ODOT shall publish each RFQ by one or more of the electronic methods identified in OAR 731-146-0150(1). ¶

(b) ODOT shall publish the advertisement within a reasonable time before the deadline for the response to the RFQ, but in any event no fewer than seven calendar days before the closing date set forth in the RFQ. ¶

(c) In the alternative to advertising using one or more electronic methods in subsection (2)(a) of this rule, ODOT may advertise the RFQ in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as may be necessary or desirable to achieve adequate competition. Other issues and publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach disadvantaged business enterprise ("DBE"), service-disabled veteran business ("SDVB"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") audiences.¶

(3) ODOT shall include the following, at a minimum, in each RFQ: ¶

(a) A brief description of the services or Project(s), or both, for which ODOT is seeking one or more Consultants; ¶

(b) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant(s) ability to provide additional services related to the services or Project(s) or both, including but not limited to construction services;¶

(c) The deadline for submitting a response to the RFQ; ¶

(d) A description of required Consultant qualifications for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services ODOT seeks; ¶

(e) The RFQ evaluation criteria, including weights, points or other classifications applicable to each criterion; ¶

(f) A statement whether or not ODOT will hold a pre-qualification meeting for all interested Consultants to discuss the services or Project(s) described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and ¶

(g) A statement that Consultants responding to the RFQ do so solely at their expense, and that ODOT is not responsible for any Consultant expenses associated with the RFQ. ¶

(4) ODOT may include a request for any or all of the following in each RFQ: ¶

(a) A statement describing Consultants' general qualifications and related performance information; ¶

(b) A description of Consultants' specific qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ including Consultants' committed resources and recent, current and projected workloads; ¶

(c) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and references concerning past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration; ¶

(d) A copy of all records, if any, of Consultants' performance under Contracts with any other agency; ¶

- (e) The number of Consultants' experienced staff committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those services; ¶
- (f) Consultants' approaches to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and design philosophy, if applicable; ¶
- (g) Consultants' geographic proximity to and familiarity with the physical location of the Project, if applicable; ¶
- (h) Consultants' ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses; ¶
- (i) If ODOT is selecting a Consultant to provide Related Services, Consultants' pricing policies and pricing Proposals or other pricing information, including the number of hours estimated for the services required, expenses, hourly rates and overhead; ¶
- (j) Consultants' ability to assist ODOT in complying with art acquisition requirements, pursuant to ORS 276.073 through 276.090; ¶
- (k) Consultants' ability to assist ODOT in complying with State of Oregon energy efficient design requirements, pursuant to ORS 276.900 through 276.915; ¶
- (L) Consultants' ability to assist ODOT in complying with the energy technology requirements of ORS 279C.527 and 279C.528; and ¶
- (m) Any other information ODOT deems reasonably necessary to Evaluate Consultants' qualifications.¶
- (5) ODOT shall Evaluate all responses received according to the criteria set forth in the RFQ.¶
- (6) ODOT may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to, the following: ¶
- (a) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list; ¶
- (b) Placing a pre-determined number of the highest scoring Consultants on a short list; ¶
- (c) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFQ. ¶
- (7) After the evaluation committee Evaluates the responding Consultants, ODOT shall establish a short list of at least three qualified Consultants, if feasible; provided however, if four or fewer Consultants responded to the RFQ or if fewer than three Consultants fail to meet ODOT's minimum requirements, then ODOT may establish a short list of fewer than three qualified Consultants. ¶
- (8) ODOT shall provide copies of the selection notices that ODOT sent to the highest ranked Proposers to all Consultants submitting a response to the RFQ.¶
- (9) ODOT may establish more than one short list from an RFQ, with each short list applicable to a particular service, dollar threshold, geographic location, or combination of the preceding.¶
- (10) No Consultant will be eligible for placement on an ODOT short list established under this rule if Consultant or any of Consultant's principals, partners or associates are members of ODOT's RFQ evaluation committee.¶
- (11) ODOT may limit participation under ~~OAR 731-148-0210 (Informal Selection Procedure)~~, OAR 731-148-0205 (Small Purchase Procedure), and OAR 731-148-0220 (Formal Selection Procedure) to firms on ODOT's short list applicable to the services.¶
- (12)-(a) RFQ Protest and Request for Change. If allowed by the RFQ, Consultants may submit a written protest of anything contained in the RFQ and may request a change to any provision contained in the RFQ, no later than seven-~~7~~ calendar days prior to the date responses are due, unless a different deadline is indicated in the RFQ. Each protest and request for change must include the reasons for the protest or request, and the proposed changes to the RFQ. ODOT may not consider any protest or requests for change that is submitted after the submission deadline.¶
- (b) Protest of Exclusion from Short List. If allowed by the RFQ, a Consultant who claims to have been adversely affected or aggrieved by the selection of the highest ranked Consultants may submit a written protest of the

selection to ODOT no later than seven (~~7~~) calendar days after the date of the selection notices, unless a different deadline is indicated in the RFQ. A Consultant submitting a protest must claim that the protesting Consultant is one of the highest ranked Consultants because the responses of all higher ranked Consultants failed to meet the requirements of the RFQ, or because a sufficient number of responses of higher ranked Consultants failed to meet the requirements of the RFQ. In the alternative, a Consultant Proposer submitting a protest must claim that the responses of all higher ranked Consultants, or a sufficient number of higher ranked Consultants, are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ. ODOT may not consider any protest that is submitted after the submission deadline.¶

(c) Resolution of Protests. ODOT shall resolve all timely submitted protests and requests for change within a reasonable time following ODOT's receipt of the protest or request for change. Once resolved, ODOT shall promptly issue a written decision on the protest or request for change to the Consultant who submitted the protest or request for change. If the protest results in a change to the RFQ, ODOT shall revise the RFQ accordingly and may re-advertise the RFQ in accordance with these rules or post an addenda, as applicable. ¶

(13) ODOT may cancel an RFQ per OAR 731-148-0250.

Statutory/Other Authority: ORS 184.619, 279A.065(6)(a), 279A.070

Statutes/Other Implemented: ORS 279A.050(3), 279C.110

AMEND: 731-148-0220

NOTICE FILED DATE: 05/28/2020

RULE SUMMARY: Housekeeping only.

CHANGES TO RULE:

731-148-0220

#### Formal Selection Procedure

(1) ODOT may use the formal selection procedure described in this rule to obtain a Contract regardless of Estimated Fee of the Contract, but ODOT must use this rule to obtain a Contract if the Estimated Fee of the Contract exceeds \$250,000 and the services cannot be obtained under OAR 731-148-0200 (Direct Appointment Procedure); or OAR 731-148-0205 (Small Purchase Procedure), ~~or OAR 731-148-0210 (Informal Selection Procedure).~~ ¶

(2) ODOT shall obtain Contracts using the formal selection procedure through public advertisement of RFPs. ¶

(a) ODOT shall publish each RFP by one or more of the electronic methods identified in OAR 731-146-0150(1). ¶

(A) ODOT shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFP. ¶

(B) ODOT shall include a brief description of the following items in the advertisement: ¶

(i) The Project(s) or the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services ODOT seeks; ¶

(ii) How and where Consultants may obtain a copy of the RFP; and ¶

(iii) The deadline for submitting a Proposal or response to the RFP. ¶

(b) In the alternative to advertising using one or more electronic methods in subsection (2)(a) of this rule, ODOT may advertise the RFP in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as may be necessary or desirable to achieve adequate competition. Other issues and publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach ~~disadvantaged business enterprise ("DBE"), service-disabled veteran business ("SDVB"), minority business enterprise ("MBE"), women business enterprise ("DBE, SDVB, MBE, WBE") and emerging small business enterprise ("ESB")~~ audiences. ¶

(c) ODOT may send notice of the RFP directly to Consultants on ODOT's list of Consultants that is created and maintained under OAR 731-148-0215 (Request for Qualifications). ¶

(3) Formal Selection of Consultants through Request for Proposals. ODOT shall use the procedure described in section (3) of this rule when issuing an RFP for a Contract described in section (1) of this rule. ¶

(a) RFP Required Contents. An RFP processed under this rule must include: ¶

(A) General background information, including a description of the Project and the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought will be performed; ¶

(B) The RFP evaluation process and the criteria which will be used to select the most qualified Proposer, including the weights, points or other classifications applicable to each criterion. If ODOT does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following: ¶

(i) Proposers' availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP; ¶

(ii) Experience of Proposers' key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on comparable projects; ¶

(iii) The amount and type of resources, and number of experienced staff persons Proposers have committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP; ¶

- (iv) The recent, current and projected workloads of the staff and resources referenced in section (3)(a)(B)(iii), above;¶
- (v) The proportion of time Proposers estimate that the staff referenced in section (3)(a)(B)(iii), above, would spend on the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;¶
- (vi) Proposers' demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services on time and within budget, including whether or not there is a record of satisfactory performance;¶
- (vii) References and recommendations from past clients;¶
- (viii) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations, price and cost data from previous projects, cost controls and contract administration;¶
- (ix) Status and quality of any required license or certification;¶
- (x) Proposers' knowledge and understanding of the Project and Architectural, Engineering and Land Surveying Services or Related Services described in the RFP as shown in Proposers' approaches to staffing and scheduling needs for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and proposed solutions to any perceived design and constructability issues;¶
- (xi) Results from interviews, if conducted;¶
- (xii) Design philosophy, if applicable, and approach to the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;¶
- (xiii) If ODOT is selecting a Consultant to provide Related Services, pricing policies and pricing Proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead; and¶
- (xiv) Any other criteria that ODOT deems relevant to the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers. Provided, however, these additional criteria cannot include pricing policies, pricing Proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, when the sole purpose or predominant purpose of the RFP is to obtain Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services.¶
- (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;¶
- (D) Whether interviews are possible and if so, the weight, points or other classifications applicable to the potential interview;¶
- (E) The date and time Proposals are due, and the delivery location for Proposals;¶
- (F) Reservation of the right to seek clarifications of each Proposal;¶
- (G) Reservation of the right to negotiate a final Contract that is in the best interest of ODOT;¶
- (H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at any time if doing either would be in the public interest as determined by ODOT;¶
- (I) A Statement that Proposers responding to the RFP do so solely at their expense, and ODOT is not responsible for any Proposer expenses associated with the RFP;¶
- (J) A statement directing Proposers to the protest procedures set forth in these ~~d~~Division 148 rules;¶
- (K) Special Contract requirements, including but not limited to DBE, MBE, WBE, ESB and SDVB participation goals or good faith efforts with respect to DBE, MBE, WBE, ESB and SDVB participation, and federal requirements when federal funds are involved;¶
- (L) A statement whether or not ODOT will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;¶

(M) A request for any information ODOT deems reasonably necessary to permit ODOT to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP; and¶

(N) A sample form of the Contract.¶

(b) RFP Contents for Related Services Selections Based on Price Only. ODOT shall include at least the following in each RFP, whether or not the RFP is preceded by an RFQ, when the formal selection procedure is for Related Services selected on the basis of price Proposals and other pricing information only:¶

(A) General background information, including a description of the Project and the specific Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Related Services sought will be performed;¶

(B) The RFP evaluation process and the price criteria which will be used to select the highest ranked Proposer, including the weights, points or other classifications applicable to each criterion. If ODOT does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation price criteria may include, but are not limited to, the total price for the Related Services described in the RFP, Consultant pricing policies, and other pricing information such as the Consultant's estimated number of staff hours needed to perform the Related Services described in the RFP, expenses, hourly rates and overhead;¶

(C) Any minimum or pass-fail qualifications that the Proposers must meet, including but not limited to any such qualifications in the subject matter areas described in section (3)(a)(B)(i) through section (3)(a)(B)(xii) of this rule; and¶

(D) The information listed in section (3)(a)(C) through section (3)(a)(N) of this rule pertaining to the Related Services described in the RFP.¶

(c) ODOT shall Evaluate all Proposals received according to the criteria set forth in the RFP.¶

(d) If ODOT does not cancel the RFP after Evaluating the Proposals, ODOT will begin negotiating a Contract with the highest ranked Proposer. ODOT shall direct negotiations towards obtaining a written agreement on:¶

(A) The Consultant's performance obligations and performance schedule;¶

(B) Payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to ODOT as determined solely by ODOT, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and; and¶

(C) Any other conditions or provisions ODOT believes to be in the ODOT's best interest to negotiate.¶

(e) ODOT shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if ODOT and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. ODOT may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, ODOT may end the particular formal solicitation. Nothing in this rule precludes ODOT from proceeding with a new formal solicitation for the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP that failed to result in a Contract.

Statutory/Other Authority: 279A.065(6)(a), 279A.070, ORS 184.619

Statutes/Other Implemented: ORS 279A.050(3), 279C.110

AMEND: 731-148-0240

NOTICE FILED DATE: 05/28/2020

RULE SUMMARY: Housekeeping only.

CHANGES TO RULE:

731-148-0240

#### Protest Procedures

(1) Applicability. This rule applies to RFPs processed under OAR 731-148-0220 (Formal Selection Procedure). ¶

(2) RFP Protest and Request for Change. Consultants may submit a written protest of anything contained in an RFP and may request a change to any provision, specification or Contract term contained in an RFP, no later than seven (~~7~~) calendar days prior to the date Proposals are due, unless a different deadline is indicated in the RFP.

Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, specifications or Contract terms. ODOT may not consider any protest or request for change that is submitted after the submission deadline. ¶

(3) Protest of Consultant Selection. ¶

(a) Single Award. In the event of an award to a single Proposer, ODOT shall provide to all Proposers a copy of the selection notice that ODOT sent to the highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to ODOT no later than seven (~~7~~) calendar days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP. ¶

(b) Multiple Award. In the event of an award to more than one Proposer, ODOT shall provide to all Proposers copies of the selection notices that ODOT sent to the highest ranked Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposers may submit a written protest of the selection to ODOT no later than seven (~~7~~) calendar days after the date of the selection notices, unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is one of the highest ranked proposers because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of higher ranked Proposers failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest must claim that the Proposals of all higher ranked Proposers, or a sufficient number of higher ranked Proposers, are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP. ¶

(c) Effect of Protest Submission Deadline. ODOT may not consider any protest that is submitted after the submission deadline. ¶

(4) Resolution of Protests. A duly authorized representative of ODOT shall resolve all timely submitted protests within a reasonable time following ODOT's receipt of the protest and once resolved, shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, the Contracting Agency shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these rules.

Statutory/Other Authority: ORS 184.619, 279A.065(6)(a), 279A.070

Statutes/Other Implemented: ORS 279A.050(3), 279A.065, 279C.110

AMEND: 731-148-0260

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RULE SUMMARY: Housekeeping only.

CHANGES TO RULE:

731-148-0260

Two-Tiered Selection Procedure for Local Contracting Agency Public Improvement Projects

(1) For procurements subject to ORS 279C.125, ODOT will serve as the lead Contracting Agency and will enter into Contracts which result from the two-tiered selection process described below.

(2) Tier One.

(a) ODOT shall, when feasible, identify no fewer than three (3) most qualified Proposers responding to an RFP that was issued under OAR ~~731-148-0210 (Informal Selection Procedure)~~ and OAR 731-148-0220 (Formal Selection Procedure), or from among Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors identified under OAR 731-148-0200 (Direct Appointment Procedure) or OAR 731-148-0205 (Small Purchase Procedure).

(b) ODOT shall notify the Local Contracting Agency of the Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors identified in (a) above.

(c) The Local Contracting Agency shall not Evaluate Tier One.

(3) Tier Two. In accordance with the qualifications based selection requirements of ORS 279C.110, the Local Contracting Agency shall select an Architect, Engineer, Photogrammetrist, Transportation Planner, or Land Surveyor from:

(a) The list of Proposers provided to the Local Contracting Agency by ODOT pursuant to section (2) above by using an additional qualification based process; or

(b) An alternative process adopted by the Local Contracting Agency consistent with the provisions of the applicable Procurement document, if any, and these Division 148 rules.

(A) ODOT and the Local Contracting Agency may document through an intergovernmental agreement between the parties, the alternative process that the Local Contracting Agency has adopted for a Procurement or series of Procurements.

(B) The Local Contracting Agency's alternative process must be described in the applicable Procurement document and may include, for example selecting the highest-ranked firm identified by ODOT in section (2) above or, in the event of a multiple award under the terms of the applicable Procurement document, selecting the highest ranked firms that are selected under the terms of the Procurement document.

(c) ODOT shall not Evaluate Tier Two.

(4) Where multiple Local Government Agencies are involved in a two-tiered selection procedure, the Local Government Agencies may name one or more authorized representative(s) to act on behalf of all the Local Government Agencies, whether the Local Government Agencies are acting collectively or individually, to select the Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the tier two selection process. In the event of a multiple award under the terms of the applicable Procurement, the authorized representative(s) of the Local Contracting Agencies may act on behalf of the Local Contracting Agencies to select the highest ranked firms that are required under the terms of the Procurement document, as part of the tier two selection process.

(5) ODOT shall negotiate a Contract with the selected Architect, Engineer, Photogrammetrist, Transportation Planner, or Land Surveyor in accordance with the negotiation provisions of OAR 731-148-0200 (Direct Appointment Procedure), OAR 731-148-0205 (Small Purchase Procedure), ~~OAR 731-148-0210 (Informal Selection Procedure)~~, or OAR 731-148-0220 (Formal Selection Procedure) as applicable.

(6) Nothing in these Division 148 rules should be construed to deny or limit a Local Contracting Agency's ability to enter into a Contract directly with an Architect, Engineer, Photogrammetrist, Transportation Planner, or Land Surveyor pursuant to ORS 279C.125(4), through a selection process established by that Local Contracting

Agency. ¶

(7) For all procurements subject to the two-tier selection procedure, ODOT will serve as the contract administrator.

Statutory/Other Authority: ORS 184.619, 279A.065(6)(a), 279A.070

Statutes/Other Implemented: ORS 279A.050(3), 279C.110, 279C.125

AMEND: 731-148-0270

NOTICE FILED DATE: 05/28/2020

RULE SUMMARY: Housekeeping only.

CHANGES TO RULE:

731-148-0270

#### Price Agreements

(1) ODOT may establish Price Agreements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, when ODOT cannot determine the precise quantities of those Services that ODOT will require over a specified time period.¶¶

(2) When establishing Price Agreements under this rule, ODOT shall select no fewer than three Consultants, when feasible. The selection procedures for establishing Price Agreements shall be in accordance with OAR 731-148-0130(1). ODOT may select a single Consultant when a Price Agreement is awarded to obtain services for a specific Project or a closely-related group of Projects.¶¶

(3) In addition to any other applicable solicitation requirements set forth in these ~~Division~~ 148 rules, solicitation materials and the terms and conditions for a Price Agreement for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services must:¶¶

(a) Include a scope of services, menu of services, a specification for services or a similar description of the nature, general scope, complexity and purpose of the ~~procurement~~ Procurement that will reasonably enable a prospective bidder or Proposer to decide whether to submit a bid or proposal;¶¶

(b) Specify whether ODOT intends to award a Price Agreement to one Consultant or to multiple Consultants. If ODOT will award a Price Agreement to more than one Consultant, the Solicitation Document and Price Agreement shall describe the criteria and procedures ODOT will use to select a Consultant for each individual work order. Subject to the requirements of ORS 279C.110, the criteria and procedures to assign work orders that only involve or predominantly involve Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services are at ODOT's sole discretion; provided, however, in circumstances where a direct contract is not permitted under OAR 731-148-0200, the selection criteria cannot be based on pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the Services required, expenses, hourly rates and overhead. In accordance with OAR 731-148-0200, OAR 731-148-0205, ~~OAR 731-148-0210~~ and OAR 731-148-0220 applicable to Related Services ~~procurements~~ Procurements, the selection criteria and procedures may be based solely on the qualifications of the Consultants, solely on pricing information, or a combination of both qualifications and pricing information. Pricing information may include the number of hours proposed for the ~~Related Services~~ Services required, expenses, hourly rates, the number of hours, overhead and other price factors. Work order assignment procedures under Price Agreements may include direct appointments, subject to the requirements of OAR 731-148-0200; and¶¶

(c) Specify the maximum term for assigning Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the Price Agreement.¶¶

(4) All Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services assigned under a Price Agreement require a written work order issued by ODOT. Any work orders assigned under a Price Agreement must include, at a minimum, the following:¶¶

(a) The Consultant's performance obligations and performance schedule;¶¶

(b) The payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the work order that is fair and reasonable to ODOT, as determined solely by ODOT, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services;¶¶

(c) Language that incorporates all applicable terms and conditions of the Price Agreement into the work order; and¶¶

(d) Any other conditions or provisions ODOT believes to be in ODOT's best interest.

Statutory/Other Authority: ORS 184.619, 279A.065(6)(a), 279A.070

Statutes/Other Implemented: ORS 279A.050(3), 279A.065