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## NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 731  
DEPARTMENT OF TRANSPORTATION

**FILED**

05/23/2022 2:05 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Emerging Small Business Procurements and Limit on Competition

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/21/2022 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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### NEED FOR THE RULE(S)

House Bill 3055 (2021), section 46, amended ORS 279A.142, raising the threshold for limiting competition to Emerging Small Business (ESB) from \$100,000 or less to \$250,000 or less. Sections 48, 49, and 49a also amend parts of ORS chapter 279C, but there is no reference in the bill to Goods and Services (ORS chapter 279B). ODOT proposes to adopt this new rule to prescribe the procedures for limiting competition for Goods and Services contracts funded by the Emerging Small Business Account.

### DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

House Bill 3055 (2021), section 46; ORS chapter 279A.142; ORS chapter 200.

### STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

Adoption of OAR 731-147-0810 is unlikely to impact racial equity in this state. The ESB Program is race-neutral and any qualifying small business can request certification in the program. Upon certification as an ESB, these businesses may participate in the procurements described in this proposed rule.

### FISCAL AND ECONOMIC IMPACT:

See statements below.

### 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).

(1) No economic impact on state agencies or local governments. Members of the public who own or work for ESBs

certified by the Certification Office for Business Inclusion and Diversity (COBID) may see a positive economic impact as more contracts are potentially set-aside for ESB companies. Businesses not certified as ESBs may also be affected, but any effect is as a result of the amendment to ORS 279A.142 and not this proposed rule.

(2) This rule will allow more small businesses certified as "ESB" by COBID to be awarded public contracts as it relates to a law increasing the threshold for limiting competition to ESBs from \$100,000 to \$250,000. Businesses not certified as ESBs may also be affected because they will now be unable to submit bids or proposals on an increased number of contracts, but any effect is as a result of the amendment to ORS 279A.142 and not this proposed rule.

(2)(a) This rule will apply to all small businesses certified as "ESB" in COBID (1,469 businesses as of April 18, 2022).

(2)(b) and (c) None.

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

None required.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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ADOPT: 731-147-0810

RULE SUMMARY: This rule prescribes the circumstances when ODOT may limit competition for purchasing Goods and Services to Emerging Small Businesses certified under ORS 200.055

CHANGES TO RULE:

731-147-0810

Emerging Small Business Procurements

For Contracts entered into under ORS 279A.050(3), ODOT may limit competition for a public contract to emerging small businesses, as provided in ORS 279A.142. To assist emerging small businesses in overcoming barriers to participation in state public improvement and maintenance projects under ORS 200.160, ODOT may limit competition under this rule if: ¶

(1) ODOT is purchasing Goods or Services;¶

(2) Competition is limited to emerging small businesses certified under ORS 200.055;¶

(3) The contract price is estimated at \$250,000 or less; and¶

(4) The Contract is funded by the Emerging Small Business Account established under ORS 200.180.

Statutory/Other Authority: ORS 184.619, ORS 279.050(3), ORS 279A.142

Statutes/Other Implemented: ORS 200.055, ORS 200.160, ORS 200.180