



## PERMANENT ADMINISTRATIVE ORDER

**DOT 10-2022**

CHAPTER 731

DEPARTMENT OF TRANSPORTATION

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FILING CAPTION: Administrative exception process for consulting services previously prohibited for oversight of ORS 279C public contracts

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AMEND: 731-148-0130

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RULE SUMMARY: This rule was amended to provide additional details for the administrative exception process applicable to ODOT procurements and contracts, which must involve the Director of Transportation as the "appropriate authority."

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) 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.¶

(c) In an application for an exception submitted by ODOT pursuant to ORS 279C.307(3), the Director of Transportation may grant exceptions to the procurement prohibitions stated in ORS 279C.307(1). In ODOT's application to the Director of Transportation for an exception under 279C.307(3), ODOT will follow the exception process, consult with legal counsel, and include the findings, justifications, and supporting facts required in ORS 279C.307(3)(c), (d) and (e). The Director of Transportation shall respond to ODOT's applications for exceptions under ORS 279C.307(3) pursuant to the requirements of ORS 279C.307(3)(e) and (f).

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