

OFFICE OF THE SECRETARY OF STATE

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

CHAPTER 731  
DEPARTMENT OF TRANSPORTATION

**FILED**

08/08/2023 11:19 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: General provisions related to Public Improvement Contracts for Construction Services

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/21/2023 5:00 PM

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

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

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Filed By:  
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NEED FOR THE RULE(S)

- Removing language that limits ODOT's adoption of DOJ Model Rules to the January 1, 2014, version.
- Adding language to allow the use of a time-stamping machine.
- Adding language that notes ODOT's adoption of DOJ Model Rules for Alternative Contracting Methods, except for any DOJ Model Rules applicable to procurements of construction manager/general contractor services that are adopted under ORS 279A.065(3) and ORS 279C.337(1), for public improvements governed by OAR chapter 731, divisions 5 and 7.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

None

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

No impact anticipated. The amendments proposed in this rulemaking are largely procedural and housekeeping related.

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, local governments or members of the public is anticipated.

(2)(a), (b) and (c) None

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

These rule changes do not impact small business, therefore no input from small business was necessary.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The amendments to this rule are largely housekeeping in nature.

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AMEND: 731-149-0010

RULE SUMMARY: General provisions related to Public Improvement Contracts for Construction Services

CHANGES TO RULE:

731-149-0010

Application ¶

~~(1) The Oregon Department of Transportation adopts OAR 137-049-0100 through 137-049-0910 (effective January 1, 2014), the Department of Justice Model Rules, General Provisions Related to Public Contracts for Construction Services for any Public Improvement Contract procurements conducted pursuant to OAR chapter 731, division 149, except for any Department of Justice Model Rules applicable to procurements of construction manager/general contractor services adopted pursuant to ORS 279A.065(3) and ORS 279C.337(1). The adoption of the Department of Justice Model Rules by this rule does not apply to any ePublic Improvement Contracts that are subject to procurement pursuant to OAR chapter 731, division 5 or 7. The following exceptions apply to these 731-149 rules. ¶~~

~~(2) This rule applies retroactively to January 1, 2014. The following sentence is adopted instead of the first sentence of OAR 137-049-0330(1): Receipt. ODOT shall electronically or mechanically time-stamp or hand-mark each Offer and any modification or other submittals upon receipt, or provide a self-time-stamping device for use by Offerors for these purposes. ¶~~

~~(2) OAR 137-049-0610 through 137-049-0690 related to Alternative Contracting Methods for Public Improvement Contracts, except for any DOJ Model Rules applicable to procurements of construction manager/general contractor services adopted pursuant to ORS 279A.065(3) and ORS 279C.337(1), are adopted by the Oregon Department of Transportation. See OAR 731-007-0340. ¶~~

~~(3) The Oregon Department of Transportation does not adopt any Oregon Department of Justice Division 49 rule related to diesel engine requirements pursuant to ORS 279C.537. The Oregon Department of Transportation has adopted OAR 731-005-0800 and OAR 731-149-0020 to implement ORS 279C.537. ¶~~

~~(4) In the event of a conflict between the ODOT Rules and the Department of Justice Model Rules referenced above for Alternative Contracting Methods for Public Improvement Contracts, the Department of Justice Model Rules for Alternative Contracting Methods for Public Improvement Contracts control.~~

Statutory/Other Authority: ~~ORS 184.616~~, 184.619, 279A.065

Statutes/Other Implemented: ORS 279A.065