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CHAPTER 731

DEPARTMENT OF TRANSPORTATION

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FILING CAPTION: Establishment of the ODOT Small Business Development Program

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RULES:

731-065-0001, 731-065-0010, 731-065-0020, 731-065-0030, 731-065-0040, 731-065-0050, 731-065-0060, 731-065-0070

ADOPT: 731-065-0001

RULE TITLE: Purpose

NOTICE FILED DATE: 08/27/2024

RULE SUMMARY: This rule implements and administers the ODOT Small Business Development Program.

RULE TEXT:

As required by ORS 184.906, ODOT has established a small business development program. These rules are to implement and administer this program. They detail eligibility criteria, program duration, disqualification factors, and the process for requesting reconsideration of program disqualification.

STATUTORY/OTHER AUTHORITY: ORS 184.619

STATUTES/OTHER IMPLEMENTED: ORS 184.906

ADOPT: 731-065-0010

RULE TITLE: Definitions

NOTICE FILED DATE: 08/27/2024

RULE SUMMARY: Rule defines terms used in ORS 184.906 and these rules.

RULE TEXT:

The following definitions apply to terms used in ORS 184.906 and these rules:

- (1) "Active Project" is an SBDP project where a contract has been awarded but not yet reached Second Notification. "Second Notification" is a written acknowledgment by the ODOT Engineer of the end of Contract Time according to Oregon Standard Specification for Construction 00180.50(g).
- (2) "Applicant" means a business owner or business representative who completes the application process and attests that their Business meets eligibility requirements for the SBDP.
- (3) "Business" means a for-profit construction business.
- (4) "COBID" means the Certification Office for Business, Inclusion and Diversity. It is the sole certification authority for Oregon state programs, which include the Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Veteran Business Entity (VBE), and Emerging Small Business (ESB), and certified for the federal Disadvantaged Business Enterprise (DBE) program.
- (5) "Expired" means the SBDP participation term of 2 years following program acceptance has been completed and the Business did not renew participation. The Business is no longer eligible for program participation unless it reapplies.
- (6) "Misconduct Disqualification" is disqualification of the Business due to specific conduct that includes but is not limited to conduct that is intentionally false or misleading to gain access to the program.
- (7) "ODOT" or "Department" means the Oregon Department of Transportation.
- (8) "Participation" means the business's ability to participate in the SBDP and compete for public improvement contracts that the Department procures under the SBDP.
- (9) "SBA" means the United States Small Business Administration.
- (10) "SBDP" means the Oregon Department of Transportation (ODOT) Small Business Development Program.
- (11) "Self-Qualification" is a mechanism by which Applicant qualifies for SBDP participation by attesting that it meets required program criteria.
- (12) "Termination" means the Business may no longer participate in the program.

STATUTORY/OTHER AUTHORITY: ORS 184.619

STATUTES/OTHER IMPLEMENTED: ORS 184.906

ADOPT: 731-065-0020

RULE TITLE: Qualifying Criteria

NOTICE FILED DATE: 08/27/2024

RULE SUMMARY: Describes methods for qualifying for the ODOT Small Business Development Program beyond those indicated in legislation.

RULE TEXT:

(1) A Business may qualify to participate in the SBDP through proof of valid SBA registration, Certification from COBID, or Self-Qualification.

(2) Qualification through valid SBA registration or Certification. A Business may qualify for participation in the SBDP if the Business meets any of the following criteria:

(a) Has registered with the SBA, or a successor agency, as a small disadvantaged business;

(b) Is certified as an emerging small business under ORS 200.055;

(c) Has registered with the SBA, or a successor agency, and is eligible to participate in any SBA small business contracting assistance program; or

(d) Has been certified by COBID as a Minority Business Enterprise (MBE), a Woman Business Enterprise (WBE), a Disadvantaged Business Enterprise (DBE), a Veteran Business Enterprise (VBE), or an Emerging Small Business (ESB).

(3) Self-Qualification. An Applicant may self-qualify their Business for participation in the SBDP if it meets all the following criteria:

(a) The Business is for-profit;

(b) The Business is in the construction industry;

(c) The Business is independently owned and operated;

(d) The Business is not a subsidiary of another business;

(e) The Business is registered with the Secretary of State;

(f) The Business has employed an average of fewer than 500 employees annually, over the past 2 calendar years;

(g) The gross receipts of the Business do not exceed an average of \$45 million annually, over the past 2 calendar years; and

(h) Following completion of the online SBDP application, the Applicant attests that all information provided about the Business is true, accurate, and willingly provided.

(4) The Department retains the right to require proof of meeting qualifying criteria at any time.

STATUTORY/OTHER AUTHORITY: ORS 184.619

STATUTES/OTHER IMPLEMENTED: ORS 184.906

ADOPT: 731-065-0030

RULE TITLE: Application Process, Program Participation Term, and Renewal

NOTICE FILED DATE: 08/27/2024

RULE SUMMARY: Describes the program application process, participation term, and renewal process.

RULE TEXT:

(1) A Business may submit an application to participate via the SBDP application online through the ODOT website or by delivering a hard copy to 355 Capitol St. NE, MS11, c/o SBDP, Salem, OR 97301.

(2) Upon notification that it has received an application from a Business, the Department will determine whether it meets the qualifying criteria.

(3) If the Business meets the qualifying criteria, the Department will notify the Business that the business has been accepted as an SBDP Participant for a two-year term. The Business will be notified of acceptance in writing, and the two-year participation term will be identified in the acceptance letter.

(4) If the Department determines that the Business does not meet the qualifying criteria, the Department will issue a Notice of Intent to Deny Participation for Failure to Meet Qualifying Criteria by Certified Mail, which will include:

(a) An explanation supporting the reasons for failure to qualify and,

(b) A statement of the Business's ability to request Administrative Reconsideration of program qualification and applicable deadlines.

(c) The Business has 20 calendar days from the date of the Notice of Intent to request Administrative Reconsideration.

(5) If the Department does not receive a request for Administrative Reconsideration within 20 calendar days, the Notice of Intent to Deny Participation for Failure to Meet Qualifying Criteria will become the Department's final determination of program eligibility.

(6) Renewal. The process to renew participation at the end of the term is as follows:

(a) The Department will notify the Business that the two-year participation term is expiring.

(b) Notifications will be provided to the Business 30 calendar days prior to expiration and 7 calendar days prior to expiration. The notifications will be in writing with the first sent by Certified Mail.

(c) The Business may renew program participation for another two-year term upon timely attestation confirming continued eligibility as set out in Section 731-065-0020.

(7) If the Business does not timely attest to its eligibility, then the Business' participation term will expire, and participation is terminated on its expiration date.

STATUTORY/OTHER AUTHORITY: ORS 184.619

STATUTES/OTHER IMPLEMENTED: ORS 184.906

ADOPT: 731-065-0040

RULE TITLE: Change In Qualifying Criteria

NOTICE FILED DATE: 08/27/2024

RULE SUMMARY: Covers what a business should do if they no longer meet qualifying criteria, as well as what ODOT will do.

RULE TEXT:

(1) If a Business no longer meets SBDP qualifying criteria, the Business must notify the Department of the change within 30 calendar days. A change in qualifying criteria only impacts future bidding opportunities in the SBDP.

(2) If the Department suspects that a Business no longer meets SBDP qualifying criteria, the Department may request documentation to assess Business eligibility. The Department retains the right to require proof from a Business of qualifying criteria at any time.

STATUTORY/OTHER AUTHORITY: ORS 184.619

STATUTES/OTHER IMPLEMENTED: ORS 184.906

ADOPT: 731-065-0050

RULE TITLE: Disqualification

NOTICE FILED DATE: 08/27/2024

RULE SUMMARY: ODOT may disqualify and terminate the participation of a Business if it determines that a Business no longer meets the eligibility criteria. This rule covers steps taken when a business is disqualified.

RULE TEXT:

(1) The Department may disqualify and terminate the participation of a Business if it determines that a Business no longer meets the eligibility criteria set out in section 731-065-0020.

(2) When the Department determines that the Business no longer meets the eligibility requirements, the Department will send by Certified Mail, a Notice of Intent to Disqualify and Terminate Participation. The Notice will include:

(a) The effective date of program disqualification;

(b) An explanation supporting the reasons for disqualification; and

(c) A statement of the Business's ability to request Administrative Reconsideration and applicable deadlines.

(3) The Business has 20 calendar days from the date of the Notice of Intent in which to request Administrative Reconsideration. If the Department does not receive a request for Administrative Reconsideration within 20 calendar days, the Notice of Intent to Disqualify and Terminate Participation will become the Department's final determination of program eligibility.

(4) A disqualified Business may reapply for the SBDP following the procedures set out in section 731-065-0020.

STATUTORY/OTHER AUTHORITY: ORS 184.619

STATUTES/OTHER IMPLEMENTED: ORS 184.906

ADOPT: 731-065-0060

RULE TITLE: Misconduct Disqualification

NOTICE FILED DATE: 08/27/2024

RULE SUMMARY: ODOT may disqualify a Business and terminate SBDP participation for a Business due to misconduct. This rule covers reasons for misconduct disqualification and the steps taken by ODOT.

RULE TEXT:

- (1) The Department may disqualify a Business and terminate SBDP participation due to misconduct.
- (2) Reasons for Misconduct Disqualification include, but are not limited to:
 - (a) The Applicant knowingly made a false claim, or misrepresented existing certification status, during the qualifying process.
 - (b) The Business entered into an agreement with another organization to leverage Business qualification in the program.
 - (c) If a Business does not meet eligibility criteria and attempts to participate in the SBDP as a qualified small business on the basis of false, fraudulent, or deceitful statements or representations indicating a serious lack of business integrity or honesty, the Department may terminate program participation.
- (3) If the Department determines that a Business should be disqualified for misconduct and have its participation terminated, the Department will issue a Notice of Intent to Disqualify for Misconduct and Terminate Participation, by Certified Mail, which will include:
 - (a) The effective date of program disqualification;
 - (b) An explanation supporting the reasons for disqualification; and
 - (c) A statement of the Business's ability to request Administrative Reconsideration and applicable deadlines.
- (4) The Business has 20 calendar days from the date of the Notice of Intent in which to request Administrative Reconsideration. If the Department does not receive a request for request Administrative Reconsideration within 20 calendar days, the Notice of Intent to Revoke Participation Due to Misconduct and Terminate Participation will become the Department's final determination of eligibility.
- (5) A Business subject to the Department's final determination of Misconduct Disqualification is not eligible to qualify for future program participation.

STATUTORY/OTHER AUTHORITY: ORS 184.619

STATUTES/OTHER IMPLEMENTED: ORS 184.906

ADOPT: 731-065-0070

RULE TITLE: Administrative Reconsideration Process and Final Determination

NOTICE FILED DATE: 08/27/2024

RULE SUMMARY: If a Business disagrees with being disqualified or terminated from participation in the SBDP, it can request that the Department reconsider its determination through the Administrative Reconsideration Process. If the Business disagrees with the result of the Administrative Reconsideration, it may request a contested case hearing.

RULE TEXT:

- (1) Following the receipt of any Notice of Intent, a Business can request Administrative Reconsideration.
- (2) Any request for Administrative Reconsideration must be in writing and received by the Department within 20 calendar days of the date of the Notice of Intent. This written request must include:
 - (a) The date; and
 - (b) A clear statement of the basis for Administrative Reconsideration; and
 - (c) Any supporting documentation, (including but not limited to updated financials or proof of current certification).
- (3) Upon receipt of a request for Administrative Reconsideration, the disqualification or termination will be stayed while the Department reviews the request. The Department will complete this review within 30 business days and will inform the Business of the outcome of Administrative Reconsideration in writing either by rescinding the Notice of Intent or issuing a new Notice of Intent.
- (4) If the Department does not rescind the Notice of Intent, the Department will issue, via Certified Mail, a Notice of Intent Following Administrative Reconsideration to Deny Participation for Failure to Meet Qualifying Criteria or Notice of Intent to Disqualify and Terminate Program Participation.
- (5) The Business may request a contested case hearing under the provisions of ORS chapter 183 by submitting a written request. A written request for a contested case hearing must include:
 - (a) The date; and
 - (b) A clear statement of the basis for requesting a contested case hearing; and
 - (c) Any supporting documentation, (including but not limited to updated financials or proof of current certification).
- (6) If no request is made, the Notice of Intent will become the Department's final determination of program eligibility.

STATUTORY/OTHER AUTHORITY: ORS 184.619

STATUTES/OTHER IMPLEMENTED: ORS 183, 184.906