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CHAPTER 731

DEPARTMENT OF TRANSPORTATION

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FILING CAPTION: Construction and maintenance contracting terms and conditions: Environmental Product Declaration for construction materials.

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RULES:

731-005-0470, 731-005-0910

AMEND: 731-005-0470

RULE TITLE: Solicitation Documents

NOTICE FILED DATE: 09/23/2024

RULE SUMMARY: Included the requirements for Environmental Product Declarations in ODOT's public contract rules.

RULE TEXT:

The Solicitation Documents shall include the following:

(1) General Information:

(a) Notice of any pre-Bid conference as follows:

(A) The time, date and location of any pre-Bid conference;

(B) Whether attendance at the conference will be mandatory or voluntary; and

(C) That statements made by ODOT's representatives at the conference are not binding upon ODOT unless confirmed by Written Addendum.

(b) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;

(c) The name and title of the authorized Agency person designated for receipt of Offers and contact person (if different);

(d) Instructions and information concerning submission requirements including the address of the office to which Bids must be delivered and any other special information, e.g., whether Bids may be submitted by Electronic Data Interchange or Electronic Procurement (See OAR 731-005-0500, 731-005-0505 and 731-005-0510 for required provisions for Electronic Data Interchange or Electronic Procurement);

(e) The time, date and place of Opening;

(f) The time and date of Closing after which ODOT will not accept Bids, which time shall be not less than 5 Days after the date of the last publication of the advertisement. The interval between the date of issuance of the Solicitation document and a Closing should not be less than 14 Days for an ITB unless ODOT finds a shorter interval is in the public's interest.

- If ODOT is issuing an ITB that may result in a Contract for a Public Improvement with a value in excess of \$75,000, ODOT shall not designate a time of Closing that falls when ODOT is closed to the public or after 12:00 p.m. on Friday; for timing issues relating to Addenda see OAR 731-005-0580(3);
- (g) The form and submission of Bids and any information required therein, including Bid security, if any;
 - (h) The office where the plans and Specifications for the Work or goods may be reviewed;
 - (i) A statement that each Bidder must identify whether the Bidder is a Resident bidder, as defined in ORS 279A.120;
 - (j) If the Contract resulting from a Solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276a), a statement that no Bid will be received or considered by ODOT unless the Bid contains a statement by the Bid as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.830 or 40 U.S.C. 276a;"
 - (k) If the Work so requires, a statement that ODOT will not receive or consider a Bid from a Bidder that is not registered with the Construction Contractors Board or is not licensed by the State Landscape Contractors Board as required by ORS 671.530;
 - (L) Whether a Contractor or a subcontractor under the Contract must be licensed for asbestos abatement by the Department of Environmental Quality under ORS 468A.720;
 - (m) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110. (See OAR 731-005-0670(3));
 - (n) How ODOT will notify Bidders of Addenda and how ODOT will make Addenda available. See OAR 731-005-0580.
 - (o) A statement that the contracting agency may reject a Bid that does not comply with prescribed public contracting procedures and requirements, including the requirement to demonstrate the bidder's responsibility under ORS 279C.375 (3)(b), and that the contracting agency may reject for good cause all bids after finding that doing so is in the public interest;
 - (p) As applicable, the advertisement must comply the domestic preference (Buy America) requirements set forth in ORS 279C.303; and
 - (q) If designated a Community Benefit Contract, the advertisement must contain the requirements set forth in ORS 279C.308 and OAR 731-005-0900.
- (2) Agency Need. The character of the Work or goods ODOT is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements;
- (3) Terms and Conditions. ODOT shall include all Contract terms and conditions, including warranties and bonding requirements, ODOT considers necessary. Without limiting the preceding sentence, ODOT must include all applicable Contract provisions required by ORS 279C.500 through 279C.870 as follows:
- (a) Payment of all Persons furnishing labor or material, contributions to Industrial Accident Fund, liens and withholding taxes (ORS 279C.505);
 - (b) If the Contract is for a Public Improvement, a condition that the Contractor shall demonstrate it has established a drug-testing program for its employees;
 - (c) If the Contract calls for demolition Work described in ORS 279C.510, a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;
 - (d) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510);
 - (e) Payment of claims by public officers (ORS 279C.515);
 - (f) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515;
 - (g) A Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515);
 - (h) Hours of labor in compliance with ORS 279C.520 and 279C.540;
 - (i) Environmental and natural resources regulations (ORS 279C.525);
 - (j) Payment for medical care and providing workers' compensation (ORS 279C.530);

- (k) Maximum hours and overtime (ORS 279C.540);
- (L) Claims for overtime (ORS 279C.545);
- (m) Prevailing wage rates (ORS 279C.800 to 279C.870);
- (n) Retainage (ORS 279C.550 through 279C.570);
- (o) Prompt payment policy (ORS 279C.570);
- (p) Contractor's relations with subcontractors (ORS 279C.580);
- (q) Notice of claim (ORS 279C.605);
- (r) With respect to state Agencies, provisions regarding use of recovered resources and recycled materials and to the extent economically feasible, use of recycled paper and PETE products (ORS 279A.150 and 279A.155);
- (s) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385;
- (t) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS 279C.530);
- (u) Contractor's certification that all subcontractors performing Work described in ORS 701.005 (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board (as applicable) before the subcontractors commence Work under the Contract;
- (v) Price escalation and de-escalation Contract Provision relating to steel materials. As used in this paragraph, steel material includes any steel products used for and permanently incorporated in the construction, reconstruction or major renovation of a road or highway. Escalation and de-escalation relate to and shall be applied to the raw steel in the steel materials listed in the Contract Provision.
- (w) As applicable, comply with the requirements set forth in ORS 279C.303 regarding domestic preference (Buy America);
- (x) For any designated Community Benefit Contracts, the contractual provisions required by ORS 279C.308 and OAR 731-005-0900;
- (y) If federal funds are involved, the federal laws, rules and regulations applicable to the fund requirements shall govern in the event they conflict with a provision required by ORS 279A.120 to 279A.155;
- (z) Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, transfer rights, or delegate duties under the Contract, either in whole or in part, without ODOT's prior Written consent. Unless otherwise agreed by ODOT in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If ODOT consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to ODOT for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless ODOT otherwise agrees in Writing;
- (aa) As applicable, provisions that meet the requirements of ORS 279C.533 for apprenticeship employment, aspirational targets, and outreach, recruitment and retention planning; and
- (bb) As applicable, comply with the requirements for submission of an Environmental Product Declaration required by ORS 184.879 and OAR 731-005-0910.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 279A.050, 279A.065

STATUTES/OTHER IMPLEMENTED: ORS 184.879, 279A.030, 279A.120, 279C.300, 279C.345, 279C.365, 279C.375, 279C.390, 279C.500 - 279C.870, 305.385, 701.005, 701.055

ADOPT: 731-005-0910

RULE TITLE: Environmental Product Declarations

NOTICE FILED DATE: 09/23/2024

RULE SUMMARY: This rule describes ODOT's requirements for Environmental Product Declarations.

RULE TEXT:

- (1) This rule describes ODOT's requirements for environmental product declarations for covered materials permanently incorporated into ODOT's construction or maintenance projects for the state's transportation system, in accordance with ORS 184.879.
- (2) In addition to the definitions in ORS 184.879, the following definitions apply to section (4) of this rule:
 - (a) "Covered materials" has the meaning set forth in ORS 184.879(1)(b)(A)-(C).
 - (b) "Permanently incorporated" means any covered material that is required to be affixed to the project at the completion of the contract.
 - (3) A contractor must submit an environmental product declaration for covered materials in accordance with the requirements in the contract for the project.
 - (4) Except as provided in ORS 184.879(3)(a)-(b), a procurement for covered materials for a construction or maintenance project must require an environmental product declaration if:
 - (a) The project includes a highway construction contract, as defined in OAR 731-005-0430(25), administered by ODOT or a maintenance project estimated at or above \$3 million, but does not include a public improvement or maintenance project administered by ODOT on behalf of a local government agency;
 - (b) For a highway construction contract, the Engineer's Estimate has an estimated project cost of \$3 million or more at the date of advertisement;
 - (c) The \$3 million threshold for a highway construction contract or maintenance project does not include additional work added after the advertised date stated in the procurement, such as construction engineering, change orders, indirect or force account items; and
 - (d) The covered materials will be permanently incorporated into the project.
 - (5) If the criteria in section (4) of this rule are met, a contractor must provide an environmental product declaration to ODOT for each covered material permanently incorporated into the project that is equal to or greater than the following thresholds:
 - (a) Ready-Mix Concrete: 50 cubic yards or more.
 - (b) Asphalt Paving Mixtures: 2,500 tons or more.
 - (c) Steel Rebar: 15,000 pounds or more.
 - (d) Structural Steel: 5,000 pounds or more.
 - (6) For a highway construction contract and maintenance project, ODOT will determine specific bid items for covered materials that are subject to the Environmental Product Declaration submittal requirement. The selected bid items and required product declaration requirements will be described in the project procurement.

STATUTORY/OTHER AUTHORITY: ORS 184.619

STATUTES/OTHER IMPLEMENTED: ORS 184.879