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

CHAPTER 731  
**DEPARTMENT OF TRANSPORTATION**

**FILED**  
03/31/2026 9:53 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Rule sets criteria for selecting suitable SBDP projects and limits bidding to qualified small businesses

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/21/2026 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)**

Rule identifying criteria to select projects that are suitable for a qualified small business to undertake successfully as a general contractor in implementation of ODOT's Small Business Development Program (SBDP) and limiting competition to bid on those projects to those qualified small businesses.

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

Executive Order No. 22-15 - [https://www.oregon.gov/gov/eo/eo\\_22-15.pdf](https://www.oregon.gov/gov/eo/eo_22-15.pdf)

2018 U.S. Census Data - <https://www.census.gov/programs-surveys/abs/data.html>

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

The SBDP will broaden the contractor pool who have experience to work bid as prime contractors. A broader contractor pool benefits the State by:

- Enhancing competition: More competition leads to potentially lower project costs and improved service delivery.
- Encouraging innovation: A diverse group of contractors brings a wider range of perspectives and expertise to the table.

**FISCAL AND ECONOMIC IMPACT:**

In accordance with ORS 184.906, the Small Business Development Program (SBDP) limits the bidding pool for projects selected for the SBDP in that only small construction firms that meet eligibility criteria may qualify for participation in the program and bid on program projects. While there is the potential for project costs of selected projects to be higher, to date that has not been the case. Based on two program projects bid in 2025, the award amount of each was about half the construction cost estimate.

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#### 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) Economically Benefited:

- Small Construction Businesses: This is the primary beneficiary. The SBDP aims to increase the number of small businesses that compete for ODOT construction contracts. This translates into increased revenue and growth opportunities for these small firms.
- Oregon Department of Transportation (ODOT): ODOT will benefit from increased competition from a broader pool of qualified contractors, which can potentially lead to lower project costs.
- Oregon Transportation Industry: A broader contractor base can introduce new perspectives and expertise, potentially leading to innovation within the industry.

#### Potential Economic Impact (Positive or Negative):

- Large Construction Businesses: Increased competition from small businesses due to the SBDP could potentially impact the number of contracts awarded to larger firms.

#### Minimal Economic Impact:

- General Public: The public is unlikely to see a direct economic impact from the SBDP. However, increased competition in the construction industry could lead to lower overall project costs, which could benefit taxpayers in the long run.

#### Not Economically Affected:

- State Agencies (besides ODOT): The SBDP is specific to ODOT construction projects and is unlikely to directly affect other state agencies.
- Units of Local Government: Similar to state agencies, unless they collaborate with ODOT on construction projects, the SBDP likely won't have a direct economic impact on local governments.

(2)(a) This rule only affects construction businesses that bid on public improvement projects. It is difficult to estimate this number; however, below are the findings of our research.

According to the Office of Small Business Assistance within the Oregon Secretary of State, in 2023 there were only 3,300 employers in Oregon with more than 100 employees. That's out of about 140,000 employers and about 520,000 registered businesses. This data comes from the Employment Department, which maintains data about employers, but not those businesses operating without employees.

While the Secretary of State tracks business registrations and the Construction Contractors Board (CCB) has records on the number of active licensed firms in Oregon, the CCB allows licensing for businesses not registered with the Secretary of State.

(2)(b) There will be no impact on small businesses that choose not to participate in the SBDP. Those construction firms that choose to participate in the program can expect to do the same reporting, recordkeeping, and administrative activities as any business bidding on and delivering federally funded ODOT projects.

(2)(c) Same as above. No change specific to complying with the rule.

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

In May 2024, ODOT convened an SBDP Advisory Committee to gain input on program framework and rule development. The SBDP Advisory Committee included small and mid-size business owners, in addition to industry association representatives. Beyond the SBDP Advisory Committee, ODOT reached out to tribes and engaged additional small firms to serve as advisors and provide input on program design, including identification of project suitability criteria.

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

No, RAC was not consulted again in 2026. However, a RAC was convened in July 2024. Meetings were held July 1 and July 2, 2024, and members were consulted on project suitability criteria at that time. Additionally, ODOT held two rounds of public comment during rulemaking related to the SBDP in summer 2024.

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ADOPT: 731-065-0080

RULE SUMMARY: Rule sets criteria for selecting suitable SBDP projects and limits bidding to qualified small businesses.

CHANGES TO RULE:

731-065-0080

Project Selection

(1) For purposes of this rule "SBDP participant" means a business that meets the qualifying criteria established in OAR 731-065-0020.¶

(2) ODOT may select a public improvement project to be in the SBDP if it meets the following selection criteria, as determined by ODOT staff knowledgeable of the project and the SBDP: ¶

(a) Project can reasonably be performed by a SBDP participant serving as a prime contractor; ¶

(b) Selection of project supports the statutory purpose of expanding opportunities for small construction firms to compete for and perform public improvement contracts; and¶

(c) Project has an estimated construction cost of greater than \$250,000 but no more than \$5,000,000.¶

(3) ODOT may limit competition for projects in the SBDP to SBDP participants consistent with ORS 184.906. ¶

(4) ODOT may select no less than one public improvement project each calendar year to be in the SBDP. The aggregate estimated total of all projects in the SBDP awarded in one calendar year may not exceed \$25,000,000.¶

(5) ODOT may remove a project from the SBDP if it determines a project no longer meets selection criteria set forth in paragraph (2) or if no SBDP participant bids on the project.

Statutory/Other Authority: ORS 184.619

Statutes/Other Implemented: ORS 184.906