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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 731
DEPARTMENT OF TRANSPORTATION

FILED

03/29/2024 2:37 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Updating public notice requirements for sole source procurements

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/21/2024 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)

Align ODOT's sole source public notice threshold with the threshold in the Attorney General Model Public Contracting rules, OAR 137-047-0275. When SB 1047 changed the threshold in ORS 279B at which a formal solicitation must be conducted, it automatically resulted in a higher threshold for the public notice requirement in the model rule OAR 137-047-0275 because the model rule points to the statute. The ODOT rule OAR 731-147-0055(2) lists the actual threshold rather than pointing to the statute, so the SB1047 threshold change did not automatically increase the public notice requirement. ODOT prefers to have the public notice requirement in ODOT's rule match the requirement in the model rule.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

2023 SB 1047

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

No impact anticipated. The amendments proposed do not impact race.

FISCAL AND ECONOMIC IMPACT:

None

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).

No fiscal or economic impact on state agencies, local governments, or members of the public.

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

None required.

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

The amendment to this rule is largely housekeeping in nature and was triggered by recent 2023 legislation (SB 1047).

AMEND: 731-147-0055

RULE SUMMARY: Align ODOT's sole source public notice threshold with the threshold in the Attorney General Model Public Contracting rules - OAR 137-047-0275.

CHANGES TO RULE:

731-147-0055

Sole-Source Procurements ¶¶

(1) Generally. ODOT may Award a Public Contract without competition as a Sole-Source Procurement pursuant to the requirements of ORS 279B.075 and this rule.¶¶

(2) Public Notice. If the value of the resulting Public Contract exceeds \$1250,000, ODOT shall publish a Public Notice in a manner similar to a Public Notice for a solicitation for Competitive Sealed Bids or Competitive Sealed Proposals. The Public Notice must describe the Goods or Services, or both, to be acquired by the Sole-Source Procurement; identify the prospective Contractor; and state the date, time and place that protests are due. ODOT will advertise the Public Notice at least seven (7) Days before Award of the Contract.¶¶

(3)-Protest. For Sole-Source Procurements requiring Public Notice under this rule, an Affected Person may protest the determination of ODOT that the Goods or Services or class of Goods or Services are available from only one source. Pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Person must file a Written protest with ODOT and exhaust all administrative remedies.¶¶

(a) Delivery. Unless otherwise specified in the Public Notice of the Sole-Source Procurement, an Affected Person must deliver a Written protest to ODOT within seven (7) Days after the first date of Public Notice of the Sole-Source Procurement, unless a different protest period is provided in the Public Notice of a Sole-Source Procurement.¶¶

(b) Content of Protest. The Written protest must include:¶¶

(A) A detailed statement of the legal and factual grounds for the protest;¶¶

(B) A description of the resulting harm to the Affected Person; and¶¶

(C) The relief requested.¶¶

(c) ODOT Response. ODOT shall not consider an Affected Person's Sole-Source Procurement protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Public Notice of the Sole-Source Procurement. ODOT shall issue a Written disposition of the protest in a timely manner. If ODOT upholds the protest, in whole or in part, the Contracting Agency shall not enter into a Sole-Source Contract.¶¶

(d) Judicial Review. Judicial review of ODOT disposition of a Sole-Source Procurement protest shall be in accordance with ORS 279B.420.

Statutory/Other Authority: ORS 184.619, 279A.065(6), 279B.075

Statutes/Other Implemented: ORS 279B.075