



**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

October 2, 2023

RE: Notice of Rulemaking and Request for Input

The Attorney General (“AG”) is initiating permanent rulemaking to modify the Model Public Contracting Rules (“Model Rules”) that specify procedures for public contracting under the Public Contracting Code. The particular Model Rules that the AG intends to modify are briefly described in the Anticipated Amendments summary provided herein.

The AG is also considering establishing a Rules Advisory Committee (“RAC”) to assist with that process and is seeking your input regarding the membership of a potential RAC.

ORS 279A.065(1) requires the AG to consult with the Director of the Oregon Department of Administrative Services, the Director of Transportation, representatives of county and city governments, representatives of school boards, and other knowledgeable persons before permanently adopting or amending the Model Rules. In addition, ORS 183.333(1) and (5), respectively, provide that Members of an agency’s RAC and fiscal impact advisory committees must “represent the interests of persons and communities likely to be affected by the rule,” while ORS 183.335(2)(b)(F) requires agencies to include a “statement identifying how adoption of the rule will affect racial equity in the state” on all rulemaking notices.

We are requesting your assistance with identifying persons and communities, including people from Black, Indigenous, and People of Color communities, likely to be affected by this permanent rulemaking. We are also asking that you point us to other knowledgeable persons who can provide information about how this permanent rulemaking will affect racial equity in the State of Oregon. Please send your responses to these inquiries to [2023MRPublicContracting@doj.state.or.us](mailto:2023MRPublicContracting@doj.state.or.us) by Sunday, October 8<sup>th</sup>.

The information you provide will help the AG decide whether to establish a RAC or seek public input by other means. We have dedicated a page on the website to this

October 2, 2023

Page 2

rulemaking process and encourage you to use the following link to obtain further information: [Attorney General's Model Public Contracting Rules Revisions - Oregon Department of Justice \(state.or.us\)](https://www.ojd.state.or.us/attorney-general/model-public-contracting-rules-revisions).

Thank you very much for your help.

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## **2023 Rulemaking: Anticipated Amendments to the Model Rules for Public Contracting (OAR Chapter 137, Divisions 46-49)**

### **Division 46:**

#### 137-046-0110 (Definitions for the Model Rules)

- Addition of two new definitions and renumbering of subsections, as appropriate:
  - Section (4) Benefit Company: to address changes and comply with HB 3572.
  - Section (38) Veteran: to address changes and comply with HB 2295.

#### 137-046-0140 (Solicitation Document Templates; Contract Forms and Contract Templates; Accountability for Advice)

- Sections (3) and (6): In anticipation of a revision to the legal sufficiency review and approval thresholds, references to \$150,000 were deleted and more generic language incorporating references to the statutes (ORS 291.047) and the AG's Rules for Review of Public Contracts were inserted.

#### 137-046-0210 (Subcontracting to and Contracting with Emerging Small Businesses; Disqualification)

- Revisions to Section (2) to comply with the changes in law under HB 2295 related to preferences for "service-disabled veteran" to "veteran owned businesses."

#### 137-046-0300 (Preference for Oregon Goods and Services)

- In Section (5), the addition of a discretionary preference for benefit companies under HB 3572.

### **Division 47:**

#### 137-047-0260 (Competitive Sealed Proposals)

- In Section (6), the deletion of provisions addressing waiver of the 30% requirement since the law requiring agencies to adhere to a 30% weighting requirement in evaluation sunseted.

#### 137-047-0261 (Multi-tiered and Multistep Proposals)

- In Section (12), the deletion of provisions addressing waiver of the 30% requirement since the law requiring agencies to adhere to a 30% weighting requirement in evaluation sunseted.

### **Division 48:**

#### 137-048-0130 (Applicable Selection Procedures; Pricing Information; Disclosure of Proposals; Conflicts of Interest)

- In Sections (8) and (9), edits made to clarify that the statutory prohibition set out in ORS 279C.307 applies equally to those individuals or entities that the rules specifically

define as a “consultant.” These edits also include the addition of pinpoint citations and grammatical improvements.

- In Section (10), edits include the addition of pinpoint citations and grammatical improvements.
- In Section (11), a new subsection was added to augment the “exception” process set forth in ORS 279C.307(3).

#### 137-048-0220 (Formal Section Procedure)

- In Sections (2) and (4), edits made to change “service-disabled veteran business” to “veteran-owned business” in accord with HB 2295 (2023).

### **Division 49:**

#### 137-049-0200 (Solicitation Documents; Required Provisions; Assignment or Transfer)

- In Section (1), new subsections added to provide contract terms and conditions that are required to be included when applied to certain Public Improvement projects. These subsections implement the requirements of HB 2649 (2023) and SB 582 (2023).

#### 137-049-0370 (Disqualification of Persons)

- In Section (1), edits made to change “service-disabled veteran business” to “veteran-owned business” in accord with HB 2295 (2023).

#### 137-049-0395 (Notice of Intent to Award)

- In Section (1), edit made to update the increased limit to small procurements resulting from SB 1047 (2023).

#### 137-049-0400 (Documentation of Award; Availability of Award Decisions)

- In Section (9), new subsection added to account for the newly added recordkeeping requirements in SB 1047 (2023).

#### 137-049-0440 (Rejection of Offers)

- In Section (3), edits made to change “service-disabled veteran business” to “veteran-owned business” in accord with HB 2295 (2023).

#### 137-049-0610 (Definitions for Alternative Contracting Methods)

- In Section (17), edit made to correct typo related to the defined term “Findings.”

#### 137-049-0630 (Findings, Notice and Hearing)

- In Sections (2), (3) and (6), edits made to correct typo related to the defined term “Findings.”
- In Section (7), edit made to address the revised approach to public hearings for exemptions from the competitive bidding process.

#### 137-049-0645 (Requests for Qualifications)

- Formatting edits provided for document consistency and grammatical improvements.

#### 137-049-0650 (Requests for Proposals)

- Formatting edits provided for document consistency.

137-049-0680 (Energy Savings Performance Contracts)

- In Section (1), provided formatting edits for document consistency.
- In Section (9), edits made to clarify that the permitted scope of work under energy savings performance contract (“ESPC”) procurements may include improvements that either completely, or substantially, pay for themselves over the useful life of the improvement.

137-049-0910 (Changes to the Work and Contract Amendments)

- In Section (4), edit made to correct a typo related to the defined term “Findings.”