

PORT OF HOOD RIVER RULE

PUBLIC PRIVATE PARTNERSHIPS FOR BRIDGE PROJECTS AND BRIDGE PROJECT ACTIVITIES

1. PURPOSE AND INTENT OF RULE

(1) The primary purpose of this Rule is to describe the process for developing and constructing a replacement bridge between Hood River, Oregon and White Salmon, Washington if undertaken as a Public-Private Partnership with the Port of Hood River.

(2) This Rule implements the authority granted to the Port by ORS 381.310 to ORS 381.314 to enter into public-private partnership agreements in connection with a Bridge Project, and is adopted in compliance with ORS 381.310(4)(b) requiring the Port to adopt rules that substantially conform with the Department of Transportation rules implementing ORS 367.800 to 367.824. Nothing in this Rule shall be interpreted as limiting the Port’s authority under other state statutes, including but not limited to its authority to exempt contracts from public bidding under ORS 279C.335(2).

2. DEFINITIONS

As used in this rule:

1. "Agreement" means a written agreement, including but not limited, to a contract for a Bridge Project or Bridge Project Activity that is entered into under Section 2 of Chapter 710 Oregon Laws 2017.

2. “Bridge” means the existing Port interstate bridge as of the effective date of this Rule, or a completed bridge that results from a Bridge Project, and any Related Facilities.

3. “Bridge Project” means a project to construct, reconstruct, or replace a bridge that spans the Columbia River, and any Related Facilities, that a Private Entity undertakes in accordance with an Agreement with the Port of Hood River that requires the Private Entity to fund, in whole or in part, the construction, reconstruction, or replacement of a Bridge.

4. “Bridge Project Activity” means an activity that a Private Entity undertakes in accordance with an Agreement with the Port of Hood River to plan, acquire, finance, develop, design, construct,

1 reconstruct, replace, improve, maintain, manage, repair, lease, or operate a bridge, Bridge Project, or any
2 Related Facility.

3 5. "Commission" means the Port of Hood River Commission.

4 6. "Days" means calendar days unless specified as business days.

5 7. "Direct Negotiations" means the undertaking of negotiations between the Port and a
6 single selected proposer regarding an Agreement, as described in paragraph 3(a) of subsection 9.2.

7 8. "Director" means the Executive Director of the Port of Hood River, a Port employee
8 authorized in writing by the Executive Director to act under this Rule in the place of, on behalf of and with
9 the authority of the Executive Director to perform specified Executive Director tasks, or a Port employee
10 authorized by the Commission to act in the place of and with the authority of the Executive Director under
11 this Rule if the Executive Director is unavailable.

12 9. "Evaluation Panel" means the panel of persons appointed by the Director to evaluate a
13 proposal for a Bridge Project or Bridge Project Activity under subsection 5.1 of this Rule.

14 10. "Key Person" means an official in a Managing Entity, Ownership Entity, or Major
15 Subcontractors who plays a critical role in running the enterprise or a critical role in a proposal and whose
16 loss or unavailability could jeopardize the success of the proposal.

17 11. "Lobbying" has the meaning given that term in paragraph (3) of subsection 4.5 of this
18 Rule.

19 12. "Local Government" has the meaning given that term in ORS 174.116.

20 13. "Major Partner" means a Private Entity that has an ownership interest in excess of 25%
21 in a Managing Entity, Ownership Entity, or Major Subcontractor, as applicable.

22 14. "Major Subcontractor" is the member of the Team, other than the Managing Entity,
23 designated in the proposal to have primary responsibility for one or more of the following: project
24 development, engineering, architecture/design, project management, construction (including any
25 construction subcontractors with subcontracts of at least 10% of the construction budget), legal, financial,
26 operations, or maintenance.

27 15. "Managing Entity" means the Private Entity or Private Entities authorized to execute
28 Agreements for the proposal and that will have primary management and oversight responsibility for the

1 performance of the obligations under an Agreement. The Managing Entity may also be a Major
2 Subcontractor or an Ownership Entity.

3 16. "Negotiation Team" shall have the meaning provided in paragraph (1) of subsection 7.1
4 of this Rule.

5 17. "Notice of an Unresponsive Submission" means a written notice sent by the Director to
6 a proposer stating that (a) the proposal was deemed incomplete or otherwise unresponsive to the
7 requirements of these Rules or the Solicitation Document; (b) the proposal will not be considered further,
8 and (c) the reasons for the determination.

9 18. "Organizational Disclosure Requirements" means any information, certifications, forms,
10 or attestations required regarding the qualifications, expertise, experience, financial backing, integrity,
11 ownership, litigation and claims history, organizational structure, and decision-making structure of any
12 Team member, Key Person, or Major Partner associated with a proposal.

13 19. "Ownership Entity" means a Private Entity or Private Entities anticipated to have an
14 ownership interest in the Bridge Project of at least 25% or that are the managing partners of an ownership
15 group anticipated to have an ownership interest in the Bridge Project of at least 25%

16 20. "Port" means the Port of Hood River.

17 21. "Private Entity" means any entity that is not a unit of government, including but not
18 limited to a corporation, partnership, company, nonprofit organization, joint venture, or other legal entity,
19 or a natural person.

20 22. "Project" means a Bridge Project or Bridge Project Activity.

21 23. "Public-Private Partnership" or "PPP" means an arrangement between the Port and one
22 or more Private Entities that includes a Private Contribution and provide for the design and construction,
23 maintenance and operation, or ownership of the Bridge Project or Bridge by one or more Private Entities.
24 The use of the word "partnership" in all contexts under this Rule is not intended to mean or to confer on
25 the relationship formed between the Port and a Private Entity any of the attributes or incidents of a
26 partnership under common law or under ORS chapters 67 and 70.

27 24. "Private Contribution" means resources supplied by a Private Entity to accomplish all or
28 part of the work on a Bridge Project, including but not limited to, funding; financing; providing income or

1 revenue; in-kind contributions of engineering, construction, or maintenance services; or other items of
2 value provided by a Private Entity.

3 25. “Related Facilities” means real or personal property for: (a) operating, maintaining,
4 renovating, or facilitating the use of a Bridge; (b) providing goods and services to people who use a Bridge;
5 or (c) generating revenue that can reduce tolls or that will be deposited in an account established under
6 an Agreement.

7 26. “Responsive Submission” means a Submission that complies with all requirements,
8 terms, and conditions of a Solicitation Document and this Rule.

9 27. “Rule” means this rule of the Port of Hood River regarding public-private partnerships for
10 a Bridge Project or Bridge Project Activity.

11 28. “Sensitive Business, Commercial or Financial Information” means information submitted
12 by a Private Entity in connection with a proposal for a Bridge Project or Bridge Project Activity, which
13 complies with the criteria in paragraph (2) if subsection 8.1 of this Rule, and which is exempt from public
14 disclosure under Oregon law and this Rule.

15 29. “Solicitation Document” means a written request for proposals, request for qualifications,
16 or any similar call for proposals or proposers issued by the Port in connection with a Bridge Project or
17 Bridge Project Activity, including any addenda thereto.

18 30. “Solicited Proposal” means a proposal submitted in response to a Solicitation Document.

19 31. “Submission” means a proposal or a statement of qualifications submitted in response to
20 or in connection to a Solicitation Document.

21 32. “Submission Deadline” means the date and time set forth in a Solicitation Document by
22 which a Submission is required to be received by the Port at a required location.

23 33. “Team” means the Managing Entities, Ownership Entities, Major Subcontractors, and
24 other significant participants proposed to undertake a Bridge Project or Bridge Project Activity.

25 34. “Term Sheet” means a non-binding agreement, approved by the Commission pursuant to
26 subsection 7.4 of this Rule, specifying preliminarily agreed-upon terms for preparing the final Agreement
27 or Agreements.

1 35. “Unresponsive Submission” means a Submission that does not comply with all
2 requirements, terms, and conditions of a Solicitation Document and this Rule.

3 36. “Unsolicited Proposal” means a proposal to the Port by a Private Entity for a Bridge Project
4 or Bridge Project Activity that is not submitted pursuant to a Solicitation Document.

5 **3. GENERAL AUTHORITY TO ENTER A PUBLIC-PRIVATE PARTNERSHIP FOR A BRIDGE PROJECT OR A**
6 **BRIDGE PROJECT ACTIVITY**

7 (1) The Port may, in accordance with ORS 381.310 to ORS 381.314 and this Rule, solicit
8 proposals or qualifications and enter into Direct Negotiations or Competing Negotiations for a Public-
9 Private Partnership to plan, acquire, finance, develop, design, manage, construct, reconstruct, replace,
10 improve, maintain, repair, operate, or own a Bridge Project or Bridge Project Activity if the Commission
11 has determined that such an approach has the potential to accelerate cost-effective delivery of the Project
12 or reduce the public cost of carrying out the Project.

13 (2) The Port shall not accept or consider an Unsolicited Proposal for a Public-Private
14 Partnership for a Bridge Project or Bridge Project Activity, unless and until this Rule is amended to allow
15 consideration of Unsolicited Proposals.

16 (3) The Port may select one or more proposers for the purpose of negotiating agreements
17 for a Bridge Project or Bridge Project Activity under Section 7 of this Rule, or may reject all proposers.
18 With regard to a proposer selected for negotiations, the Port may enter into negotiations for the full scope
19 of their proposal or for any part or parts of their proposal.

20 (4) The selection of a proposer or proposal for negotiations does not constitute a final
21 selection of such proposer or proposal nor prohibit the Port from considering other proposers or
22 proposals. Final selection of a proposer or proposal is subject to the Commission’s approval of an
23 Agreement.

24 **4. SOLICITATION OF STATEMENTS OF QUALIFICATIONS AND/OR PROPOSALS FOR A PUBLIC-**
25 **PRIVATE PARTNERSHIP FOR A BRIDGE PROJECT OR BRIDGE PROJECT ACTIVITY**

26 **4.1 Solicitation Documents**

27 (1) The Port may solicit proposals for a Bridge Project or one or more Bridge Project Activities
28 by issuing a Request for Qualifications (RFQ), a Request for Proposals (RFP), or a multi-staged RFQ/RFP

1 (each referred to herein as a “Solicitation Document”), as determined by the Port. Before issuing a
2 Solicitation Document, the Solicitation Document shall first be approved by the Commission. (2) Each
3 Solicitation Document shall specify the requirements for the Submission content, and criteria and
4 procedures under which Submissions will be evaluated and selected, either by reference to this Rule or
5 by supplementation or amendment to the provisions of this Rule. Nothing in this Rule is intended to limit
6 the scope of the Port’s discretion or authority to develop evaluation criteria and processes for a Solicited
7 Proposal as long as the criteria and processes comply with the requirements of ORS 381.310.

8 (3) The Port may require a proposer to pay a proposal review fee, in an amount prescribed
9 in the Solicitation Document, to accompany a Submission. If required by the Solicitation Document, the
10 Port shall not accept or consider a Submission that is not accompanied by payment of the required fee.

11 (4) Following approval of a Solicitation Document by the Commission, the Port will furnish
12 reasonable announcement of the Solicitation Document, as determined by the Port, for the purpose of
13 fostering and promoting competition. The announcement will indicate where, when, how, and for how
14 long the Solicitation Document may be obtained and generally describe the work. The notice shall specify
15 the date and time by which the response to the Solicitation Document must be submitted to the Port (the
16 “Submission Deadline”) and may contain any other appropriate information. The Port may charge a fee
17 or require a deposit for the Solicitation Document. The Port shall announce the availability of the
18 Solicitation Documents as follows:

19 (a) Mail the announcement of the availability of Solicitation Documents to Private
20 Entities that submitted a writing to the Port expressing an interest in the Port’s Bridge Project or Bridge
21 Project Activity procurements;

22 (b) Place the announcement on the Port’s internet web site;

23 (c) Place the announcement in the Daily Journal of Commerce and any other
24 applicable publications determined by the Director; and

25 (d) Use any other method the Director determines will promote competition.

26 (5) The Port may require potential proposers to register its name, contact information, and
27 areas of interest as a prerequisite to receiving the Solicitation Document.

1 (6) Following the issuance of the initial Solicitation Document, the Port may from time to
2 time issue an addendum to the Solicitation Document requesting additional information, the addition or
3 deletion of project features, alternative financing terms, additional Organizational Disclosure
4 Requirements, and other materials not included in the initial Solicitation Document or initial Submissions.

5 (a) Except as described in paragraph (6) (c) below, before issuing an addendum to a
6 Solicitation Document, the addendum shall first be approved by the Commission unless the Commission
7 otherwise authorizes the Director to issue addenda without Commission approval.

8 (b) Notice of the availability of an addendum shall be provided as set forth in
9 paragraph (2) of Section 10 of this Rule. Upon the Port's issuance of notice of availability of an addendum,
10 the provisions of the Solicitation Document shall be as amended or clarified by the addendum and any
11 previous addenda. Each addendum shall include a deadline for the Submission of requested materials.
12 The burden of responding to an addenda accurately and completely resides with the proposer. Failure of
13 a proposer to adequately or timely respond to such addenda shall constitute sufficient grounds to reject
14 the applicable Submission.

15 (c) The Director may issue an addendum that clarifies and does not otherwise revise
16 a Solicitation Document or previous addendum, without the approval of the Commission.

17 (7) The Port may issue a request for information, request for interest, or other preliminary
18 documents to obtain information useful in preparing a Solicitation Document.

19 **4.2 Eligible Proposers, Team Members, Key Persons, and Major Partners**

20 (1) All members of the proposed Team and their Major Partners and Key Persons:

21 (a) Must be able to legally operate and fully perform their proposed role and
22 responsibilities under the Submission in Oregon and Washington, or provide evidence that they will have
23 such ability prior to entering an Agreement; and

24 (b) Have or will have the ability to obtain the appropriate financial, material,
25 equipment, personnel, and expertise necessary to fulfill their proposed roles and obligations under the
26 Submission.

27 (2) No Submission will be considered from a Team in which a member of the Team, a Major
28 Partner of a Team member, or a principal officer of a Team member or a Major Partner:

1 (a) Is disbarred, suspended, disqualified, proposed for debarment, or declared
2 ineligible for contracts by any federal agency or agency of the State of Oregon; or

3 (b) Has, within the last 3-year period, been convicted of or had a civil judgment
4 rendered against it for commission of fraud or a criminal offense in connection with obtaining or
5 attempting to obtain a public (federal, state, or local) contract or subcontract; violation of federal or state
6 antitrust statutes relating to the Submission of bids, proposals, or qualifications; or commission of
7 embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax
8 evasion or receiving stolen property.

9 **4.3 Contents of a Proposal or Statement of Qualifications**

10 (1) A Submission must include all information required by this Rule and the
11 Solicitation Document. Unless otherwise revised in the Solicitation Document, a Submission shall be
12 formatted and include the information set forth in Exhibit 4.3 of this Rule. All information must be
13 complete, accurate, current, and truthful. The failure or refusal of any proposer to provide complete,
14 accurate, current, and truthful information requested by the Port shall be sufficient grounds for rejection
15 of the Submission.

16 (2) A Submission must be in response to the specific language in a Solicitation Document, an
17 addendum to a Solicitation Document, or a written notice from the Port; proposers shall not make any
18 assumptions based on verbal statements or written statements not contained in a Solicitation Document,
19 addendum to a Solicitation Document, or a written notice from the Port.

20 (3) In addition to the information required by this Rule and the Solicitation Documents, the
21 Port may request in writing, electronically or otherwise, from time to time such additional information,
22 Organizational Disclosure Requirements, or other materials from the proposer as the Port deems
23 beneficial to understanding or reviewing the Submission. Failure by a proposer to provide such
24 information or material within the time specified by the Port in the writing, or if no time is specified within
25 a reasonable time as determined by the Port, shall be sufficient grounds for rejection of the proposal. In
26 addition, the Port may undertake such reference checks and make such other inspections of Team
27 members as the Port may find beneficial to reviewing a Submission.

1 (4) All aspects of the Submission must comply with all applicable federal, state, and local laws
2 and regulations, including but not limited to the provisions of and this Rule.

3 (5) A cover letter must be attached to or incorporated in a Submission that:

4 (a) Incorporates a statement to the effect that by responding to the Solicitation
5 Document, the proposer acknowledges for itself and its Team that it agrees to and accepts all terms and
6 conditions under this Rule and the Solicitation Document, and

7 (b) Is signed by a duly authorized representative(s) of the Team making the
8 Submission.

9 (6) The Submission must include duly executed copies of all Organizational Disclosure
10 Requirements, including but not limited to any conflicts of interest forms, certifications, and attestations,
11 required under the Solicitation Document.

12 (7) The proposer shall clearly identify any Sensitive Business, Commercial, or Financial
13 Information in the proposal or statement of qualification that the proposer considers exempt from public
14 disclosure under Oregon state law, as described in Section 8 of this Rule.

15 (8) All pages of a proposal or statement of qualification shall be double-sided and numbered.
16 Each copy of the proposal or statement of qualification must be contained in a single volume where
17 practicable. An electronic version of the proposal and any supporting material submitted as part of the
18 proposal or statement of qualification shall also be provided.

19 **4.4 Obligation to Update Changed Information**

20 (1) Any change in the status of the proposer, the Team, any of the Key Persons, or any Major
21 Partners must be reported to the Port within fourteen (14) calendar days of the known change, and those
22 whose status has changed or who have been added are required to satisfy all Organizational Disclosure
23 Requirements within the fourteen day period. For purposes of this section, a “change in the status of a
24 proposer” includes reorganization of the business structure or corporate structure of the proposer, Team
25 Member, or a Major Partner amounting to a transfer of over twenty five percent (25%) of the entity’s
26 ownership.

1 (2) Any replacement or additional Team member, Key Person, or Major Partner must meet
2 the requirements set forth in subsection 4.2 of this Rule.

3 (3) The burden of satisfying the Organizational Disclosure Requirements, both in terms of
4 producing the disclosures and assuring their accuracy and completeness, resides with each proposer.
5 Failure to meet this burden shall be sufficient grounds for rejection of the Submission.

6 **4.5 Communications during the Solicitation, Evaluation, and Negotiation Process**

7 (1) From the date on which the Commission approves a Solicitation Document to the date on
8 which the Commission approves an Agreement or terminates the solicitation process without approving
9 an Agreement, all communications, whether direct or indirect, between the proposer, including any Team
10 member, agent, or representative of the proposer, and the Port shall only be with the contact person or
11 persons designated by the Director, and not with any other staff member, Commission member, or other
12 official, agent, or representative of the Port.

13 (2) Unless otherwise authorized in writing by the Director or his or her designee as described
14 in paragraph (4) of this subsection, no proposer or potential proposer, agent or representative of a
15 proposer or potential proposer, Team member, or agent or representative of a Team member shall
16 engage in Lobbying, as described in paragraph (3) of this subsection, between the date on which the
17 Commission approves a Solicitation Document and the date on which the Commission approves an
18 Agreement or terminates the solicitation process without approving an Agreement.

19 (3) Lobbying under this Rule shall include any direct or indirect contact, not authorized under
20 paragraph (4) of this subsection, in which a proposal for a Bridge Project or Bridge Project Activity is
21 discussed, whether in person, in writing, or electronically, by a proposer or potential proposer or an agent
22 or representative of a proposer or potential proposer (including any member of the Team, or an agent or
23 representative of a Team member) with any member of the Commission; any local, state, or federal official
24 (including presentations to any governmental boards or commissions); or persons (or agents or
25 representatives of persons) engaged in print or electronic media. Lobbying does not include any valid
26 appeal by a qualified proposer under this Rule, provided the appeal is limited to the content and process
27 described in this Rule.

1 (4) The Director may authorize proposers or potential proposers, as applicable, to engage in
2 Public Outreach, if the Director determines such Public Outreach: (i) does not afford any Private Entity an
3 undue competitive advantage and (ii) is in the best interest of the Port. As used in this Rule, Public
4 Outreach shall include any direct or indirect contact with public officials or media that is authorized by
5 the Director. The authorization to engage in Public Outreach shall be in writing and shall describe the
6 specific purpose or purposes for which Public Outreach is authorized, any limitations on the Public
7 Outreach, and the time period during which the authorization is effective. Any proposer or potential
8 proposer, agent or representative of a proposer or potential proposer, Team member, or agent or
9 representative of a Team member authorized to engage in Public Outreach shall only do so under the
10 terms and conditions set forth in the Director’s authorization. Any Public Outreach not complying with
11 the terms and conditions in the Director’s authorization shall constitute Lobbying under this subsection.

12 (5) Any violation of the prohibition against Lobbying shall constitute grounds for disqualifying
13 the violator but not the proposal (allowing the Team to replace the violator) or terminating consideration
14 of the proposal of the violator. The Director shall determine whether prohibited Lobbying has occurred. If
15 the Director determines that Lobbying occurred, the Director shall send notice to the violator or violators
16 stating the nature of the violation.

17 (6) Any proposer or potential proposer receiving notice under paragraph (5) of this
18 subsection shall have five (5) business days after receiving the Port notice to file a written appeal of the
19 Director’s determination to the Commission stating its reasons why the Director’s determination is
20 unwarranted. The Commission may overturn the determination of the Director if the Commission finds
21 that (i) there was not any improper contact or (ii) the contact was unintended or incidental and contact
22 could not have reasonably given the violator or the violator’s proposal a competitive advantage. If the
23 Director’s determination is not appealed or the Commission upholds the Director’s determination that
24 Lobbying occurred, the Commission shall, in its reasonable discretion, impose the appropriate penalty.

25 **5. SELECTION OF A TEAM OR TEAMS FOR NEGOTIATING AGREEMENT(S) FOR A PUBLIC-PRIVATE**
26 **PARTNERSHIP FOR A BRIDGE PROJECT OR BRIDGE PROJECT ACTIVITY**

27 **5.1 Evaluation Panel**

28 (1) Each Submission shall be evaluated by an Evaluation Panel nominated by the Director and
29 approved by the Commission.

1 (2) The Evaluation Panel shall be of such size and composition as the Port determines is in
2 the best interest of achieving a credible and technically sound assessment of the proposals, but may not
3 consist of less than three (3) members, and may be comprised of such Port staff, including the Director,
4 or officials, state and local staff or officials, public representatives, consultants, or other advisers as the
5 Commission may determine.

6 (3) Under the direction of the Director, the Evaluation Panel shall:

7 (a) Screen each Submission received by the Submission Deadline for its
8 responsiveness to the requirements in the Solicitation Document and this Rule and identify any potential
9 Unresponsive Submission, as provided in subsection 5.2 of this Rule;

10 (b) Evaluate each Responsive Submission, as provided in subsection 5.3 of this Rule;
11 and

12 (c) Prepare a final report documenting the results of its evaluation, as provided in
13 paragraph (8) of subsection 5.3 of this Rule.

14 **5.2 Initial Screening for Responsiveness of Submissions**

15 (1) The Port shall not accept or consider any Submission received by the Port after the
16 Submission Deadline or at a location other than that specified in the Solicitation Document.

17 (2) Each Submission received by the Submission Deadline at the correct location will be
18 assessed to determine if it is a Responsive Submission, which will receive detailed consideration by the
19 Port, or an Unresponsive Submission, which will not receive detailed consideration.

20 (3) To be a Responsive Submission, the Commission must find that the Submission:

21 (a) Is duly executed by an authorized representative of the Team;

22 (b) Is accompanied by the fee required by the Solicitation Document, if any;

23 (c) Satisfies all Organizational Disclosure Requirements, including all duly executed
24 forms, certifications, and attestations, required by the Solicitation Document;

1 (d) Provides all information required by the Solicitation Document; and

2 (e) Complies with all other applicable requirements, terms, and conditions under this
3 Rule and the Solicitation Document.

4 (4) Any Submission that the Commission finds does not comply with all criteria in paragraph
5 (3) of this subsection shall be an Unresponsive Submission and shall not be considered.

6 (5) Following the Submission Deadline, the Director shall cause to be undertaken an initial
7 screening of all Submissions received by the Port by the Submission Deadline, as follows:

8 (a) Each Submission will be reviewed to determine if it (i) is duly executed by an
9 authorized representative of the Team, (ii) is accompanied by the fee required by the Solicitation
10 Document, if any, and (iii) complies with all Organizational Disclosure Requirements, including all duly
11 executed forms, certifications, and attestations required by the Solicitation Document.

12 (b) If any of the items reviewed in paragraph (5)(a) of this subsection is found to be
13 deficient, the proposer shall be notified in writing by the Port, and if the proposer has not fully rectified
14 the deficiency or deficiencies in the Port's notice by within five (5) business days following the date on
15 which notice is provided, as set forth in section 10 of this Rule, consideration of the Submission may be
16 terminated.

17 (c) Each Submission complying with the criteria in paragraph (5)(a) of this subsection
18 will be reviewed by the Evaluation Panel to determine if the Submission (i) provides all information
19 required by the Solicitation Document and (ii) complies with all other applicable requirements under this
20 Rule and the Solicitation Document. The Evaluation Panel may request in writing clarifications from a
21 proposer regarding its Submission, and may take such clarifications received from the proposer into
22 account in making its assessment. The Evaluation Panel will report its findings in writing to the Director.

23 (6) After reviewing the findings of the Evaluation Panel, the Director shall recommend to the
24 Commission a list of those Submissions that are Responsive Submissions, which, subject to Commission
25 approval, will be further considered by the Evaluation Panel, and those Submissions that are Unresponsive
26 Submissions which, subject to Commission approval, will not receive any further consideration, and an
27 explanation of the reasons for the recommendation. The Director shall make the recommendation

1 available to proposers by issuing a written notice to the proposers or by an electronic posting of the
2 recommendation.

3 (7) If the Director recommends that a Submission is an Unresponsive Submission, the
4 Director shall promptly convey to the proposer a “Notice of an Unresponsive Submission” stating his or
5 her reasons for the recommendation. A proposer receiving a Notice of an Unresponsive Submission shall
6 have fourteen (14) days from the date of notice, as set forth in section 6.3(4) of this Rule, to appeal in
7 writing to the Port. The written appeal shall explain in detail why the Notice of an Unresponsive
8 Submission was issued in error. If appealed, the Commission shall hear the appeal within fourteen (14)
9 days after Port receipt of the appeal, unless the time is extended by the Commission.

10 (8) Each Submission approved by the Commission as a Responsive Submission shall be
11 evaluated by the Evaluation Panel pursuant to subsection 5.3 of this Rule. Further consideration of a
12 Submission designated as an Unresponsive Submission shall be terminated upon the Commission’s action.

13 **5.3 Evaluation of Responsive Submissions**

14 (1) The Evaluation Panel shall evaluate each Responsive Submission in accordance with this
15 subsection 5.3.

16 (2) In evaluating proposals for a Bridge Project, the following factors must be considered
17 pursuant to ORS 381.310(6):

18 (a) The estimated cost of the Bridge Project;

19 (b) The qualities of the design that the proposer submits, if appropriate, including:

20 (A) The structural integrity of the design and how the design will likely affect
21 future costs of maintaining the bridge;

22 (B) The aesthetic qualities of the design and other aspects of the design such
23 as the width of lane separators, landscaping and sound walls;

24 (C) The traffic capacity of the design;

1 (D) Aspects of the design that affect safety, such as lane width, the quality of
2 lane markers and separators, the shape and positioning of ramps and curves and changes in elevation;
3 and

4 (E) The ease with which traffic will pass through any toll collection facilities;

5 (c) The extent to which the bridge project will involve small businesses. The Port shall
6 encourage small businesses to participate in the bridge project to the maximum extent that the Port
7 determines is practicable. As used in this paragraph “small business” means an independent business with
8 fewer than 20 employees and with average annual gross receipts during the last three years of not more
9 than \$1 million for construction firms and not more than \$300,000 for businesses that are not construction
10 firms; however, small business does not include a subsidiary or parent company that belongs to a group
11 of firms that the same individuals own or control and that have average aggregate annual gross receipts
12 during the last three years in excess of \$1 million for construction firms or \$300,000 for firms that are not
13 construction firms;

14 (d) The proposer’s financial stability and ability to provide funding for the Bridge
15 Project or Bridge Project Activity and obtain, or act as, a surety for the proposer’s performance and
16 financial obligations with respect to the Bridge Project or Bridge Project Activity;

17 (e) The experience of the proposer and the proposer’s subcontractors in engaging in
18 bridge project activities of a size and scope similar to the proposed Bridge Project or Bridge Project
19 Activity;

20 (f) The terms of the financial arrangement that the proposer accepts or proposes
21 with respect to franchise fees, license fees, lease payments, or operating expenses and the proposer’s
22 required rate of return from engaging in the bridge project activity; and

23 (g) The terms that the proposer offers for engaging in the bridge project activity,
24 including:

25 (A) The amount of proposed tolls and administrative fees;

26 (B) Schedules for altering tolls and administrative fees; and

27 (C) Any restrictions or conditions on future increases in tolls or
28 administrative fees.

1 (3) In addition to the criteria in paragraph (2) of this subsection, the Evaluation Panel shall
2 employ any additional criteria set forth in the Solicitation Document, and any addenda to the Solicitation
3 Document, in evaluating a Submission.

4 (4) If after opening Submissions the Director determines that amendments to the process or
5 criteria in the Solicitation Document or any addenda to a Solicitation Document would be beneficial to
6 the Port, the Director may recommend such amendments to the Commission as an addendum to the
7 Solicitation Document and, subject to the Commission approval, the Evaluation Panel may employ the
8 amended evaluation process or criteria. At least five (5) days before the Evaluation Panel can use the
9 amended process or criteria in an addendum, the Port shall issue in writing sent to proposers or post
10 electronically the addendum to allow proposers adequate time to address the addendum.

11 (5) Unless otherwise limited in the Solicitation Document, subject the approval of the
12 Director and, when required, the Commission, the Evaluation Panel may:

13 (a) Request in writing additional information from proposers;

14 (b) Employ outside technical or legal advice;

15 (c) Seek public input;

16 (d) Undertake reference checks of Team members, and

17 (e) Investigate the validity of assumptions and information provided by proposers.

18 (6) The Evaluation Panel may from time to time request proposers to make presentations
19 regarding its Submission to the Evaluation Panel. Proposers shall be afforded not less than ten (10)
20 business days following written notification from the Evaluation Panel to make such presentations. The
21 format of these presentations will include a formal presentation by the proposer, followed by any
22 questions the Evaluation Panel has pertaining to the Project, proposal, or statement of qualifications. The
23 Evaluation Panel is not limited to asking the same or similar questions to each proposer. If there is an issue
24 to which the proposer is unable to adequately respond during the formal presentation, the Evaluation
25 Panel may, at its discretion, grant the proposer a reasonable period of time in which to submit a written
26 response.

1 (7) As part of its evaluation of a Submission, the Port may consult with appropriate state
2 agencies and local governments in Oregon and Washington. Consultation under this Rule will occur in
3 such manner and at such time as the Port considers appropriate in the particular circumstance, and may
4 include but not be limited to:

5 (a) An informal information-sharing opportunity prior to completion of the Port’s
6 evaluation of the proposal;

7 (b) Solicitation of comments from the appropriate state agencies and local
8 governments in Oregon and Washington; and

9 (c) Any additional method(s) of consultation appropriate under the circumstances.

10 (8) Upon the completion of its evaluation, the Evaluation Panel shall transmit to the Director
11 a final report and any supporting materials the Evaluation Panel deems relevant. To the extent permitted
12 by law, the report of the Evaluation Panel, including any documentation in connection with its
13 preparation, shall not be subject to public disclosure until such time as the Director issues his or her
14 recommendation under subsection 6.1, at which time the report will be made public; provided, however,
15 the Port may redact from the from the publicly disclosed recommendation report any Sensitive Business,
16 Commercial or Financial Information that is exempt from disclosure by law.

17 **6. Director’s Recommendation and Commissions Approval of Proposers for Negotiation**

18 **6.1 Director’s Recommendation to the Commission**

19 (1) Following receipt of the Evaluation Panel report under paragraph (8) of subsection 5.3,
20 the Director shall determine if the report is sufficient for the Director to make his or her recommendation
21 to the Commission. If the Director finds that the report of the Evaluation Panel is insufficient to make a
22 recommendation, the Director shall ask the Evaluation Panel for such additional analysis or
23 documentation as the Director deems necessary to make a recommendation.

24 (2) Following the Director’s determination that the report of the Evaluation Panel is sufficient
25 to make a recommendation, the Director shall prepare his or her recommendation to the Commission,
26 which may include a recommendation to:

27 (a) Reject all Submissions and terminate the process;

1 (b) Select one Submission for Direct Negotiations, and reject all other proposals;

2 (c) Select one Submission for Direct Negotiations, and retain one or more other
3 proposals for possible future negotiations if the initial negotiations are not successfully concluded;

4 (d) Select two or more Submittals for Competing Negotiations; and reject all other
5 proposals; or

6 (e) Such other recommendation as the Director may determine.

7 (3) Upon the completion of his or her recommendation, the Director shall transmit the
8 recommendation to the Commission along with any supporting materials the Director deems relevant;
9 provided, however, the Port may redact from the from the publicly disclosed recommendation report any
10 Sensitive Business, Commercial or Financial Information permitted by law. The Director shall notify
11 proposers of his or her recommendation by emailing proposers, without confirmation of delivery, to the
12 proposer's email address as described in paragraph (3)(b) of Section 10 of this Rule.

13 **6.2 Commission Review and Selection of Proposers for Negotiation**

14 (1) The Commission shall review the recommendation and any supporting materials
15 forwarded by the Director under Section 6.1. If the Commission finds that recommendation and
16 supporting materials transmitted by the Director are insufficient to make a decision, the Commission shall
17 require the Director to obtain such additional information as the Commission deems necessary to make
18 its decision.

19 (2) If the Commission finds the recommendation of the Director and the supporting materials
20 are sufficient for the Commission to take an action, the Commission as a whole or a sub-committee
21 appointed by the Commission shall review the recommendation and supporting material, including
22 holding any hearings the Commission deems necessary, and may approve, amend, or reject the Director's
23 recommendation, with or without conditions, or take such other actions as the Commission deems in the
24 best interest of the Port, including cancelling the solicitation process or procurement in the Solicitation
25 Document. If the Commission acts to cancel the solicitation process or procurement, the reasons for the
26 cancellation shall be in writing and included in the solicitation file.

1 (3) Pursuant to ORS 381.310(6)(b), if the Commission’s action is to select a single proposal
2 for Direct Negotiations, the action must follow a public hearing in which the elements described in
3 subsection 5.3 of this Rule are considered. The Commission shall select a Submission that provides the
4 best overall public value. In determining the best overall public value, the Commission must find that the
5 selected Submission, compared to other Submissions, is likely to:

- 6 (a) Reduce the cost of constructing the Bridge Project;
- 7 (b) Accelerate the schedule for completing the Bridge Project; and
- 8 (c) Reduce the financial risk to the Port and the public.

9 (4) The Commission may authorize, at its option, Competing Negotiations with multiple
10 proposers as a means of selecting from among the Submissions selected for detailed evaluation. In making
11 this selection, the Commission shall comply with the requirements in paragraph (3) of this subsection.

12 (5) Any action by the Commission to approve or disapprove one or more Submissions shall
13 not take effect until the completion of the appeal process set forth in Section 6.3.

14 (6) Promptly following a Commission action to reject one or more Submissions, the Port will
15 give, electronically or otherwise, written notice to all participating proposers of the Port’s action.

16 **6.3 Appeals of Port Action to Reject Submissions**

17 (1) A Commission or Director action in which one or more Submissions are rejected may be
18 appealed by an adversely affected proposer in accordance with the provisions of this subsection 6.3. A
19 properly filed appeal will be heard by the Commission or such other body or hearings officer as the
20 Commission may appoint. An appeal that is not fully consistent with the requirements of this Rule shall
21 not be heard.

22 (2) For purposes of this Rule, a protesting proposer is adversely affected by a Commission or
23 Director action only if: (i) the proposer has submitted a Responsive Submission, and (ii) the Submission
24 was rejected for further consideration by the Commission’s or Director’s action.

25 (3) To appeal a Commission or Director action, an adversely affected proposer must submit
26 to the Director a written protest stating the facts and providing explanations that demonstrate the Port:

1 (a) Committed a material violation of a provision in the Solicitation Document or this
2 Rule in evaluating the Submission or taking the Commission or Director action; or

3 (b) Otherwise abused its discretion in evaluating a proposal or proposals.

4 (4) The written protest must be received by the Port no later than 5:00PM (Pacific Time) on
5 the 14th calendar day following the day on which the Port sent notice of the Commission or Director action
6 under paragraphs (6) or (7) of subsection 5.2 or paragraph (5) of subsection 6.2. If the Port receives no
7 written protest concerning the action under paragraphs (6) or (7) of subsection 5.2 or paragraph (5) of
8 subsection 6.2 within the 14-calendar day period, then the Commission action automatically shall become
9 effective on the 15th calendar day following the day on which the Port sent notice of the Commission or
10 Director action under paragraphs (6) or (7) of subsection 5.2 or paragraph (5) of subsection 6.2.

11 (5) In response to a protest that complies with the requirements of this rule, the Commission
12 will issue a written decision that resolves the issues raised in the protest. In considering a timely protest,
13 the Port may request further information from the protesting proposer and may undertake any further
14 investigations the Commission finds beneficial. The Port will make its written decision available, by mail
15 or by electronic means, to all proposers identified in the Port's notice.

16 **7. Negotiation and Approval of Agreements for Bridge Projects or Bridge Project Activities**

17 **7.1 Negotiation Team**

18 (1) Any Submissions approved by the Commission for negotiation of an Agreement shall be
19 referred to a Negotiation Team nominated by the Director and appointed by the Commission. The
20 Negotiation Team shall be of such size and composition as the Commission determines is in the best
21 interest of the Port, and may be comprised of such Port staff, including the Director, legal counsel,
22 consultants, or other advisers as the Commission may determine.

23 (2) Under the direction of the Director, the Negotiating Team shall be responsible for Direct
24 Negotiations with a proposer or Competing Negotiations with proposers, as authorized by the
25 Commission, and be subject to any terms or conditions set forth from time to time by the Commission
26 regarding the negotiations.

27 **7.2 Legal Counsel**

1 (1) Prior to commencing negotiations on an Agreement, the Port shall engage legal counsel
2 for the purpose of:

3 (a) Advising the Port on the legality of specific proposed partnerships and the legal
4 sufficiency of any Agreements;

5 (b) Advising the Port on the legal procedures and practices that are related to
6 implementing a Bridge Project in a Public-Private Partnership;

7 (c) Assisting the Port in negotiating agreements and preparing documents related to
8 a Public-Private Partnership;

9 (d) Advising the Port on accounting, investment and tax requirements that apply to
10 a Bridge Project the Port undertakes in a Public-Private Partnership; and

11 (e) Advising the Port concerning any relevant federal securities or other laws and
12 related disclosure requirements.

13 **7.3 Negotiation and Approval of Agreements**

14 (1) Subject to its statutory authorities and this Rule, the Port may enter into one or more
15 Agreements with Private Entities for a Bridge Project or one or more Bridge Project Activities. To the
16 extent permitted by law, the Port may conduct negotiations regarding Agreements without public
17 disclosure of the content of the negotiations or draft agreements, provided the final Agreement shall be
18 subject to public disclosure.

19 (2) Subject to Commission approval, the Negotiation Team may enter into:

20 (a) Direct Negotiations with one proposer for an Agreement for a Bridge Project or
21 Bridge Project Activity. The Commission may establish terms and conditions for the negotiations, including
22 setting an exclusivity period for such negotiations. The Commission in its discretion may, from time to
23 time, extend such exclusivity period. If the negotiations are not subject to an exclusivity period, at any
24 time during the negotiations, the Director may recommend and the Commission may approve to
25 terminate the Direct Negotiations or commence Competing Negotiations with one or more other
26 proposers.

1 (b) Competing Negotiations with multiple proposers for an Agreement for a Bridge
2 Project or a Bridge Project Activity. Such Competing Negotiations may be sequential or concurrent, or a
3 combination of sequential and concurrent. The Commission may set terms and conditions for the
4 negotiations. During the course of Competing Negotiations the Director may from time to time
5 recommend and the Commission may approve the termination of one or more of the Competing
6 Negotiations, potentially resulting in Direct Negotiations with one proposer. If more than one Competing
7 Negotiation successfully yields an Agreement, the Director shall evaluate the relative merits of the related
8 Agreements and recommend a preferred Agreement for Commission approval.

9 (3) The object of Competing Negotiations is to maximize the Port’s ability to obtain best
10 value. Accordingly, the Competing Negotiations may include but shall not be limited to:

11 (A) Informing proposers of deficiencies in their Submissions;

12 (B) Notifying proposers of parts of their Submissions for which the Port
13 would like additional information; and

14 (C) Otherwise allowing proposers to develop revised Submissions that will
15 permit the Port to obtain the best proposal. The scope, manner, and extent of negotiations with any
16 proposer are subject to the discretion of the Port. In conducting these negotiations, the Port shall not (i)
17 engage in conduct that unfairly favors any proposer over another; (ii) reveal to another proposer a
18 proposer’s Sensitive Business, Commercial, or Financial Information, or (iii) reveal to another proposer a
19 proposer’s price (or pricing information) or business terms.

20 (4) The Negotiation Team shall transmit any final Agreements to the Director for his or her
21 review and recommendation to the Commission. As part of the Director’s review, Legal Counsel shall
22 review the legal sufficiency of the Agreement or Agreements and the legal history/organization of the
23 Team. Following the Director’s review and Legal Counsel’s approval of the legal sufficiency of the
24 Agreement or Agreements, the Director shall transmit his or her recommendation on the Agreement or
25 Agreements to the Commission for its approval.

26 (5) Following receipt of the Director’s recommendation regarding an Agreement or
27 Agreements, the Commission shall hold such work sessions, public hearings, briefings, and discussions on
28 the Agreement or Agreements as the Commission finds beneficial to its deliberations. Following

1 completion of its review of the Director’s recommendation and the Agreement or Agreements, the
2 Commission may approve, reject, or offer amendments to the recommended Agreement, terminate any
3 further consideration of the Agreement, or terminate the solicitation process.

4 **7.4 Term Sheet**

5 (1) The Commission may require that the Negotiation Team first negotiate a Term Sheet with
6 a proposer before undertaking substantial work on an Agreement.

7 (2) If a Term Sheet is required by the Commission, the Negotiation Team shall seek to
8 negotiate a draft Term Sheet. If the Negotiation Team:

9 (a) Cannot reach agreement on a draft Term Sheet or make reasonable progress
10 toward a Term Sheet within a reasonable time period, the Negotiation Team shall so notify the Director,
11 and the Director shall forward the information to the Commission, which may then decide to continue
12 negotiations or terminate negotiations with the proposer.

13 (b) Reaches agreement on a draft Term Sheet, the Negotiation Team shall forward
14 the draft Term Sheet to the Director. The Director may (i) direct the Negotiation Team to undertake
15 further work on the draft Term Sheet before recommending it to the Commission, or (ii) recommend to
16 the Commission that the draft Term Sheet be approved, rejected, or amended or that the negotiation
17 process be terminated.

18 (3) After receiving a recommendation from the Director, the Commission may hold such work
19 sessions, public hearings, briefings, and discussions on the Term Sheet as the Commission finds beneficial
20 to its deliberations. Following completion of its review of the Term Sheet the Commission may approve
21 or reject a Term Sheet, direct the Director to continue negotiations of the Term Sheet based on certain
22 terms or conditions approved by the Commission, or terminate the negotiations with the proposer. The
23 Port shall make its action available to all proposers actively engaged in the proposal selection process at
24 the time of the Commission’s action.

25 **7.5 Terms of the Agreement**

26 (1) The Agreement or Agreements shall define the rights and obligations of the Port and the
27 respective proposer with regard to the Bridge Project or Bridge Project Activity. At a minimum, pursuant
28 to ORS 381.310, an Agreement for a Bridge Project with a Private Entity must include:

1 (a) At what point in the Bridge Project the public and private partners will assume
2 responsibility for specific elements of the Bridge Project;

3 (b) How the public and private partners will share costs and risks of the Bridge
4 Project;

5 (c) How the public and private partners will allocate financial responsibility for cost
6 overruns;

7 (d) Incentives to perform and penalties for a failure to perform an element of the
8 Bridge Project;

9 (e) Accounting and auditing standards for evaluating work on the Bridge Project; and

10 (f) Whether the Bridge Project is consistent with the applicable state, regional, and
11 local transportation plans and programs, and, if not, how and when the Bridge Project will become
12 consistent with such plans and programs.

13 (g) The account or accounts into which proceeds from tolls, administrative fees and
14 civil penalties from the bridge may be deposited. The account designated for the share of toll proceeds
15 received by the Port or another unit of government must be a depository that meets the requirements
16 set forth in ORS chapter 295. The account designated for the share of toll proceeds received by a Private
17 Entity shall be an insured institution, as defined in ORS 706.008.

18 (h) That the public has dedicated and unrestricted use of the bridge for the duration
19 of the bridge's functional life unless the Port, a state government or the federal government declares an
20 emergency that forbids using the bridge; and

21 (i) That construction of the bridge project may not proceed until the Department of
22 Transportation has issued, in accordance with ORS 374.305, any permits that are necessary to connect
23 the bridge project to state highways.

24 (2) If an Agreement is for the sale or transfer of ownership of a Bridge or Bridge Project, the
25 Agreement shall provide that:

26 (a) The sale or transfer is subject to an easement in favor of public use for the
27 duration of the functional life of the Bridge or Bridge Project;

1 (b) Other than for a sale or transfer to a subsidiary or affiliate of the seller, the Port
2 has a right of first refusal in any subsequent sale or transfer of the Bridge or Bridge Project under which
3 the seller must offer the Port a price, terms and conditions that are the same as or better than the price,
4 terms and conditions that the seller offers to any other prospective purchaser, which allows a reasonable
5 period of time to comply with legal requirements applicable to the purchase and to arrange financing for
6 the purchase if needed; and

7 (c) If the Port declines to purchase the bridge or bridge project under paragraph (b)
8 of this subsection, the State has a right of first refusal that the state may exercise and under which the
9 seller must offer the State a price, terms and conditions that are the same as or better than the price,
10 terms and conditions that the seller offers to any other prospective purchaser and to the Port.

11 (3) If the Agreement is for a Bridge Project Activity that is a Public Works under ORS 279C.800,
12 the Agreement shall require that:

13 (a) ORS 279C.380, 279C.385 and 279C.390 and 279C.800 to 279C.870 apply to the
14 Bridge Project Activity; and

15 (b) If the Agreement is for constructing, reconstructing, performing a major
16 renovation, or painting a Bridge Project, the Agreement must provide that those workers be paid in
17 accordance with ORS 279C.540 and 279C.800 to 279C.870.

18 (4) In addition to the specified requirements under law and this Rule, an Agreement for a
19 Bridge Project or a Bridge Project Activity may include such other terms as the Port finds beneficial and
20 legally permitted.

21 (5) If pursuant to subsection 7.4 a Term Sheet is approved by the Commission, the
22 Negotiation Team shall seek to negotiate an Agreement or Agreements with the proposer that
23 substantially conforms to the provisions of the Term Sheet. Circumstances discovered during the course
24 of negotiating the Agreement or Agreements may result in refinements or amendments to the provisions
25 in the Term Sheet. The Director shall apprise the Commission of any material changes from the provisions
26 of the Term Sheet, and, when deemed beneficial to the negotiations, may offer amendments to the Term
27 Sheet for Commission approval. The Port shall make its action available to all proposers actively engaged
28 in the proposal selection process at the time of the Commission's action.

29 **7.6 Port Approval of Major Subcontractors**

1 (1) Prior to the execution of any Agreement with a proposer, the proposer must provide to
2 the Director or his or her designee, for review, a list of all Major Subcontractors not included in the initial
3 proposal and all information regarding such Major Subcontractors required by this Rule or subsequent
4 requests by the Port.

5 (a) All subcontractors, whether a Major Subcontractor or not, must be legally eligible
6 to perform or work on public contracts under federal and Oregon law and regulations. No subcontractor
7 will be accepted who is on the list of contractors ineligible to receive public works contracts under ORS
8 279C.860.

9 (b) During performance of the contract, the proposer shall promptly notify the Port
10 of the engagement or disengagement of any Major Subcontractor.

11 (2) If the Director objects to any proposed Major Subcontractor, whether included in the
12 initial proposal or added pursuant to paragraph (1) of this subsection, the Director, subject to Commission
13 approval, may require the proposer to submit for Port review an acceptable substitute subcontractor
14 before transmitting the Agreement to the Commission for final approval. The Director, in his or her
15 reasonable discretion, shall establish and, from time to time amend, a deadline for providing the Port, for
16 Port review, an acceptable substitute subcontractor. A proposer's failure to submit an acceptable
17 substitute within the deadline will constitute sufficient grounds for the Port to refuse to execute an
18 Agreement without incurring any liability for the refusal. If the substitute subcontractor is approved by
19 the Port, the Port may revise the proposed Agreement to account for any differences necessitated by the
20 substitution. The Commission shall approve any substitute subcontractors.

21 **8. Public Disclosure and Public Records Requests**

22 **8.1 Designation of Sensitive Business, Commercial or Financial Information**

23 (1) By making a Submission, the proposer acknowledges and accepts that, as a public entity,
24 the Port must comply with and will comply with public disclosure requirements under ORS 192.311, et
25 seq. Upon written request and within a reasonable time, the Director or his designee will provide records
26 relating to Bridge Project or Bridge Project Activity proposals for public inspection in accordance with ORS
27 Chapter 192, unless the records are otherwise exempt from public disclosure under Oregon law and this
28 Rule.

1 (2) A proposer may seek an exemption from public disclosure of Sensitive Business,
2 Commercial, and Financial Information provided to the Port for the purpose of evaluating a proposal for
3 a Bridge Project or Bridge Project Activity if such information is:

4 (a) Submitted in confidence, not customarily provided to or available to business
5 competitors, and not otherwise required by law to be submitted, where such information should
6 reasonably be considered confidential, and the public interest would suffer by the disclosure;

7 (b) A trade secret under ORS 192.345 and ORS 646.461 through ORS 646.475;

8 (c) Of a personal nature that if disclosed would constitute an unreasonable invasion
9 of privacy; or

10 (d) Otherwise exempt from public disclosure under Oregon law under a statute cited
11 by the proposer in writing with specific reference to information claimed to be exempt.

12 (3) Although some information provided by a proposer to the Port for the purpose of
13 evaluating a proposal may be exempt from public disclosure, the terms of a proposed or final Agreement
14 between the Port and a Private Entity are subject to public disclosure.

15 (4) To seek an exemption from public disclosure of Sensitive Business, Commercial, or
16 Financial Information, the proposer must comply with the following:

17 (a) Each individual page submitted with such information, whether included in the
18 proposal or otherwise submitted in connection with the proposal, shall have a statement in bold and
19 underline text on the top of the page providing the sections or paragraphs on the page considered to be
20 Sensitive Business, Commercial, or Financial Information; and

21 (b) The proposal shall include a table showing the page number of each page in the
22 proposal containing such information.

23 (5) The Port may at any time, and from time to time, make a written request to the proposer
24 to justify designating information as Sensitive Business, Commercial, or Financial Information. The
25 proposer shall have five (5) business days from the date of the Port's request to respond in writing to the
26 request. Failure to respond in writing within the required time may be grounds for the Port to provide
27 public disclosure of the information.

1 (6) Notwithstanding a proposer's designation of information as exempt from public
2 inspection, including information constituting Sensitive Business, Commercial, or Financial Information,
3 or a proposer's written justification for such designation, the Port, when responding to a public records
4 request, will independently assess whether the information constitutes Sensitive Business, Commercial,
5 or Financial Information or is otherwise exempt from public disclosure. In determining whether the
6 information is exempt from disclosure, the Port will consider the evidence and objections to disclosure
7 presented by the proposer, but as custodian of the records or information the Port must make the initial
8 determination of the records that may be withheld from disclosure.

9 **8.2 Public Records Requests**

10 (1) Upon written request and within a reasonable time, the Director or his designee will
11 provide records relating to Bridge Project or Bridge Project Activity proposals for public inspection in
12 accordance with Oregon law and this Rule.

13 (2) The Port may charge fees to cover its reasonable and actual costs in responding to public
14 records requests. Such costs may include but are not limited to costs associated with locating records,
15 separating exempt from nonexempt records, monitoring the requester's inspection of requested records,
16 copying records and delivering copies of requested records. The Port may charge fees calculated to
17 reimburse it for its reasonable and actual costs as authorized by the relevant provisions of the Public
18 Records Law.

19 (3) The Port will prepare an estimate of the costs of responding to any request for public
20 records as required by ORS 192.324(4), and may prepare an estimate of costs in other circumstances. The
21 Port may require payment of all or a portion of the estimated costs before acting on the request.

22 (4) Records related to a proposal for a Bridge Project or Bridge Project Activity submitted to
23 the Port under this Rule are exempt from public disclosure until the Commission has selected one or more
24 proposals for negotiation of an Agreement, unless the Director determines that an earlier time is in the
25 Port's best interest.

26 (5) Notwithstanding paragraph (4) of this subsection, Sensitive Business, Commercial or
27 Financial Information is exempt from disclosure unless and until the records or information contained in
28 them is submitted to the Commission in connection with its review and approval of a proposal, Term
29 Sheet, or final Agreement for a Bridge Project or Bridge Project Activity. To the extent required by law,

1 the Port will permit public disclosure of any Sensitive Business, Commercial, or Financial Information
2 submitted to the Commission in connection with its review and approval of a proposal, Term Sheet, or
3 final Agreement for a Bridge Project or Bridge Project Activity. No less than five (5) business days prior to
4 submitting any Sensitive Business, Commercial, or Financial Information to the Commission that the Port
5 intends to publicly disclose, the Director shall notify the proposer of his or her intent to do so. No longer
6 than five (5) business days following receipt of the Director's notice:

7 (a) The proposer may (i) send notice, as described in section 10, to the Port that it
8 disagrees with the Port's determination that such Sensitive Business, Commercial, or Financial
9 Information is required to be publicly disclosed under applicable law and state its reasons for disagreeing,
10 and (ii) concurrently institute appropriate proceedings in its own behalf to protect the proposer's interests
11 in preventing the disclosure or maintaining the confidentiality of the information. The proposer shall be
12 exclusively responsible for all costs, expenses, and attorney fees incurred in taking any action to prevent
13 the disclosure of information. In such a case, unless the Port concurs with the proposer's reasons for
14 retaining confidentiality or is otherwise directed the District Attorney or court, the Port shall permit public
15 inspection of the subject Sensitive Business, Commercial, or Financial Information;

16 (b) The proposer may recommend an alternative to releasing the subject Sensitive
17 Business, Commercial, or Financial Information. In such instance, the Director shall consider the
18 proposer's alternative and decide which Sensitive Business, Commercial, or Financial Information to
19 submit to the Commission based on his or her determination of the information required to satisfy the
20 Commission's needs and applicable state laws; or

21 (c) To the extent permitted by law, the proposer may prevent the disclosure the
22 Sensitive Business, Commercial, or Financial Information by withdrawing its proposal from consideration.

23 (6) If the Port is served with a public records request for production of a document that
24 includes information marked by the proposer as Sensitive Business, Commercial, or Financial Information;
25 and

26 (a) If the Port agrees that such information is Sensitive Business, Commercial, or
27 Financial Information that is exempt from public disclosure, then the Port will redact the Sensitive
28 Business, Commercial, or Financial Information from the document before the Port permits inspection of
29 the records by the person making the request. By submitting a proposal, the proposer thereby agrees that
30 if following a Port decision to redact information a District Attorney or a court later orders production of

1 the redacted information, the proposer shall pay for all costs resulting from such appeal to the District
2 Attorney or court, including any attorney fees imposed on the Port by its failure to provide the documents;
3 or

4 (b) If the Port does not agree that such information is Sensitive Business,
5 Commercial, or Financial Information exempt from public disclosure, the Port will inform the proposer of
6 its decision to disclose the information, giving the proposer no fewer than five (5) business days in which
7 to institute appropriate proceedings in its own behalf to protect the proposer's interests in preventing the
8 disclosure or maintaining the confidentiality of the information. The proposer shall be exclusively
9 responsible for all costs, expenses, and attorney fees incurred in taking any action to prevent the
10 disclosure of information. In such a case, unless otherwise directed the District Attorney or court, the Port
11 shall permit public inspection of the Sensitive Business, Commercial, or Financial Information.

12 **9. Terms and Conditions**

13 (1) The Port reserves all rights available to it by law in administering these rules, including
14 without limitation, the right in its sole discretion to:

15 (a) Reject any and all Submissions at any time.

16 (b) Terminate evaluation of any and all Submissions at any time.

17 (c) Suspend, discontinue and/or terminate agreement negotiations with any
18 proposer at any time prior to the actual authorized execution of such agreement by all parties.

19 (d) Negotiate with a proposer without being bound by any provision in its proposal.

20 (e) Request or obtain additional information about any proposals or members of a
21 Team.

22 (f) Issue addenda to and/or cancel any Solicitation Document

23 (g) In accordance with the applicable laws, revise, supplement, or withdraw all or any
24 part of these Rules.

25 (h) Decline to return any and all fees required to be paid by proposers hereunder.

26 (i) Request revisions to proposals.

1 (2) Except as otherwise provided for in a Solicitation Document, by submitting a Submission,
2 or any other information to the Port, the proposer thereby:

3 (a) Waives any claim for any reimbursement of the costs and expenses of making the
4 Submission or any follow up activities in connection with the Submission or additional information; and

5 (b) Agrees that neither the Commission, Director nor the Port, its employees,
6 representatives, or agents are liable for, or obligated to reimburse the costs incurred by proposers in
7 developing Submissions or in negotiating agreements. In its sole discretion, the Port may, in a Solicitation
8 Document, provide for the possibility of payment for work product developed by a proposer in the course
9 of developing a Submission.

10 (3) Any and all information the Port makes available to proposers shall be as a convenience
11 to the proposer and without representation or warranty of any kind. If a proposer has a question regarding
12 application of these rules, the proposer may submit the question in writing to the Director or his designee.

13 (4) The Port reserves the right, in the Port's discretion, to waive or to permit the correction
14 of minor or technical violations of this Rule. The Port will not grant relief under this section in any case in
15 which granting the relief would give the entity or person applying for relief a material competitive
16 advantage that is not made available to its competitors.

17 (5) The Port reserves the right at any time in the Port's discretion to extend any deadline or
18 time within which a proposer or the Port must take any action required or permitted this rule, and to do
19 so if an affected proposer applies in writing for relief to the Port and demonstrates in that application that
20 special circumstances warrant the grant of such relief. For the purpose of this subsection, special
21 circumstances that warrant the grant of relief include practical exigencies that reasonably can be regarded
22 as imposing a substantial, practical impediment to the proposer's ability to meet the deadline or achieve
23 the correction of a violation of provisions of this Rule. The grant or denial of relief to a proposer under
24 this subsection shall be determined by the Commission.

25 (6) By submitting a proposal, a proposer thereby waives and relinquishes any claim, right in
26 or expectation that the proposer may assert against the Commission, the Port, or its members, officers,
27 representatives and employees, that the proposer may occupy, use, profit from, or otherwise exercise
28 any prerogative with respect to any route, right of way or public property identified in the proposal as
29 being involved in or related to the proposed Bridge Project. A proposer may obtain no right to claim

1 exclusivity or the right of use with respect to any such route, right-of-way, or public property by virtue of
2 having submitted a proposal that proposes to use or otherwise involve or affect it.

3 (7) By submitting a proposal, a proposer thereby waives and relinquishes, as against the
4 Commission, the Port, and their members, officers, representatives, and employees, any right, claim,
5 copyright, proprietary interest or other right in any proposed route, right of way or alignment or
6 configuration identified in the proposal as being involved in or related to the proposed Bridge Project.

7 (8) By submitting a Submission to the Port, the proposer thereby acknowledges that it has
8 agreed to and accepts all terms and conditions under this Rule.

9 (9) Each proposer and Team member by submitting a Submission, including but not limited
10 to information and forms satisfying Organizational Disclosure Requirements, thereby accepts all risk of
11 adverse public notice, damages, financial loss, or criticism, that may result from any disclosure or
12 publication of any material or information required or requested by the Port in connection with the
13 proposer's Submission. In making a Submission, the proposer and each Team member expressly waives,
14 on behalf of itself, its partners, joint venturers, officers, employees, representatives, and agents, any claim
15 against the Director, the Commission, the Port, and their officers, representatives, agents, and employees
16 for any damages that may arise therefrom.

17 (10) In addition to the Organizational Disclosure Requirements in a Solicitation Document, the
18 Director or the Director's designee may impose, after the Submission, any other Organizational Disclosure
19 Requirements the Director determines to be reasonably necessary to evaluate the Team associated with
20 a proposal. All proposers, and Team members and Key Persons associated with a Submission, must
21 complete and submit any required disclosure form prescribed by the Port within the deadlines set by the
22 Director or the Director's designee, including any documents required in the disclosure process. Failure
23 to provide such disclosures or documents shall constitute sufficient grounds for rejection of the proposal.

24 (11) Any statement or representation made by the proposer, including the Team, in response
25 to or in connection with a Solicitation Document determined to be false or fraudulent, a
26 misrepresentation, or inaccurate because of an omission could result in a claim under the Oregon False
27 Claim Act, ORS 180.750 to 180.785, and subject to liabilities or penalties associated with making a false
28 claim under that Act.

1 **10. Notices**

2 (1) All notices required or permitted hereunder shall be in writing and shall be served on the
3 Port and each proposer in the manner and at the addresses set forth hereafter. Any such notices shall
4 either be:

5 (a) Sent by overnight delivery using a nationally recognized overnight courier, in
6 which case notice shall be deemed delivered one (1) business day after deposit with such courier;

7 (b) Sent by U.S. mail, certified return receipt requested, in which case the notice shall
8 be deemed delivered three (3) days from the postmark,

9 (c) Sent by email with confirmation of delivery in which case the notice shall be
10 deemed delivered on the date the email is sent, except if sent after 5:00 p.m. or if sent on a day other
11 than a regular business day receipt shall be at 8:00 a.m. on the next regular business day, or

12 (d) Sent by personal delivery, in which case notice shall be deemed delivered upon actual
13 receipt.

14 (2) Notice of addenda to a Solicitation Document shall be sent by an electronic posting on
15 the Port's website or by email to proposers that have registered its interest in the procurement, without
16 confirmation of delivery, in which case the notice shall be deemed delivered on the date the posting
17 occurred or the date the email is sent, except if sent after 5:00 p.m. or if sent on a day other than a regular
18 business day receipt shall be at 8:00 a.m. on the next regular business day.

19 (3) The Port's or a proposer's address may be changed by written notice to the other party,
20 or the Port may change its address by publishing a revised address on the Port's website, provided,
21 however, that no notice of a change of a proposer's address shall be effective until actually received by
22 the Port. Unless changed:

23 (a) Mail and courier notices to the Port shall be addressed to: Executive Director, Port
24 of Hood River, 1000 E. Port Marina Way, Hood River, OR 97031. Mail and courier notices to a proposer
25 shall be addressed to the physical or post office address listed by the proposer in a proposal, or in a letter
26 sent to the Port which specifically states the address is to use when the Port sends a notice to the

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1 proposer. Unless changed by the Port, the Port's email address for notices shall be
2 mmcelwee@portofhoodriver.com.

3 (b) A proposer's email address for notices sent by the Port shall be the email address
4 the proposer provides to the Port as an email contact address, or if none is specified the proposer's email
5 address listed in correspondence to the Port, or if none is specified a proposer's email address publicly
6 available to receive business emails.

7

EXHIBIT 4.3

CONTENT AND FORMAT REQUIREMENTS FOR SOLICITED PROPOSALS

A Solicited Proposal shall include the following, except as expressly waived, supplemented, or amended by the Port in the Solicitation Document, separated by tabs as herein described.

(1) Cover Letter

The Cover Letter shall not exceed two (2) pages, must be signed by an authorized representative of the Team, and must include:

(a) The name of the Managing Entities and Ownership Entities included in the proposal;

(b) A short summary of the of the proposal;

(b) The name and contact information of the designated contact person for purposes all communications with the Port regarding the proposal;

(d) The following acknowledgement of the Rule: *“As the authorized representative of the Team, I hereby acknowledge and agree on behalf of the Team to all terms and conditions set forth in the Port of Hood River’s rule regarding Public-Private Partnerships for a Bridge Project or Bridge Project Activity;”* and

(e) Any additional information the proposer deems beneficial to the Port’s consideration of the proposal.

(2) TAB 1: Organizational Disclosure Requirements.

(a) Identify the Team anticipated to undertake the proposal, including each Managing Entity, Ownership Entity, and each Major Subcontractor identified at the time of the proposal. For each of these entities:

(i) Identify the Major Partners and Key Persons in the entity;

1 (ii) Provide the names, addresses, telephone numbers, and
2 email addresses of persons within the entity who may be contacted for further information;

3 (iii) Describe the length of time in business, and the entity's
4 experience in similarly sized transportation projects and public-private partnerships in which it had a
5 similar role. Describe each similarly sized transportation project and each public-private partnership the
6 entity was involved with during the past ten (10) years, whether or not successfully completed. For each
7 include the name, address, telephone number, and email address of a specific contact person at the public
8 entity. For each project or public-private partnership that was not successfully completed, describe why
9 the project or partnership was not successful.

10 (iv) Include the resumes for those managerial persons that
11 will likely be associated in a significant way with the proposal; and

12 (v) Provide financial information regarding the entity
13 demonstrating its financial ability to perform its obligations or responsibilities under the proposal. If
14 available, provide the most recent independently audited financial statement of the entity.

15 (b) Describe the legal organization of the Team, and the
16 management structure of the Team, including major decision-making, quality control, and reporting
17 relationships.

18 (c) Submit an executed Conflict of Interest Disclosure Form provided
19 by the Port for each Managing Entity, Ownership Entity, and Major Subcontractor.

20 (d) For each Managing Entity, Ownership Entity, and Major
21 Subcontractor, provide the most recent ten-year history of its involvement in claims and litigation,
22 including mediated or arbitrated claims, arising out of past projects or under contracts in which the
23 proceedings exceeded \$1,000,000 in liability exposure or claim amount. Describe the nature of the claim
24 or litigation and its final (or current) disposition. Include information concerning whether (and the
25 circumstances) the entity or any Key Person in the entity has been:

1 (i) Convicted of any criminal offense in obtaining or
2 attempting to obtain a public or private contractor subcontract, or in the performance of such contract or
3 subcontract;

4 (ii) Convicted under any state or federal statute of any other
5 offense indicating a lack of business integrity or improper business dealings;

6 (iii) Found liable for or settled for an amount \$500,000 or
7 greater in connection with obtaining or attempting to obtain a public or private contract or subcontract
8 or its performance under a contract or subcontract.

9 (3) TAB 2: Project Characteristics

10 (a) Provide a detailed description of the proposed Bridge Project or
11 Bridge Project Activity, including, if applicable, the use or disposition of the existing Bridge.

12 (b) For each of the following activities: overall project management,
13 project development, design and engineering, construction, maintenance and operations/tolling, and
14 ownership, describe the following:

15 (i) The entities responsible for managing and, if different,
16 performing the work;

17 (ii) How the activity is organized;

18 (iii) The scope of the work under the proposal;

19 (iv) The proposed responsibilities/obligations and rights/
20 authorities of the Port, ODOT, WSDOT, or other public entity for the activity; and

21 (v) Any other material terms, conditions, or assumptions
22 regarding the activity.

23 (c) List the major assumptions underlying the Project and any critical
24 factors for the Project's success.

1 (d) Identify the proposed schedule for implementation of the
2 Project.

3 (e) Identify any significant assistance the proposal contemplates
4 from the Port, or other public entities, such as right-of-way acquisition, operation and maintenance
5 responsibilities, or responsibilities for obtaining permits or approvals.

6 (f) Identify any portions of the proposal that will not qualify for the public
7 contracting exemption under ORS 381.310(4)(a).

8 (g) Describe the proposed tolling program for the Bridge Project, if any,
9 including:

10 (i) The proposed methods of and responsibilities for setting toll
11 rates, collecting tolls, and enforcing toll collection.

12 (ii) The assumed toll rate structure for the first year of operations,
13 for each classification of vehicles, method of toll collection, and, if applicable time of day and time of year,
14 including (and shown separately) any administrative or other fees to be collected in connection with the
15 toll;

16 (iii) The assumption regarding toll rate increases in future years,
17 including the assumed or estimated schedule for such increases, estimated or assumed amount of the toll
18 rate increase, and the process and protocols for how future toll rate increases will be approved and
19 implemented;

20 (iv) The role, if any, of the Port or other public entity in setting or
21 approving toll rates or toll rate increases; and

22 (v) Any limits, covenants, or criteria regarding the setting of toll rates
23 and toll rate increases that are proposed to be incorporated in the agreements with the Port, including
24 any terms or conditions regarding such limitations.

25 (vi) Include any traffic studies, forecasts, and related materials that
26 establish the toll revenue assumptions.

1 (h) Identify any amendments to federal or state statutes or rules that are
2 required to implement the proposal, the party or parties responsible for securing such amendments, and
3 the schedule for doing so.

4 (4) TAB 3: Project Financing and Business Terms

5 (a) Provide a projected budget for the Project, and identify key
6 assumptions in the budget, risk factors, and methods of addressing the risk factors.

7 (b) Provide a detailed description of the financial plan for developing,
8 constructing, and operating the Bridge Project or Bridge Project Activity. Identify any proposed:

9 (i) Equity contributions by Private Entities anticipated to
10 provide such equity contributions, the nature of the equity contribution, and any material terms and
11 conditions regarding the private equity contribution;

12 (ii) Other Private Contributions included in the finance plan,
13 such as contributed services, the Private Entities anticipated to provide these other Private Contributions,
14 and any material terms and conditions of such contribution.

15 (iii) Bonds or other borrowings expected to be repaid with
16 toll revenues, and the material terms or assumptions underlying these borrowings;

17 (iv) Borrowings or credit enhancements not related to toll
18 revenues that are included in the finance plan, and the material terms or assumptions underlying these
19 borrowings;

20 (v) Public funding contribution, whether by the Port,
21 Washington, Oregon, or the federal government, whether by grant, loan, credit enhancement, or other
22 form of financial contribution, and the material terms or assumptions underlying these contributions;

23 (vi) Other local, state, or federal resources, such as
24 contributed rights-of-way or other services, included in the finance plan; include the specific sources,
25 timing, and how obtained;

1 (vii) Other components to the financial plan, including their
2 material terms, conditions, timing, and sources.

3 (c) Describe the nature of the commitment to complete the Bridge
4 Project or Bridge Project Activity the proposer anticipates making in the Agreement with the Port;
5 including:

6 (i) Describe if the anticipated commitment in the
7 Agreement to undertake the Bridge Project or Bridge Project Activity is unconditional or contingent;

8 (ii) If the anticipated commitment is contingent, describe
9 the conditions precedent to making a binding commitment to complete the Bridge Project or Bridge
10 Project Activity, including the process, timing, criteria, and any other material factors associated with the
11 conditions precedent;

12 (iii) If the proposal includes a due diligence period for the
13 proposer, describe the scope of, and roles and responsibilities for, the due diligence period, including the
14 parties responsible for paying the costs and expenses of the due diligence; and

15 (iv) Any completion guaranties or warranties anticipated to
16 be included in the Agreement.

17 (d) Describe any payments or financial contributions proposed to be
18 made to the Port in the Agreement, such as any purchase price for the existing Bridge, toll revenue sharing
19 formula, lease payments, franchise fees, in-kind services provided to the Port, or other Private
20 Contributions. Describe any such payments or contributions to other public entities.

21 (e) Provide any other material terms or conditions related to the
22 financial and business arrangements in the proposal.

23 (f) Provide a twenty (20) year cash-flow for the proposal showing
24 costs and revenues, rates of return for private investors, and payments to the Port or other public entities.

25 (5) TAB 4: Public Coordination and Involvement

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1 (a) Identify the public oversight functions proposed for the Port,
2 ODOT, or WSDOT, if any, with regards to project development, construction, or operations and
3 maintenance, if any, including the scope the scope of the oversight, the review rights of the public entities,
4 and the approval rights of the public entities;

5 (b) Explain the strategy and plans that will be carried out to involve
6 and inform the agencies and the general public in areas affected by the Project;

7 (c) Explain the steps to be taken to ensure bi-state coordination with
8 the development and operation of the Bridge Project, including roles and responsibilities for providing
9 such bi-state coordination; and

10 (d) Explain the steps to be undertaken to ensure coordination with
11 the Federal Highway Administration and other federal agencies overseeing the Bridge Project or Bridge
12 Project Activity.

13