

PORT OF HOOD RIVER RULE
PUBLIC PRIVATE PARTNERSHIPS FOR BRIDGE PROJECTS AND BRIDGE PROJECT ACTIVITIES

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1 **PORT OF HOOD RIVER RULE**

2 **PUBLIC PRIVATE PARTNERSHIPS FOR BRIDGE PROJECTS AND BRIDGE PROJECT ACTIVITIES**

3
4 **1. PURPOSE AND INTENT OF RULE**

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

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

14 **2. DEFINITIONS**

15 As used in this rule:

16 1. "Agreement" means a written agreement, including but not limited to a contract, for a
17 Bridge Project or Bridge Project Activity that is entered into under ORS 381.310 ORS 381.314.

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

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

24 4. "Bridge Project Activity" means an activity that a Private Entity undertakes in accordance
25 with an Agreement with the Port of Hood River to plan, acquire, finance, develop, design, construct,
26 reconstruct, replace, improve, maintain, manage, repair, lease, or operate a bridge, Bridge Project, or any
27 Related Facility, including all ancillary activities.

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1 5. “Business Days” means all days when the Port of Hood River offices are scheduled to be
2 open to the public for general business.

3 4.6. “Clarification” means additional materials or information regarding a Submission that is
4 provided to the Port by the proposer at the request of the Port.

5 7. “Commission” means the Port of Hood River Commission.

6 5.8. “Competitive Negotiations” means negotiations of Term Sheets or Agreements between
7 the Port and multiple proposers that are undertaken as part of the process of evaluating and selecting the
8 preferred Submission, as more fully described in subsection 7.3(2)(b) and (3) of the Rule.

9 6.9. “Days” means calendar days, unless specified as business days, and include Saturdays,
10 Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any
11 Saturday, Sunday, or legal holiday, the period shall be extended to include the next day which is not a
12 Saturday, Sunday or legal holiday.

13 7.10. “Direct Negotiations” means the undertaking of negotiations between the Port and a
14 single selected proposer regarding a Term Sheet or Agreement, as described in paragraph 3.2(a) of
15 subsection 9.27.3.

16 8.11. “Director” means the Executive Director of the Port of Hood River, a Port employee
17 authorized in writing by the Executive Director to act under this Rule in the place of, on behalf of, and with
18 the authority of the Executive Director to perform specified Executive Director tasks, or a Port employee
19 authorized by the Commission to act in the place of and with the authority of the Executive Director under
20 this Rule if the Executive Director is unavailable.

21 9.12. “Evaluation Panel” means the panel of persons appointed by the Director to evaluate a
22 proposal for a Bridge Project or Bridge Project Activity under subsection 5.1 of this Rule.

23 10.13. “Key Person” means an official in a Managing Entity, Ownership Entity, or Major
24 Subcontractors who plays a critical role in running the enterprise or a critical role in a proposal and whose
25 loss or unavailability could jeopardize the success of the proposal.

26 ~~11.1.~~ ~~“Lobbying” has the meaning given that term in paragraph (3) of subsection 4.5 of this~~
27 ~~Rule.~~

28 12.14. “Local Government” has the meaning given that term in ORS 174.116.

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1 ~~13~~15. “Major Partner” means a Private Entity that has an ownership interest in excess of 25%
2 in a Managing Entity, Ownership Entity, or Major Subcontractor, as applicable.

3 ~~14~~16. “Major Subcontractor” is the member of the Team, other than the Managing Entity,
4 designated in the proposal to have primary responsibility for one or more of the following: project
5 development, engineering, architecture/design, project management, construction (including any
6 construction subcontractors with subcontracts of at least 10% of the construction budget), legal, financial,
7 operations, or maintenance.

8 ~~15~~17. “Managing Entity” means the Private Entity or Private Entities authorized to execute
9 Agreements for the proposal and that will have primary management and oversight responsibility for the
10 performance of the obligations under an Agreement. The Managing Entity may also be a Major
11 Subcontractor or an Ownership Entity.

12 ~~16~~18. “Negotiation Team” shall have the meaning provided in paragraph (1) of subsection 7.1
13 of this Rule.

14 ~~17~~19. “Notice of an Unresponsive Submission” means a written notice sent by the Director to
15 a proposer stating that (a) the proposal was deemed incomplete or otherwise unresponsive to the
16 requirements of these Rules or the Solicitation Document; (b) the proposal will not be considered further,
17 and (c) the reasons for the determination.

18 ~~18~~20. “Organizational Disclosure Requirements” means any information, certifications, forms,
19 or attestations required by the Port regarding the qualifications, expertise, experience, financial backing,
20 integrity, ownership, litigation and claims history, organizational structure, and decision-making structure
21 of any Team member, Key Person, or Major Partner associated with a proposal.

22 ~~19~~21. “Ownership Entity” means a Private Entity or Private Entities anticipated to have an
23 ownership interest in the Bridge Project of at least 25% or that are the managing partners of an ownership
24 group anticipated to have an ownership interest in the Bridge Project of at least 25%

25 ~~20~~22. “Port” means the Port of Hood River.

26 ~~20~~23. “Private Contribution” means resources supplied by a Private Entity to accomplish all or
27 part of the work on a Bridge Project, including but not limited to, funding; financing; providing income or
28 revenue; in-kind contributions of engineering, construction, or maintenance services; the acceptance of
29 risks otherwise borne by the public, or other services or items of value provided by a Private Entity.

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1 ~~24-24.~~ 24. "Private Entity" means any entity that is not a unit of government, including but not
2 limited to a corporation, partnership, company, nonprofit organization, joint venture, or other legal entity,
3 or a natural person.

4 25. "Project" means a Bridge Project or Bridge Project Activity.

5 ~~22-26.~~ 26. "Public Communications" has the meaning given that term in paragraph (3) of subsection
6 4.5 of this Rule.

7 ~~23-27.~~ 27. "Public-Private Partnership" or "PPP" means an arrangement resulting from an
8 Agreement between the Port and one or more Private Entities ~~that includes a Private Contribution and~~
9 ~~provide~~ for the design, ~~and~~ construction, maintenance, ~~and~~ operation, financing, or ownership of the
10 Bridge Project or Bridge by one or more Private Entities that includes a Private Contribution and, in return,
11 the right of the Private Entity (or Entities) to receive all or a portion of toll revenues from the Bridge or
12 Bridge Project and/or other public funds or resources. The use of the word "partnership" in all contexts
13 under this Rule is not intended to mean or to confer on the relationship formed between the Port and a
14 Private Entity any of the attributes or incidents of a partnership under common law or under ORS chapters
15 67 and 70.

16 ~~24.~~ 24. ~~"Private Contribution" means resources supplied by a Private Entity to accomplish all or~~
17 ~~part of the work on a Bridge Project, including but not limited to, funding, financing, providing income or~~
18 ~~revenue; in kind contributions of engineering, construction, or maintenance services; or other items of~~
19 ~~value provided by a Private Entity.~~

20 ~~25-28.~~ 28. "Related Facilities" means real or personal property for: (a) operating, maintaining,
21 renovating, or facilitating the use of a Bridge; (b) providing goods and services to people who use a Bridge;
22 or (c) generating revenue that can reduce tolls or that will be deposited in an account established under
23 an Agreement.

24 ~~26-29.~~ 29. "Responsive Submission" means a Submission that complies with all requirements,
25 terms, and conditions of a Solicitation Document and this Rule.

26 ~~27-30.~~ 30. "Rule" means this rule of the Port of Hood River regarding public-private partnerships for
27 a Bridge Project or Bridge Project Activity.

28 ~~28-31.~~ 31. "Sensitive Business, Commercial or Financial Information" means information submitted
29 by a Private Entity in connection with a proposal for a Bridge Project or Bridge Project Activity, which

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1 complies with the criteria in paragraph (2) if subsection 8.1 of this Rule, and which is exempt from public
2 disclosure under Oregon law and this Rule.

3 ~~29.32.~~ 32. “Solicitation Document” means a written request for proposals, request for qualifications,
4 or any similar call for proposals or proposers issued by the Port in connection with a Bridge Project or
5 Bridge Project Activity, including any addenda thereto.

6 ~~30.33.~~ 33. “Solicited Proposal” means a proposal submitted in response to a Solicitation Document.

7 ~~31.34.~~ 34. “Submission” means a proposal or a statement of qualifications submitted in response to
8 or in connection to a Solicitation Document.

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

11 ~~32.36.~~ 36. “Submission Performance Guaranty” means a legal commitment or other instrument
12 provided by a proposer in or in conjunction with a Submission that provides assurance to the Port of the
13 proposer’s capacity to perform or intent to perform under the Submission, should it be selected by the
14 Port.

15 ~~33.37.~~ 37. “Team” means the Managing Entities, Ownership Entities, Major Subcontractors, and
16 other significant participants proposed to undertake a Bridge Project or Bridge Project Activity.

17 ~~34.38.~~ 38. “Term Sheet” means a non-binding agreement, approved by the Commission pursuant to
18 subsection 7.4 of this Rule, specifying preliminarily agreed-upon terms for preparing the final Agreement
19 or Agreements.

20 ~~35.39.~~ 39. “Unresponsive Submission” means a Submission that does not comply with all
21 requirements, terms, and conditions of a Solicitation Document and this Rule.

22 ~~36.40.~~ 40. “Unsolicited Proposal” means a proposal to the Port by a Private Entity for a Bridge Project
23 or Bridge Project Activity that is not submitted pursuant to a Solicitation Document.

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

26 (1) The Port may, in accordance with ORS 381.310 to ORS 381.314 and this Rule, solicit
27 proposals or qualifications and enter into Direct Negotiations or Competitive Negotiations for a Public-
28 Private Partnership to plan, acquire, finance, develop, design, manage, construct, reconstruct, replace,
29 improve, maintain, repair, operate, or own a Bridge Project or Bridge Project Activity if the Commission

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1 has determined that such an approach has the potential to accelerate cost-effective delivery of the Project
2 or reduce the public cost or risk of carrying out the Project.

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

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

10 (4) The selection of a proposer or proposal for negotiations does not constitute a final
11 selection of such proposer or proposal nor prohibit the Port from considering other proposers or
12 proposals. Final selection of a proposer or proposal is subject to the Commission's approval of an
13 Agreement.

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

16 **4.1 Solicitation Documents**

17 (1) The Port may solicit proposals for a Bridge Project or one or more Bridge Project Activities
18 by issuing a Request for Qualifications (RFQ), a Request for Proposals (RFP), or a multi-staged RFQ/RFP
19 (each referred to herein as a "Solicitation Document"), as determined by the Port. Before issuing a
20 Solicitation Document, the Solicitation Document shall first be approved by the Commission.

21 (2) Each Solicitation Document shall specify the requirements for the Submission content,
22 including Organizational Disclosure Requirements, and the criteria and procedures under which
23 Submissions will be evaluated and selected, either by reference to this Rule or by supplementation or
24 amendment to the provisions of this Rule. Nothing in this Rule is intended to limit the scope of the Port's
25 discretion or authority to develop evaluation criteria and processes for a Solicited Proposal as long as the
26 criteria and processes comply with the requirements of ORS 381.310.

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1 (3) The Port may require in a Solicitation Document (or an Addendum or a notice) that the
2 proposer provide to the Port a ~~a proposer to pay a proposal review fee, in an amount prescribed~~
3 Submission Performance Guaranty in the Solicitation Document, to accompany a Submission (or during
4 the evaluation of proposals or the negotiation of Agreements). If required ~~by the Solicitation Document to~~
5 accompany a Submission, the Port shall not ~~accept or~~ consider a Submission that is not accompanied by
6 ~~payment of the required fee~~ the required Submission Performance Guaranty.

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

15 (a) Mail the announcement of the availability of Solicitation Documents to Private
16 Entities that submitted a writing to the Port expressing an interest in the Port's Bridge Project or Bridge
17 Project Activity procurements;

18 (b) Place the announcement on the Port's internet web site;

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

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

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

24 (6) Following the issuance of the initial Solicitation Document, the Port may from time to
25 time issue an addendum to the Solicitation Document or a writing requesting ~~additional~~
26 ~~information~~ Clarifications, the addition or deletion of project features, alternative financing terms,

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1 additional Organizational Disclosure Requirements, and other materials not included in the initial
2 Solicitation Document or initial Submissions.

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

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

13 (c) The Director may, without the approval of the Commission, issue an addendum
14 that clarifies the meaning of provisions in ~~and does not otherwise revise~~ a Solicitation Document or
15 previous addendum, amends a process in a manner that does not violate a provision of this rule or reduce
16 the Commission's decision-making authority, requests Clarifications from proposers, or provides
17 additional data or other information to proposers, ~~without the approval of the Commission.~~

18 (7) The Port may issue a request for information, request for industry review, expression of
19 interest, or other preliminary documents or market-sounding mechanisms to obtain information useful in
20 preparing a Solicitation Document.

21 **4.2 Eligible Proposers, Team Members, Key Persons, and Major Partners**

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

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

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

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

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

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

11 **4.3 Contents of a Proposal or Statement of Qualifications**

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

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

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

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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) The proposer must notify the Port of Any change in the status of the proposer, ~~the a~~
21 Team member, ~~any of the a~~ Key Persons, or ~~any a~~ Major Partners within five (5) business days of the date
22 of the known change. A change in status under this Rule includes (a) the replacement of a Team member,
23 Key Person, or Major Partner; (b) a shift in the role or a material commitment of a Team member, Key
24 Person, or Major Partner; and (c) reorganization of the business structure or corporate structure of the
25 proposer, Team Member, or a Major Partner amounting to a transfer of over twenty percent (20%) of the
26 entity's ownership (at one time or cumulatively during the procurement process). The notice to the Port

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1 shall include an explanation of the reason(s) for the change, and all information on the changed entity or
2 entities that are required by this Rule or the Solicitation Documents. Those entities ~~must be reported to~~
3 ~~the Port within fourteen (14) calendar days of the known change, and those~~ whose status has changed or
4 who have been added are required to satisfy all Organizational Disclosure Requirements within the
5 ~~fourteen~~ five (5) business day period; provided, however, the Director may prescribe in writing a longer
6 time period for fulfillment of the Organizational Disclosure Requirements if she or he finds special
7 circumstances that justify an extension. ~~For purposes of this section, a “change in the status of a proposer”~~
8 ~~includes reorganization of the business structure or corporate structure of the proposer, Team Member,~~
9 ~~or a Major Partner amounting to a transfer of over twenty five percent (25%) of the entity’s ownership.~~

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

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

15 (4) The Port shall approve or reject a proposed change to the status of the proposer, a Team
16 member, a Key Person, or Major Partner as follows:

17 (a) If notice of a proposed change in the status of the proposer, a Team member, a
18 Key Person, or a Major Partner is received by the Port prior to a Commission action approving or rejecting
19 a Submission for detailed evaluation, the Director shall have the authority to (i) approve the change; (ii)
20 reject the change and provide the proposer additional time to propose a different change; or (iii) reject
21 the change and terminate further consideration of the proposal. In making this determination, the
22 Director shall consider (i) the extent of the change proposed by the proposer, (ii) the experience, technical
23 capacity, and organizational disclosure of the entities involved in the change, and (iii) the impacts of
24 considering or allowing the change on the fairness and schedule of the solicitation process. Unless
25 otherwise extended by the Director, the Director shall notify the proposer of his or her decision and
26 reasons for the decision within a five (5) business day period from the date the Port receives notice from
27 the proposer under subsection 4.4(1). A proposer may appeal to the Commission a rejection of a proposed
28 status change made by the Director by filing a written appeal with the Port no later than three (3) business
29 days after receipt of the Director’s notice under this paragraph stating the reasons why the Director’s

1 determination was in error. If properly appealed, the Commission shall hear the appeal within fourteen
2 (14) days of the Port receipt of the written appeal, unless this time is extended by the Commission. In
3 considering the appeal, the Commission shall only consider the explanation of the error(s) set forth in the
4 proposer's written appeal.

5 (b) If notice of a proposed change in the status of the proposer, a Team member, a
6 Key Person, or a Major Partner is received by the Port following a Commission action approving or
7 rejecting a Submission for detailed evaluation, the Commission shall have the authority to (i) approve the
8 change; (ii) reject the change and provide the proposer additional time to propose a different change; or
9 (iii) reject the change and terminate further consideration of the proposal. In making this determination,
10 the Commission shall consider (i) the extent of the change proposed by the proposer, (ii) the experience,
11 technical capacity, and organizational disclosure of the entities involved in the change, and (iii) the impacts
12 of considering or allowing the change on the fairness and schedule of the solicitation process.

13 **4.5 Communications during the Solicitation, Evaluation, and Negotiation Process**

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

20 (2) Unless otherwise authorized in writing by the Director or his or her designee as described
21 in paragraph (4) of this subsection, no proposer or potential proposer, agent or representative of a
22 proposer or potential proposer, Team member, or agent or representative of a Team member shall
23 engage in ~~Lobbying~~Public Communications, as described in paragraph (3) of this subsection, between the
24 date on which the Commission approves a Solicitation Document and the date on which the Commission
25 approves an Agreement or terminates the solicitation process without approving an Agreement.

26 (3) ~~Lobbying~~Public Communications under this Rule shall include any direct or indirect
27 contact, not authorized under paragraph (4) of this subsection, in which a proposal for a Bridge Project or
28 Bridge Project Activity is discussed, whether in person, in writing, or electronically, by a proposer or
29 potential proposer or an agent or representative of a proposer or potential proposer (including any

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1 member of the Team, or an agent or representative of a Team member) with any member of the
2 Commission; any local, state, or federal official (including presentations to any governmental boards or
3 commissions); or persons (or agents or representatives of persons) engaged in print or electronic media.
4 ~~Lobbying does not include any valid appeal by a qualified proposer under this Rule, provided the appeal~~
5 ~~is limited to the content and process described in this Rule.~~

6 (4) The Solicitation Documents may describe certain Public Communications that the
7 proposer or potential proposer may engage in. In addition, ~~The~~the Director may authorize proposers or
8 potential proposers, ~~as applicable,~~ to engage in ~~Public Outreach~~Public Communications, if the Director
9 determines such Public OutreachPublic Communications: (i) does not afford any Private Entity an undue
10 competitive advantage and (ii) is in the best interest of the Port. ~~As used in this Rule, Public Outreach shall~~
11 ~~include any direct or indirect contact with public officials or media that is authorized by the Director.~~The
12 authorization to engage in Public OutreachPublic Communications shall be in writing and shall describe
13 the specific purpose or purposes for which Public OutreachPublic Communications is authorized, any
14 limitations on the Public OutreachPublic Communications, and the time period during which the
15 authorization is effective. Any proposer or potential proposer, agent or representative of a proposer or
16 potential proposer, Team member, or agent or representative of a Team member authorized to engage
17 in Public OutreachPublic Communications shall only do so under the terms and conditions set forth in the
18 Solicitation Documents or Director's authorization, as applicable. Any Public OutreachPublic
19 Communications not complying with the terms and conditions in the Director's authorization shall
20 constitute Lobbyingunauthorized Public Communications under this subsection.

21 (5) ~~Any violation of the prohibition against Lobbyingunauthorized Public Communications~~
22 ~~shall~~may constitute grounds for (i) disqualifying the violator but not the proposal (allowing the Team to
23 replace the violator) or (ii) terminating consideration of the proposal of the violator, depending on the
24 nature and extent of the unauthorized Public Communications. The Director shall determine whether
25 ~~prohibited Lobbyingunauthorized Public Communications~~ has occurred. If the Director determines that
26 unauthorized ~~Lobbying~~Public Communications occurred, the Director shall send notice to the violator or
27 violators stating the nature of the violation and the penalty, if any.

28 (6) Any proposer or potential proposer receiving notice under paragraph (5) of this
29 subsection shall have five (5) business days after receiving the Port notice to file a written appeal of the
30 Director's determination to the Commission stating its reasons why the Director's determination is
31 unwarranted. If the Director's determination is not appealed or the Commission upholds the Director's

1 ~~determination, the penalty, if any, stated in the Director's notice under subsection 4.5(5) will be imposed.~~
2 ~~If appealed, the~~The Commission may amend or overturn the determination (and penalty) of the Director
3 if the Commission finds that (i) there was not any improper contact or (ii) the contact was unintended or
4 incidental and contact could not have reasonably given the violator or the violator's proposal a
5 competitive advantage. ~~If the Director's determination is not appealed or the Commission upholds the~~
6 ~~Director's determination that Lobbying occurred, the Commission shall, in its reasonable discretion,~~
7 ~~impose the appropriate penalty.~~

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

10 **5.1 Evaluation Panel**

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

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

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

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

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

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

26 **5.2 Initial Screening for Responsiveness of Submissions**

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

3 (2) Each Submission received by the Submission Deadline at the correct location will be
4 assessed to determine if it is a Responsive Submission, ~~which will receive detailed consideration by the~~
5 ~~Port, or an Unresponsive Submission, which will not receive detailed consideration.~~ ~~(3)~~ To be a
6 Responsive Submission, ~~the Commission must find that~~ the Submission must:

7 (a) ~~Is~~Be duly executed by an authorized representative of the Team;

8 (b) ~~Is~~Be accompanied by the ~~fee~~Submission Performance Guaranty, if required by
9 the Solicitation Document, ~~if any, or Addenda require such a guaranty to accompany the~~
10 Submission.

11 (c) ~~Satisfies~~Satisfy all Organizational Disclosure Requirements, including all duly
12 executed forms, certifications, and attestations, required by the Solicitation Document;

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

14 (e) ~~Complies~~Comply with all other applicable requirements, terms, and conditions
15 under this Rule and the Solicitation Document.

16 ~~(43)~~ Any Submission that ~~the Commission find~~ does not comply with all criteria in paragraph
17 ~~(32)~~ of this subsection shall be an Unresponsive Submission and shall ~~not be considered~~disqualified from
18 further consideration.

19 ~~(54)~~ Following the Submission Deadline, the Director shall cause to be undertaken an initial
20 screening of all Submissions received by the Port by the Submission Deadline, as follows:

21 (a) Each Submission will be reviewed to determine if it (i) is duly executed by an
22 authorized representative of the Team, (ii) is accompanied by the ~~fee~~Submission Performance Guaranty
23 required by the Solicitation Document or Addenda, if any, and (iii) complies with all Organizational
24 Disclosure Requirements, including all duly executed forms, certifications, and attestations required by
25 the Solicitation Document.

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1 (b) If any of the items reviewed in paragraph ~~(54)~~(a) of this subsection is found to be
2 deficient, the proposer shall be notified in writing by the Port, and ~~if the proposer has not~~ must fully
3 ~~rectified~~ rectify the deficiency or deficiencies identified in the Port's notice by within five (5) business days
4 following the date on which notice is provided, ~~as set forth in section 10 of this Rule, consideration of the~~
5 ~~Submission may be terminated~~ unless a later date is authorized in writing by the Director due to special
6 circumstances. Failure to fully rectify the deficiency or deficiencies identified in the Port's notice within
7 the required time period shall make the Submission an Unresponsive Submission that receives no further
8 consideration.

9 (c) Each Submission complying with the criteria in paragraph ~~(54)~~(a) of this
10 subsection will be reviewed by the Evaluation Panel to ~~determine~~ assess if the Submission (i) provides all
11 information required by the Solicitation Document and (ii) complies with all other applicable requirements
12 under this Rule and the Solicitation Document. ~~The Evaluation Panel may request in writing clarifications~~
13 ~~from a proposer regarding its Submission, and may take such clarifications received from the proposer~~
14 ~~into account in making its assessment.~~ The Evaluation Panel will report its findings in writing to the
15 Director.

16 ~~(65)~~ After reviewing the findings of the Evaluation Panel, the Director shall ~~recommend to the~~
17 ~~Commission a list of those~~ determine which, if any, Submissions ~~that are Responsive Submissions, which,~~
18 ~~subject to Commission approval, will be further considered by the Evaluation Panel, and those~~
19 ~~Submissions that are Unresponsive Submissions which, subject to Commission approval, that~~ will not
20 receive any further consideration, ~~and an explanation of the reasons for the recommendation. The~~
21 ~~Director shall make the recommendation available to proposers by issuing a written notice to the~~
22 ~~proposers or by an electronic posting of the recommendation.~~

23 ~~(76)~~ If the Director ~~recommends~~ determines that a Submission is an Unresponsive Submission,
24 the Director shall promptly convey to the proposer a "Notice of an Unresponsive Submission" stating his
25 or her reasons for the ~~recommendation~~ determination. A proposer receiving a Notice of an Unresponsive
26 Submission shall have ~~fourteen (14)~~ five (5) business days from the date of notice, as set forth in section
27 ~~6-3(4)~~ 10 of this Rule, to appeal in writing to the Port. The written appeal shall explain in detail why the
28 Notice of an Unresponsive Submission was issued in error. If appealed, the Commission shall hear the
29 appeal within fourteen (14) days after Port receipt of the appeal, unless the time is extended by the

1 Commission. If not appealed, the Director's determination shall take effect at the close of the appeal
2 period.

3 ~~(8) Each Submission approved by the Commission as a Responsive Submission shall be~~
4 ~~evaluated by the Evaluation Panel pursuant to subsection 5.3 of this Rule. Further consideration of a~~
5 ~~Submission designated as an Unresponsive Submission shall be terminated upon the Commission's action.~~

6 **5.3 Evaluation of Responsive Submissions**

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

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

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

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

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

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

17 (C) The traffic capacity of the design;

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

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

22 (c) The extent to which the bridge project will involve small businesses. The Port shall
23 encourage small businesses to participate in the bridge project to the maximum extent that the Port
24 determines is practicable. As used in this paragraph "small business" means an independent business with
25 fewer than 20 employees and with average annual gross receipts during the last three years of not more
26 than \$1 million for construction firms and not more than \$300,000 for businesses that are not construction

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1 firms; however, small business does not include a subsidiary or parent company that belongs to a group
2 of firms that the same individuals own or control and that have average aggregate annual gross receipts
3 during the last three years in excess of \$1 million for construction firms or \$300,000 for firms that are not
4 construction firms;

5 (d) The proposer's financial stability and ability to provide funding for the Bridge
6 Project or Bridge Project Activity and obtain, or act as, a surety for the proposer's performance and
7 financial obligations with respect to the Bridge Project or Bridge Project Activity;

8 (e) The experience of the proposer and the proposer's subcontractors in engaging in
9 bridge project activities of a size and scope similar to the proposed Bridge Project of Bridge Project
10 Activity;

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

14 (g) If the Submission proposes private sector involvement or control in the setting of
15 toll rates and fees, the nature and level of the private sector's involvement or control, the nature and level
16 of public oversight of the private sector's involvement or control, and, if applicable, the proposed terms
17 that the proposer offers for engaging in the bridge project activity, including regarding:

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

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

20 (C) Any restrictions or conditions on future increases in tolls or
21 administrative fees; and

22 (h) If the Submission proposes private ownership of the Bridge or Bridge Project, the
23 organizational structure of the Ownership Entities, the experience of the Ownership Entities and Key
24 Persons, the reversionary ownership rights of the Port, if any, and the Port's rights, if any, to approve
25 future ownership transfers.

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

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

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

10 (a) Request in writing ~~additional information~~ Clarifications from proposers;

11 (b) Employ outside technical or legal advice, subject to the decision of the
12 Commission to retain such technical or legal advisors;

13 ~~(c) Seek public input;~~

14 ~~(d)~~ Undertake reference checks of Team members, and

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

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

25 (7) As part of its evaluation of a Submission, the Port ~~may~~ will consult with the Oregon
26 Department of Transportation, Washington State Department of Transportation, and, as determined by
27 the Port, other appropriate federal agencies, and state agencies and local governments in Oregon and

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1 Washington. Consultation under this Rule will occur in such manner and at such time as the Port considers
2 appropriate in the particular circumstance, and may include but not be limited to:

3 (a) An informal information-sharing opportunity prior to completion of the Port's
4 evaluation of the proposal;

5 (b) Solicitation of comments from the appropriate federal agencies, and state
6 agencies and local governments in Oregon and Washington; and

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

8 (8) Upon the completion of its evaluation, the Evaluation Panel shall transmit to the Director
9 a final report and any supporting materials the Evaluation Panel deems relevant. To the extent permitted
10 by law, the Submissions and the report of the Evaluation Panel, including any documentation in
11 connection with its preparation, shall not be subject to public disclosure until such time as the Agreement
12 is approved under subsection 7.3, unless the Commission finds that it is in the best interest of the Port to
13 allow public disclosure at an earlier date. ~~the Director issues his or her recommendation under subsection~~
14 ~~6.1, at which time the report will be made public; provided, however, the~~ To the extent permitted by law,
15 the Port may redact Sensitive Business, Commercial, or Financial Information from ~~the from the~~ any
16 publicly disclosed Submission; evaluation report, memorandum or documentation; or recommendation
17 report ~~any Sensitive Business, Commercial or Financial Information that is exempt from disclosure by law.~~

18 **6. RECOMMENDATION AND APPROVAL OF PROPOSERS FOR NEGOTIATION**

19 **6.1 Director's Recommendation to the Commission**

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

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

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- 1 (a) Reject all Submissions and terminate the process;
- 2 (b) Select one Submission for Direct Negotiations, and reject all other proposals;
- 3 (c) Select one Submission for Direct Negotiations, and retain one or more other
- 4 proposals for possible future negotiations if the initial negotiations are not successfully concluded;
- 5 (d) Select two or more Submittals for Competitive Negotiations; and reject all other
- 6 proposals; or
- 7 (e) Such other recommendation as the Director may determine.

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

15 **6.2 Commission Review and Selection of Proposers for Negotiation**

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

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

1 action(s) shall include findings stating its reasons for its action. If the Commission acts to cancel the
2 solicitation process or procurement, the reasons for the cancellation shall be in writing and included in
3 the solicitation file.

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

9 (a) Reduce the cost of constructing the Bridge Project, including reducing the
10 technical and environmental risks of the Bridge Project;

11 (b) Accelerate the schedule for completing the Bridge Project; and

12 (c) Reduce the financial risk to the Port and the public, including the financial burden
13 on the Port, states, and bridge users-

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

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

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

21 **6.3 Appeals of Port Action to Reject Submissions**

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

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

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

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

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

9 (4) The written protest must be received by the Port no later than 5:00PM (Pacific Time) on
10 the ~~14th calendar~~ fifth (5th) business day following the day on which the Port sent notice of the Commission
11 or Director action under paragraphs (6) or (7) of subsection 5.2 or paragraph (5) of subsection 6.2. If the
12 Port receives no written protest concerning the action under ~~paragraphs (6) or (7) of subsection 5.2 or~~
13 ~~paragraph (5) of~~ subsection 6.2 within the ~~14 calendar~~ 5-business day period, then the Commission action
14 automatically shall become effective on the ~~15th calendar~~ sixth (6th) business day following the day on
15 which the Port sent notice of the Commission or Director action under ~~paragraphs (6) or (7) of subsection~~
16 ~~5.2 or paragraph (5)~~ of subsection 6.2.

17 (5) Unless otherwise extended by the Commission, the Commission shall hear the appeal
18 within 14 days from the date on which it receives the appeal. In response to a protest that complies with
19 the requirements of this rule, the Commission will issue a written decision that resolves the issues raised
20 in the protest. In considering a timely protest, the Port may request further information from the
21 protesting proposer and may undertake any further investigations the Commission finds beneficial. The
22 Port will make its written decision available, by mail or by electronic means, to all proposers identified in
23 the Port's notice.

24 **7. NEGOTIATION AND APPROVAL OF AGREEMENTS FOR BRIDGE PROJECTS OR BRIDGE PROJECT**
25 **ACTIVITIES**

26 **7.1 Negotiation Team**

27 (1) Any Submissions approved by the Commission for negotiation of an Agreement shall be
28 referred to a Negotiation Team nominated by the Director and appointed by the Commission. The
29 Negotiation Team shall be of such size and composition as the Commission determines is in the best

1 interest of the Port, and may be comprised of such Port staff, including the Director, legal counsel,
2 consultants, or other advisers as the Commission may determine.

3 (2) Under the direction of the Director, the Negotiating Team shall be responsible for Direct
4 Negotiations with a proposer or Competitive Negotiations with proposers, as authorized by the
5 Commission, and be subject to any terms or conditions set forth from time to time by the Commission
6 regarding the negotiations.

7 **7.2 Legal Counsel**

8 (1) Prior to commencing ~~negotiations on an Agreement~~the public-private procurement
9 process, the Port shall engage legal counsel for the purpose of:

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

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

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

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

18 (e) Advising the Port concerning any relevant federal securities or other laws and
19 related disclosure requirements; and

20 (f) Issuing legal opinions.

21 **7.3 Negotiation and Approval of Agreements**

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

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

2 (a) Direct Negotiations with one proposer for Term Sheet or an Agreement for a
3 Bridge Project or Bridge Project Activity. The Commission may establish terms and conditions for the
4 negotiations, including setting an exclusivity period for such negotiations, and may enter an exclusive
5 negotiation agreement with a selected proposer. The Commission in its discretion may, from time to time,
6 extend such exclusivity period. If the negotiations are not subject to an exclusivity period, at any time
7 during the negotiations, the Director may recommend and the Commission may approve to terminate the
8 Direct Negotiations or commence Competitive Negotiations with one or more other proposers.

9 (b) Competitive Negotiations with multiple proposers for Term Sheet or an
10 Agreement for a Bridge Project or a Bridge Project Activity. Such Competitive Negotiations may be
11 sequential or concurrent, or a combination of sequential and concurrent. The Commission may set terms
12 and conditions for the negotiations. During the course of Competitive Negotiations the Director may from
13 time to time recommend and the Commission may approve the termination of one or more of the
14 Competitive Negotiations, potentially resulting in Direct Negotiations with one proposer. If more than one
15 Competitive Negotiation successfully yields a Term Sheet or an Agreement, the Director shall evaluate the
16 relative merits of the ~~related~~ Term Sheets or Agreements and recommend a preferred Term Sheet or
17 Agreement for Commission approval.

18 (3) The object of Competitive Negotiations is to maximize the Port's ability to obtain best
19 value. Accordingly, the Competitive Negotiations may include but shall not be limited to:

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

21 (B) Notifying proposers of parts of their Submissions for which the Port
22 would like ~~additional information~~ Clarifications; and

23 (C) Otherwise allowing proposers to develop revised Submissions that will
24 permit the Port to obtain the best proposal. The scope, manner, and extent of negotiations with any
25 proposer are subject to the discretion of the Port. In conducting these negotiations, the Port shall not ~~(#)~~
26 engage in conduct that unfairly favors any proposer over another; nor, unless otherwise subject to public
27 disclosure, (#) reveal to another proposer a proposer's Sensitive Business, Commercial, or Financial

1 Information, or ~~(iii)~~ reveal to another proposer a proposer's price (or pricing information) or business
2 terms.

3 (4) The Negotiation Team shall transmit any final Agreements to the Director for his or her
4 review and recommendation to the Commission. As part of the Director's review, Legal Counsel shall
5 review the legal sufficiency of the Agreement or Agreements and the legal history/organization of the
6 Team. Following the Director's review and Legal Counsel's approval of the legal sufficiency of the
7 Agreement or Agreements, the Director shall transmit his or her recommendation on the Agreement or
8 Agreements to the Commission for its approval.

9 (5) Following receipt of the Director's recommendation regarding an Agreement or
10 Agreements, the Commission shall hold such work sessions, public hearings, briefings, and discussions on
11 the Agreement or Agreements as the Commission finds beneficial to its deliberations. Following
12 completion of its review of the Director's recommendation and the Agreement or Agreements, the
13 Commission may approve, reject, or offer amendments to the recommended Agreement, terminate any
14 further consideration of the Agreement, or terminate the solicitation process.

15 **7.4 Term Sheet**

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

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

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

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

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

8 **7.5 Terms of the Agreement**

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

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

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

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

18 (d) Incentives to perform and ~~penalties~~ remedies for a failure to perform an element
19 of the Bridge Project;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **7.6 Port Approval of Major Subcontractors**

13 (1) ~~Prior to the execution of any Agreement with a proposer, the proposer must provide to~~
14 ~~the Director or his or her designee, for review, a list of all Major Subcontractors not included in the initial~~
15 ~~proposal and all information regarding such Major Subcontractors required by this Rule or subsequent~~
16 ~~requests by the Port.~~ All Major Subcontractors must be approved or disapproved in writing by the Port
17 prior to performing work on the Bridge Project or Bridge Project Activity. Major Subcontractors included
18 in a Submission may be approved as part of the evaluation and selection process. To obtain Port approval
19 of a Major Subcontractor not included in the Submission, the proposer shall submit to the Port a written
20 statement providing (a) all information regarding the Major Subcontractor required by this Rule and the
21 Solicitation Documents (including any Addenda) and (b) a statement of the nature of the work to be
22 performed by the proposed Major Subcontractor. No review, approval, deemed approval, objection, or
23 failure to object by the Port under this subsection 7.6 shall be deemed to constitute an approval,
24 determination, or waiver of professional or contracting licensing requirements of the Major
25 Subcontractor, or compliance with any legal requirements pertaining to the Major Subcontractor. No
26 approval given by the Port under this subsection 7.6 will be deemed a representation or warranty by the
27 Port of any kind and will not give rise to any Port liability for a Major Subcontractor's deficient
28 performance.

29 (a) All subcontractors, whether a Major Subcontractor or not, must be legally eligible
30 to perform or work on public contracts under federal and Oregon law and regulations. No subcontractor

1 will be accepted who is on the list of contractors ineligible to receive public works contracts under ORS
2 279C.860.

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

5 (2) Except as provided in paragraph (4)(a) of subsection 4.4, ~~if~~ the Director objects to any
6 proposed Major Subcontractor, whether included in the initial proposal or added pursuant to paragraph
7 (1) of this subsection, the Director, subject to Commission approval, may require the proposer to submit
8 for Port review an acceptable substitute subcontractor before transmitting the Agreement to the
9 Commission for final approval. The Director, in his or her reasonable discretion, shall establish and, from
10 time to time amend, a deadline for providing the Port, for Port review, an acceptable substitute
11 subcontractor. A proposer's failure to submit an acceptable substitute within the deadline will constitute
12 sufficient grounds for the Port to refuse to execute an Agreement without incurring any liability for the
13 refusal. If the substitute subcontractor is approved by the Port, the Port may revise the proposed
14 Agreement to account for any differences necessitated by the substitution. The Commission shall approve
15 any substitute subcontractors.

16 **8. PUBLIC DISCLOSURE AND PUBLIC RECORDS REQUESTS**

17 **8.1 Designation of Sensitive Business, Commercial or Financial Information**

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

24 (2) Except as otherwise limited in a Solicitation Document, a ~~A~~ proposer may seek an
25 exemption from public disclosure of Sensitive Business, Commercial, and Financial Information provided
26 to the Port for the purpose of evaluating a proposal for a Bridge Project or Bridge Project Activity if such
27 information is:

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

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

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

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

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

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

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

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

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

25 (6) Notwithstanding a proposer's designation of information as exempt from public
26 inspection, including information constituting Sensitive Business, Commercial, or Financial Information,
27 or a proposer's written justification for such designation, the Port, when responding to a public records

1 request, will independently assess whether the information constitutes Sensitive Business, Commercial,
2 or Financial Information or is otherwise exempt from public disclosure. In determining whether the
3 information is exempt from disclosure, the Port will consider the evidence and objections to disclosure
4 presented by the proposer, but as custodian of the records or information the Port must make the initial
5 determination of the records that may be withheld from disclosure.

6 **8.2 Public Records Requests**

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

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

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

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

23 (5) Notwithstanding paragraph (4) of this subsection, Sensitive Business, Commercial or
24 Financial Information is exempt from disclosure unless and until the records or information contained in
25 them is submitted to the Commission in connection with its review and approval of a proposal, Term
26 Sheet, or final Agreement for a Bridge Project or Bridge Project Activity. To the extent required by law,
27 the Port will permit public disclosure of any Sensitive Business, Commercial, or Financial Information
28 submitted to the Commission in connection with its review and approval of a proposal, Term Sheet, or
29 final Agreement for a Bridge Project or Bridge Project Activity. No less than five (5) business days prior to

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1 submitting any Sensitive Business, Commercial, or Financial Information to the Commission that the Port
2 intends to publicly disclose, the Director shall notify the proposer of his or her intent to do so. No longer
3 than five (5) business days following receipt of the Director's notice:

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

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

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

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

23 (a) If the Port agrees that such information is Sensitive Business, Commercial, or
24 Financial Information that is exempt from public disclosure, then the Port will redact the Sensitive
25 Business, Commercial, or Financial Information from the document before the Port permits inspection of
26 the records by the person making the request. By submitting a proposal, the proposer thereby agrees that
27 if following a Port decision to redact information a District Attorney or a court later orders production of
28 the redacted information, the proposer shall pay for all costs resulting from such appeal to the District
29 Attorney or court, including any attorney fees imposed on the Port by its failure to provide the documents;
30 or

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

9 **9. TERMS AND CONDITIONS**

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

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

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

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

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

17 (e) Request or obtain ~~additional information~~ Clarifications about any proposals or
18 members of a Team.

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

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

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

23 (i) Request revisions to proposals.

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

26 (a) Unless otherwise authorized in writing by the Port, ~~it~~ waives any claim for any
27 reimbursement of the costs and expenses of making the Submission, ~~or any follow up activities preparing~~

1 Clarifications~~in connection with the Submission, or additional information~~ or undertaking any other
2 activity or incurring any other cost or expense related to the Port's procurement of a Bridge Project or
3 Bridge Project Activity; and

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

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

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

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

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

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

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

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

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

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

27 (12) To the extent permitted by law, the Commission reserves the right to review in executive
28 session any (i) information or record, (ii) recommendation of the Director or (iii) appeal of determination
29 by the Director prepared or undertaken in connection with this Rule, including any Information that

1 contains or pertains to Sensitive Business, Commercial, or Financial. All final decisions and actions by the
2 Commission shall be made in a public meeting.

3 **10. NOTICES**

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

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

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

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

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

16 (2) Notice of addenda to a Solicitation Document shall be sent by an electronic posting on
17 the Port's website or by email to proposers that have registered its interest in the procurement, without
18 confirmation of delivery, in which case the notice shall be deemed delivered on the date the posting
19 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
20 business day receipt shall be at 8:00 a.m. on the next regular business day.

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

25 (a) Mail and courier notices to the Port shall be addressed to: Executive Director, Port
26 of Hood River, 1000 E. Port Marina Way, Hood River, OR 97031. Mail and courier notices to a proposer

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1 shall be addressed to the physical or post office address listed by the proposer in a proposal, or in a letter
2 sent to the Port which specifically states the address is to use when the Port sends a notice to the
3 proposer. Unless changed by the Port, the Port's email address for notices shall be
4 mmcelwee@portofhoodriver.com.

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

9

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~~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;~~

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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:~~

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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.~~

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1 ~~Identify the proposed schedule for implementation of the~~
2 ~~Project.~~

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

8 ~~Describe the proposed tolling program for the Bridge Project, if any,~~
9 ~~including:~~

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

12 ~~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 ~~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 ~~The role, if any, of the Port or other public entity in setting or~~
21 ~~approving toll rates or toll rate increases; and~~

22 ~~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 ~~Include any traffic studies, forecasts, and related materials that~~
26 ~~establish the toll revenue assumptions.~~

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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;~~

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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.~~

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