



LABOR COMPLIANCE MANUAL

**Non-Federal
Public Works**

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1. MINIMUM WAGE RATES ON PUBLIC WORKS

When the Contract price exceeds \$50,000, the Contractor shall comply fully with the provisions of ORS 279C.800 through 279C.870. The BOLI prevailing wage rates referenced in the Special Provisions or as otherwise noted in this paragraph are incorporated into this Contract by this reference.

2. PAYROLL CERTIFICATION AND FEE REQUIREMENTS

2.1 In accordance with ORS 279C.845, the contractor or the contractor's surety and every subcontractor or the subcontractor's surety shall file certified statements with TriMet in writing in a form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom the contractor or the subcontractor has employed upon such public work, and further certifying that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract, which certificate and statement shall be verified by the oath of the contractor or the contractor's surety or subcontractor or the subcontractor's surety that the contractor or subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to the contractor or subcontractor's knowledge. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. The prevailing wage requirements also extend to all warranty work performed under this contract.

Each certified statement required by this section shall be delivered or mailed by the contractor or subcontractor to TriMet. Certified statements for each week during which the contractor or subcontractor employs a worker upon the public work shall be submitted once a month, by the fifth business day of the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870.

Each contractor or subcontractor shall preserve the certified statements for a period of three years from the date of completion of the contract.

Certified statements received by a public contracting agency are public records subject to the provisions of ORS 192.410 to 192.505

2.2 The form required by ORS 279C.845 is the Payroll and Certified Statement form, WH-38. This form must accurately and completely set out the

contractor's or subcontractor's payroll for each week during which the contractor or subcontractor employs a worker upon a public works project.

The contractor or subcontractor may submit the weekly payroll on the WH-38 form or may use a similar form providing such form contains all the elements of the WH-38 form. When submitting the weekly payroll on a form other than WH-38, the contractor or subcontractor must attach the certified statement contained on the WH-38 form to the payroll forms submitted. **If required in the Special Provisions, payroll reporting will be done in Elations.**

Each Payroll and Certified Statement form must be submitted by the contractor or subcontractor to the public contracting agency by the fifth business day of each month following a month in which workers were employed upon a public works project.

The Payroll and Certified Statement forms received by the public contracting agency are public records subject to the provisions of ORS 192.410 to 192.505. As such, they must be made available upon request. Pursuant to ORS 279C.845(2), information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 through 279C.870.

2.3 If Contractor fails to submit its certified payroll form to TriMet as required, TriMet shall retain 25 percent of any amount earned by the Contractor until the Contractor has submitted the required certified payroll form to TriMet. The amount to be retained by TriMet shall be calculated at 25 percent of the unpaid amount earned by the Contractor at the time each certified payroll form is due. When calculating the amount to be retained, amounts previously retained shall not be included as amounts earned by the Contractor. Once the required certified payroll form has been submitted to TriMet, TriMet must pay the amount retained to the Contractor within 14 days. Amounts retained under this paragraph shall be in addition to any other amounts retained.

If a first-tier subcontractor fails to submit a certified payroll form to TriMet as required, Contractor must retain 25 percent of any amount earned by the first-tier subcontractor until the first-tier subcontractor has submitted the required certified payroll form to TriMet. The amount to be retained by Contractor shall be calculated at 25 percent of the unpaid amount earned by the first-tier subcontractor at the time each certified payroll form is due. When calculating the amount to be retained, amounts previously retained shall not be included as amounts earned. Once the required certified payroll form has been submitted to TriMet, Contractor must pay the amount retained to the first-tier subcontractor within 14 days. Amounts retained under this paragraph shall be in addition to any other amounts retained.

2.4 Pursuant to ORS 279C.825 and in accordance with administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, the contracting agency must pay a fee to the Bureau of Labor and Industries equaling

1/10 of 1% of the Contract price, however, the fee may not be less than \$250 nor more than \$7,500, regardless of the Contract price. The fee shall be paid at the time the public agency enters into the public works contract. The fee is payable to the Bureau of Labor and Industries and shall be mailed or otherwise delivered to the Bureau at the following address:

Bureau of Labor and Industries
Wage and Hour Division
Prevailing Wage Unit
800 N.E. Oregon Street, #32
Portland, Oregon 97232

3 PROMPT PAYMENT AND CONTRACT CONDITIONS

3.1 Pursuant to ORS 279C.505, the Contractor shall:

3.1.1 Make payment promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the Work provided for in this Contract.

3.1.2 Pay all contributions or amounts due the State Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract.

3.1.3 Not permit any lien or claim to be filed or prosecuted against TriMet on account of any labor or material furnished.

3.1.4 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

3.1.5 Demonstrate that an employee drug testing program is in place as follows:

(a) Contractor represents and warrants that Contractor has in place at the time of the execution of this Contract, and shall maintain during the term of this Contract, a Qualifying Employee Drug Testing Program for its employees that includes, at a minimum, the following:

(1) A written employee drug testing policy,

(2) Required drug testing for all new Subject Employees or, alternatively, required testing of all Subject Employees every 12 months on a random selection basis, and

- (3) Required testing of a Subject Employee when the Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs.

A drug testing program that meets the above requirements will be deemed a "Qualifying Employee Drug Testing Program." For the purposes of this section, an employee is a "Subject Employee" only if that employee will be working on the project job site.

- (b) Contractor shall require each Subcontractor providing labor for the project to:

- (1) Demonstrate to the Contractor that it has a Qualifying Employee Drug Testing Program for the Subcontractor's Subject Employees, and represent and warrant to the Contractor that the Qualifying Employee Drug Testing Program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract, or

- (2) Require that the Subcontractor's Subject Employees participate in the Contractor's Qualifying Employee Drug Testing Program for the duration of the subcontract.

3.2 Pursuant to ORS 279C.515, Contractor agrees:

- 3.2.1 If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with the project as such claim becomes due, the proper officer(s) representing the TriMet may pay the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract. Payment of claims in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

- 3.2.2 If the Contractor or a first-tier Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within thirty (30) Days after receipt of payment from TriMet or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-Day period that payment is due under ORS 279C.580 (4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Contractor or first-tier Subcontractor on the amount due shall equal three times the discount rate on 90-Day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that

includes Oregon on the date that is thirty (30) Days after the date when payment was received from TriMet or from the Contractor, but the rate of interest shall not exceed thirty (30) percent. The amount of interest may not be waived.

3.2.3 If the Contractor or a Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Every contract related to this Contract shall contain a similar clause.

3.3 Pursuant to ORS 279C.580, Contractor shall include in each subcontract for property or services entered into by the Contractor and a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract:

(a) A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten (10) Days out of such amounts as are paid to the Contractor by TriMet under the Contract; and

(b) An interest penalty clause that obligates the Contractor if payment is not made within thirty (30) Days after receipt of payment from TriMet, to pay to the first-tier Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph (a) of this subsection. Contractor or first-tier Subcontractor shall not be obligated to pay an interest penalty if the only reason that the Contractor or first-tier subcontractor did not make payment when payment was due is that the Contractor or first-tier Subcontractor did not receive payment from TriMet or Contractor when payment was due. The interest penalty shall be for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and shall be computed at the rate specified in ORS 279C.515 (2).

(c) A clause which requires each of Contractor's Subcontractor's to include, in each of their contracts with lower-tier Subcontractors or suppliers, provisions to the effect that the first-tier Subcontractor shall pay its lower-tier Subcontractors and suppliers in accordance with the provisions of subsections (a) and (b), above and requiring each of their Subcontractors and suppliers to include such clauses in their subcontracts and supply contracts.

3.4 All employers working under this Contract are subject employers which must comply with ORS 656.017 relating to providing Workers' Compensation coverage.

4 PAYMENT FOR MEDICAL CARE

Pursuant to ORS 279C.530, Contractor shall promptly, as due, make payment to any person, partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, all sums of which the Contractor agrees to pay for such services and all moneys and sums which the Contractor has collected or deducted from the wages of personnel pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

5 HOURS OF LABOR

Contractor shall comply with ORS 279C.520, as amended from time to time and incorporated herein by this reference:

Pursuant to ORS 279C.520 no person shall be employed to perform Work under this Contract for more than ten (10) hours in any one day or forty (40) hours in any one week, except in cases of necessity, emergency or where public policy absolutely requires it. In such instances, Contractor shall pay the employee at least time and a half pay:

- (a) For all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive Days, Monday through Friday; or
- (b) For all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four consecutive Days, Monday through Friday; and
- (c) For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

This section 5 will not apply to Contractor's Work under this Contract if Contractor is currently a party to a collective bargaining agreement with any labor organization.

This Section 5 shall not excuse Contractor from completion of the Work within the time required under this Contract.

6 PUBLIC WORKS BOND

1. Prior to beginning work, Contractor must file with the Oregon Construction Contractors Board a public works bond with a corporate surety authorized to do business in the State of Oregon in the amount of \$30,000, as required by ORS 279C.836. The bond must provide that the

contractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects.

2. Before permitting a subcontractor to being work, Contractor shall verify that the subcontractor has filed with the Oregon Construction Contractors Board a public works bond with a corporate surety authorized to do business in the State of Oregon in the amount of \$30,000, as required by ORS 279C.836. The bond must provide that the subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects.

3. Exception

As set forth in ORS 279C.836, a disadvantaged, minority, women, or emerging small business enterprise certified under ORS 200.055 may, for up to four years after certification, elect not to file a public works bond. In the event Contractor elects not to file a bond under this Paragraph, it shall notify TriMet of this decision prior to beginning work.

4. The public works bond required by this Paragraph shall be in addition to any other bond the contractor or subcontractor is required to obtain.