

**STANDARD PUBLIC IMPROVEMENT CONTRACT TERMS
AND CONDITIONS**
Effective: JULY 30, 2018

1. Prevailing Wage.

- a. As further provided in Exhibit D, Contractor shall comply with ORS 279C.800 – 279C.870 regarding the payment of state prevailing wage or, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 U.S.C. 3141 et seq), that must be paid to workers in each trade or occupation that the contractor or subcontractor or other person who is a party to the contract uses in performing all or part of the contract.
- b. Workers must be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840. If a public works project is subject both to ORS 279C.800 to 279C.870 and to the Davis-Bacon Act, workers on the public works must be paid not less than the higher of the applicable state or federal prevailing rate of wage.

2. Public Works Bond. Contractor shall:

- a. Have a public works bond filed with the Construction Contractors Board before starting work on the project, unless the contractor is exempt under ORS 279C.836 (4), (7), (8) or (9).
- b. Require, in every subcontract, that the subcontractor have a public works bond filed with the Construction Contractors Board before starting work on the project, unless the subcontractor is exempt under ORS 279C.836 (4), (7), (8) or (9).
- c. Every subcontract that a contractor or subcontractor awards in connection with a public works contract between a contractor and a public agency must require any subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the public works project, unless the subcontractor is exempt under ORS 279C.836 (4), (7), (8) or (9).

3. Two-Year Warranty

- a. In addition to and not in lieu of any other warranties required under the Contract, Contractor shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City and at no cost to the City, any and all defects, breaks, or failures of the work occurring within two years following the date of completion due to faulty or inadequate materials or workmanship. Contractor shall repair damage or disturbances to other improvements under, within, or adjacent to the work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of the Contractor in performing its duties and obligations under this Contract when such defects or damage occur within the warranty period. The two-year warranty period shall, with relation to such required repair, be extended two years from the date of completion of such repair.
- b. If Contractor, after written notice, fails within ten days to proceed to comply with the terms of this section, City may have the defects corrected, and the Contractor and Contractor's surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the City, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor and Contractor or Surety shall pay the cost of repairs. Failure of the City to act in case of an emergency shall not relieve Contractor or Surety from liability and payment of all such costs.

4. Drug Testing.

- a. Contractor shall certify to the City that it has a drug-testing program in place for its employees that includes, at a minimum, the following:
 - i. A written employee drug-testing policy,
 - ii. 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
 - iii. Required testing of a Subject Employee when the Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs.
- b. 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 Public Improvement project job site
- c. By executing and returning this contract the Contractor certifies, represents and warrants to the City that a Qualifying Employee Drug-testing Program is in place at the time of execution, will continue in full force and

effect for the duration of this contract, and that Contractor will comply with the provisions of subsection (d) below. Further, the City's performance obligation (which includes, without limitation, the City's obligation to make payment) is contingent on Contractors compliance with this representation and warranty.

- d. Contractor will require each subcontractor providing labor for the project to:
 - i. 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
 - ii. Require that the subcontractor's Subject Employees participate in the Contractor's Qualifying Employee Drug-testing Program for the duration of the subcontract.

5. Construction Contractor's Board. The Contractor, hereby certifies that the Contractor is licensed with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 and, further, that all subcontractors performing work as described in ORS 701.005(2) (i.e., construction work) will be licensed with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the contract. The Contractor and every subcontractor shall have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836(7), (8) or (9). The Contractor shall include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836(7), (8) or (9).

6. Oregon Statutory Provisions.

- a. **Conditions concerning payment, contributions, liens, withholding, drug testing.** In accordance with ORS 279C.505, Contractor shall: (a) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract; (b) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract; (c) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; (d) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167; and (e) Demonstrate that an employee drug testing program is in place in accordance with Section 30.
- b. **Demolition contracts to require material salvage; lawn and landscape maintenance contracts to require composting or mulching.** In accordance with ORS 279C.510, contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. To the extent applicable to scope of work, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.
- c. **Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints.** (i) In accordance with ORS 279C.515, if the contractor fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to the contractor or a subcontractor in connection with the public improvement contract as the claim becomes due, the proper officer that represents the state or a county, school district, municipality or municipal corporation or a subdivision of the state, county, school district, municipality or municipal corporation may pay the amount of the claim to the person that provides the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract. (ii) If the contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from the contracting agency or a contractor, the contractor or first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived (iii) If the contractor or a subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement 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. (iv) Paying a claim in the manner authorized in this section does not relieve the contractor or the contractor's surety from obligation with respect to an unpaid claim.
- d. **Condition concerning hours of labor.** In accordance with ORS 279C.520, (1)(a) a contractor may not employ an employee for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires otherwise, and in such cases, except in

cases of contracts for personal services as defined in ORS 279C.100, the contractor shall pay the employee at least time and a half pay for:

(A)(i) All overtime in excess of eight hours in any one day or 40 hours in any one week if the work week is five consecutive days, Monday through Friday; or

(ii) All overtime in excess of 10 hours in any one day or 40 hours in any one week if the work week is four consecutive days, Monday through Friday; and

(B) All work the employee performs on Saturday and on any legal holiday specified in ORS 279C.540.

(b) The contractor shall comply with the prohibition set forth in ORS 652.220, that compliance is a material element of the contract and that a failure to comply is a breach that entitles the contracting agency to terminate the contract for cause.

(c) The contractor may not prohibit any of the contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

(2) A contractor shall give notice in writing to employees who work on a public contract, either at the time of hire or before work begins on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the contractor may require the employees to work.

(3) Contractor shall pay employees at least time and a half pay for work the employees perform under the public contract on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540 (1)(b)(B) to (G) and for all time the employees work in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

(b) Contractor shall notify in writing employees who work on a public contract for services, either at the time of hire or before work begins on the public contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the contractor may require the employees to work.

e. **Condition concerning payment for medical care and providing workers' compensation.**

i. In accordance with ORS 279C.530, contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

ii. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

f. **Contractor's relations with subcontractors**

i. In accordance with ORS 279C.580, contractor shall include in each subcontract for property or services the contractor enters into with a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract the following:

(a) A payment clause that obligates the contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within 10 days out of amounts the contracting agency pays to the contractor under the public improvement contract.

(b) A clause that requires the contractor to provide a first-tier subcontractor with a standard form that the first-tier subcontractor may use as an application for payment or as another method by which the subcontractor may claim a payment due from the contractor.

(c) A clause that requires the contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. A contractor may change the form or the regular administrative procedures the contractor uses for processing payments if the contractor:

(A) Notifies the subcontractor in writing at least 45 days before the date on which the contractor makes the change; and

(B) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

(d) An interest penalty clause that obligates the contractor, if the contractor does not pay the first-tier subcontractor within 30 days after receiving payment from the contracting agency, to pay the first-tier subcontractor an interest penalty on amounts due in each payment the contractor does not make in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. A contractor or first-tier subcontractor is not 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 the contracting agency or contractor when payment was due. The interest penalty:

(A) Applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and

(B) Is computed at the rate specified in ORS 279C.515 (2).

- ii. In each of the contractor's subcontracts, Contractor shall require the first-tier subcontractor to include a payment clause and an interest penalty clause that conforms to the standards of subsection (i) of this section in each of the first-tier subcontractor's subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in the first-tier subcontractors' subcontracts with each lower-tier subcontractor or supplier.