

BEFORE THE COMMISSIONER

OF THE

BUREAU OF LABOR AND INDUSTRIES

In the matter of rules regulating)
prevailing wage rates on public works) PROPOSED RULES

839-025-0010

Payroll and Certified Statement

(1) 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] records, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked and the gross wages the worker earned each week during which the contractor or subcontractor employs a worker upon a public works project.

(2) 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.

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

(4) The Payroll and Certified Statement forms received by the public 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.

Note: Material in [brackets] and *italics* is material that is deleted. Material that is **underlined** and **bold** is material to be added.

(5) If the contractor fails to submit its payroll and certified statement forms to the public agency as required by subsection (3) of this rule, the public agency must retain 25 percent of any amount earned by the contractor until the contractor has submitted the required payroll and certified statements to the public agency.

(a) The amount to be retained shall be calculated at 25 percent of the unpaid amount earned by the contractor at the time each payroll and certified statement are due. For example, if the contractor fails to submit its payroll and certified statement by the fifth of the month and the contractor earned \$100,000 in the period since its last payroll and certified statement were submitted to the public agency, the public agency must retain 25 percent of \$100,000 (\$25,000), until such time as the required payroll and certified statement are submitted.

(b) When calculating the amount to be retained, amounts previously retained shall not be included as amounts earned by the contractor.

(c) Once the required payroll and certified statement have been submitted to the public agency, the public agency must pay the amount retained to the contractor within 14 days.

(6) If a first-tier subcontractor fails to submit a payroll and certified statement form to the public agency as required by subsection (3) of this rule, the contractor must retain 25 percent of any amount earned by the first-tier subcontractor until the first-tier subcontractor has submitted the required payroll and certified statements to the public agency.

(a) The amount to be retained shall be calculated at 25 percent of the unpaid amount earned by the first-tier subcontractor at the time each payroll and certified statement are due. For example, if the first-tier subcontractor fails to submit the payroll and certified statement by the fifth of the month and the first-tier subcontractor earned \$100,000 in the period since the last payroll and

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certified statement were submitted to the public agency, the contractor must retain 25 percent of \$100,000 (\$25,000), until such time as the required payroll and certified statement are submitted.

(b) When calculating the amount to be retained, amounts previously retained shall not be included as amounts earned by the first-tier subcontractor.

(c) The contractor must verify that the first-tier subcontractor has filed the required payroll and certified statement(s) with the public agency before the contractor may pay the first-tier subcontractor any amount retained under this section.

(d) Once the first-tier subcontractor has filed the required payroll and certified statement with the public agency, the contractor must pay the amount retained to the first-tier subcontractor within 14 days.

(7) Notwithstanding ORS 279C.555 or 279C.570(7), amounts retained pursuant to the provisions of this rule shall be in addition to any other amounts retained.

(8)(a) If a project is a public works of the type described in ORS 279C.800(6)(a)(B), and no public agency awards a contract to a contractor for the project, the contractors and any subcontractors employing workers upon the public works project shall submit weekly payrolls as required by ORS 279C.845 and this rule to the public agency or agencies providing funds for the project.

(b) When more than one public agency provides funds for a project, the public agencies may designate one agency to receive the contractor's and any subcontractors' payrolls.

(9)(a) If a project is a public works of the type described in ORS 279C.800(6)(a)(C), and no public agency awards a contract to a contractor for the project, the contractors and any subcontractors employing workers upon the public works project shall submit weekly payrolls as

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required by ORS 279C.845 and this rule to the public agency or agencies that will occupy or use the completed project.

(b) When more than one public agency will occupy or use the completed project, the public agencies may designate one agency to receive the contractor's and any subcontractors' payrolls.

839-025-0013

Notice of Public Works[*Form*]

(1) The notification form required by ORS 279C.835 is the Notice of Public Works form, **WH-81**.

(2) Except as provided in sections (4) and (5) of this rule, the public agency must file the Notice of Public Works form, **WH-81**, with the Prevailing Wage Rate Unit within 30 days after the date a public works contract is awarded.

(3) [*Pursuant to ORS 279C.835, the*]**The** Notice of Public Works form, **WH-81**, must [*include*]**be accompanied by:**

(a) payment of the fee required pursuant to ORS 279C.825; and

(b) a copy of the disclosure of first-tier subcontractors submitted to the public agency by the contractor if required pursuant to ORS 279C.370 and if a public agency awards a contract to a contractor for a public works project.

(4) When a project is a public works project pursuant to ORS 279C.800(6)(a)(B) and no public agency awards a contract to a contractor for the project, the Notice of Public Works form shall be filed by the public agency providing public funds for the project at the time the public agency commits to the provision of funds for the project.

(5) When a project is a public works project pursuant to ORS 279C.800(6)(a)(C) and no public agency awards a contract to a contractor for the project, the Notice of Public Works form shall be

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filed by the public agency when the agency enters into an agreement to occupy or use the completed project.

(6) Public agencies are not required to file a Notice of Public Works form when the contract awarded is not regulated under the provisions of ORS 279C.800 to 279C.870.

[ED. NOTE: Forms and Publications referenced are available from the agency.]

839-025-0015
Public Works Bonds

(1) Pursuant to ORS 279C.836, except as provided, before starting work on a contract or subcontract for a public works project of \$100,000 or more, a contractor or subcontractor must file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in this state in the amount of \$30,000. **For purposes of this section, “project of \$100,000 or more” includes, but is not limited to, the combined value of work performed by every person paid by a contractor or subcontractor in any manner for the person’s work on the project, but does not include the value of donated materials or work performed on the project by individuals volunteering to the public agency without pay.**

(2) The Commissioner of the Bureau of Labor and Industries adopts the language in the Statutory Public Works Bond set forth in **Appendix 5**.

(3) The name of the entity as it appears on the public works bond must be the same as the entity name filed at the Oregon Corporation Division (if applicable).

(a) If the entity is a sole proprietorship, the bond must include the name of the sole proprietor;

(b) If the entity is a partnership, or joint venture, the bond must include the names of all partners or venturers (except limited partners);

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- (c) If the entity is a limited liability partnership, the bond must be issued in the name of all partners and in the name of the limited liability partnership;
- (d) If the entity is a limited partnership, the bond must be issued in the name of all general partners and in the name of the limited partnership and any other business name(s) used. Limited partners do not need to be listed on the bond;
- (e) If the entity is a corporation or trust, the bond must be issued showing the corporate or trust name; or
- (f) If the entity is a limited liability company, the bond must be issued in the name of the limited liability company.
- (4) If at any time an entity changes or amends its entity name, the Construction Contractors Board must be notified within 30 days of the date of the change.
- (5) If an entity is a sole proprietorship, partnership, limited liability partnership, limited partnership, joint venture, corporation, limited liability company, business trust or any other entity, and changes the entity to one of the other entity types, the new entity must supply a new bond.
- (6) Riders to existing bonds changing the type of entity bonded will be construed as a cancellation of the bond and will not be otherwise accepted.
- (7) The inclusion or exclusion of business name(s) on a bond shall not limit the liability of an entity. Claims against a bonded entity will be processed regardless of business names used by such entity.

[ED. NOTE: Appendices referenced are available from the agency.]

839-025-0020

Public Works Contracts and Contract Specifications; Required Conditions

Note: Material in [brackets] and *italics* is material that is deleted. Material that is **underlined** and **bold** is material to be added.

(1) For purposes of this rule:

(a) "Construction Manager/General Contractor contract" (or "CM/GC contract") means a contract that typically results in a general contractor/construction manager initially undertaking various pre-construction tasks that may include, but are not limited to: design phase development, constructability reviews, value engineering, scheduling, and cost estimating, and in which a guaranteed maximum price for completion of construction-type work is typically established by amendment of the initial contract, after the pre-construction tasks are complete or substantially complete. "CM/GC" refers to the general contractor/construction manager under this form of contract. Following the design phase, the CM/GC may then act as a General Contractor and begin the subcontracting process. The CM/GC typically coordinates and manages the construction process, provides contractor expertise, and acts as a member of the project team.

(b) "Construction specifications" include the detailed description of physical characteristics of the improvement, design details, technical descriptions of the method and manner of doing the work, quantities or qualities of any materials required to be furnished, descriptions of dimensions, required units of measurement, composition or manufacturer, and descriptions of any quality, performance, or acceptance requirements.

(2) Every public works contract must contain the following:

(a) A condition or clause that, if the 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, or the assignee of the person, in connection with the public works contract as such claim becomes due, the proper officer or officers of the public agency may pay such claim and charge

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the amount of the payment against funds due or to become due the contractor by reason of the contract (Reference: ORS 279C.515);

(b) A condition that no person will be employed for more than 10 hours in any one day, or 40 hours in any one week except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases the person so employed must be paid at least time and one-half the regular rate of pay for all time worked:

(A) For all overtime in excess of eight hours a day or 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 10 hours a day or 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;

(c) A condition that an employer must give notice to employees who work on a public works contract in writing, either at the time of hire or before commencement of work 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 employees may be required to work (Reference: ORS 279C.520); and

(d) A condition that the contractor must promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such contractor, of all sums which the contractor agrees to pay for such services and all moneys and sums which the contractor collected or deducted from the wages of the contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service (Reference: ORS 279C.530).

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(3) Every public works contract and subcontract must contain a provision that each worker in each trade or occupation employed in the performance of the contract either by the contractor, subcontractor or other person doing or contracting to do or contracting for the whole or any part of the work on the contract, must be paid not less than the applicable state prevailing rate of wage, or the applicable federal prevailing rate of wage, whichever is higher.

(4)(a) **The specifications for every public works contract must contain a provision stating the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 U.S.C. 3141 et seq.).** Except as provided in sections (6) and (7) of this rule, the existing rate of wage is the rate in effect at the time the initial specifications were first advertised for bid solicitations.

(b) If a public agency is required under subsection (a) of this section or section (6) of this rule to include the state and federal prevailing rates of wage in the specifications for a contract for public works, the public agency also shall include in the specifications information showing which prevailing rate of wage is higher for workers in each trade or occupation in each locality, as determined by the Commissioner of the Bureau of Labor and Industries under ORS 279C.815(2)(b).

(5)(a) The provisions described in sections (3) and (4), and sections (6) and (7) if applicable, must be included in all specifications for each contract awarded on the project, regardless of the price of any individual contract, so long as the combined price of all contracts awarded on the project is \$50,000 or more (Reference: ORS 279C.830).

(b) A statement incorporating the applicable prevailing wage rate publication and any amendments thereto or Davis-Bacon wage rate determination into the specifications by reference will satisfy these requirements. Such reference must include the title of the applicable wage rates
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publication or determination and the date of the publication or determination as well as the date of any applicable amendments.

(c) When the prevailing wage rates are available electronically or are accessible on the Internet, the rates may be incorporated into the specifications by referring to the electronically accessible or Internet-accessible rates and by providing adequate information about how to access the rates. Such reference must include the title of the applicable wage rates publication or determination and the date of the publication or determination as well as the date of any applicable amendments.

(6) When a public agency is a party to a CM/GC contract, the CM/GC contract becomes a public works contract either when the contract first constitutes a binding and enforceable obligation on the part of the CM/GC to perform or arrange for the performance of construction, reconstruction, major renovation or painting of an improvement that is a public works or when the CM/GC contract enters the construction phase, whichever occurs first. The prevailing wage rate in effect at that time shall apply and must be included with the construction specifications for the CM/GC contract. For example, the CM/GC will have a binding and enforceable obligation to perform or arrange for the performance of construction, reconstruction, major renovation or painting of an improvement after the public agency and CM/GC commit to the guaranteed maximum price. For purposes of this rule, the CM/GC contract enters the construction phase when the agency first authorizes the performance of early construction, reconstruction, major renovation or painting work directly related to the improvement project.

(7) A public works project described in ORS 279C.800(6)(a)(B) or (C) that is not a CM/GC contract subject to section (6) of this rule is subject to the existing state prevailing rate of wage or, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act that is in Note: Material in [brackets] and *italics* is material that is deleted. Material that is **underlined** and **bold** is material to be added.

effect at the time a public agency enters into an agreement with a private entity for the project.

After that time, the specifications for any contract for the public works shall include the applicable prevailing rate of wage.

(8) If a project is a public works of the type described in ORS 279C.800(6)(a)(B) or (C), a public agency will be deemed to have complied with the provisions of ORS 279C.830 if the public agency requires compliance with the provisions of section (5) of this rule in any agreement entered into by the public agency committing to provide funds for the project or to occupy or use the completed project.

(9) Public agencies may obtain, without cost, a copy of the existing prevailing rate of wages for use in preparing the contract specifications by contacting the Prevailing Wage Rate Unit or any office of the bureau.

839-025-0030

Records Availability

(1) Every contractor and subcontractor performing work on a public works contract shall make available to representatives of the Wage and Hour Division records necessary to determine if the prevailing wage rate has been or is being paid to workers upon such public work[*and records showing contract prices and sums paid as fees to the bureau*]. Such records shall be made available to representatives of the Wage and Hour Division for inspection and transcription during normal business hours.

(2) The contractor or subcontractor shall make the records referred to in section (1) of this rule available within 24 hours of a request from a representative of the Wage and Hour Division or at such later date as may be specified by the division.

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(3) When a prevailing wage rate claim or complaint has been filed with the Wage and Hour Division or when the division has otherwise received evidence indicating that a violation has occurred and upon a written request by a representative of the Division a public works contractor or subcontractor shall send a certified copy of such contractor's or subcontractor's payroll records to the Division within ten days of receiving such request. The Division's written request for such certified copies will indicate that a prevailing wage rate claim has been filed or that the division has received evidence indicating that a violation has occurred.

839-025-0035

Payment of Prevailing Rate of Wage

(1) Every contractor or subcontractor employing workers on a public works project must pay to such workers no less than the applicable prevailing rate of wage for each trade or occupation, as determined by the commissioner, in which the workers are employed. **Additionally, all wages due and owing to the workers shall be paid on the regular payday established and maintained under ORS 652.120.**

(2) When a public works project is subject to the Davis-Bacon Act (40 U.S.C. 3141 et seq.), if the state prevailing rate of wage is higher than the federal prevailing rate of wage, the contractor and every subcontractor on the project shall pay no less than the state prevailing rate of wage as determined under ORS 279C.815.

(3) Every person paid by a contractor or subcontractor in any manner for the person's labor in the construction, reconstruction, major renovation or painting of a public work is employed and must receive no less than the applicable prevailing rate of wage, regardless of any contractual relationship alleged to exist. Thus, for example, if partners are themselves performing the duties

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of a worker, the partners must receive no less than the prevailing rate of wage for the hours they are so engaged.

(4) Persons employed on a public works project and who are spending more than 20% of their time during any workweek in performing duties which are manual or physical in nature as opposed to mental or managerial in nature are workers and must be paid the applicable prevailing rate of wage. Mental or managerial duties include, but are not limited to, administrative, executive, professional, supervisory or clerical duties.

(5) Persons employed on a public works project for the manufacture or furnishing of materials, articles, supplies or equipment (whether or not a public agency acquires title to such materials, articles, supplies or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) are not workers required to be paid the applicable prevailing rate of wage unless the employment of such persons is performed in connection with and at the site of the public works project.

(6) Except as provided in ORS 279C.838, persons employed on a public works project who are employed by a commercial supplier of goods or materials must be paid no less than the applicable prevailing rate of wage when the work is performed at the "site of work" as that term is defined in OAR 839-025-0004(25) or when the work is performed in fabrication plants, batch plants, borrow pits, job headquarters, tool yards or other such places that are dedicated exclusively or nearly so to the public works project.

(7) Except as provided in ORS 279C.838, persons employed on a public works project by the construction contractor or construction subcontractor to transport materials or supplies to or from the public works project are required to be paid the applicable prevailing wage rate for work

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performed in connection with the transportation of materials or supplies at the "site of work" as that term is defined in OAR 839-025-0004(25).

(8) Persons employed on a public works project for service work as opposed to construction work are not workers required to be paid the prevailing rate of wage.

(9) Every apprentice, as defined in these rules, must be paid not less than the appropriate percentage of the applicable journeyman's wage rate and fringe benefits as determined pursuant to ORS 279C.800 to 279C.870. Any worker listed on a payroll at an apprentice wage rate, who is not an apprentice as defined in these rules, must be paid not less than the applicable prevailing rate of wage for the classification of work actually performed. In addition, if the total number of apprentices employed exceeds the ratio permitted in the applicable standards, all apprentices so employed must be paid not less than the applicable journeyman's prevailing wage rate for work actually performed.

(10) Every trainee, as defined in these rules, must be paid not less than the appropriate percentage of the applicable journeyman's wage rate and fringe benefits determined pursuant to ORS 279C.800 to 279C.870. Any worker listed on a payroll at a trainee wage rate, who is not a trainee as defined in these rules, must be paid not less than the applicable prevailing rate of wage for the classification of work actually performed. In addition, if the total number of trainees employed exceeds the ratio permitted in the applicable standards, all trainees so employed must be paid not less than the applicable journeyman's prevailing wage rate for work actually performed.

839-025-0085
Contract Ineligibility

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(1) Under the following circumstances, the commissioner, in accordance with the Administrative Procedures Act, may determine that, for a period not to exceed three years, a contractor, subcontractor or any firm, limited liability company, corporation, partnership or association in which the contractor or subcontractor has a financial interest is ineligible to receive any contract or subcontract for a public works:

(a) The contractor or subcontractor has intentionally failed or refused to pay the prevailing rate of wage to workers employed on a public works project as required by ORS 279C.840;

(b) The subcontractor has failed to pay the prevailing rate of wage to workers employed on a public works project as required by ORS 279C.840 and the contractor has paid the workers on the subcontractor's behalf; [*or*]

(c) The contractor or subcontractor has intentionally failed or refused to post the prevailing wage rates as required by ORS 279C.840(4) and these rules[.]; **or**

(d) The contractor or subcontractor has intentionally falsified information in the contractor's or subcontractor's certified statements submitted under ORS 279C.845.

(2) When the contractor or subcontractor is a corporation, the provisions of [*section (1) of*]this rule will apply to any corporate officer or corporate agent who is responsible for the failure or refusal to pay or post the prevailing wage rates, **the failure to pay to a subcontractor's employees amounts required by ORS 279C.840 that are paid by the contractor on the subcontractor's behalf or the intentional falsification of information in the contractor's or subcontractor's certified statements submitted under ORS 279C.845.**

(3) As used in section (2) of this rule, any corporate officer or corporate agent responsible for the failure to pay or post the prevailing wage rates, [*or for*] the failure to pay to a subcontractor's employees amounts required by ORS 279C.840 that are paid by the contractor on the

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subcontractor's behalf or for the intentional falsification of information in the contractor's or subcontractor's certified statements submitted under ORS 279C.845, includes, but is not limited to, the following individuals when the individuals knew or should have known the amount of the applicable prevailing wages or that such wages must be posted:

- (a) The corporate president;
 - (b) The corporate vice president;
 - (c) The corporate secretary;
 - (d) The corporate treasurer;
 - (e) Any other person acting as an agent of a corporate officer or the corporation.
- (4) The Wage and Hour Division will maintain a written list of the names of those contractors, subcontractors and other persons who are ineligible to receive public works contracts and subcontracts. The list will contain the name of contractors, subcontractors and other persons, and the name of any firms, corporations, partnerships or associations in which the contractor, subcontractor or other persons have a financial interest. Except as provided in OAR 839-025-0095, such names will remain on the list for a period not to exceed three (3) years from the date such names were first published on the list.
- (5) Before placing a name on the ineligible list referred to in section (4) of this rule, the commissioner will serve a notice of intended action upon the contractor or subcontractor in the same manner as service of summons or by certified mail, return receipt requested. The notice will include:
- (a) A reference to ORS 279C.840;

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(b) A short and concise statement of the matters which constitute intentional failure or refusal to pay or post the prevailing rate of wage or intentional falsification of information in the certified statements;

(c) A statement of the party's right to request a contested case hearing and to be represented by counsel at such hearing, provided that any such request must be received by the commissioner in writing within 20 days of service of the notice;

(d) A statement that the party's name will be published on a list of persons ineligible to receive public works contracts or subcontracts, unless the party requests a contested case hearing as provided in section (5)(c) of this rule;

(e) A statement that failure to make written request to the commissioner for a contested case hearing within the time specified will constitute a waiver of the right thereto; and

(f) A statement that if a hearing is requested, the contractor or subcontractor will be given information on procedures and rights as required by ORS 183.413(2).

(6) Upon the failure of the contractor or subcontractor to request a contested case hearing within the time specified, the commissioner or the commissioner's designee will enter an order supporting the bureau's action.

(7) If a contractor or subcontractor makes a timely request for a contested case hearing a hearing will be held in accordance with the Attorney General's Model Rules of Procedure under the Administrative Procedure Act by the commissioner or the commissioner's designee.

839-025-0200
Fees to Be Paid by Public Agency

Note: Material in [brackets] and *italics* is material that is deleted. Material that is underlined and **bold** is material to be added.

(1) A public agency must pay a fee to the Prevailing Wage Rate Unit for every contract awarded to a contractor for a public work which is regulated under the Prevailing Wage Rate Law (ORS 279C.800 to 279C.870).

(2) The amount of the fee is one tenth of one percent (.001) of the contract price. However, the fee must be no less than [~~\$100~~]**\$250** nor more than [~~\$5,000~~]**\$7,500** regardless of the contract price.

[NOTE: Pursuant to Or Laws 2007, ch. 844, sec. 8, for public works contracts first advertised or solicited on or after January 1, 2008 and before January 1, 2011, the fee must be no less than \$250 nor more than \$7,500 regardless of the contract price.]

(3) The public agency must pay the fee at the time the public agency [*enters into the public works contract*] **notifies the commissioner under ORS 279C.835 a contract subject to the provisions of Prevailing Wage Rate law has been awarded.**

(4) In order to assist public agencies in the proper calculation of the fee, the bureau has prepared a form for this purpose. The form, **WH-39**, is available, on request, from the Prevailing Wage Rate Unit.

(5) As used in this rule, "contract price" means the dollar amount of the contract on the date it was awarded to the contractor and the dollar amount of any subsequent change orders or other adjustments.

839-025-0210 Adjustment of Fees

(1) Within 30 days of the final progress payment to the contractor by the public agency after completion of the contract, the public agency must determine the final contract price. The public

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agency must consider all change orders or other adjustments to the contract price in making the determination.

(2) The public agency must calculate the fee in accordance with OAR 839-025-0200(2) and must credit the amount paid pursuant to 839-025-0200(3). The difference, if any, must be determined as follows:

(a) In the case of a reduction of more than \$100 in the amount of the fee, the public agency may submit a request to the bureau for a refund of the difference and the bureau will pay a refund to the public agency;

(b) In the case of an increase of more than \$100 in the amount of the fee, the public agency must pay the difference to the bureau.

(3) Requests for refunds and additional payments must be submitted with sufficient documentation to show how the amount to be refunded or to be paid was calculated. All such requests or payments must be made to the Prevailing Wage Rate Unit within 30 days after the date the final progress payment was made to the contractor by the public agency after completion of the contract.

(4) In order to assist public agencies in the proper calculation of the fee, the bureau has prepared a form for this purpose. The form, WH-40, is available, on request, from the Prevailing Wage Rate Unit.

839-025-0530

Violations for Which a Civil Penalty May Be Assessed

(1) The commissioner may assess a civil penalty for each violation of any provision of the Prevailing Wage Rate Law (ORS 279C.800 to 279C.870) and for each violation of any provision of the administrative rules adopted under the Prevailing Wage Rate Law.

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(2) Civil penalties may be assessed against any contractor, subcontractor or public agency regulated under the Prevailing Wage Rate Law and are in addition to, not in lieu of, any other penalty prescribed by law.

(3) The commissioner may assess a civil penalty against a contractor or subcontractor for any of the following violations:

(a) Failure to pay the applicable prevailing rate of wage in violation of ORS 279C.840;

(b) **Failure to pay all wages due and owing to the contractor's or subcontractor's workers on the regular payday established and maintained under ORS 652.120 in violation of ORS 279C.840(1).**

[(b)](c) Failure to post the applicable prevailing wage rates in violation of ORS 279C.840(4);

[(c)](d) Failure to post the notice describing the health and welfare or pension plans in violation of ORS 279C.840(5);

[(d)](e) Failure to include a provision in a subcontract that workers shall be paid not less than the specified minimum hourly rate of wage in violation of ORS 279C.830(1)(c);

[(e)](f) Failure to include in a 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, in violation of ORS 279C.830(3);

[(f)](g) Failure to file with the Construction Contractors Board a public works bond, as required under ORS 279C.836, before starting work on a contract or subcontract for a public works project subject to the provisions of 279C.800 to 279C.870;

[(g)](h) Failure to verify that a subcontractor has filed a public works bond as required or has elected not to file a public works bond under ORS 279C.836 prior to permitting a subcontractor to start work on a public works project;

Note: Material in [brackets] and *italics* is material that is deleted. Material that is **underlined** and **bold** is material to be added.

- [(h)]**(i)** Failure to file certified statements in violation of ORS 279C.845;
- [(i)]**(j)** Filing inaccurate or incomplete certified statements in violation of ORS 279C.845;
- [(j)]**(k)** Failure to retain 25 percent of the amount the first-tier subcontractor earned when the first-tier subcontractor fails to submit payroll and certified statement forms to the public agency in violation of ORS 279C.845;
- [(k)]**(l)** Paying the prevailing rate of wage in violation of ORS 279C.840(6);
- [(l)]**(m)** Reducing an employee's pay in violation of ORS 279C.840(7);
- [(m)]**(n)** Taking action to circumvent the payment of the prevailing wage, other than subsections [(i)]**(j)** and [(k)]**(l)** of this section, in violation of ORS 279C.840(7);
- [(n)]**(o)** Failure to submit reports and returns in violation of ORS 279C.815(3);
- [(o)]**(p)** Failure to certify the accuracy of reports and returns in violation of ORS 279C.815(3);
- [(p)]**(q)** Failure to timely pay the fee required by ORS 279C.825 on public works contracts first advertised or solicited prior to January 1, 2008;
- [(q)]**(r)** Receiving a public works contract or subcontract while on the list of ineligibles in violation of ORS 279C.860;
- [(r)]**(s)** Awarding a contract to a contractor whose name appears on the list of ineligibles maintained pursuant to ORS 279C.860.

(4) The commissioner may assess a civil penalty against a public agency for any of the following violations:

- (a) Failure to include a contract provision stating that workers must be paid the applicable prevailing rate of wage in violation of ORS 279C.830(1)(c);
- (b) Failure to include in the contract specifications a provision stating the applicable existing prevailing wage rate in violation of ORS 279C.830(1);

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- (c) Failure to include in the specifications for a contract for a public works stating that the contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt, in violation of ORS 279C.830(3);
- (d) Failure to include in a contract for a public works a provision requiring the contractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt, in violation of ORS 279C.830(3)(a);
- (e) Failure to include in a contract for a public works a provision requiring the contractor to include in every subcontract a provision requiring the contractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt, in violation of ORS 279C.830(3)(b);
- (f) Failure to notify the commissioner when a contract is awarded in violation of ORS 279C.835;
- (g) Dividing a public works project in violation of Or Laws 2007, ch. 764, sec. 44;
- (h) Failure to include a copy of the disclosure of first-tier subcontractors with the Notice of Award in violation of ORS 279C.835;
- (i) Failure to retain 25 percent of the amount the contractor earned when the contractor fails to submit payroll and certified statement forms to the public agency in violation of ORS 279C.845;
- (j) Failure to timely pay the fee required in violation of ORS 279C.825;
- (k) Awarding a contract to a contractor whose name appears on the list of ineligibles maintained pursuant to ORS 279C.860;

(l) Entering into an agreement with another state or a political subdivision or agency of another state agreeing that a contractor or subcontractor may pay less than the prevailing rate of wage determined in accordance with ORS 279C.815 under the terms of a contract

Note: Material in [brackets] and *italics* is material that is deleted. Material that is **underlined** and **bold** is material to be added.

for public works to which the contracting agency is a party or of which the contracting agency is a beneficiary in violation of Enrolled House Bill 2907 (2009).

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