

BEFORE THE COMMISSIONER
OF THE
BUREAU OF LABOR AND INDUSTRIES

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

839-025-0020

Public Works Contracts and Contract Specifications; Required Conditions

(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

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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 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 **(Reference: ORS 279C.520(1))**;

(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

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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~~(2)~~); 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)[.]; **and**

(e) A condition or clause that requires the contractor to:

(A) Have a public works bond filed with the Construction Contractors Board before starting work on the project, unless 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 exempt under ORS 279C.836(4), (7), (8) or (9).

(3)**(a)** Every public works contract and subcontract must [*contain a provision*]**provide** that each worker in each trade or occupation [*employed in the performance of the contract either by*]**that** the contractor, subcontractor or other person [*doing or contracting to do or contracting for the whole or any part of the work on*]**who is a party to the contract uses in performing all or part** **of** 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*].

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(b) If a public works project is subject to both ORS 279C.800 to ORS 279C.870 and to the Davis-Bacon Act (40 U.S.C. 3141 et seq.), every public works contract and subcontract must provide that the worker in each trade or occupation that the contract, subcontractor or other person who is a party to the contract uses in performing all or part of the contract, must be paid not less than the higher of the applicable state prevailing rate of wage or federal prevailing rate of wage.

(4)(a) The specifications for every public works contract must contain a provision [*stating*] **that states** 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 subsection (c) of this section and sections (6) and (7) of this rule, the existing **state prevailing** 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)*]**shall also require the contractor to pay the higher of the applicable state or federal prevailing rate of wage to all workers on the public works project.**

(c) Pursuant to ORS 279C.838(4) and notwithstanding ORS 279C.830(1), if the contract is subject to both ORS 279C.800 to 279C.870 and the Davis Bacon Act (40 U.S.C. 3141 et seq.),

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the public agency may provide in the specifications for the contract a single date to be used to establish both the “existing state prevailing rate of wage” and the “applicable federal prevailing rate of wage” that is consistent with the federal requirements under 29 CFR 1.6.

(d) The specifications for a contract for public works must provide 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 under ORS 279C.836(4), (7), (8) or (9).

(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 state prevailing wage rate publication and any amendments thereto [*or Davis-Bacon wage rate determination*] into the specifications by reference will satisfy these requirements. Except as provided in subsection (c), 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.

(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

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amendments. The reference requirements of this subsection will be satisfied if such reference includes Uniform Resource Locator (URL) information for a webpage or webpages showing the title of each applicable wage rates publication or determination and the date of each 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), (C), or (D) 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 effect at the time a public agency enters into an agreement with a private entity for the project.

(Note: The effective date of the applicable federal prevailing rate of wage may be different

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under federal law.) 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), (C), or (D), 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, to occupy or use the completed project, or authorizing the construction or installation of a solar radiation device.

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

839-025-0025 Required Records

(1) All contractors and subcontractors performing work on public works contracts subject to ORS 279C.800 to 279C.870 shall make and maintain for a period of three (3) years from the completion of work upon such public works records necessary to determine whether the prevailing rate of wage and overtime has been or is being paid to workers upon public works.

(2) In addition to the Payroll and Certified Statement, Form **WH-38**, records necessary to determine whether the prevailing wage rate and overtime wages have been or are being paid include but are not limited to records of:

(a) The name and address of each employee;

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- (b) The work classification or classifications of each employee;
 - (c) The rate or rates of monetary wages and fringe benefits paid to each employee;
 - (d) The rate or rates of fringe benefit payments made in lieu of those required to be provided to each employee;
 - (e) Total daily and weekly compensation paid to each employee;
 - (f) The daily and weekly hours worked by each employee;
 - (g) Apprenticeship and Training Agreements;
 - (h) Any deductions, rebates or refunds taken from each employee's total compensation and actual wages paid;
 - (i) Any payroll and other such records pertaining to the employment of employees upon a public work.
- (3) When apprentices and/or trainees are employed on a public works project, the records must clearly distinguish them from other employees.
- (4) When a contractor or subcontractor employs a worker on public works projects and non public works projects during the same work week and the worker is paid a rate of pay which is less than the prevailing wage rate when working on a non public works project, the contractor or subcontractor must separately record the hours worked on the public works projects and those hours worked elsewhere.
- [(5) For all public works contracts subject to ORS 279C.800 to 279C.870 first advertised or solicited on or before January 1, 2008, contractors shall maintain records documenting that the appropriate fee was paid. Such records shall be maintained for a period of two years and shall*

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include but are not limited to:

(a) Contract documents showing the contract price;

(b) Change orders or other adjustments to the final contract price;

(c) Receipts showing amounts paid.]

839-025-0037

Residential Construction Projects

(1)(a) For residential construction projects **as defined in OAR 839-025-0004(24) and** subject to ORS 279C.800 to 279C.870, public agencies shall use federal Davis-Bacon wage rates for residential construction projects unless there is no applicable federal rate for a particular trade or classification on the residential project.

(b) If the applicable federal Davis-Bacon wage rate determination does not include a rate for a particular trade or classification needed on a specific residential construction project, and the project is subject to ORS 279C.800 to 279C.870 but not the federal Davis-Bacon Act, the public agency is required to request a special wage rate, identifying the specific trade or classification, pursuant to OAR 839-025-0007.

(c) The commissioner may consider and approve a residential wage determination for a trade or classification issued by any federal agency within twelve months of the date of any request for a special wage rate pursuant to subsection (b) of this section.

(d) Requests for special wage rate determinations for projects subject to both ORS 279C.800 to 279C.870 and the federal Davis-Bacon Act shall be submitted pursuant to Title 29 CFR, Part 5.5(a)(1)(ii) as amended November 20, 2000.

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(e) Copies of any special federal wage rate determinations requested and subsequent determination(s) issued pursuant to subsection (d) of this section must be provided to the commissioner by the public agency.

(2) Notwithstanding section (1) of this rule, the commissioner, consistent with statutory authority, may survey and issue residential rates.

(3) Requests for special wage rates for residential construction projects pursuant to section (1)(b) of this rule must be submitted to the Bureau of Labor and Industries by the public agency no fewer than fifteen (15) business days prior to the date the specifications for the project are first advertised.

(4) If a public agency fails to request special wage rates for a residential construction project pursuant to section (1)(b) of this rule at least fifteen (15) business days before the date the specifications for the project are first advertised for the project, the Prevailing Wage Rates for Public Contracts published by the Commissioner of the Bureau of Labor and Industries in effect when the specifications are first advertised shall apply to those trades or classifications for which there is no applicable federal residential rate.

(5) The federal Davis-Bacon wage rates apply to residential construction projects subject to ORS 279C.800 to 279C.870 regardless of whether federal law requires Davis-Bacon rates on the project.

(6) Notwithstanding any other provision of this rule, unless otherwise exempt, under no circumstances may a rate less than the minimum wage rate required by ORS 653.025 be paid to any worker on a residential construction project subject to ORS 279C.800 to 279C.870.

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839-025-0050

Overtime Wages Computations

(1) As used in this rule "work day" or "day" means **any time period of 24 consecutive hours as determined by the employer** [*a period of 24 consecutive hours beginning with the time the employee regularly starts work*]. The beginning of the work day may be changed **only** if the change is intended to be permanent, **if the change is made in writing** and **if the change** is not designed to evade the overtime requirements of ORS 279C.540. **If an employer does not determine a 24 consecutive hour period, the default 24 consecutive hour period shall be from 12:00 midnight to 11:59 p.m.** For purposes of overtime wages computation, each work day stands alone.

(2) Contractors and subcontractors required by ORS 279C.540 to pay overtime wages shall pay such wages as follows:

(a) Workers must be paid at least time and one-half the hourly rate of pay, excluding fringe benefits, for all hours worked:

(A) On Saturdays;

(B) On the following legal holidays:

(i) Each Sunday;

(ii) New Year's Day on January 1;

(iii) Memorial Day on the last Monday in May;

(iv) Independence Day on July 4;

(v) Labor Day on the first Monday in September;

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(vi) Thanksgiving Day on the fourth Thursday in November;

(vii) Christmas Day on December 25[.];

(C) Over 40 hours in a week; and either

(D) Over eight (8) hours in a day; or

(E) Over 10 hours in a day provided:

(i) The employer has established a work schedule of four consecutive days (Monday through Thursday or Tuesday through Friday) pursuant to OAR 839-025-0034; and

(ii) The employer operates in accordance with this established work schedule.

(b) Where a worker performs work in one or more classifications which provide for one or more hourly rates of pay the worker must be paid, in addition to the straight time hourly earnings for all hours worked, a sum determined by multiplying one half the weighted average of the hourly rates by the number of overtime hours worked pursuant to subsection (a) of this rule[.];

(c) When determining the hourly wage rate for overtime purposes, the amount paid for fringe benefits shall be excluded from the computations. Though the amount paid for fringe benefits must be paid for all hours worked, such amount is not included when determining the overtime rate. For example, a worker who works a five-day work schedule and earns \$15 per hour plus \$3 per hour in fringe benefits and works ten hours in a day is entitled to \$195 (($\$15/\text{hr} \times 8 \text{ hours}$) + ($\$22.50/\text{hr} \times 2 \text{ hours}$) + ($\$3/\text{hr} \times 10 \text{ hours}$) = \$195) for that day.

839-025-0065

Trainees

(1) Trainees will not be permitted to work upon a public works project at less than the prevailing

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rate of wage for the work performed unless they are employed **by a registered training agent pursuant to ORS 660.010(10)** and **are** individually registered in a program which has received prior approval of the U.S. Department of Labor, Bureau of Apprenticeship and Training.

(2) The ratio of trainees to journeymen must not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training.

(3) The contractor or subcontractor will be required to furnish the contracting officer or a representative of the Wage and Hour Division written evidence of the certification of the program, the registration of the trainees, and the ratios and wage rates prescribed in that program.

The contractor or subcontractor may use form **WH-120** for this purpose. Use of this form is optional.

(4) In the event the Apprenticeship and Training Division withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable prevailing rate of wage for the work performed until an acceptable program is approved.

839-025-0080

Liability to Workers

(1) Any contractor or subcontractor or any surety thereof who fails or refuses to pay at least the prevailing wages and fringe benefits as determined by the commissioner or any overtime wages as required by ORS 279C.540 is liable to the workers affected for all the unpaid prevailing wages, including fringe benefits, and unpaid overtime wages.

(2) The contractor or subcontractor or surety thereof, referred to in section (1) of this rule, is also liable to all unpaid workers for an amount equal to the unpaid prevailing wages, including fringe

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benefits, as liquidated damages.

(3) The contractor or subcontractor or surety thereof, referred to in section (1) of this rule, is also liable to all unpaid workers for an amount equal to the unpaid overtime wages as liquidated damages, except that if the unpaid overtime results from willful falsification of payroll records, these liquidated damages shall be twice the amount of unpaid overtime.

(4) Any public agency [*which*]**that** fails to include a provision in the advertisement for bids, the request for bids, the contract specifications, the accepted bid or elsewhere in the contract documents that the contractor and any subcontractor shall comply with ORS 279C.840 shall be jointly and severally liable, with any contractor or subcontractor that had notice of the requirement to comply with ORS 279C.840, to the workers affected for any unpaid minimum wages.

(5) As used in section (4) of this rule, "minimum wages" means the prevailing wage, including fringe benefits, as determined by the commissioner. "Minimum wages" does not mean overtime wages required by ORS 279C.540 nor liquidated damages referred to in sections (2) and (3) of this rule.

(6) When a public works project is subject to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) and a public agency fails to include the state and federal prevailing rates of wage in the specifications for the contract for public works as required under ORS 279C.830(1)(a), or fails to [*include in the specifications information showing which prevailing rate of wage is higher for workers in each trade or occupation in each locality as required under 279C.830(1)(b)*]**provide in the contract that workers on the public works project must be paid not less than the higher of**

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the applicable state or federal prevailing rate of wage as required under ORS

279C.830(1)(d), the public agency is liable to each affected worker for:

(a) The worker's unpaid minimum wages, including fringe benefits, in an amount that equals, for each hour worked, the difference between the applicable higher rate of wage and the lower rate of wage; and

(b) An additional amount, equal to the amount of unpaid minimum wages due under subsection

(a) of this section, as liquidated damages.

839-025-0090

List of Ineligibles

(1) The name of the contractor, subcontractor or other persons and the names of any firm, corporation, partnership or association in which the contractor or subcontractor has a financial interest whom the commissioner has determined to be ineligible to receive public works contracts shall be published on a list of persons ineligible to receive such contracts or subcontracts.

(2) The list of persons ineligible to receive contracts or subcontracts on public works shall be known as the List of Ineligibles. In addition to names referred to in section (1) of this rule, the list shall contain the date the name was placed on the list and the period of time for which the person is ineligible.

(3) The List of Ineligibles shall be published [*quarterly*]and amended as needed at any time.

Such list shall be [*furnished to the public upon request, and*]made available to **the** public [*agencies*]as published or amended.

839-025-0155

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Payment of Prevailing Rate of Wage for the Installation of Art on Public Works Projects

(1) Workers engaged in the installation of art necessary to the structural integrity of the public work, as defined in these rules, must be paid no less than the applicable prevailing rate of wage as determined by the Commissioner.

(2) Workers engaged in the installation of applied art, as defined in these rules, are not required to be paid the prevailing rate of wage when such work is the only work in which the worker is engaged while employed on the public work project. Such work is considered de minimus as defined in these rules.

(3) Any artist [*who meets the definition of an individual in*]**whose primary duties consist of those described in** OAR 839-025-0150([2]**1**)(b) is not required to be paid the prevailing rate of wage, even when the artist is engaged in the installation of art necessary to the structural integrity of the public work when the art is of the artist's own creation.

839-025-0230

Special Circumstances

(1) When a public agency enters into an agreement for construction management services or chooses to act as its own general contractor or construction manager in connection with a public works project subject to ORS 279C.800 to 279C.870, the contract price for purposes of determining whether the project is regulated under the law shall be the sum of all contracts associated with the project or, if the actual sums are not known at the time work begins, the contract price shall be the guaranteed maximum amount for the project or the agency's good faith estimate of the contract price of the project if there is no guaranteed maximum amount.

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(2) When a public agency contracts with a contractor to act as the general manager of a public works project, the contract for general manager services is a public works contract for purposes of these rules and a fee is required just as it is for any other public works contract, since the contract would not have been entered into but for the public works project.

(3) When a public agency acts as its own general contractor and enters into one or several contracts in connection with a public works project subject to ORS 279C.800 to 279C.870, the public agency is required to pay the fee in connection with each contract awarded to each contractor. The fee is required on all contracts, regardless of the contract price of any individual contract, so long as the combined price of all contracts awarded on the project is \$50,000 or more.

(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 public agency or agencies providing public funds for the project shall pay the required fee at the time the public agency or agencies commit(s) to the provision of funds for the project. **The amount of the fee shall be based on the total project amount.** When the amount of the project is not known by the public agency or agencies providing public funds for the project, the public agency or agencies shall pay the required fee pursuant to the provisions of OAR 839-025-0220.

(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 public agency or agencies that will occupy or use the completed project shall pay the required fee when the agency or agencies enter(s) into an agreement to occupy or use the completed project. **The amount of the fee shall**

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be based on the total project amount. When the amount of the project is not known by the public agency or agencies that will occupy or use the completed project, the public agency or agencies shall pay the required fee pursuant to the provisions of OAR 839-025-0220.

(6) When a project is a public works project pursuant to ORS 279C.800(6)(a)(D) and no public agency awards a contract to a contractor for the project, the public agency that owns the land, premise(s), structure(s), or building(s) on which the solar radiation device will be constructed or installed shall pay the required fee at the time the public agency enters into an agreement authorizing the construction or installation of the solar radiation device. **The amount of the fee shall be based on the total project amount. When the amount of the project is not known by the public agency, the public agency shall pay the required fee pursuant to the provisions of OAR 839-025-0220.**

(7) When more than one public agency is required to pay a fee pursuant to section (4) or (5) of this rule, the amount of the fee owed by each public agency shall, if not otherwise previously agreed upon by the agencies, be pro-rated proportionately based on the amount of public funds provided or space occupied or used by each agency.

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.

(2) Civil penalties may be assessed against any contractor, subcontractor or public agency

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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).

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

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

(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);

(f) If a public works project is subject to both ORS 279C.800 to ORS 279C.870 and to the Davis-Bacon Act (40 U.S.C. 3141 et seq.), failure to include a provision in a subcontract that workers must be paid not less than the higher of the applicable state or federal prevailing rate of wage in violation of ORS 279C.830(1)(d);

~~(f)~~**(g)** 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(2);

~~(g)~~**(h)** 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

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project subject to the provisions of 279C.800 to 279C.870;

[(h)]**(i)** 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;

[(i)]**(j)** Failure to file certified statements in violation of ORS 279C.845;

[(j)]**(k)** Filing inaccurate or incomplete certified statements in violation of ORS 279C.845;

[(k)]**(l)** 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;

[(l)]**(m)** Paying the prevailing rate of wage in violation of ORS 279C.840(6);

[(m)]**(n)** Reducing an employee's pay in violation of ORS 279C.840(7);

[(n)]**(o)** Taking action to circumvent the payment of the prevailing wage, other than subsections [(j) and (l)]**(k) and (m)** of this section, in violation of ORS 279C.840(7);

[(o)]**(p)** Failure to submit reports and returns in violation of ORS 279C.815(3);

[(p)]**(q)** Failure to certify the accuracy of reports and returns in violation of ORS 279C.815(3);

[(q)]**(r)** Failure to timely pay the fee required by ORS 279C.825 on public works contracts first advertised or solicited prior to January 1, 2008;

[(r)]**(s)** Receiving a public works contract or subcontract while on the list of ineligibles in violation of ORS 279C.860;

[(s)]**(t)** Awarding a contract to a contractor whose name appears on the list of ineligibles maintained pursuant to ORS 279C.860.

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

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

(a) **Failure to include in the specifications for a public works contract a provision stating the applicable existing prevailing wage rate in violation of ORS 279C.830(1)(a);**

(b) If a public works project is subject to both ORS 279C.800 to ORS 279C.870 and to the Davis-Bacon Act (40 U.S.C. 3141 et seq.), failure to require the contractor to pay the higher of the applicable state prevailing rate of wage or federal prevailing rate of wage to all workers in violation of ORS 279C.830(1)(b);

[(b) Failure to include in the contract specifications a provision stating the applicable existing prevailing wage rate in violation of ORS 279C.830(1);]

*[(a)]***(c)** 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);

(d) If a public works project is subject to both ORS 279C.800 to ORS 279C.870 and to the Davis-Bacon Act (40 U.S.C. 3141 et seq.), failure to include a contract provision stating that workers on public works must be paid not less than the higher of the applicable state prevailing rate of wage or federal prevailing rate of wage in violation of ORS 279C.830(1)(d);

*[(c)]***(e)** 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(2);

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[(d)]**(f)** 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(2)(a);

[(e)]**(g)** 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(2)(b);

[(f)]**(h)** Failure to notify the commissioner when a contract is awarded in violation of ORS 279C.835;

[(g)]**(i)** Dividing a public works project in violation of ORS 279C.827;

[(h)]**(j)** Failure to include a copy of the disclosure of first-tier subcontractors with the Notice of Award in violation of ORS 279C.835;

[(i)]**(k)** 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)]**(l)** Failure to timely pay the fee required in violation of ORS 279C.825;

[(k)]**(m)** Awarding a contract to a contractor whose name appears on the list of ineligibles maintained pursuant to ORS 279C.860;

[(l)]**(n)** 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 for public

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works to which the contracting agency is a party or of which the contracting agency is a beneficiary in violation of ORS 279C.829.

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