

OREGON PUBLIC WORKS CHECKLIST

| TO DO | CONSIDER |
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| 1. Claimant's name: | Call Secretary of State ((503) 986-2200; www.sos.state.or.us) and Construction Contractors Board (CCB) ((503) 378-4621, ext 4900; www.ccb.state.or.us). Review ORS 60.094 (corporate name), 648.007 (assumed business names), 671.575 (prohibition on unlicensed landscaping business filing lien), and 701.131 (prohibits unlicensed contractor filing claims). |
| 2. Name of person/entity who/which employed client: | See 1 above. Also review contracts, invoices, credit applications, and payments. |
| 3. Name of contractor who acquired the bond (i.e. prime/general contractor): | Not all public works contracts require a bond. Confirm one exists and is correct. Use Oregon Public Records Request to obtain. |
| 4. Name of public body which let the contract (State agency, county, city, etc.): | If state agency, do not simply insert location of project. |
| 5. All names confirmed with: Secretary of State <input type="checkbox"/> CCB <input type="checkbox"/> | Is the information the same? Are there any licensing issues? |
| 6. Type of construction: | See 3 above. |
| 7. Claimant provided: Labor <input type="checkbox"/> Equipment <input type="checkbox"/> Materials <input type="checkbox"/> Services <input type="checkbox"/> | Review <u>Multnomah Co. v. United States</u> , 87 Or. 198 (1918). Equipment is included in definition of "Labor or Materials." |

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| <p>8. Date of claimant's bid/contract:</p> <p>Date claimant started working:</p> | <p>See 1 above for licensing issues.</p> |
| <p>9. Copy of bond obtained? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> | <p>See 3 above.</p> |
| <p>10. Is bond correct? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If no, concerns:</p> | <p>Under ORS 279C.625, the public body that let the contract <u>and the officer(s) authorizing the contract are jointly and severally liable</u> to parties who should have been protected by the Little Miller Act bond if one was required and not provided. A tort claim notice under ORS 30.260-30.300 may be provided by parties who should have been protected parties under the bond.</p> |
| <p>11. Date project completed:</p> | |
| <p>12. Claimant's last day of work on the project:</p> | <p>Unlike lien statutes, corrective work may count as a last day. <u>See City of Dalles v. D'Electric Co., Inc., 105 Or.App. 46 (1990).</u></p> |
| <p>13. 180 days: from Project's completion is: _____ from Client's last day is: _____</p> | <p>Do not rely on ORCP 10 or ORS 174.120 in counting days. The time period may not be extended if the last day falls on a Saturday, Sunday, or other legal holiday.</p> <p>*Note that if the contract was <u>first advertised or, if not advertised, entered into before May 26, 2009</u> the old <u>120 day</u> deadline applies.</p> |

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| <p>14. Original Contract Amount: \$ _____</p> <p>Minus payments of:</p> <p>Change order(s): _____</p> <p>Backcharges: _____</p> <p>Extra Work Order: _____</p> | <p>Review dates, amounts and applications of payments and bond waivers/releases. A general form of notice is provided in the statutes. ORS 279C.605(3).</p> |
| <p>15. Total remaining owing: \$ _____ including:</p> <p>\$ _____ for labor</p> <p>\$ _____ for materials</p> <p>\$ _____ for equipment</p> <p>\$ _____ for services</p> | |
| <p>16. Client is entitled to interest of ____% per annum beginning:</p> | <p>Interest is generally available on bond claims from the date the charges become due. <u>Konen Const. Co. v. U.S. Fid. & Guar. Co.</u>, 234 Or. 554 (1963).</p> |
| <p>17. Project Name and Address:</p> | |
| <p>18. Who will sign the bond claim:</p> <p>_____</p> <p>Title: _____</p> | |

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| <p>19. Date claim received by contractor: _____</p> | <p>The notice must be sent by registered or certified mail or hand delivered by the 180 day deadline (See 13 above). ORS 279C.605(1). It is unclear whether the notice which is mailed but not physically <u>received</u> by the contractor and public body within the 180 day period would be timely. However, there are decisions under the comparable Miller Act which hold that the notice must be <u>physically received</u> within that period. <u>Pepper Burns Insulation, Inc. v. Arico Corp.</u>, 970 F2d 1340 (4th Cir. 1992). Thus, the claimant should make sure that the notice is physically received by the contractor and public body by the 180th day.</p> |
| <p>20. Date claim received by public body: _____</p> | <p>The statute does not specify “who” at the contracting agency is supposed to receive the notice. By definition, the “contracting agency” includes, but is not limited to, the Director of the Oregon Department of Administrative Services and any person authorized by a contracting agency to conduct a procurement on the contracting agency’s behalf.” <u>See</u> ORS 279A.010(1)(b). The legislative history of prior statutes suggests that it is incumbent upon the agency to route the notice to the appropriate person after it is received. Nonetheless, to avoid any question on this issue it is suggested that separate notices to the state agency be directed to: (1). <u>The name of the agency which let the contract (CAUTION!! This might not be where the work is being done)</u>; (2). The state agency % the project manager; and (3). The state agency % the agency's clerk, auditor, director or manager.</p> |

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| 21. Date claim received by surety: _____ | Notice to the surety is not mandated to perfect a claim, but providing the notice may commence the six month time period for the recovery of attorney fees against the surety. ORS 742.061. |
| 22. Date claim received by customer: _____ | Note: If bankruptcy is filed, consider whether customer is required to receive a notice. |
| 23. Date complaint filed: _____ | The complaint on the bond under Oregon's Little Miller Act must be filed no later than two years after the claimant's last day on the project (not based on the claim date). ORS 279C.610(3). |