

OREGON PUBLIC WORKS CHECKLIST

TO DO	CONSIDER
1. Claimant's name:	<p>Research names using on-line records of Secretary of State and Construction Contractors Board ("CCB").</p> <p>Also, consider whether a license, endorsement, or registration is required for remedy. See e.g. ORS 701.131 (contractor license and endorsements); ORS 479.670 (electrical contractor license); ORS 447.070 (plumbing contractor license); ORS 480.640 (boiler/pressure vessel license); ORS 671.220(3) (architect registration); and ORS 671.575 (Landscape contracting business license). Information may be found online (e.g. websites of CCB, Building Codes Division, and Board of Architect Examiners).</p>
2. Name of person/entity that employed claimant:	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. See ORS 279C.380(5). Confirm payment bond exists and obtain a copy. If necessary, use Oregon Public Records Request to obtain.
4. Name of contracting agency that let contract: (State agency, county, city, etc.)	"Contracting agency" means a public body authorized by law to conduct a procurement, including but 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. See ORS 279A.010(1)(b) (applicable to ORS Chapter 279C).
5. All names confirmed with: <div style="text-align: right; margin-right: 50px;">Secretary of State <input type="checkbox"/></div> <div style="text-align: right; margin-right: 50px;">CCB <input type="checkbox"/></div>	Is the information the same? Are there any licensing issues?
6. Type of construction:	See 3 above.
7. Claimant provided: Labor <input type="checkbox"/> <div style="text-align: right; margin-right: 50px;">Materials <input type="checkbox"/></div> <div style="text-align: right; margin-right: 50px;">Rental Equipment <input type="checkbox"/></div> <div style="text-align: right; margin-right: 50px;">Professional Services <input type="checkbox"/></div>	Review <i>Multnomah Co. v. United States</i> , 87 Or 198 (1918). Equipment is included in definition of "Labor or Materials."

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8. Date of claimant's bid/contract: Date claimant started working:	
9. Copy of bond obtained: No <input type="checkbox"/> Yes <input type="checkbox"/>	See 3 above.
10. Is bond correct: No <input type="checkbox"/> Yes <input type="checkbox"/> If no, concerns:	Under ORS 279C.625 the contracting agency 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. Parties who should have been protected parties under the bond should send a tort claim notice and otherwise comply with the Oregon Tort Claims Act (ORS 30.260 - 30.300) in the event it applies. See e.g. <i>Jenkins v. Portland Hous. Auth., Corp.</i> , 260 Or. App. 26 <i>cert denied</i> 355 Or. 380 (2014) (some statutory claims are subject to Oregon Tort Claims Act).
11. Date project completed:	
12. Claimant's last day of work on the project:	Unlike lien statutes, corrective work may count as a last day. <i>City of The Dalles, Or. ex rel. Taylor Elec. Supply, Inc. v. D'Lectric Co., Inc.</i> , 105 Or App 46, 52, 803 P2d 771 (1990), rev den, 311 Or 261 (1991) (construing former ORS 279.526 (1999)). See also <i>State ex rel Robert Warren Trucking, LLC v. Smith & Smith Excavation, Inc.</i> , 280 Or App 778-779 and n.8 (2016) (noting statute construed is similar to former ORS 279.526 (1999)).

OREGON PUBLIC WORKS CHECKLIST

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<p>13. 180 days: from Project's completion is: _____ from Claimant's last day is: _____</p>	<p>Deadline to make an Oregon Little Miller Act bond claim is no later than 180 days after the day the person last provided labor or furnished materials. ORS 279C.605. 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. Note the language of some bonds may contain different deadlines and notice requirements. If the payment bond was required by ORS Chapter 279C, some case law suggests the surety may not be entitled to rely on more restrictive requirements. See OSB CLE CONSTRUCTION LAW (2011 REV.) CHAPTER 10, THE SURETY RELATIONSHIP AND PAYMENT AND PERFORMANCE BONDS.</p>
<p>14. Original contract amount:\$ _____ Less payments of: _____ Change order(s): _____ Back charges: _____ Extra work order(s): _____</p>	<p>Review dates, amounts and applications of payments and wording of bond waivers/releases.</p>
<p>15. Total remaining owing:\$ _____ including: \$ _____ for labor \$ _____ for materials \$ _____ for rental equipment \$ _____ for professional services</p>	
<p>16. Claimant is entitled to interest of _____ per annum starting _____</p>	<p>Interest is generally available on bond claims from the date the charges become due. <i>Konen Const. Co. v. U.S. Fid. & Guar. Co.</i>, 234 Or 554 (1963).</p>
<p>17. Project Name and Address:</p>	<p>Consider obtaining a copy of cover page to the public contract that required the bond for information that identifies the project.</p>

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<p>18. Who will sign the bond claim:</p> <p>_____</p> <p>Title: _____</p>	<p>A general form of notice is provided by ORS 279C.605.</p>
<p>19. Date claim received by contractor: _____</p> <p>_____</p>	<p>The notice of claim must be “sent by registered or certified mail or hand delivered no later than 180 calendar days after the day the person last provided labor or furnished materials”(See 13 above). ORS 279C.605. It is unclear whether the notice which is <u>mailed</u> but not physically <u>received</u> by the contractor and contacting agency within the 180-day period would be timely. However, there are decisions under the comparable federal Miller Act which hold that the notice must be physically received within that period. <i>Pepper Burns Insulation, Inc. v. Arico Corp.</i>, 970 F2d 1340 (4th Cir 1992). Thus, the claimant should make sure that the notice is physically received by the contractor and contracting agency by the 180th day.</p>
<p>20. Date claim received by contracting agency: _____</p> <p>_____</p>	<p>The Oregon Little Miller Act does not specify who at the state agency is supposed to receive the notice. While some state agencies may attempt to adopt specific administrative rules to specify exactly who should receive the notice, the legislative history of the bill suggests that it is incumbent upon the state 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) The name of the state agency that let the contract (CAUTION! This might not be the same agency for whom the work is being performed); (2) The state agency c/o the project manager; and (3) The state agency c/o the agency’s clerk, auditor, director or manager.</p>

OREGON PUBLIC WORKS CHECKLIST

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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 (6) month time period for the recovery of attorney fees against the surety. See ORS 742.061; <i>See also Dockins v. State Farm Ins. Co.</i> , 329 Or 20 (1999). Claimant may have to provide additional information to satisfy “proof of loss” requirement. See e.g. <i>Zimmerman v. Allstate Property And Casualty Insurance Co.</i> , 354 Or. 271, 280-281 (2013) (Discussing “proof of loss” as a term of art and substantial compliance with requirement).
22. Date claim received by customer: _____ _____	
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.
24. Settlement: Require entry of stipulated judgment to reserve ability to recover attorney fees.	Recovery of attorney fees under ORS 742.061 requires entry of a judgment for recovery of attorney fees. See <i>Triangle Holdings, II, LLC v. Stewart Title Guaranty Company</i> , 266 Or App 531 (2014).

COURTESY OF DOUGLAS GALLAGHER LAW OFFICE PC
(Thank you to Alan Mitchell (retired) for his substantial contribution to earlier editions.)

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