

CONCEPT DRAFT, ONLY FOR DISCUSSION – 3rd RAC Meeting, Thursday, 4-21-2022 – Only For Receiving Comments/Input On Draft Concepts Discussed Earlier With RAC Members – Not An Indication Of The Final Approved Form Of The Rules – Attorney General To Develop The Final Form Of These Rules]

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[Chapter 137](#)

[Division 49](#)

[MODEL RULES GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES](#)

137-049-0120

Definitions

(1) "Certified Firm" means a business concern that possesses one or more current, valid certification(s) as a Disadvantaged Business Enterprise, Minority-Owned Business, Woman-Owned Business, Business That A Service-Disabled Veterans Owns, or Emerging Small Business by the Oregon Certification Office for Business Inclusion and Diversity, pursuant to ORS 200.055.

Commented [UB1]: **NOTE** Red-lined revisions show rough draft edits to the current DOJ temporary rule.

(2) "Conduct Disqualification" means a Disqualification under ORS 279C.440.

(3) "Disqualification" means the preclusion of a Person from contracting with a Contracting Agency for a period of time in accordance with OAR 137-049-0370.

Commented [UB2]: **NOTE** The terms capitalized in this rule are capitalized under the general protocol described in OAR 137-046-0110, or due to the fact the phrase (e.g. Oregon Certification Office for Business Inclusion and Diversity) involves a proper name.

(4) "Emergency" means, only for purposes of the Diesel Engine Requirements rule ~~OAR 137-049-0805~~, circumstances that could not have been reasonably foreseen, and that create a substantial risk of loss, damage, interruption of services, or threat to public health or safety with regard to a Public Improvement Contract.

(5) "Foreign Contractor" means a Contractor that is not domiciled in or registered to do business in the State of Oregon.

(6) "Non-Road Diesel Equipment" means equipment used on the Project Site and in the course of performing the Public Improvement Contract~~in the course of performing a State Contracting Agency? Public Improvement Contract~~, that is powered by a compression ignition diesel engine of 25 horsepower or more and that is not designed primarily to ~~propel a motor vehicle~~ be propelled on public highways.

Commented [UB3]: **NOTE** Clarifications of this definition, consistent with key language in ORS 279C.537.

(7) "Notice" means any of the alternative forms of public announcement of Procurements, ~~as~~ described in OAR 137-049-0210.

(8) "On-Road Dump Truck" means a truck used on the Project Site and in the course of performing the Public Improvement Contract that is powered by a compression ignition diesel engine with a gross vehicle weight rating greater than 26,000 pounds that is designed to transport construction materials such as dirt, asphalt, rock or construction debris, including, but not limited to, a transfer truck or a tractor-trailer combination used exclusively to pull bottom dump, end dump or side dump trailers.

(9) "On-Road Concrete Mixer Truck" means a truck used on the Project Site and in the course of performing the Public Improvement Contract that is powered by a compression ignition diesel engine

with a gross vehicle weight rating greater than 26,000 pounds and that is designed for hauling a concrete mixture.

Commented [UB4]: **NOTE** These 2 truck definitions are based on the DEQ definitions, from the DEQ "Minimum Standards" document.

(108) "Project Site" means, only for purposes of the Diesel Engine Requirements rule, -OAR 137-049-0805, the geographic dimensions of the surface area of the real property on which the Work for a State Contracting Agency? Public Improvement Contract is to be performed, including ~~designated~~ contiguous staging areas and contiguous right-of-way areas designated by the State Contracting Agency for the project.

(11) "Small Business Firm" means, only for purposes of the Diesel Engine Requirements rule, OAR 137-049-0805, an independent business concern that meets the definition of an Emerging Small Business, as that term is defined in ORS 200.005(5), whether the independent business concern possesses a certification from the Oregon Certification Office for Business Inclusion and Diversity, pursuant to ORS 200.055, or does not possess such a certification.

(12) "Specified Projects" means the following projects and Project Sites formally described and established by the Oregon Department of Transportation: The Interstate 5 Rose Quarter Project, the Interstate 205 Abernathy Bridge Project, the Interstate 205 Freeway Widening Project, the State Highway 217 Northbound Project and the State Highway 217 Southbound Project.

(13) "Tier 4 Exhaust Emission Standards" means the Tier 4 compression ignition diesel engine emission standards established by the United States Environmental Protection Agency in 40 CFR Part 89, § 89.112 **[REDACTED] Edition** for Non-Road Diesel Equipment.

Commented [UB5]: **NOTE** Add effective date.

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(14) "Trucking Services" means materials hauling services by On-Road Concrete Mixer Trucks and On-Road Dump Trucks owned and operated by a provider who is not the Contractor that has signed a Public Improvement Contract with the State Contracting Agency involved with the project, who is not a subcontractor of that Contractor, who is not a supplier, vendor or other provider of mere materials delivery services to the Project Site, but who is required to provide a Public Works bond for the project and who is required to be paid the prevailing rate of wage for materials hauling services taking place on the Project Site pursuant to ORS 279C.800 – 279C.870.

Commented [UB6]: **NOTE** VERY rough conceptual draft definition of "Trucking Services," for discussion with the RAC.

(15) "Verified Diesel Oxidation Catalyst" means a diesel oxidation catalyst verified by the United States Environmental Protection Agency on **[REDACTED]** for use on Non-Road Diesel Equipment.

Commented [UB7]: **NOTE** Add effective date.

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(16) "Verified Diesel Particulate Filter" means a diesel particulate filter verified by the United States Environmental Protection Agency on **[REDACTED]** for use on Non-Road Diesel Equipment.

Commented [UB8]: **NOTE** Add effective date.

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(17) "Work" means the furnishing of all services, materials, equipment, labor and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out and completion of all duties and obligations imposed by the Contract.

Statutory/Other Authority: ORS 279A.065; ORS 279C.537

Statutes/Other Implemented: ORS 279A.065, OL 2015, ch 565 (HB 3303), ORS 279C.537 & ORS 200.005 - 200.055

History:

DOJ 2-2022, temporary amend filed 01/03/2022, effective 01/03/2022 through 07/01/2022

DOJ 18-2015, f. 12-31-15, cert. ef. 1-1-16

DOJ 2-2015, f. & cert. ef. 2-3-15

Reverted to DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14

DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05