

This rule is repealed in its entirety.

731-007-0335

Agency Payment for Steel Escalation

[(1) The purpose of this rule is to carry out the provisions of Section 2, Chapter 557, Oregon Laws 2005, as authorized by Section 2, subsection (5).

(2) A Contractor's request for an adjustment of payment under the provisions of this rule must be received by the Department of Transportation (ODOT) prior to January 2, 2010.

(3) This rule applies only to ODOT Public Improvement Contracts executed on or after April 1, 2003 and before October 1, 2005, and that are not eliminated by section (4) of this rule.

(4) This rule does not apply to Public Improvement Contracts that meet all of the following:

(a) The Project is included in the Statewide Transportation Improvement Program;

(b) The Project is partially funded by the Federal Highway Administration; and

(c) The Project is classified as "Local Agency." Such projects are not typically on the State or Federal highway system and all or nearly all matching funds are provided by the Local Agency. The final decision of the applicability of the classification of a project as "Local Agency" will be at the sole discretion of ODOT.

(5) Process:

(a) A Contractor must initiate the request for an adjustment of payment in the format required by ODOT on Form 734-2615. The request must be received by ODOT prior to January 2, 2010.

(b) The Contractor must demonstrate with written contemporaneous documentation that the market price of a steel material charged to the Contractor, on the date the steel material was delivered to the Contractor, was more than 10 percent above the market price of the steel material on the Contractor's original bid quote. The Contractor must demonstrate that the steel material was required either as a contract pay item or as incidental to a contract pay item. The steel material shall have been purchased by and delivered to the Contractor after the original bid quote was made. Materials salvaged by the Contractor would not be eligible for this reimbursement.

(A) The Contractor must itemize and include a total of the amount requested. Example: Invoice Value of Steel - (1.10 X Bid Quote Value of Steel) = Escalation Example: \$125 - (1.10 X \$100) = \$15.

(B) The Contractor must certify under penalty of law for perjury or false swearing that the request is a true statement of the actual costs incurred in the request.

(C) The Contractor must send the request to the ODOT Project Manager.

(D) The Contractor is obligated to respond to a request from ODOT for additional clarification or information. Failure by the Contractor to provide a response in writing within 14 calendar days of receipt of the Project Manager's request is deemed to have waived its right to further review and the request for steel escalation will not be considered preserved.

(c) The Project Manager will, within 45 days of receiving the contractor's request, consider, investigate, and evaluate the Contractor's request and provide a written response to the Contractor. The Project Manager will use the expertise of a statewide central position assigned to review adjustments of payment for steel escalation to provide consistency in ODOT's evaluation and decision on the Contractor's request. The request will be reviewed in its entirety for compliance with Oregon Laws 2005, Ch 557, Section 2 and this rule. During its review, ODOT will verify that the request correlates with an increased cost of steel to ensure the

increase is due to an industry wide market price increase of steel and the increase is not unique to this request. The Project Manager's written response to the Contractor's request will either: (A) Request additional written information or documentation to substantiate the Contractor's request if the Project Manager determines it is needed. The Contractor shall either:

(i) Provide the requested written information to the Project Manager or meet with the Project Manager within 14 calendar days of receiving the request, or as otherwise agreed to by the parties, to present the additional information or documentation, or make other arrangements with the Project Manager to supply that information. Upon receipt of the information, the Project Manager will respond as provided in subsection (c) of this section.

(ii) Provide the Project Manager a written statement that it cannot supply the required information and request the Project Manager issue a decision without the information. Upon receipt of the written statement, the Project Manager will respond as provided in subsection (c) of this section.

(B) Provide the Contractor with the Project Manager's decision. The Project Manager's decision either will agree to the Contractor's request or will deny in full or part the Contractor's request.

(d) The Contractor, within 14 calendar days of receiving the Project Manager's decision, shall do one of the following:

(A) Provide the Project Manager a written acceptance of the decision. See subsection (f) of this section if payment is due.

(B) Provide the Project Manager with a written rejection of the decision. See subsection (e) of this section for resolution process for denials.

(e) Resolution process for Contractor rejection of Project Manager's decision. If the Contractor rejects the Project Manager's decision in section (5)(c)(B) of this rule, the Contractor may request that the Project Manager's decision be escalated to the claim review process established in the Contract with ODOT. The Contractor must notify the ODOT Project Manager within 14 calendar days of issuance of the Project Manager's decision and request the issue be escalated. The Contractor is deemed to have waived its right to further review and the request for steel escalation will not be considered preserved if the Contractor fails to provide the written notice within 14 days of issuance of the Project Managers decision.

(f) Payment. Upon execution of a Change Order ODOT will include such payment on the next scheduled monthly payment for active projects or will issue payment on inactive or closed projects within 30 calendar days. Late payment interest will apply for the number of days above the 45 calendar days allowed in subsection (c) of this section or if ODOT does not make payment within 30 calendar days after the Change Order is executed. The request for adjustment will be considered a claim for payment on the day it is escalated by the Contractor under subsection (e) of this section. Interest, if applicable, will be included in accordance with ORS 279C.