

ODOT Record Keeping Rule

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ODOT's Record Keeping Rule

- Prior Rule:
 - Contractors and subcontractors shall maintain all records in accordance with GAAP and all records necessary to clearly document performance.
 - ODOT may at reasonable times access, inspect, copy, and audit any contractor's or subcontractor's records.
 - Records must be reasonably accessible for 3 years from final payment.

ODOT's Record Keeping Rule

- Initially Proposed Rule:
 - Contractor shall maintain records in manner where providing complete copy to ODOT is neither time consuming nor burdensome to ODOT
 - 6 years from final payment
 - ODOT or its representatives get access or copy
 - Reasons to access records:
 - Review claims
 - Collusive bidding
 - Checking wages or safety compliance
 - Auditing
 - Checking qualifications

ODOT's Record Keeping Rule

- Initially Proposed Rule:
 - “Contractor” includes:
 - Subcontractors
 - Suppliers (Concrete, Aggregate, Steel)
 - Related Entities

ODOT's Record Keeping Rule

- Initial Definition of Related Entities:
 - Entity where 10% or more owned by Contractor
 - Entity that owns 10% or more of Contractor
 - Entity where 10% or more of entity and Contractor are owned by a common entity or relatives

ODOT's Record Keeping Rule

- Primary Negotiation Points:
 - Types of documents kept and maintained
 - Who must keep documents
 - Related entities
 - Time (to keep and produce)
 - Who may request or access
 - Claim waiver provisions
 - Confidentiality
 - Termination for default
 - Bidding and award considerations

ODOT's New Rule

- List of Required Documents
 - Job Cost Report with Monthly Totals
 - Quotes, invoices, subcontracts, purchase orders
 - Equipment used on project
 - Depreciation Records
 - General Ledger
 - Trial Balance
 - Financial Statements
 - Bid Worksheets/Estimates

ODOT's New Rule

- Must keep & maintain for 3 years
- Responsible for keeping your own records
- No dispute or claim – ODOT must pay
- Must designate “Confidential” & explain

ODOT's New Rule

- Related Entities:
 - Entity that furnishes any goods or services in fulfillment of any obligation of Contractor
 - Entity where 10% or more owned by Contractor
 - Entity that owns 10% or more of Contractor

ODOT's New Rule

- Authority to request:
 - **Project Manager:** Project records to review dispute or claim and performance issues
 - **ODOT CAE:** All records
 - Dispute or Claim
 - Performance issues
 - General auditing
 - Checking for collusive bidding
 - Reviewing qualifications

ODOT's New Rule

- ODOT will pay copy costs to produce if request not because of dispute or claim
 - Amount equal to rates for public records requests (OAR 731-001-0025)

ODOT's New Spec

- Subcontracts must reference 00170.07
- Termination for Default 00180.90
- Responsible for keeping your own records
- Additional financial statements
- ODOT may consider record keeping history:
 - Bidding & Award
- Detailed claim waiver provisions

ODOT's New Spec

New Claims Procedure 00199.30

- Must comply with 00170.07
- If “material and necessary” ***portions*** of claim “waived and irrevocably dismissed”
- Waiver cannot occur until Step 2

ODOT's New Spec

New Claims Procedure 00199.30

- CAE and/or CE may decide claim not waived even though not all records provided
- If waiver:
 - Contractor may appeal to Const. Eng.
 - Contractor may appeal Const. Eng. to Director

ODOT's New Spec

New Claims Procedure 00199.30

- Director's decision = final determination
- Contractor has 5-day opportunity to provide records after Director's decision to avoid waiver
- Appeal of Director's decision to court under Administrative Procedures Act