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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DOJ 2-2022
CHAPTER 137
DEPARTMENT OF JUSTICE

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& LEGISLATIVE COUNSEL

FILING CAPTION: Definitions Rule

EFFECTIVE DATE: 01/03/2022 THROUGH 07/01/2022

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NEED FOR THE RULE(S):

The amendments to OAR 137-049-0120 are needed to include defined terms that are used in the new diesel engine requirements rule, OAR 137-049-0805.

JUSTIFICATION OF TEMPORARY FILING:

The Temporary Filing for this rule is needed for the following reasons:

(1) Without this 137-049-0805 rule and the amendments to 137-049-0120, contractors, subcontractors and other suppliers would be very adversely impacted and prejudiced by having to meet the more rigid and demanding requirements of the primary statutory diesel engine requirements in ORS 279C.537(2) and (3). Those contractors, subcontractors and suppliers would incur very substantial expense in purchasing compliant non-road diesel equipment, as well as all of the on-road diesel engine powered trucks used by those contractors, subcontractors and suppliers on qualifying public improvement projects---or they might not be able to afford compliant non-road diesel equipment and on-road diesel engine powered trucks at all, and would thereby not be able to participate in the projects.
(2) The additional costs incurred by contractors, subcontractors and suppliers to meet the basic statutory standard would be passed on to State Contracting Agencies, through the compensation payments being made by State Contracting Agencies under the qualifying public improvement contracts, thereby increasing the cost of the qualifying projects.
(3) Furthermore, without the exemptions included in the rule, contractors that are certified under ORS 200.055, as disadvantaged business enterprises, minority-owned businesses, women-owned businesses, businesses owned by service-disabled veterans or emerging small businesses would be disproportionately impacted and prejudiced by the basic 80% compliance standard of ORS 279C.537(2) and (3).

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

AMEND: 137-049-0120

RULE TITLE: Definitions

RULE SUMMARY: The amendments to OAR 137-049-0120 establish new defined terms used in OAR 137-049-0805, pertaining to new diesel engine requirements.

RULE TEXT:

(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 Service-Disabled Veterans Own or Emerging Small Business by the Oregon Certification Office for Business Inclusion and Diversity, pursuant to ORS 200.055.

(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.

(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. See OAR 137-049-0480.

(6) “Nonroad Diesel Equipment” means equipment used in the course of performing a State Contracting Agency? Public Improvement Contract, powered by a compression ignition diesel engine of 25 horsepower or more that is not designed primarily to propel a motor vehicle on public highways.

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

(8) “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.

(9) “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.

(10) “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 89.112 for Non-Road Diesel Equipment.

(11) “Verified Diesel Oxidation Catalyst” means a diesel oxidation catalyst verified by the United States Environmental Protection Agency for use on Non-Road Diesel Equipment.

(12) “Verified Diesel Particulate Filter” means a diesel particulate filter verified by the United States Environmental Protection Agency for use on Non-Road Diesel Equipment.

(13) “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

STATUTES/OTHER IMPLEMENTED: ORS 279A.065, OL 2015, ch 565 (HB 3303), ORS 279C.537, ORS 200.005 - 200.055