



CITY OF BEND

QUALIFIED CONTRACTOR POLICY

Policy No. 2023-7

Bend Code Chapter 1.30.005 provides for ‘City Manager Authority to Adopt Administrative Regulations, Policies and Guidelines.’ All regulations, policies and guidelines adopted by the City Manager shall be consistent with the City of Bend Charter, the Bend Code, and council ordinances.

The following policy conforms to the above stated standards.

Authorized by City Manager:

DocuSigned by:
Eric King
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Eric King, City Manager

Dated: 6/15/2023

Reviewed by Legal Counsel:

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Ian M. Leitheiser
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Ian Leitheiser, Assistant City Attorney

Dated: 6/15/2023

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I. PURPOSE

The purpose of this policy is to ensure that work performed in City right-of-way (“ROW”) or property owned or controlled by the City or subject to a PFIA or similar pre-dedication agreement is done by qualified contractors as required by Bend Municipal Code Section (“BMC”) 3.40.020(E). Qualification is necessary to protect public infrastructure systems that serve the residences, businesses, and community members of Bend. Contractors must obtain a Qualified Contractor License (“QCL”) to be placed on the list of qualified contractors that are approved to perform work in the ROW and maintain their license to remain on the list.

This policy is in addition to, and not in lieu of, any other requirement of applicable law, including the [Bend Municipal Code](#) and the [Standards and Specifications](#).

II. POLICY

Work in the City ROW or property owned and controlled by the City or subject to a PFIA or similar pre-dedication agreement may be performed only by contractors with an active QCL. The City, at its discretion and upon review of required qualifications, may grant a QCL if a contractor and/or applicant provides information that the contractor is responsible and has sufficient experience, knowledge, skill and resources to properly perform work in rights-of-way. To be eligible to receive a QCL, applicants must demonstrate compliance with BMC 3.40.020 as well maintaining the minimum resource requirements:

1. Bonding as required by this Policy and BMC 3.40.020
2. Insurance and indemnification as required by this Policy and BMC 3.40.020
3. Active City of Bend Business Registration
4. Active Oregon Construction Contractors Board (“CCB”) License, if required by the State of Oregon
5. Active Oregon Business Registry Number

Contractor experience, knowledge, and skill will be evaluated based on the following factors:

1. Prior experience – A complete license application includes a Documentation of Work Experience submittal item to demonstrate prior experience that is germane to the work type(s) being applied for. Contractors and/or applicants must provide specific information regarding cost, duration of project, number of years of experience performing such work, their role/responsibility on all projects and contact information for project references.

- a. Work types requiring a \$100,000 bonding capacity minimum:

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- i. Contractor and/or applicant must submit references for at least five projects of a similar nature to the work type being applied for.
 - b. Work types that do not require a bonding capacity minimum:
 - i. Contractor and/or applicant must submit references for at least three projects of a similar nature to the work type being applied for.
2. Proof of a satisfactory safety record – Contractors and/or applicants with employees must submit documentation of their experience modification rate (EMR) or another industry standard form of measurement with their license application to demonstrate their safety record.
 - a. Contractors with an EMR > 1.0 must provide additional information about the claims that increased the rate and may be required to provide information about changes they've implemented to improve their safety record.
 - b. Sole-proprietors and/or contractors without employees are not required to submit documentation of an EMR, but they must submit a statement to that effect in place of the EMR documentation requirement.
3. Qualified Contractor Acknowledgement Form – This form is required to be submitted with the license application. Contractors and/or applicants must attest by signature that they understand the City of Bend requirements to:
 - a. Understand, meet and follow the City of Bend Standards and Specifications
 - b. Meet project timelines and communicate any project delays to the Private Development Engineering Division as soon as possible
 - c. Perform their work with minimal disruption to the community
 - d. Provide factual and accurate information in their license application
 - e. Assume all risks associated with use of the ROW; specifically to indemnify, pay and hold the City of Bend harmless from any liability for loss of any kind according to BMC Chapter 3.10.010(F)

The Assistant City Engineer reserves the right to approve or deny license applications in their sole discretion consistent with the criteria above, but may deviate as reasonably necessary for any license.

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III. WORK TYPES

Work in the ROW will be divided into types of work. Contractors and/or applicants must meet the minimum requirements for the work types they desire to be licensed for. Contractors and/or applicants shall only apply for work types that they will perform themselves. Work types should not be applied for by the applicant if they are contracting that work type out to other parties.

- Art Installation & Restoration
- Asphalt (\$100,000 Bonding Capacity Min.)*
- Asphalt Grinding/Cold Plane*
- Blasting (\$100,000 Bonding Capacity Min.)*
- Boring (\$100,000 Bonding Capacity Min.)*
- Concrete
- Concrete Sewer Taps*
- Concrete Supplier (Must provide Mix Designs)*
- Curb Sawing
- Electrical-Signals included
- Excavation (Grading, Pipe Laying, Subgrade)*
- Franchise
- Landscaping (Irrigation included)
- Sawcutting*
- Sewer Laterals*
- Sewer Main (\$100,000 Bonding Capacity Min.)*
- Sewer Taps*
- Signs
- Stormwater*
- Striping
- Traffic Control (Must provide proof of Oregon Flagger Certification for all staff who will be flagging in Bend city limits and a Traffic Control Supervisor Certification)
- Tree Cutting / Removal
- Vacuum Sewer*
- Water Laterals
- Water Main (\$100,000 Bonding Capacity Min.)
- Water Taps

*Pollution insurance coverage is required for these work types.

IV. QUALIFIED CONTRACTOR LICENSE REQUIREMENTS

A. Required Application, Fees & Timeframes. QCL applications must be accompanied by the application fee as set by the [City of Bend Fee Schedule](#). The license renewal application and fee are due on or before December 31st of each calendar year to extend the license into the following year. If applications and fees are not submitted within

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the required timeframes, then the license will become inactive, the contractor will be removed from the Qualified Contractors List and they will not be able to perform work in the ROW until they have obtained an active license. New applications may be submitted at any time during the calendar year but will only be valid until December 31st of the calendar year in which the applicant applies.

A complete QCL application includes the application fee payment and:

1. An active City of Bend Business Registration number
2. An active Oregon Business Registry number
3. An active Oregon CCB License number, if required by the State of Oregon
4. Bonding Capability Letter, if required
5. Proof of a Satisfactory Safety Record or a statement that they are a sole-proprietor or do not have any employees
6. Insurance Certificate and Additional Insured Endorsement
7. Documentation of Work Experience Form
8. Qualified Contractor Acknowledgement Form

B. Incomplete Applications. If a QCL application does not include all required materials, the application will be considered incomplete and the City will notify the applicant from the Online Permit Center to explain the information required. If the applicant provides the missing, required information within 30 days of the date of the notice, the application will be reviewed. If the applicant does not provide the required information, the application will be deemed withdrawn and the City will refund the application fee at the rate set forth in the City's fee schedule.

C. Requirements for Continued Eligibility. Contractors shall maintain all required licenses, registrations, insurance, and any required bonding for continued eligibility. Contractors and/or applicants may update their application at any time during the calendar year if circumstances within their business change resulting in a change to their qualification status. There is no fee to update license information.

D. Bonding Requirements. BMC Chapter 3.40.010(C) states the following:

“The City may require the applicant to provide a performance bond or equivalent security in an amount sufficient to protect and ensure completion of the work and restoration of the right-of-way.”

Bonding may be required on all major infrastructure improvements exceeding \$100,000 in estimated engineering construction costs. Contractors and/or applicants are required to

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submit a bonding capacity letter in their QCL application. This requirement may be waived for the following work types:

- Art Installation & Restoration
- Concrete Suppliers
- Landscaping

Security shall meet the requirements of [ORS 279C.380\(1\)\(a\)](#) and be subject to any City conditions and City approval.

E. Indemnification. Contractors and/or applicants assume all risks associated with use of the right-of-way; specifically, to indemnify, pay and hold the City of Bend harmless from any liability for loss of any kind according to BMC Chapter 3.40.010(F):

“The applicant must agree to indemnify the City as to liability of any kind resulting from or in connection with the permitted activities. The permittee is responsible for injury to any person or property resulting from the permitted excavation, construction, or related work.”

F. Insurance Requirements. All contractors and/or applicants shall provide proof of the following coverages with QCL application*:

1. Commercial General Liability Insurance with minimum coverage in effect of \$2,000,000 per incident, claim or occurrence and \$2,000,000 in aggregate. The policy shall include coverage for personal injury, bodily injury, property damage, and products completed operations. The policy shall be written on an “occurrence” basis. Any policy written on a ‘claims made’ basis may only be done so with the written approval and authorization of the City of Bend and coverage written in this manner shall extend for two years past completion of any work performed under the permit issued.
2. Automobile Liability Insurance with minimum combined single limit of \$2,000,000 covering all owned, non-owned, and hired vehicles. This coverage shall be written in combination with the Commercial General Liability Insurance with separate limits for Commercial Automobile Liability and Commercial General Liability.
3. Workers’ Compensation Insurance as required by ORS Chapter 656 and meeting the minimum requirements therein.**

The general liability and automobile policies will be primary and non-contributory to any insurance maintained by the City and will name “the City of Bend, its officers, agents, and employees” as additional insureds.

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Pollution Insurance. The following work types shall also provide pollution insurance coverage in an amount not less than \$2,000,000:

- Asphalt (\$100,000 Bonding Capacity Min.)
- Asphalt Grinding/Cold Plane
- Blasting (\$100,000 Bonding Capacity Min.)
- Boring (\$100,000 Bonding Capacity Min.)
- Concrete Sewer Taps
- Concrete Supplier (Must provide Mix Design)
- Excavation (Grading, Pipe Laying, Subgrade)
- Sawcutting
- Sewer Laterals
- Sewer Main (\$100,000 Bonding Capacity Min.)
- Sewer Taps
- Stormwater
- Vacuum Sewer

Contractors and/or applicants agree to maintain continuous coverage while working in the City ROW or property owned and controlled by the City or subject to a PFIA or similar pre-dedication agreement. A certificate of insurance and endorsement shall be submitted as part of the QCL application. Failure to provide a valid certificate of insurance and endorsement will result in denial of an application.

Contractors and/or applicants are required to update all insurance certificates and endorsements upon annual policy renewal. When insurance coverages expire, are terminated, or if the City determines the coverage is or becomes inadequate, licensees will be notified from the Online Permit Center and will be required to submit updated insurance coverage to keep their license active. If renewed insurance coverage is not provided within required timeframes as communicated to the licensee, then the license will be inactivated, and the contractor will be immediately removed from the City's Qualified Contractor List.

**Contractors that have an existing contract with the City of Bend to do work on City property shall refer to the insurance requirements in that contract, which shall supersede the amounts in this policy.*

***Sole-proprietors or contractors that have no employees are not required to carry Worker's Compensation insurance coverage, but they must upload a statement to that effect in place of the Worker's Compensation.*

V. REVIEW & APPROVAL

The QCL application review process will be conducted for the following reasons by the following review panel of City staff:

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- Program Coordinator: Verification of application completion and issuance of review panel decisions to issue or deny a license.
- Administrative Support Specialist: Determines if applicant has an active Bend Business Registration, Oregon Business Registry and Oregon CCB License.
- Assistant City Engineer & Engineering Inspector Lead: Determines eligibility for work types based on safety record, acknowledgement of City regulations and prior experience.
- Risk Manager: Determines if the required insurance coverage has been met.

Complete QCL applications will be reviewed in the order in which they are received. The review panel will conduct reviews within three weeks of the date that an application has been deemed complete. The City reserves the right to approve or deny a QCL application for any reason. The City may use additional information it deems necessary to verify work experience and/or safety record (e.g., Public Utility Commission actions, OSHA safety records, etc.).

VI. VIOLATIONS

A licensee may be removed at any time from the City's Qualified Contractor List for poor performance. Poor performance includes but is not limited to: delays or lateness in work, failure to obtain permits, poor quality work, failure of work to last through warranty periods, lack of proper project management, or other defects in performance.. Each situation will be evaluated given the nature and seriousness of the violation, the work history, and the onsite conditions.

If a licensee is in violation of this Policy or if they fail to comply with any aspect of an approved permit, then the following actions may be taken:

1. Verbal warning (emailed follow-up from the Assistant City Engineer)
2. Formal written warning (from the Assistant City Engineer)
3. Stop work order and suspension of construction privileges. Suspension length to be determined by the City Engineer based upon the severity and/or frequency of the violation.*
4. Civil infraction and penalties under [Bend Municipal Code Chapter 1.40](#).

**A licensee may be removed from the Qualified Contractor List and will not be able to re-apply until a suspension period, as determined by the City Engineer, has lapsed.*

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These steps need not be followed in progression. Depending on the severity of the violation and past history, the City may move to any step that is deemed reasonable and appropriate in relation to the violation.

VII. APPEAL OF QUALIFIED CONTRACTOR LICENSE DETERMINATIONS

A contractor and/or applicant may appeal a decision to deny a QCL application or revoke their QCL. The City of Bend Chief Operations Officer shall be responsible for determining an appeal of a decision to deny, revoke or suspend a QCL.

The appeal must be communicated in writing (mail and/or email) by the affected contractor, and should contain, but is not limited to, the following information:

1. The name, address, and phone number of the person filing the appeal;
2. A description of the problem, detailing specific circumstances and why they are requesting relief from denial or an enforcement action and suggested solution;
3. Evidence to support their appeal; and,
4. A copy of the impacted Qualified Contractor License.

The appeal must be submitted within thirty (30) calendar days of receiving notice of specific applicable enforcement action or a denied application. Appeals may be submitted to the Private Development Engineering Division by email at engineering@bendoregon.gov or by mail to City Hall, ATTN: PDED, 710 NW Wall Street, Bend, OR 97703. Within thirty (30) calendar days of receiving the appeal, the Chief Operations Officer will respond to the appellant in writing either affirming, modifying, or overturning the decision of the license review panel in the interpretation or application of the provisions of this Policy. The Chief Operations Officer's decision is final and there is no further right of appeal.