

FEDERALLY FUNDED “ONLY” CONSTRUCTION CONTRACTS
SPECIAL PROVISIONS DIVISION A - LABOR
May 17, 2006

I. PREAMBLE

It is in the public interest that public buildings and other public works projects be constructed and maintained by the best means and the highest quality of labor reasonably available and that persons working on public works projects be compensated according to the real value of the services they perform.

Therefore, the department shall administer this contract pursuant to the **Federal Davis-Bacon and Related Acts, Required Contract Provisions Federal-Aid Construction Contracts, Form-1273, U.S. Department of Labor’s Field Operations Handbook, MN/DOT’s Standard Specifications for Construction and MN/DOT’s Contract Administration Manual.**

II. DEFINITIONS¹

- A. **Contract**: The written agreement between the contracting authority and the prime contractor setting forth their obligations, including, but not limited to, the performance of the work, the furnishing of labor and materials, the basis of payment, and other requirements contained in the contract documents.
- B. **Contracting Authority**: The political subdivision, governmental body, board, department, commission, or officer making the award and execution of contract as the party of the first part.
- C. **Contractor**: The term “contractor” in these provisions shall include the prime contractor, subcontractor, agent, or other person doing or contracting to do all or part of the work under this contract.
- D. **Department**: The Department of Transportation of the State of Minnesota, or the political subdivision, governmental body, board, commission, office, department, division, or agency constituted for administration of the contract work within its jurisdiction.
- E. **First Tier Subcontractor**: An individual, firm, corporation, or other entity to which the prime contractor sublets part of the contract.
- F. **Independent Truck Owner/Operator (ITO)**: An individual, partnership, or principal stockholder of a corporation who owns or holds a vehicle under lease and who contracts that vehicle and the owner’s services to an entity that provides construction services to a public works project.
- G. **Laborer or Mechanic**: Includes at least those workers whose duties are manual or physical in nature, including those workers who use tools or who are performing the work of the trade, as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees and helpers.
- H. **Plan**: The plan, profiles, typical cross-sections, and supplemental drawings that show the locations, character, dimensions, and details of the work to be done.
- I. **Prime Contractor**: The individual, firm, corporation, or other entity contracting for and undertaking prosecution of the prescribed work; the party of the second part to the contract, acting directly or through a duly authorized representative.
- J. **Project**: The specific section of the highway, the location, or the type of work together with all appurtenances and construction to be performed under the contract.

¹ 29 CFR Part 5.2, MN/DOT Standard Specifications for Construction, Section 1103, Minnesota Rules 5200.1106

- K. **Second Tier Subcontractor**: An individual, firm, corporation, or other entity to which a first tier subcontractor sublets part of the contract.
- L. **Special Provisions**: Additions and revisions to the standard and supplemental specifications covering conditions peculiar to an individual project.
- M. **Specifications**: A general term applied to all directions, provisions, and requirements pertaining to performance of the work.
- N. **Subcontractor**: An individual, firm, corporation, or other entity to which the prime contractor or subcontractor sublets part of the contract.
- O. **Substantially In Place**: Mineral aggregate is deposited on the project site directly or through spreaders where it can be spread from or compacted at the location where it was deposited.
- P. **Trucking Broker**: An individual or business entity, the activities of which include, but are not limited to: contracting to provide trucking services in the construction industry to users of such services, contracting to obtain such services from providers of trucking services, dispatching the providers of the services to do work as required by the users of the services, receiving payment from the users in consideration of the trucking services provided and making payment to the providers for the services.
- Q. **Trucking Firm/Multiple Truck Owner (MTO)**: Any business entity that owns more than one vehicle and hires the vehicles out for services to brokers or contractors on public works projects.
- R. **Work**: The furnishing of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the project and the carrying out of all the duties and obligations imposed by the contract upon the contractor. Also used to indicate the construction required or completed by the contractor.

III. SCOPE – SPECIAL PROVISIONS DIVISION A & CONTRACT

- A. These provisions shall apply to this contract, which is funded in whole or in part with federal funds.²
- B. These provisions shall apply to the prime contractor and all subcontractors contracting to do all or part of the work under this contract.³
- C. The provisions established in this document do not necessarily represent all federal and state regulations. It is the responsibility of the prime contractor to inform itself and all subcontractors about other regulations that may be applicable to this contract.
- D. The prime contractor is responsible to ensure that each subcontractor performing work under this contract receives copies of all required contract provisions.⁴ These provisions shall be incorporated into written subcontracts and must be displayed on the poster board.⁵
- E. The department shall administer this contract in accordance with all applicable federal regulations, along with the plans, specifications and provisions, which are incorporated into and found elsewhere in this contract.
- F. For additional information refer to: www.dot.state.mn.us/const/labor/.

² 29 CFR Part 5.5(a)

³ 29 CFR Part 5.5(a)(6)

⁴ 29 CFR Part 5.5(a)(6)

⁵ 29 CFR Part 5.5(a)(6)

IV. PAYROLLS AND STATEMENTS

- A. Each week, in which work was performed under this contract, all contractors shall submit a payroll statement to the department.⁶ Each statement shall be submitted within seven days after the regular payment date of the payroll period.⁷ Each payroll submitted shall include all employees that performed work under this contract and provide at a minimum the following information:⁸
1. Contractor's name, address, and telephone number.
 2. State project number.
 3. Payroll report number.
 4. Project location.
 5. Workweek ending date.
 6. Name, social security number, and home address for each employee.
 7. Labor classification(s) and/or three-digit code for each employee.
 8. Hourly straight time and overtime wage rates paid to each employee.
 9. Daily and weekly hours worked in each labor classification, including overtime hours for each employee.
 10. Authorized legal deductions for each employee.
 11. Project gross amount, weekly gross amount and net wages paid to each employee.
- B. Payroll records may be submitted in any form provided it includes all the information contained in **Subpart A (1 - 11)** of this section.⁹ However, contractors needing a payroll form may utilize the "front side" of the **U.S. Department of Labor's, WH-347 - Payroll Form**. This form is available by visiting the Labor Compliance website.¹⁰
- C. All payroll records must be accompanied with a completed and signed **Mn/DOT, 21658 - Statement of Compliance Form**; this form shall replace the **WH-347 - Statement of Compliance Form**.¹¹
- D. The prime contractor is responsible for assuring that its payroll records and those of all subcontractors include all employees that performed work under this contract and accurately reflect the hours worked, regular and overtime rates of pay and classification of work performed.¹²
- E. The prime contractor is responsible to maintain all certified payroll records, including those of all subcontractors, throughout the course of a construction project and retain all records for a period of three years after the final contract voucher has been issued.¹³
- F. At the end of each pay period, each contractor shall provide every employee, in writing, an accurate detailed earnings statement.¹⁴
- G. Upon request from the U.S. Department of Labor (U.S. DOL), U.S. Department of Transportation (U.S. DOT), Federal Highway Administration (FHWA) or the Department, the prime contractor shall promptly furnish copies of payroll records for its workers and those

⁶ 29 CFR Part 3.3(b)

⁷ 29 CFR Part 3.4 (a)

⁸ 29 CFR Part 5.5(a)(3)

⁹ 29 CFR Part 5.5(a)(3)

¹⁰ www.dot.state.mn.us/const/labor/

¹¹ 29 CFR Part 5.5(a)(3)(ii)(B)

¹² 29 CFR Part 5.5(a)(6)

¹³ 29 CFR Part 5.5(a)(3)

¹⁴ Minnesota Statute 181.032

of all subcontractors, along with other records, deemed appropriate by the requesting agency to determine compliance with these contract provisions.¹⁵

- H. If, after written notice, the prime contractor fails to submit its payroll reports and certification forms and those of any subcontractor, the department may implement the actions prescribed in section **XVI (NON-COMPLIANCE AND ENFORCEMENT)**.

V. WAGE RATES

- A. The prime contractor is responsible to ensure that its workers and those of all subcontractors are compensated according to the U.S. DOL federal general decision(s) incorporated into and found elsewhere in this contract. All contractors shall pay each worker the required minimum total hourly wage rate for all hours worked on the project and for the appropriate classification of labor.
1. Federal building, heavy and highway general decisions are specific to the county in which the construction work is being performed; a decision does not cross county or state lines.¹⁶ If a project extends into more than one county or state, the applicable wage decision for each county or state shall be incorporated into and found elsewhere in this contract.
- B. Wage rates listed in the federal wage determination(s) contain two components: the hourly basic rate and the fringe rate; together they equal the total prevailing wage rate. A contractor shall compensate a worker at a minimum, a combination of cash and fringe benefits equaling the total prevailing wage rate.¹⁷
- C. The applicable certified wage decision(s) incorporated into and found elsewhere in this contract remain in effect for the life of this contract. The wage decision(s) do not necessarily represent the workforce that can be obtained at the rates certified by the U.S. DOL. It is the responsibility of the prime contractor and any subcontractor to inform themselves about local labor conditions and prospective changes or adjustments to the wage rates. No increase in this contract price shall be allowed or authorized due to wage rates that exceed those incorporated into this contract.
- D. From the time a worker is required to report for duty at the project site until the worker is allowed to leave the site, no deductions shall be made from the worker's hours for any delays of less than twenty consecutive minutes.¹⁸

VI. BONA FIDE FRINGE BENEFITS

- A. A "funded" fringe benefit plan is one that allows the contractor to make irrevocable contributions on behalf of an employee to a financially responsible trustee, third person, fund, plan or program, without prior approval from the U.S. Department of Labor. Types of "funded" fringe benefits may include, but are not limited to: pension, health and life insurance.¹⁹
- B. An "unfunded" fringe benefit plan or program is one that allows the contractor to furnish an in-house benefit on behalf of an employee. The cost to provide the benefit is funded from the contractor's general assets rather than funded by contributions made to a trustee, third person, fund, plan or program. Types of "unfunded" fringe benefits may include, but are not limited to: holiday plans, vacation plans and sick plans.²⁰

¹⁵ 29 CFR Part 5.5(a)(3)(iii)

¹⁶ 29 CFR Part 1.7(a)

¹⁷ 29 CFR Part 5.5(a)(1)(i)

¹⁸ 29 CFR Parts 785.14, 785.15, 785.17 and 785.18

¹⁹ 29 CFR Parts 5.26 and 5.27

²⁰ 29 CFR Part 5.28

- C. Credit toward the total prevailing wage rate shall be determined for each individual employee and is allowed for bona fide fringe benefits that:²¹
1. include contributions irrevocably made by a contractor on behalf of an employee to a financially responsible trustee, third person, fund, plan, or program;
 2. are legally enforceable;
 3. have been communicated in writing to the employee; and
 4. are made available to the employee once he/she has met all eligibility requirements.
- D. No credit shall be allowed for benefits required by federal, state or local law, such as: worker's compensation, unemployment compensation, and social security contributions.²²
- E. Upon request from the U.S. DOL, Minnesota Department of Labor and Industry (MN/DLI) or the Department, the prime contractor shall promptly furnish copies of fringe benefit records for its workers and those of all subcontractors, along with other records, deemed appropriate by the requesting agency to determine compliance with these contract provisions.²³
- F. In addition to the requirements set forth in **Subpart C** of this section, it is the responsibility of the prime contractor and any subcontractor to inform themselves about other federal and state fringe benefit regulations that may be applicable to this contract.
- G. Contractors shall submit a completed and signed **MN/DOT, 21658 - Statement of Compliance Form**, identifying any fringe contributions made on behalf of a worker; this form shall replace the **WH-347 – Statement of Compliance Form**.²⁴ The form must be submitted in accordance with section **IV (PAYROLLS AND STATEMENTS), Subparts A and C**.
- H. Pursuant with *Minnesota Statute 181.74, Subdivision 1*, a contractor that is obligated to deposit fringe benefit contributions on behalf of its employees into a financially responsible trustee, third person, fund, plan, or program and fails to make timely contributions may be guilty of a gross misdemeanor. A contractor found in violation of the above-mentioned statute shall compel the department to take such actions as prescribed in section **XVI, (NON-COMPLIANCE AND ENFORCEMENT)**.

VII. OVERTIME

- A. A contractor shall not permit or require a worker to work in excess of 40 hours per week unless the worker is compensated at a rate not less than 1-1/2 times the basic hourly rate as determined by the United States Secretary of Labor.²⁵
- B. In addition to the requirements set forth in **Subparts A** of this section, it is the responsibility of the prime contractor and any subcontractor to inform themselves about other federal and state overtime regulations that may be applicable to this contract.

VIII. LABOR CLASSIFICATIONS

- A. All contractors shall refer to the federal general decision(s) incorporated into and found elsewhere in this contract to obtain an applicable job classification. Workers must be classified and compensated for the actual work performed regardless of the worker's skill level.²⁶ The prime contractor shall ensure that all contractors adhere to the following requirements:

²¹ 29 CFR Part 5.23

²² 29 CFR Part 5.29(f)

²³ 29 CFR Part 5.5(a)(3)(iii)

²⁴ 29 CFR Part 5.5(a)(3)(ii)(B)

²⁵ 29 CFR Part 5.5(a)(10)(iii)(b)(1)

²⁶ 29 CFR Part 5.5(a)(1)(i)

1. Prior to performing work under this contract, all contractors shall review the federal general decision and complete a **U.S. DOL, SF-1444 - Request for Authorization of Additional Classification and Wage Rate Form** for any labor classification missing from the decision and submit it to the MN/DOT Labor Compliance Unit for processing.²⁷

IX. INDEPENDENT CONTRACTORS, OWNERS, SUPERVISORS AND FOREMAN

- A. An independent contractor performing work as a laborer or mechanic is subject to the contract prevailing wage requirements²⁸ for the classification of work performed and shall adhere to the requirements established in sections **IV (PAYROLLS AND STATEMENTS); V (WAGE RATES); VI (FRINGE BENEFITS); VII (OVERTIME) and VIII (LABOR CLASSIFICATIONS)**. In order to ensure compliance, the department may examine the subcontract agreement to determine if the bid price submitted covers the applicable prevailing wage rate for the number of hours worked, along with other records, deemed appropriate by the department.²⁹
- B. Pursuant with federal regulations, the contract labor provisions do not apply to owners, supervisors or foreman whose duties are primarily associated with bona fide administrative, executive or clerical positions. These individuals are not deemed to be laborers or mechanics.³⁰
 1. However, working owners, supervisors and/or foreman who devote more than 20 percent of their time during a workweek to laborer or mechanic duties are considered laborers or mechanics for the time so spent and are subject to the requirements established in sections **IV (PAYROLLS AND STATEMENTS); V (WAGE RATES); VI (FRINGE BENEFITS); VII (OVERTIME) and VIII (LABOR CLASSIFICATIONS)**.

X. APPRENTICES, TRAINEES AND HELPERS

- A. An apprentice is not subject to the federal wage decision(s) incorporated into and found elsewhere in this contract, provided the contractor can demonstrate compliance with **Subparts (1 - 4)** of this section:³¹
 1. The apprentice is performing the work of his/her trade.
 2. The apprentice is registered with the U.S. DOL Bureau of Apprenticeship and Training or MN/DLI Division of Voluntary Apprenticeship.
 3. The apprentice is compensated according to the rate specified in the program for the level of progress.
 4. The ratio of apprentices to journeyman workers on the project is not greater than the ratio permitted for the contractor's entire work force under the registered program.³²
- B. A trainee is not subject to the federal general decision incorporated into and found elsewhere in this contract, provided the contractor can demonstrate compliance with **Subparts (1 - 4)** of this section:³³
 1. The trainee is performing the work of his/her trade.
 2. The trainee is registered with the U.S. DOL Employment and Training Administration.
 3. The trainee is compensated according to the rate specified in the program for the level of progress.

²⁷ 29 CFR Part 5.5(a)(1)(ii)

²⁸ 29 CFR Part 5.2(o) and Minnesota Statute 177.41

²⁹ Minnesota Statute 177.44, Subdivision 7 and Minnesota Rules 5200.1106, Subpart 10

³⁰ 29 CFR Part 5.2(m)

³¹ 29 CFR Part 5.5(a)(4)(i)

³² 29 CFR Part 5.5(a)(4)(i)

³³ 29 CFR Part 5.5(a)(4)(ii)

4. The ratio of trainees to journeyman workers on the project is not greater than the ratio permitted under the program.
 5. All hours worked in excess of the prescribed hours allowed under the program and/or this contract shall be paid at the journeyman wage rate incorporated into and found elsewhere in this contract.
- C. A helper may perform work only if the helper classification is specified and defined in the federal general decision incorporated into and found elsewhere in this contract or is approved pursuant to the federal conformance procedure.³⁴
- D. If a contractor fails to demonstrate compliance with the terms established in **Subparts A - C** of this section, the contractor shall compensate the worker not less than the applicable total prevailing wage rate for the actual work performed.³⁵

XI. SUBCONTRACTING PART OF THIS CONTRACT³⁶

- A. If the prime contractor intends to sublet any portion of this contract, it shall complete and submit a **MN/DOT, TP-21834, Request To Sublet Form** to the project engineer 10 days prior to the first day of work for any subcontractor.
- B. The prime contractor shall not subcontract any portion of this contract without prior written consent from the project engineer.
- C. The prime contractor's organization shall perform work amounting to not less than 40 percent of the total original contract cost. However, contracts with Disadvantaged Business Enterprise (DBE) or Targeted Group Business (TGB) established goals, or both, the contractor's organization shall perform work amounting to not less than 30 percent of the total original contract cost.
- D. A first tier subcontractor shall not subcontract any portion of its work under this contract unless approved by the prime contractor and the project engineer. In addition, a first tier subcontractor may only subcontract up to 50% of its original subcontract.
- E. A second tier subcontractor shall not subcontract any portion of its work under this contract.
- F. Written consent to subcontract any portion of this contract does not relieve the prime contractor of liabilities and obligations under the contract and bonds.
- G. Contractors shall not subcontract with or purchase materials or services from a debarred or suspended person.³⁷

XII. POSTER BOARDS

- A. The prime contractor shall construct and display a poster board, which contains all required posters, is legible and is accessible to all workers from the first day of work until the project is 100 percent complete.³⁸ The prime contractor is not allowed to place a poster board at an off-site location.
1. The prime contractor can obtain the required posters by contacting MN/DOT at (651) 366-3091. The prime contractor will need to furnish its name, mailing address, the type of posters (federal-aid) and the quantity needed.

³⁴ 29 CFR Part 5.2(n)(4)

³⁵ 29 CFR Part 5.5(a)(4)(i) and 29 CFR Part 5.5(a)(4)(ii)

³⁶ MN/DOT Standard Specifications for Construction, Section 1801

³⁷ Minnesota Statute 161.315, Subdivision 3(3)

³⁸ 29 CFR Part 5.5(a)(1)(i)

XIII. EMPLOYEE INTERVIEWS

- A. At any time the prime contractor shall permit representatives from the U.S. DOL, U.S. DOT, FHWA or the Department to interview its workers and those of any subcontractor during working hours on the project.³⁹

XIV. TRUCKING / OFF-SITE FACILITIES

- A. The prime contractor is responsible to ensure that its workers and those of all subcontractors are compensated in accordance with the federal wage decision incorporated into and found elsewhere in this contract for the following work duties:
1. The processing or manufacturing of material, including the hauling of material to and from an immediately adjacent, dedicated off-site facility.⁴⁰
 2. The hauling of any or all stockpiled or excavated materials on the project work site to other locations on the same project.⁴¹
- B. The work duties prescribed in **Subpart A (1 - 2)** of this section do not represent all possible hauling activities and/or other work duties that may be performed under this contract. It is the responsibility of the prime contractor to inform itself and all subcontractors about other applicable job duties that may be subject to this contract labor provisions.
- C. A contractor with employee truck drivers shall adhere to the requirements established in **Sections IV (PAYROLLS AND STATEMENTS); V (WAGE RATES); VI (FRINGE BENEFITS); VII (OVERTIME) and VIII (LABOR CLASSIFICATIONS).**

XV. CHILD LABOR

- A. No worker under the age of 18 is allowed to perform work on construction projects.⁴²
- B. In accordance with state law, a worker under the age of 18, employed in a corporation totally owned by one or both parents that is supervised by the parent(s), may perform work on construction projects.⁴³ However, if this contractor is subject to the federal Fair Labor Standards Act, a worker under the age of 18 is not allowed to perform work in a hazardous occupation.⁴⁴
- C. To protect the interests of the department, the project engineer may remove a worker that appears to be under the age of 18 from the construction project until the contractor or worker can demonstrate proof of age⁴⁵ and compliance with all applicable federal and/or state regulations.⁴⁶

XVI. NON-COMPLIANCE AND ENFORCEMENT

- A. The prime contractor shall be liable for any unpaid wages to its workers or those of any subcontractor.⁴⁷
- B. If it is determined that a contractor has violated federal regulations, or any portion of this contract, the department may implement, after written notice, one or more of the following sanctions:

³⁹ 29 CFR Part 5.5(a)(10)(iii)(c)

⁴⁰ 29 CFR Part 5.2(1)(2)

⁴¹ 29 CFR Part 5.2(j)(1)

⁴² Minnesota Rules 5200.0910, Subpart F

⁴³ Minnesota Rules 5200.0930, Subpart 4

⁴⁴ 29 CFR Part 570.2(a)(ii)

⁴⁵ Minnesota Statute 181A.06, Subdivision 4

⁴⁶ MN/DOT Standard Specifications for Construction, Section 1701

⁴⁷ 29 CFR Part 5.5(a)(10)(iii)(b)(4)

1. Withhold or cause to be withheld from the prime contractor under this contract, or any other federally funded contract with the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay workers employed by the prime contractor or any subcontractor the full amount of wages required by this contract.⁴⁸
 2. Withhold or cause to be withheld from the prime contractor such amounts in considerations or assessments against the prime contractor, whether arising from this contract or other contract with the department.⁴⁹
 3. The department may reject a bid from a prime contractor that has demonstrated continued or persistent noncompliance with the prevailing wage law on previous or current contracts with the department.⁵⁰
 4. The department may take the prosecution of the work out of the hands of the prime contractor, place the contractor in default and terminate this contract for failure to demonstrate compliance with these provisions.⁵¹
- C. All required documents and certification reports are legal documents; willful falsification of the documents may result in civil action and/or criminal prosecution⁵² and may be grounds for debarment proceedings.⁵³

⁴⁸ 29 CFR Part 5.5(a)(10)(iii)(b)(3)

⁴⁹ MN/DOT Standard Specifications for Construction, Section 1906

⁵⁰ Minnesota Statute 161.32, Subdivision 1(d)

⁵¹ MN/DOT Standard Specifications for Construction, Section 1808

⁵² Minnesota Statutes 16B, 161.315, Subdivision 2, 177.43, Subdivision 5 177.44, Subdivision 6, 609.63

⁵³ Minnesota Statute 161.315