

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.¹

Therefore, the contracting authority² (CA) shall administer the contract in accordance with this section and all applicable federal regulations, state statutes and rules³, along with the plans, specifications and provisions, which are incorporated into the contract. Pursuant with Minnesota Rules 8820.3000, Subpart 5, failure to fulfill this obligation could subject the CA to financial sanctions.

The Mn/DOT Labor Compliance Unit (LCU) shall provide to the CA contract administration support and oversight in the areas of federal and state prevailing wage regulations, along with investigative, enforcement and educational assistance.

II. SCOPE

This section shall apply to a contract that is funded in whole or in part with federal funds⁴ and/or state funds.⁵

In order to ensure compliance, the CA shall apply the guidelines outlined in this section. However, the guidance provided does not necessarily represent all contract administration strategies, nor does it cover all federal, state, and local labor laws, ordinances, rules and regulations. It is the responsibility of the CA to inform itself about other regulations that may be applicable to the contract.

For additional information or contract administration resources, refer to the [LCU website](#) or [contact](#) a professional in the LCU.

III. MN/DOT LABOR COMPLIANCE UNIT (LCU)

The objective of the LCU is to serve the CA by providing contract administration support and oversight concerning the Federal Davis-Bacon & Related Acts (DBRA) and the State of Minnesota Prevailing Wage Law. Specifically, the LCU provides expertise and assistance in the areas of prevailing wage audits, investigations, determinations, dispute resolution, training and the collection and distribution of wages.

Any questions, comments or concerns, please [contact](#) a professional in the LCU.

¹ Minnesota Statute 177.41

² Mn/DOT Standard Specifications for Construction, 2005 Edition, Section 1103

³ Minnesota Rules 8820.3000, Subpart 2

⁴ 29 CFR Part 5.5(a)

⁵ Minnesota Statute 177.41

IV. CONTRACT LABOR PROVISIONS & WAGE DECISIONS

The CA is responsible to ensure that all applicable contract labor provisions are incorporated into the contract. To obtain the contract labor provisions refer to the [Proposal/Contract Documents](#) link on the Labor Compliance website.

Federal Wage Decision Requirements

[Federal general wage decisions](#) are specific to the county in which the construction work is being performed; a decision does not cross county or state lines.⁶ If a project extends into more than one county or state, the CA shall incorporate into the contract the applicable wage decision for each county or state and enforce each decision accordingly.

State Wage Determination Requirements

State [highway and heavy wage determinations](#) are specific to ten separate regions throughout the state of Minnesota. If a project extends into more than one region, the CA shall incorporate into the contract the applicable wage decision for each region. If the contract contains multiple highway and heavy wage determinations, the CA shall enforce only one standard of hours of labor and wage rates.⁷

State [commercial wage determinations](#) are specific to the county in which the construction work is being performed. If a project extends into more than one county, the CA shall incorporate into the contract the applicable wage determination for each county.

If the CA has any questions regarding the incorporation of the labor provisions or wage decisions into a contract, please [contact](#) a professional in the LCU.

V. PRE-CONSTRUCTION MEETING

In order to provide contractors with a comprehensive summary of the contract labor provisions, the LCU recommends that the CA utilize the federal-aid, state-aid or federal only VHS or DVD audiovisual [pre-construction resources](#). It's recommended that the CA discuss the agenda items provided with each audiovisual package. For further information, refer to Section .310 of this manual.

VI. PAYROLLS AND STATEMENTS

All contractors performing work under the contract shall submit a payroll statement to the CA.⁸ The CA shall utilize a [payroll tracking system](#) to monitor the submission of payroll statements from all contractors performing work under the contract.

⁶ 29 CFR Part 1.7(a)

⁷ Minnesota Statute 177.44, Subdivision 4

⁸ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section V, Subpart 2(c)

Federal Payroll Submission Requirements

Each week, in which work was performed under the contract, the CA shall require the prime contractor to submit payroll statements, along with those of any subcontractor. Each statement shall be submitted within seven days after the regular payment date of the payroll period.⁹

State Payroll Submission Requirements

The CA shall require the prime contractor to submit payroll statements, along with those of any subcontractor according to the contractor's payment schedule. If a contractor pays its employees weekly, a payroll statement shall be submitted weekly. If a contractor pays its employees biweekly, a payroll statement shall be submitted biweekly.

Payroll statements may be submitted in any form provided it includes all the information specified below. Contractors needing a payroll form may utilize the "front side" of the [U.S. Department of Labor's, WH-347 - Payroll Form](#).

The CA shall ensure that each payroll statement submitted includes all employees that performed work under the contract and contains at a minimum the following information:¹⁰

- Contractor's name, address, and telephone number.
- State project number.
- Payroll report number.
- Project location.
- Workweek ending date.
- Name, social security number, and home address for each employee.
- Labor classification(s) and/or three-digit code for each employee.
- Hourly straight time and overtime wage rates paid to each employee.
- Daily and weekly hours worked in each labor classification, including overtime hours for each employee.
- Authorized legal deductions for each employee.

⁹ 29 CFR Part 3.4(a)

¹⁰ Minnesota Rules 5200.1106, Subpart 10

- Project gross amount, weekly gross amount and net wages paid to each employee.

The CA shall ensure that all payroll statements are accompanied with a completed and signed [MN/DOT, 21658 - Statement of Compliance Form](#). Payroll statements that do not include this form or the form is incomplete, shall be returned to the contractor. See section **VIII, FRINGE BENEFITS** for guidelines regarding the completion of the form.

The CA shall ensure compliance by thoroughly auditing the first two weekly-certified payroll statements submitted by each contractor that performed work under the contract and a random one thereafter. Furthermore, the CA shall implement the strategies prescribed in section **XIII, EMPLOYEE INTERVIEWS & OTHER LABOR RELATED INFORMATION** to obtain employee information that shall be utilized during the payroll audit.

Payroll discrepancies shall be addressed and resolved by the CA. However, if compliance cannot be obtained, the CA shall [contact](#) a professional in the LCU.

The CA shall require the prime contractor maintain all certified payroll records, including those of any subcontractor, 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.¹¹

Upon request from the U.S. Department of Labor (U.S. DOL), Federal Highway Administration (FHWA), Minnesota Department of Labor and Industry (MN/DLI) or the Department, the CA shall furnish copies of payroll records submitted by the prime contractor and those of any subcontractor, along with other records, deemed appropriate by the requesting agency to determine compliance with these contract provisions.¹²

Concerning Mn/DOT contracts, the project engineer may administer the submission of payroll records according to MN/DOT's [Payroll Maintenance Program](#). The program has not been approved for federal-aid contracts administered by local units of government and will not be allowed for such contracts. However, the program may be utilized for local state-aid contracts.

If, after written notice, the prime contractor fails to submit its payroll statements and certification forms and those of any subcontractor, the CA may implement the actions prescribed in section **XVIII, ENFORCEMENT OF CONTRACT LABOR PROVISIONS**. Furthermore, if compliance cannot be obtained, the CA shall [contact](#) a professional in the LCU.

¹¹ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section V, Subpart 2(a)

¹² Minnesota Statute 177.44, Subdivision 7 and Minnesota Rules 5200.1106, Subpart 10

VII. WAGE RATES

The CA shall ensure that all workers are compensated according to the U.S. DOL federal general decision(s) and/or the MN/DLI state prevailing wage determination(s) incorporated into the contract, **whichever is greater**. The CA shall ensure that each worker is compensated at the required minimum total hourly wage rate for all hours worked on the project and for the appropriate classification of labor.

Wage rates listed in the federal and/or state wage determination(s) contain two components: the hourly basic rate and the fringe rate; together they equal the total prevailing wage rate. The CA shall ensure that a worker is compensated at a minimum, a combination of cash and fringe benefits equaling the total prevailing wage rate.¹³

The CA shall ensure that a contractor does not reduce a worker's private, regular rate of pay when the wage rate certified by the U.S. DOL or MN/DLI is less than the worker's normal hourly wage.¹⁴

VIII. FRINGE BENEFITS

The CA shall review the [MN/DOT 21658, Statement of Compliance Form](#) to determine if a contractor's fringe benefit contributions are bona-fide and acceptable. Credit toward the total prevailing wage rate shall be determined for each individual employee and is allowed for bona fide fringe benefits that:¹⁵

- include contributions irrevocably made by a contractor on behalf of an employee to a financially responsible trustee, third person, fund, plan, or program;
- are legally enforceable;
- have been communicated in writing to the employee; and
- are made available to the employee once he/she has met all eligibility requirements.

The CA shall not allow the contractor a credit for benefits required by federal, state or local law, such as: worker's compensation, unemployment compensation, and social security contributions.¹⁶

The CA shall request copies of fringe benefit plan documents, along with other records, deemed appropriate to determine compliance with these contract provisions.¹⁷

¹³ Minnesota Statute 177.42, Subdivision 6

¹⁴ Minnesota Statute 181.03, Subdivision 1(2)

¹⁵ 29 CFR Part 5.23

¹⁶ 29 CFR Part 5.29(f)

¹⁷ Minnesota Statute 177.44, Subdivision 7 and Minnesota Rules 5200.1106, Subpart 10

If, after written notice, the prime contractor fails to submit its fringe benefit statements and those of any subcontractor, the CA may implement the actions prescribed in section **XVIII, ENFORCEMENT OF CONTRACT LABOR PROVISIONS**. Furthermore, if compliance cannot be obtained, the CA shall [contact](#) a professional in the LCU.

IX. OVERTIME

Federal Overtime (OT) Requirements

Pursuant with federal regulations, the CA shall ensure that a worker working in excess of 40 hours per week 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.¹⁸

State Overtime (OT) Requirements

Pursuant with state law, the CA shall ensure that a worker working longer than the prevailing hours of labor is paid for all hours in excess of the prevailing hours at a rate of at least 1-1/2 times the hourly basic hourly rate of pay.¹⁹ The prevailing hours of labor is defined as not more than 8 hours per day or more than 40 hours per week.²⁰

X. LABOR CLASSIFICATIONS

The CA shall refer to the federal general decision(s) or the state wage determination(s) incorporated into the contract to determine an applicable job classification. The CA shall ensure that each worker is classified and compensated for the actual work performed regardless of the worker's skill level.²¹

Federal Labor Classification Requirements

Preferably at the pre-construction meeting, the CA, along with 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.²²

State Labor Classification Requirements

If the CA cannot determine an appropriate job classification, state law requires that the worker be assigned a job classification that is the "same or most similar".²³ Contractors should refer to the [Master Job Classification List](#)²⁴ to obtain an applicable labor classification. Clarification regarding labor classifications should be directed to the Minnesota Department of Labor and Industry or [contact](#) a professional in the LCU.

¹⁸ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section IV, Subpart 7

¹⁹ Minnesota Statute 177.44, Subdivision 1

²⁰ Minnesota Statute 177.42, Subdivision 4

²¹ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section IV, Subpart 1(a)

²² Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section IV, Subpart 2

²³ Minnesota Statute 177.44, Subdivision 1

²⁴ Minnesota Rules 5200.1100

XI. APPRENTICES, TRAINEES AND HELPERS

An apprentice is not subject to the federal and/or state wage decisions incorporated into the contract. Therefore, the CA shall ensure that the contractor demonstrates compliance with the following:²⁵

- The apprentice is performing the work of his/her trade.
- The apprentice is registered with the U.S. DOL Bureau of Apprenticeship and Training or MN/DLI Division of Voluntary Apprenticeship.
- The apprentice is compensated according to the rate specified in the program for the level of progress.
- 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.²⁶

A trainee is not subject to the federal general decision incorporated into the contract. Therefore, the CA shall ensure that the contractor demonstrates compliance with the following:²⁷

- The trainee is performing the work of his/her trade.
- The trainee is registered with the U.S. DOL Employment and Training Administration.
- The trainee is compensated according to the rate specified in the program for the level of progress.
- The ratio of trainees to journeyman workers on the project is not greater than the ratio permitted under the program.
- 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.

Furthermore, a trainee is not exempt under state law; the CA shall ensure that the contractor assign the trainee a job classification that is the "same or most similar"²⁸ and compensate the trainee for the actual work performed regardless of the trainee's skill level, unless the trainee is:²⁹

²⁵ Minnesota Rules 5200.1070

²⁶ MN/DOLI Division of Apprenticeship – April 6, 1995 Memorandum from Jerry Briggs, Director

²⁷ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section IV, Subpart 4(b)

²⁸ Minnesota Statute 177.44, Subdivision 1

²⁹ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section IV, Subpart 1(a)

- employed and registered in a bona-fide apprenticeship program; or
- employed in the first 90 days of probationary employment as an apprentice, is not registered in the apprenticeship program, but has been certified by the proper government authorities to be eligible for probationary employment as an apprentice.

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.³⁰

A helper is not exempt under state law; a contractor shall assign the helper a job classification that is the "same or most similar"³¹ and compensate the helper for the actual work performed regardless of the helper's skill level.³²

If a contractor fails to demonstrate compliance with the terms established in this section, the contractor shall compensate the worker not less than the applicable total prevailing wage rate for the actual work performed.³³

XII. INDEPENDENT CONTRACTORS, OWNERS, SUPERVISORS AND FOREMAN

Pursuant with federal regulations, 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 contract prevailing wage requirements.

However, 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.

Pursuant with state regulations, independent contractors, owners, supervisors and foreman performing work as a laborer or mechanic are subject to the contract prevailing wage provisions.

The CA shall ensure that all independent contractors, owners, supervisors and foreman performing work under a contract a compensated correctly for all hours worked and for the appropriate job classification.

³⁰ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section IV, Subpart 4(c)

³¹ Minnesota Statute 177.44, Subdivision 1

³² Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section IV, Subpart 1(a)

³³ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section IV, Subpart 4(a)(b)(c)

XIII. POSTER BOARDS

The CA shall require the prime contractor to construct and display a [poster board](#) on the project site of work, 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.³⁴ The CA shall refer to Section .320 of this manual regarding the process that the prime contractor shall follow to obtain poster board materials.

The CA shall inspect the poster board to ensure compliance with the above-mentioned requirements and shall not allow the prime contractor to place a poster board at an off-site location.

Any poster board discrepancies shall be addressed and resolved by the CA. However, if compliance cannot be obtained, the CA shall [contact](#) a professional in the LCU.

XIV. EMPLOYEE INTERVIEWS & OTHER LABOR RELATED INFORMATION

In order to ensure compliance, the CA shall conduct random, monthly employee interviews for each contractor performing work under the contract. The CA shall utilize the [MN/DOT Labor Compliance Field Review Form](#). The CA shall attempt to ensure employee confidentiality at all times.

The CA shall compare the information obtained during the interview to the information contained on a contractor's payroll statement. Any discrepancies shall be addressed and resolved by the CA. However, if compliance cannot be obtained, the CA shall [contact](#) a professional in the LCU.

At any time the CA and the prime contractor shall permit representatives from the U.S. DOL, FHWA, MN/DLI, or Mn/DOT to interview its workers during working hours on the project.³⁵

In addition to conducting employee interviews, the LCU suggests that the CA's daily inspection diaries contain the following information about each contractor:

- The name of the contractor.
- Type of work performed.
- The number of employees performing work.
- Hours worked, including start/stop times.
- Detailed description of any equipment being utilized.

³⁴ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section IV, Subpart 1(a)

³⁵ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section V, Subpart 2(g)

XV. TRUCKING / OFF-SITE FACILITIES**Federal Trucking / Off-Site Facility Requirements**

The CA shall ensure that the prime contractor's 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:

- The processing or manufacturing of material, including the hauling of material to and from an immediately adjacent, dedicated off-site facility.³⁶
- The hauling of any or all stockpiled or excavated materials on the project work site to other locations on the same project.³⁷

State Trucking / Off-Site Facility Requirements

The CA shall ensure that the prime contractor's workers and those of all subcontractors, are compensated in accordance with the state wage determination incorporated into and found elsewhere in this contract for the following work duties:

- The processing or manufacturing of material, including the hauling of material to and from a prime contractor's material operation that is not a separate commercial establishment.³⁸
- The processing or manufacturing of material, including the hauling of material to and from an off-site material operation that is not considered a commercial establishment.³⁹
- The hauling of any or all stockpiled or excavated materials on the project work site to other locations on the same project even if the truck leaves the work site at some point.⁴⁰
- The delivery of materials from a non-commercial establishment to the project and the return haul.⁴¹
- The delivery of materials from another construction project site to the public works project and the return haul, either empty or loaded. Construction projects are not considered commercial establishments.⁴²

³⁶ 29 CFR Part 5.2(l)(2)

³⁷ 29 CFR Part 5.2(j)(1)

³⁸ ALJ Findings of Fact, Conclusions of Law, and Recommendation, Conclusions (7), Case #12-3000-11993-2

³⁹ Minnesota Rules 5200.1106, Subpart 3B(2)

⁴⁰ Minnesota Rules 5200.1106, Subpart 3B(1)

⁴¹ Minnesota Rules 5200.1106, Subpart 3B(2)

⁴² Minnesota Rules 5200.1106, Subpart 3B(3)

- The hauling required to remove any materials from the project to a location off the project site and the return haul, either empty or loaded from other than a commercial establishment.⁴³
- The delivery of mineral aggregate materials from a commercial establishment, which is deposited "substantially in place" and the return haul, either empty or loaded.⁴⁴

The CA shall ensure that a contractor acquiring trucking services from an ITO, MTO and/or Truck Broker to perform and/or provide "covered" hauling activities complies with the payment of the [certified state truck rental rates](#).⁴⁵

Each month, in which hauling activities were performed under the contract, the CA shall require the prime contractor and any subcontractor to submit a *MN/DOT, TP-90550 – ITO Month-End Trucking Report* and *MTO Month-End Trucking Report* and MN/DOT, TP-90551 - [Statement of Compliance Form](#), along with each ITOs, MTOs and/or Truck Brokers reports to the department.⁴⁶ The specifications regarding the dates for submission can be found near the bottom of the form.

In order to ensure compliance, the CA shall review the first two month-end trucking reports submitted by each contractor that performed work under the contract and a random one thereafter.

Any truck report discrepancies shall be addressed and resolved by the CA. However, if compliance cannot be obtained, the CA shall [contact](#) a professional in the LCU.

XVI. CHILD LABOR

The CA shall not allow a worker under the age of 18 to perform work on construction projects.⁴⁷

However, in accordance with state law, the CA may permit a worker under the age of 18, who is employed in a corporation totally owned by one or both parents and is supervised by the parent(s), to perform work on construction projects.⁴⁸ Conversely, if this contractor is subject to the federal Fair Labor Standards Act, the CA shall not allow a worker under the age of 18 to perform work in a hazardous occupation.⁴⁹

To protect the interests of the department, the CA may remove a worker that appears to be under the age of 18 from the construction project until the contractor or worker can

⁴³ Minnesota Rules 5200.1106, Subpart 3B(4)

⁴⁴ Minnesota Rules 5200.1106, Subpart 3B(5)(6)

⁴⁵ Minnesota Rules 5200.1106, Subpart 1

⁴⁶ Minnesota Rules 5200.1106, Subpart 10

⁴⁷ Minnesota Rules 5200.0910, Subpart F

⁴⁸ Minnesota Rules 5200.0930, Subpart 4

⁴⁹ 29 CFR Part 570.2(a)(ii)

demonstrate proof of age⁵⁰ and compliance with all applicable federal and/or state regulations.⁵¹

XVII. EMPLOYEE WAGE COMPLAINTS

The CA shall address and attempt to resolve all verbal and written prevailing wage complaints initiated by workers performing work under the contract. Upon receipt of the alleged prevailing wage violation, the CA should recommend that the employee complete and submit a formal [Prevailing Wage Complaint Form](#) to the CA or the LCU. The CA shall attempt to ensure employee confidentiality at all times.

If the CA needs assistance in resolving the matter, please [contact](#) a professional in the LCU.

XVIII. FINALIZATION OF THE CONTRACT

Before issuing the final contract voucher, the CA shall contact the LCU or review CMS to ensure that there are no outstanding prevailing wage issues associated with the contract. Furthermore, for federal-aid contracts, the CA shall review and complete the [Federal Aid Contracts Check List](#) to ensure that all contractors have demonstrated compliance with the contract labor provisions. Further information can be obtained in Section .370 of this manual.

XIX. ENFORCEMENT OF CONTRACT LABOR PROVISIONS

The CA is responsible for enforcing the contract labor provisions to the same extent as any other contract specification. Furthermore, the enforcement strategies suggested in this section shall be implemented consistently and carried out in the same manner for federal and/or state funded contracts.

If the CA has determined that a contractor has violated federal and/or state prevailing wage laws, or any portion of the contract, the CA may implement, after written notice, one or more of the following sanctions:

- 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.⁵²

⁵⁰ Minnesota Statute 181A.06, Subdivision 4

⁵¹ MN/DOT Standard Specifications for Construction, Section 1701

⁵² Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section IV, Subpart 6

- 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.⁵³
- 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.⁵⁴
- 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.⁵⁵

The CA shall execute all enforcement actions prescribed in this section. However, if compliance cannot be obtained, the CA shall [contact](#) a professional in the LCU for assistance.

⁵³ MN/DOT Standard Specifications for Construction, Section 1906

⁵⁴ Minnesota Statute 161.32, Subdivision 1(d)

⁵⁵ MN/DOT Standard Specifications for Construction, Section 1808