

FEDERALLY FUNDED CONSTRUCTION CONTRACTS
SPECIAL PROVISIONS DIVISION A - LABOR
February 1, 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.¹

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, State of Minnesota Statutes and Rules, MN/DOT's Standard Specifications for Construction, MN/DOT's Contract Administration Manual and MN/DOT's State Aid Manual.**

II. DEFINITIONS²

- 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.³
- 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.⁴
- G. **Laborer or Mechanic**: A worker in a construction industry labor class identified in or pursuant to Minnesota Rules 5200.1100, Master Job Classifications.⁵
- 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.

¹ Minnesota Statute 177.41

² MN/DOT Standard Specifications for Construction, Section 1103

³ Minnesota Statute 177.44, Subdivision 1

⁴ Minnesota Rules 5200.1106, Subpart 7(A)

⁵ Minnesota Rules 5200.1106, Subpart 5(A)

- 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.
- 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.⁶
- 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.⁷
- 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.⁸
- 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 funds⁹ and state funds.¹⁰
- B. These provisions shall apply to the prime contractor and all subcontractors contracting to do all or part of the work under this contract.¹¹
- C. The provisions established in this document do not necessarily represent all federal, state, and local laws, ordinances, rules and 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.¹² These provisions shall be incorporated into written subcontracts and must be displayed on the poster board.¹³
- E. The department shall administer this contract in accordance with all applicable federal regulations, state statutes and rules¹⁴, along with the plans, specifications and provisions, which are incorporated into and found elsewhere in this contract.

⁶ Minnesota Rules 5200.1106, Subpart 5(C)

⁷ Minnesota Rules 5200.1106, Subpart 7(C)

⁸ Minnesota Rules 5200.1106, Subpart 7(B)

⁹ 29 CFR Part 5.5(a)

¹⁰ Minnesota Statute 177.41

¹¹ Minnesota Statute 177.44, Subdivision 1

¹² 29 CFR Part 5.5(a)(6)

¹³ Minnesota Statute 177.44, Subdivision 5

- F. An unpublished decision from the Minnesota Court of Appeals affirms the authority of the Minnesota Commissioner of Transportation to enforce the Minnesota Prevailing Wage Law on a case-by-case basis.¹⁵ Therefore, the department shall provide enforcement in a manner consistent with the decision notwithstanding any prior notices on the subject.
- G. For additional information refer to: www.dot.state.mn.us/const/labor/.

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.¹⁶ Each statement shall be submitted within seven days after the regular payment date of the payroll period.¹⁷ Each payroll submitted shall include all employees that performed work under this contract and provide at a minimum the following information:¹⁸
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.¹⁹ 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.²⁰
- C. All payroll records must be accompanied with a completed and signed **MN/DOT, 21658 - Statement of Compliance Form**.²¹
- 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.²²
- 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.²³

¹⁴ Minnesota Rules 8820.3000, Subpart 2

¹⁵ Minnesota Court of Appeals Case Number: C6-97-1582

¹⁶ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section V, Subpart 2(c)

¹⁷ 29 CFR Part 3.4(a)

¹⁸ Minnesota Rules 5200.1106, Subpart 10

¹⁹ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section V, Subpart 2(c)

²⁰ www.dot.state.mn.us/const/labor/

²¹ Minnesota Rules 5200.1106, Subpart 10

²² 29 CFR Part 5.5(a)(6)

²³ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section V, Subpart 2(a)

- F. At the end of each pay period, each contractor shall provide every employee, in writing, an accurate detailed earnings statement.²⁴
- G. 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 prime contractor shall promptly furnish copies of payroll 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.²⁵
- H. At the department's discretion, the project engineer may administer the submission of payroll records according to MN/DOT's Payroll Maintenance Program. The guidelines for the implementation and administration of this program are outlined in the **MN/DOT Contract Administration Manual, Section A(4)(d)**. 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.
- I. 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) and the MN/DLI state prevailing wage determination(s) incorporated into and found elsewhere in this contract, **whichever is greater**. 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.²⁶ 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.
 2. 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 applicable wage decision for each region shall be incorporated into and found elsewhere in this contract.
 - a. If this contract contains multiple highway and heavy wage determinations, there shall be only one standard of hours of labor and wage rates.²⁷
 3. 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 applicable wage determination for each county shall be incorporated into and found elsewhere in this contract.
 - a. If this contract contains multiple commercial wage determinations, there shall be only one standard of hours of labor and wage rates.²⁸
- B. 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. A

²⁴ Minnesota Statute 181.032

²⁵ Minnesota Statute 177.44, Subdivision 7 and Minnesota Rules 5200.1106, Subpart 10

²⁶ 29 CFR Part 1.7(a)

²⁷ Minnesota Statute 177.44, Subdivision 4

²⁸ Minnesota Statute 177.44, Subdivision 4

- contractor shall compensate a worker at a minimum, a combination of cash and fringe benefits equaling the total prevailing wage rate.²⁹
- C. The applicable certified wage decisions incorporated into and found elsewhere in this contract remain in effect for the life of this contract. The wage decisions do not necessarily represent the workforce that can be obtained at the rates certified by the U.S. DOL or MN/DLI. 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. A contractor shall 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.³⁰
- E. 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.³¹
1. In situations where a delay may exceed twenty consecutive minutes and the contractor requires a worker to remain on the premises or so close to the premises that the worker cannot use the time effectively for the worker's own purposes, the worker is considered "on-call"³² and shall be compensated in accordance with **Subpart B** of this section, unless the worker is allowed or required to leave the project site.
- F. A contractor making payment to an employee, laborer, mechanic, worker, or truck owner-operator shall not accept a rebate for the purpose of reducing or otherwise decreasing the value of the compensation paid.³³
- G. Any employee who knowingly permits a contractor to pay less than the total prevailing wage or gives up any part of the compensation to which the employee is entitled may be subject to penalties.³⁴

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.³⁵
- 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.³⁶
- C. Credit toward the total prevailing wage rate shall be determined for each individual employee and is allowed for bona fide fringe benefits that:³⁷
1. include contributions irrevocably made by a contractor on behalf of an employee to a financially responsible trustee, third person, fund, plan, or program;

²⁹ Minnesota Statute 177.42, Subdivision 6

³⁰ Minnesota Statute 181.03, Subdivision 1(2)

³¹ Minnesota Rules 5200.0120, Subpart 1

³² Minnesota Rules 5200.0120, Subpart 2

³³ Minnesota Rules 5200.1106, Subpart 6

³⁴ Minnesota Statute 177.44, Subdivision 6

³⁵ 29 CFR Parts 5.26 and 5.27

³⁶ 29 CFR Part 5.28

³⁷ 29 CFR Part 5.23

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.³⁸
- E. Upon request from the 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.³⁹
- 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.⁴⁰ 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.⁴¹
- B. A contractor shall not permit or require a worker to work longer than the prevailing hours of labor unless the worker 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.⁴² The prevailing hours of labor is defined as not more than 8 hours per day or more than 40 hours per week.⁴³
- C. In addition to the requirements set forth in **Subparts A and B** 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 or the state wage determination 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.⁴⁴ The prime contractor shall ensure that all contractors adhere to the following requirements:

³⁸ 29 CFR Part 5.29(f)

³⁹ Minnesota Statute 177.44, Subdivision 7 and Minnesota Rules 5200.1106, Subpart 10

⁴⁰ Minnesota Rules 5200.1106, Subpart 10

⁴¹ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section IV, Subpart 7

⁴² Minnesota Statute 177.44, Subdivision 1

⁴³ Minnesota Statute 177.42, Subdivision 4

⁴⁴ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section IV, Subpart 1(a)

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.⁴⁵
2. If a contractor cannot determine an appropriate job classification, state law requires that the worker be assigned a job classification that is the "same or most similar".⁴⁶ Contractors should refer to the Master Job Classification List⁴⁷ to obtain an applicable labor classification. Clarification regarding labor classifications should be directed to the MN/DLI or the MN/DOT Labor Compliance Unit.

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 requirements⁴⁸ 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.⁴⁹
- B. Pursuant with state regulations, owners, supervisors and foreman performing work under the contract⁵⁰ shall be compensated in accordance with section **V (WAGE RATES)**. Furthermore, the prime contractor and any subcontractor shall adhere to the requirements established in sections **IV (PAYROLLS AND STATEMENTS); VI (FRINGE BENEFITS); VII (OVERTIME) and VIII (LABOR CLASSIFICATIONS)**.
- C. 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.⁵¹
 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 and/or state wage decisions incorporated into and found elsewhere in this contract, provided the contractor can demonstrate compliance with **Subparts (1 - 4)** of this section:⁵²
 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.

⁴⁵ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section IV, Subpart 2

⁴⁶ Minnesota Statute 177.44, Subdivision 1

⁴⁷ Minnesota Rules 5200.1100

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

⁴⁹ Minnesota Statute 177.44, Subdivision 7 and Minnesota Rules 5200.1106, Subpart 10

⁵⁰ Minnesota Statute 177.44, Subdivision 1

⁵¹ 29 CFR Part 5.2(m)

⁵² Minnesota Rules 5200.1070

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.⁵³
- 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:⁵⁴
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.
 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.
 6. A trainee is not exempt under state law; the contractor shall assign the trainee a job classification that is the "same or most similar"⁵⁵ and compensate the trainee for the actual work performed regardless of the trainee's skill level, unless the trainee is:⁵⁶
 - a. employed and registered in a bona-fide apprenticeship program; or
 - b. 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.
- 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:⁵⁷
1. A helper is not exempt under state law; a contractor shall assign the helper a job classification that is the "same or most similar"⁵⁸ and compensate the helper for the actual work performed regardless of the helper's skill level.⁵⁹
- 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.⁶⁰

XI. SUBCONTRACTING PART OF THIS CONTRACT⁶¹

- 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.

⁵³ MN/DOLI Division of Apprenticeship – April 6, 1995 Memorandum from Jerry Briggs, Director

⁵⁴ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section IV, Subpart 4(b)

⁵⁵ Minnesota Statute 177.44, Subdivision 1

⁵⁶ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section IV, Subpart 1(a)

⁵⁷ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section IV, Subpart 4(c)

⁵⁸ Minnesota Statute 177.44, Subdivision 1

⁵⁹ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section IV, Subpart 1(a)

⁶⁰ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section IV, Subpart 4(a)(b)(c)

⁶¹ MN/DOT Standard Specifications for Construction, Section 1801

- 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.⁶²

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.⁶³ 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.

XIII. EMPLOYEE INTERVIEWS

- A. At any time the prime contractor shall permit representatives from the U.S. DOL, FHWA, MN/DLI, or the Department to interview its workers and those of any subcontractor during working hours on the project.⁶⁴

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.⁶⁵
 2. The hauling of any or all stockpiled or excavated materials on the project work site to other locations on the same project.⁶⁶
- B. The prime contractor is responsible to ensure that its 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:
 1. 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.⁶⁷

⁶² Minnesota Statute 161.315, Subdivision 3(3)

⁶³ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section IV, Subpart 1(a)

⁶⁴ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section V, Subpart 2(g)

⁶⁵ 29 CFR Part 5.2(l)(2)

⁶⁶ 29 CFR Part 5.2(j)(1)

⁶⁷ ALJ Findings of Fact, Conclusions of Law, and Recommendation, Conclusions (7), Case #12-3000-11993-2

2. 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.⁶⁸
 3. 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.⁶⁹
 4. The delivery of materials from a non-commercial establishment to the project and the return haul.⁷⁰
 5. 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.⁷¹
 6. 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.⁷²
 7. The delivery of mineral aggregate materials from a commercial establishment, which is deposited "substantially in place" and the return haul, either empty or loaded.⁷³
- C. The work duties prescribed in **Subpart A (1 - 2) and Subpart B (1 - 7)** 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.
- D. A contractor acquiring trucking services from an ITO, MTO and/or Truck Broker to perform and/or provide "covered" hauling activities shall comply with the payment of the certified state truck rental rates,⁷⁴ which are incorporated into and found elsewhere in this contract.
1. Each month, in which hauling activities were performed under this contract, the prime contractor and all subcontractors shall submit a **MN/DOT, TP-90550 - 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.⁷⁵ The specifications regarding the dates for submission can be found near the bottom of the **MN/DOT, TP-90551 - Statement of Compliance Form**.
- E. A Truck Broker contracting to provide trucking services in the construction industry may charge a reasonable broker fee to the provider of trucking services.⁷⁶ The prime contractor and any subcontractor contracting to receive trucking services shall not assess a broker fee.
- F. 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)**.
- G. If after written notice, the prime contractor fails to submit its month-end trucking reports and certification forms and those of any subcontractor, MTO and/or Truck Broker, the department may take such actions as prescribed in section **XVI, (NON-COMPLIANCE AND ENFORCEMENT)**.

⁶⁸ Minnesota Rules 5200.1106, Subpart 3B(2)

⁶⁹ Minnesota Rules 5200.1106, Subpart 3B(1)

⁷⁰ Minnesota Rules 5200.1106, Subpart 3B(2)

⁷¹ Minnesota Rules 5200.1106, Subpart 3B(3)

⁷² Minnesota Rules 5200.1106, Subpart 3B(4)

⁷³ Minnesota Rules 5200.1106, Subpart 3B(5)(6)

⁷⁴ Minnesota Rules 5200.1106, Subpart 1

⁷⁵ Minnesota Rules 5200.1106, Subpart 10

⁷⁶ Minnesota Rules 5200.1106, Subpart 7(C)

XV. CHILD LABOR

- A. No worker under the age of 18 is allowed to perform work on construction projects.⁷⁷
- 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.⁷⁸ 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.⁷⁹
- 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 age⁸⁰ and compliance with all applicable federal and/or state regulations.⁸¹

XVI. NON-COMPLIANCE AND ENFORCEMENT

- A. The prime contractor shall be liable for any unpaid wages to its workers or those of any subcontractor, ITO, MTO and/or Truck Broker.⁸²
- B. If it is determined that a contractor has violated federal and/or state prevailing wage laws, or any portion of this contract, the department may implement, after written notice, one or more of the following sanctions:
 - 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.⁸³
 - 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.⁸⁴
 - 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.⁸⁵
 - 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.⁸⁶
- C. Any contractor who violates the state prevailing wage law is guilty of a misdemeanor and may be fined not more than \$300 or imprisoned not more than 90 days or both. Each day that the violation continues is a separate offense.⁸⁷
- D. All required documents and certification reports are legal documents; willful falsification of the documents may result in civil action and/or criminal prosecution⁸⁸ and may be grounds for debarment proceedings.⁸⁹

⁷⁷ Minnesota Rules 5200.0910, Subpart F

⁷⁸ Minnesota Rules 5200.0930, Subpart 4

⁷⁹ 29 CFR Part 570.2(a)(ii)

⁸⁰ Minnesota Statute 181A.06, Subdivision 4

⁸¹ MN/DOT Standard Specifications for Construction, Section 1701

⁸² MN/DOT Standard Specifications for Construction, Section 1801

⁸³ Required Contract Provisions Federal-Aid Construction Contracts Form-1273, Section IV, Subpart 6

⁸⁴ MN/DOT Standard Specifications for Construction, Section 1906

⁸⁵ Minnesota Statute 161.32, Subdivision 1(d)

⁸⁶ MN/DOT Standard Specifications for Construction, Section 1808

⁸⁷ Minnesota Statute 177.44, Subdivision 6

⁸⁸ Minnesota Statutes 16B, 161.315, Subdivision 2, 177.43, Subdivision 5 177.44, Subdivision 6, 609.63

⁸⁹ Minnesota Statute 161.315