

SUMMARY OF MINNESOTA'S RESPONSIBLE CONTRACTOR LAW

THE LAW WAS EFFECTIVE JANUARY 1, 2015

Overview

This new law requires a contracting authority to enter into construction contracts on *projects* with only “responsible contractors”. Under the law, a contracting authority is defined broadly to include all *state agencies* and *municipalities*.

What projects are covered under the new law?

Projects covered include any building, erection, construction, alteration, remodeling, demolition and all repair of buildings, real property, highways, roads, bridges or other construction work performed pursuant to a construction contract estimated to exceed \$50,000.

What is a state agency under the new law?

‘State Agency’ includes any Minnesota state agency and all Minnesota State Colleges & Universities, the University of Minnesota, the Met Council, the Metropolitan Airports Commission, and any municipalities.

What is considered a municipality under the new law?

A county, town, home rule charter or statutory city, school district, watershed district, housing and redevelopment authorities, port authority, economic development authority, sport facility authority, drainage authority, joint powers board or organization created under MN Stat. § 471.59, special district, instrumentality, destination medical center corporation, or other municipal corporation or political subdivision authorized by law to enter into contracts.

What is a prime contractor under the law?

The definition of a “prime contractor” in this new law is essentially a vendor who bids on a project. But, the minimum criteria for a “responsible contractor” apply to the prime **and** its *related entities*. A *related entity* is defined broadly to include:

- Businesses substantially under the control of the prime
- Subsidiaries
- Predecessors
- Principals
- People or businesses that substantially control the prime.

What is a “Responsible Contractor” under the new law?

The minimum criteria for a “responsible contractor” under the law are:

(1) Administrative Filing & Registration Requirements

- compliance with workers' compensation and unemployment insurance requirements;
- currently registered with the Department of Revenue and the Department of Employment and Economic Development, if it has employees;
- valid federal tax id number or a valid Social Security number if an individual and;
- filed a certificate of authority to transact business in Minnesota with the secretary of state, if a foreign corporation or cooperative

(2) Wage Violations & Misclassification

The contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated:

- ✓ Minnesota’s Prevailing Wage laws (§§ 177.24, 177.25, 177.41 to 177.44)
- ✓ Minnesota Wage & Hour laws (§§ 181.13, 181.14)
- ✓ Minnesota Employee Classification law (§ 181.722)
- ✓ Federal Fair Labor Standards Act (USC, title 29, §§ 201 to 219) or
- ✓ Federal Davis Bacon Act (USC, title 40, §§ 3141 to 3148)

For purposes of this clause, a violation occurs when a contractor or related entity:

- repeatedly fails to pay statutorily required wages or penalties on one or more separate projects for a total underpayment of \$25,000 or more within the 3-year period;
- has been issued a compliance order by the commissioner of labor and industry that has become final;
- has been issued at least two determination letters within the three-year period by the Department of Transportation finding an underpayment by the contractor or related entity to its own employees;
- has been found by the commissioner of labor and industry to have repeatedly or willfully violated any of the sections referenced in this clause pursuant to §177.27;
- has been issued a ruling or findings of underpayment by the administrator of the Wage & Hour Division of the USDOL that have become final or have been upheld by an administrative law judge or the Administrative Review Board; or
- has been found liable for underpayment of wages or penalties or misrepresenting a construction worker as an independent contractor in a court action having jurisdiction

Provided that, if the contractor or related entity contests a determination of underpayment by the Department of Transportation in a contested case proceeding, a violation does not occur until the contested case proceeding has concluded with a determination that the contractor or related entity underpaid wages or penalties;

- (3) **Independent Contractor Abuses:** the contractor or related entity is in compliance with and, during the 3-year period before submitting the verification, has not violated section 181.723 or chapter 326B. (A violation here means a final administrative or licensing order.);
- (4) **Certificates of Compliance for Public Contracts:** the contractor or related entity has not, more than twice during the three-year period before submitting the verification, had a certificate of compliance under section 363A.36 revoked or suspended based on the provisions of that section, with the revocation or suspension becoming final because it was upheld by the Office of Administrative Hearings or was not appealed to the office;
- (5) **Diversity Goals:** the contractor or related entity has not received a final determination assessing a monetary sanction from the Department of Administration or Transportation for failure to meet targeted group business, disadvantaged business enterprise, or veteran-owned business goals, due to a lack of good faith effort, more than once during the three-year period before submitting the verification;
- (6) **Suspension or Debarment:** the contractor or related entity is not currently suspended or debarred by the federal government or the state of Minnesota or any of its departments, commissions, agencies, or political subdivisions; **and**
- (7) **Subcontractor Verification:** prior to execution of a construction contract, an apparent successful prime contractor must verify that all subcontractors it intends to use have verified that they meet the definition of a Responsible Contractor.

Any violations, suspensions, revocations, or sanctions, as defined in clauses (2) to (5) above, *occurring prior to July 1, 2014*, shall not be considered in determining whether a contractor or related entity meets the minimum criteria.

- * Note, that state agencies and municipalities are not restricted by this law in considering *additional criteria* for what they think, in their discretion, is a “responsible contractor.”
- * Limited exception: If only one prime contractor bids a project, a contracting authority may award them the contract even if that contractor does not meet the minimum criteria above.

How must a contractor show that it is a “Responsible Contractor”?

Bidding contractors must submit to the contracting authority a sworn statement under oath by an owner or officer stating that it meets the minimum criteria for a responsible contractor under this new law. With this verification, the prime contractor must submit a list of its first-tier subcontractors it intends to use.

- * Each contractor must obtain verifications of compliance from each subcontractor with which it will have a direct contractual relationship prior to execution of a

contract. All subcontractor verifications must be provided to the contracting authority upon request.

- * A contractor is responsible for false statements of its subcontractors *only if* that contractor accepted the verification of compliance from the subcontractor with *actual knowledge* that it includes a false statement.
- * Subcontractors must meet the minimum criteria no matter what the value of the subcontract.

What must be included in the project bid documents regarding the new law?

The definition of “responsible contractor” taken directly from the statute or a clear reference to that statutory definition *must be included* in the bid documents for all covered projects. Bids can be awarded either to the lowest responsible bidder or by a best value selection method.