



RESPONSIBLE CONTRACTOR LAW

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Background

- What inspired this law?
- What is the intent of the law?
- How was the bill drafted?
- What happened in legislative committees?
- What was the stakeholder response?

Minn. Stat. § 16C.285

Effective Date:

January 1, 2015

Amendments effective July 1, 2015

The law applies to all construction contracts estimated to exceed \$50,000 entered into based on solicitation documents issued on or after January 1, 2015. For “violations” covered by the law, the slate was “wiped clean” on July 1, 2014.





Definitions

Subdivision 1 & 3 defines the following:

- Construction contract
- Contractor
- Contracting authority
- Motor carrier
- Municipality
- Prime Contractor
- Principal
- Project
- Related entity
- Responsible Contractor
- Solicitation document
- Subcontractor
- Vendor

Responsible Contractor Required

- A contractor must meet the minimum criteria in subdivision 3 to be eligible to be awarded a construction contract.
- The law applies to publicly owned or financed projects where the construction contract is estimated to exceed \$50,000. Amendment clarified that tax increment financing does not count towards the \$50,000.
- A subcontractor or motor carrier must meet the minimum criteria in subdivision 3 regardless of the value of the subcontract.
- If only one prime contractor responds to a solicitation document a contracting authority may award a construction contract to the responding prime contractor even if the minimum criteria in Subd. 3 are not met.



Minimum criteria

“Responsible contractor” means a contractor that conforms to the responsibility requirements in the solicitation document for its portion of the work on the project and verifies that it meets the following minimum criteria:

Minimum Criteria #1

The contractor:

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

Minimum Criteria #2

The contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated section 177.24, 177.25, 177.41 to 177.44, 181.13, 181.14, or 181.722, and has not violated US Code, title 29, sections 201 to 219, or US Code, title 40, sections 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 three-year period, provided that a failure to pay is “repeated” only if it involves two or more separate and distinct occurrences of underpayment during the three-year period;
- has been issued an order to comply by the commissioner of labor and industry that has become final;

Minimum Criteria #2 (continued)

- 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 section 177.27;
- has been issued a ruling or findings of underpayment by the administrator of the Wage and Hour Division of the United States Department of Labor 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 an action brought in a court having jurisdiction.

Minimum Criteria #3

- the contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated section 181.723 or chapter 326B.

For purposes of this clause, a violation occurs when a contractor or related entity has been issued a final administrative or licensing order;

Minimum Criteria #4

- 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 section 363A.36, with the revocation or suspension becoming final because it was upheld by the Office of Administrative Hearings or was not appealed to the office;

Minimum Criteria #5

- 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.

Minimum Criteria

Applies to #2 - #5

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

Minimum Criteria #6

- 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 that have authority to debar a contractor; and

Minimum Criteria #7

- all subcontractors and motor carriers that the contractor intends to use to perform project work have verified to the contractor through a signed statement under oath by an owner or officer that they meet the same minimum criteria listed in clauses (1) to (6).

Verification of Compliance

- A contractor responding to a solicitation document shall submit a signed statement under oath by an owner or officer verifying compliance with each of the minimum criteria in subd. 3, with the exception of clause (7) at the time that it responds to the solicitation document.
- A contracting authority may accept a signed statement under oath as sufficient and shall not be held liable for awarding a contract in reasonable reliance on that statement.
- A prime contractor, subcontractor, or motor carrier that fails to verify compliance with any one of the required min. criteria or makes a false statement under oath in a verification of compliance shall be ineligible to be awarded a construction contract.

Verification of Compliance (continued)

- A false statement under oath verifying compliance may result in termination of a construction contract.
- A contracting authority shall not be liable for declining to award a contract or terminating a contract based on a reasonable determination that the contractor failed to verify compliance or falsely stated that it meets the minimum criteria.
- A verification of compliance need not be notarized.
- An electronic verification of compliance made & submitted as part of an electronic bid shall be an acceptable verification of compliance provided that it contains an electronic signature.

Subcontractor Verification

- A prime contractor or subcontractor shall include a list of all of its first-tier subcontractors that it intends to retain for work on the project.
- Prior to contract execution, the apparent successful prime contractor shall submit to the contracting authority a supplemental verification under oath confirming compliance with subd. 3, clause (7).
- Each contractor or subcontractor shall obtain from all subcontractors in which it will have a direct contractual relationship a signed statement under oath verifying that they meet all of the min. criteria in subd. 3 prior to execution of a contract with each subcontractor.
- If a prime contractor or any subcontractor retains additional subcontractors on the project after submitting its verification of compliance, the prime contractor or subcontractor shall obtain verifications of compliance from each additional subcontractor and shall submit a supplemental verification confirming compliance within 14 days of retaining the additional subcontractors.

Subcontractor Verification (continued)

- A prime contractor shall submit upon request copies of the signed verifications of compliance from all subcontractors of any tier pursuant to subdivision 3, clause (7).
- A prime contractor and subcontractors shall not be responsible for the false statements of any subcontractor with which they do not have a direct contractual relationship.
- A prime contractor and subcontractors shall be responsible for false statements by their first-tier subcontractors with which they have a direct contractual relationship only if they accept the verification of compliance with actual knowledge that it contains a false statement.

Motor Carrier Verification

- A prime contractor or subcontractor shall obtain annual from all motor carriers with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subd. 3 prior to execution of a contract with each motor carrier.
- A prime contractor or subcontractor shall require each such motor carrier to provide it with immediate written notification in the event that the motor carrier no longer meets one or more of the minimum criteria in subd. 3 after submitting its annual verification.
- A motor carrier shall be ineligible to perform work on a project covered by this section if it does not meet all the minimum criteria in subd. 3.
- Upon request, a prime contractor or subcontractor shall submit to the contracting authority the signed verifications of compliance from all motor carriers providing for-hire transportation of materials, equipment, or suppliers for a project.

Additional Criteria

- Nothing in this section shall restrict the discretion of a contracting authority to establish additional factors for defining contractor responsibility. This sub-divisions not an independent grant of authority to a contracting authority to establish additional minimum criteria pursuant to subdivision 3.



Implementation

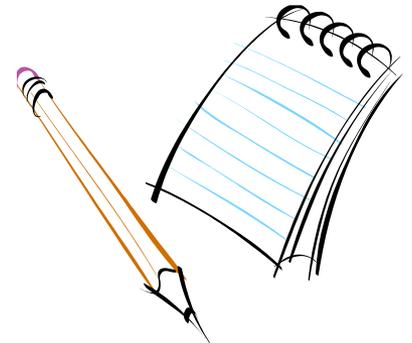
The solicitation document shall include the following:

- The definition of responsible contractor
- shall state that any prime contractor or subcontractor or motor carrier that does not meet the minimum criteria or fails to verify that it meets those criteria is not a responsible contractor and is not eligible to be awarded a construction contract.



Implementation (continued)

- shall provide that a false statement under oath verifying compliance with any of the minimum criteria shall render the prime contractor or subcontractor or motor carrier ineligible to be awarded a construction contract and may result in termination of a contract awarded.
- shall state that a prime contractor shall submit to the contracting authority upon request copies of the signed verifications of compliance from all subcontractors of any tier and motor carriers.



Implementation (continued)

- MnDOT using electronic verification as part of e-bid system; MnDOT not accepting paper copies;
- Admin. Promulgated a standard form; being used for all state contracts (other than MnDOT highway construction);
- Initially lots of questions about requirements, but few questions recently.
- Has it deterred firms from bidding?

Ways to Stay Safe

- Enroll in Prevailing Wage training.
- Do due diligence on your subcontractors – make sure to get verifications from subs.
- Make sure motor carrier verifications are current.
- You can check state and federal debarred/suspended lists online.

QUESTIONS?