

# Public Contractors Face New Requirements

As the result of new legislation codified in Minnesota Statutes § 16C.285, Minnesota contractors that bid on public construction projects will face new requirements in the bidding process. Specifically, contractors and subcontractors soliciting contracts for, or working on projects in excess of \$50,000 from public entities, must now qualify as “responsible contractors.”

A “responsible contractor” is one that meets minimum criteria under lowest responsible bidder or best value selection methods. Contractors seeking a construction project with designated public entities must submit a signed statement under oath verifying the following: (1) the contractor or subcontractor is in compliance with workers’ compensation and unemployment insurance requirements; (2) the contractor or subcontractor is currently registered with the Department of Revenue and the Department of Employment and Economic Development if it has employees and has a valid federal tax identification number (or a valid social security number if an individual); (3) the contractor or subcontractor has the authority to conduct business in the state of Minnesota; (4) the contractor or subcontractor is in compliance, during the preceding three years, with federal labor laws and Minnesota statutes and/or municipality requirements regarding minimum wage, overtime, the Prevailing Wage Act, prompt payment of wages, and misrepresentations of employment; (5) the contractor or subcontractor, within the preceding three years, has not violated Minnesota statutes regarding independent contractors, registration, construction codes, and licensing; (6) the contractor or subcontractor has not had a certificate of compliance for public contracts revoked or suspended more than twice during the preceding three years; (7) the contractor or subcontractor has not operated under false names or fronts as a small business, a socially or economically disadvantaged small business, or a disadvantaged business enterprise; (8) the contractor or subcontractor has not, within the preceding three years, failed to meet applicable government agency established disadvantaged business enterprise goals due to lack of good faith effort; (9) the contractor or subcontractor is not currently debarred by the federal government or state of Minnesota and is currently not ineligible to be awarded a construction contract by a contracting authority or perform work under a construction contract; and (10) all subcontractors and vendors intended to be used on the project have verified to the contractor or subcontractor through a signed statement under oath that they also meet the minimum criteria described in (1) to (9) above.

If the prime contractor or subcontractor retains additional subcontractors after the submission of the verification of compliance above, the prime contractor or subcontractor must provide verifications of compliance from each additional subcontractor with which it has a direct contractual relationship. Contractors cannot be held liable for false statement of any subcontractor unless the contractor has a direct contractual relationship with the subcontractor and they accept the verification of compliance with either knowledge that it contains a false statement or reckless disregard for the truth of the verification of compliance.

Contractors and subcontractors that fail to qualify as “responsible contractors” or make false statements under oath regarding the minimum criteria may be deemed ineligible to be awarded a construction contract or may have their construction contract terminated.

The new legislation becomes effective January 1, 2015 and applies to construction contracts let by state agencies, the Metropolitan Council, the University of Minnesota, Minnesota State Colleges and Universities, the Metropolitan Airports Commission, and municipalities.