

**KANSAS DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION TO THE
STANDARD SPECIFICATIONS, EDITION 2007**

**REQUIRED CONTRACT PROVISIONS
KANSAS FUNDED CONSTRUCTION CONTRACTS**

I. GENERAL.

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any second-tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or second-tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the Contract.

4. A breach of Section I, paragraph 2; Section III, paragraphs 1, 2, 3, 5 or 6; Section IV, paragraph 1 through 4; or, Section V of these Required Contract Provisions may be grounds for debarment whenever any contractor or subcontractor is found by the Secretary of Transportation to be in aggravated or willful violation of these Required Contract Provisions. Such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period of not to exceed 3 years to receive any contracts or subcontracts subject to any of the applicable statutes.

5. In the event of a dispute of fact or law concerning payment of wages, overtime or proper classifications, the contract administrator may upon his own motion, upon referral from the project administrator, or upon request of the contractor or subcontractor(s), conduct an investigation to determine the appropriate actions to be taken.

II. DEFINITIONS.

1. The term "Contracting Officer" means the individual, duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Kansas Department of Transportation.

2. The term "Contract" means the written agreement between the Secretary and the Contractor setting forth the obligations of the parties hereunder, including, but not limited to, the performance of the work, the furnishing of labor and materials, and the basis of payment.

The contract includes the invitation for bids, proposal, contract forms and contract bond, specifications, special provision, general and detailed plans, any notice to contractors, the notice to proceed, and any change orders and agreements that are required to complete the construction of the work in an acceptable manner, including authorized extensions thereof, all of which constitute one agreement.

In addition, for the purposes of these required contract provisions, and without exclusion of any part of the above, the term "Contract" means any prime contract which is subject to the labor standards provisions of K.S.A. 68-2317 and any second-tier subcontract let under the prime contract.

(a) The term "contractor" means the individual, firm, corporation, or any acceptable combination thereof, or joint venture, contracting through its agents or employees with the Secretary for performance of prescribed work.

(b) The term "Subcontractor" means an individual, partnership, firm, corporation, or any acceptable combination thereof, or joint venture, to which the contractor sublets part of the contract, or a subcontract of the contract.

3. The term "work" generally includes construction activities as distinguished from manufacturing, furnishing of materials, or serving as maintenance work. The terms include without limitation, structures, and improvements of all types such as bridges, highways, parkways, streets, sewers, channels, dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of material, articles, supplies or equipment is not a "work" within the meaning of the regulations herein unless conducted in connection with and at the site of such work as is described herein.

4. The term "public work" includes work, the construction, prosecution, completion, or repair of highways, roads, streets and bridges which is carried on directly by authority of the Secretary of Transportation.

5. The terms "construction", "prosecution", "completion" or "repair" mean:

- (a) All types of work done on a particular work at the site thereof;
- (b) all work done in conjunction of development of the project, including without limitations, altering or installation on the site of the work.
- (c) painting and decorating;
- (d) the transporting of materials and supplies to or from the work by the employees of the Construction Contractor or construction subcontractor; and
- (e) the manufacturing or furnishing of materials, supplies or equipment on the site of the work by persons employed by the contractor or subcontractor.

6. The term "site of the work" is defined as follows:

(a) The "site of work" is limited to the physical place or places where the construction called for in the Contract will remain when work on it has been completed and, as discussed in paragraph 6 (b) below, other adjacent or nearby property used by the Contractor or Subcontractor in such construction which can be reasonably be said to be included in the "site" because of proximity.

(b) Except as provided in paragraph 6 (c) below, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., are part of the "site of work" provided they are dedicated exclusively or nearly so to the performance of the Contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

(c) Not included in the "site of work" are permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular contract or project. This is so even though mechanics and laborers working at such an establishment may repair or maintain machinery used in contract performance, or make items called for by the Contract while continuing normal commercial work. Regardless of the activities performed at such establishments, the wage determination does not apply because they do not constitute the "site of work". In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids and not on the project site are not included in the "site of work", even when the operation for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract. On the other hand, if mechanics or laborers working at such establishments that are not a part of the "site of work" are required to go to a place which is the "site of work" to perform activities on the contract there, the wage decision is applicable for the actual time so spent at the "site of work", not including travel.

7. Once the limits of "site of work" have been determined, the wage determination is applicable only to those mechanics and laborers employed by a contractor or subcontractor within such limits (that is, upon the "site of work").

8. The term "laborer" or "mechanic" includes those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanics' or laborers' duties are laborers and mechanics for the time so spent.

9. Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a highway, bridge, street or road work which is non-federal aid state-funded is employed regardless of any contractual relationship alleged to exist between the contractor and such person.

10. The term "wages" means the basic hourly rate of pay; any contributions irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of cost to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborer and mechanic affected. Fringe benefits may include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupation activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay, defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local laws.

11. The term "wage determination" includes the original U.S. Department of Labor General Wage Decision included herein as a contract document.

The minimum rates and fringe benefits as determined by the U. S. Department of Labor fulfill the requirement of K.S.A. 68 2317. A copy of the minimum rates as published by the Government Printing Office entitled "U. S. Department of Labor General Wage Decision" is included in this contract.

12. The term "Truck Owner-Operator" means an individual owns and operates the vehicle. The prime contractor is responsible for the submission of certified payrolls for truck owner-operators.

In determining whether a truck driver is an owner-operator/independent contractor, the following factors are considered:

- (a) the extent to which the services rendered are an integral part of the principals business;
- (b) the permanency of the relationship;
- (c) the amount of individual investment in facilities and equipment;
- (d) the opportunity for profit and loss;
- (e) the degree of independent business organization and operation and the degree of independent initiative, judgment or foresight exercised by the one who performs the service; and
- (f) the nature and degree of control by the principal.

III. CONTRACT PROVISIONS AND RELATED MATTERS.

1. The Contractor shall insert in full in any subcontracts which is entered into for the actual construction, alteration and/or repair of any highway, bridge, street or road, financed by the State of Kansas, the following clauses:

(a) Minimum Wages.

All laborers and mechanics employed or working upon the site of the work will be paid unconditionally not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by law), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination which is found elsewhere in the contract and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits on behalf of laborers and mechanics are considered wages paid to such laborers and mechanics. Regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed without regard to skill, except for apprentices. Laborers and mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein. Provided, that the employer's payroll records actually set forth the time spent in each classification in which work is performed. The employer may elect to pay the laborer or mechanic at the rate for the classification of work which provides the higher rate of pay.

The wage determination shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b) Apprentices.

(1) Apprentices will be permitted to be paid less than the predetermined rate for the work they perform when they are registered in a bona fide apprenticeship program registered by the Kansas Apprenticeship Council (KAC) recognized by the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training (BAT).

(2) An apprentice is (1) any person employed under a bona fide apprenticeship program registered with the KAC, or, (2) a person in the first 90 days of probationary employment as an apprentice in such an approved apprenticeship program, who is not individually registered in the program, but who has been certified by KAC to be eligible for probationary employment as an apprentice. All apprentices other than probationary apprentices must be individually registered in the approved program. Consistent with the level of training in the program and under the supervision of the journeymen of the trade, an apprentice will perform for the appropriate period of time at all levels of work, from the lowest unskilled laborer's work to the highest skilled or craft work of the finished journeyman.

(3) Under the registered program, the allowable ratio of apprentices to journeymen employed on the Contract work in any craft classification is not to be greater than the ratio permitted the Contractor as to his entire work force. The allowable ratio is to be applied on a daily basis.

(4) Work may be performed in a location other than the place where the program registration was initially made, the allowable ratio is the ratio specified in the Contractor's or subcontractor's registered program.

(5) A working foreman, supervisor, or owner may be counted as a journeyman for ratio purposes provided such a worker spends the majority of their time at the site.

(6) If a Contractor or subcontractor employs apprentices in such a number that the permissible ratio is exceeded, all apprentices employed in excess of the ratio are considered to have been improperly employed and will be entitled to the rate for the classification of work which they are performing.

(7) Maintain written evidence of the registration of the program and the apprentices, and of the ratios and wage rates prescribed in the applicable programs. The Engineer should check with the Contractor for such written evidence of bona fide apprenticeship if apprentices are employed on the Contract.

(8) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.

(9) In the event that the KAC withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for work performed until an acceptable program is approved.

2. Classification:

(a) The Department shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, be classified in the following manner.

(b) The Chief, Bureau of Construction and Maintenance will approve additional classifications, wage rate and fringe benefits therefore only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry; and

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(c) If the contractor or subcontractor, as appropriate, and the laborers and mechanics (if known) to be employed in the additional classification or their representatives, agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate). The appropriate form (Standard Form (SF) 1444) shall be completed and sent to the m Chief, Bureau of Construction and Maintenance who will approve, modify, or disapprove every additional classification within 30 days of receipt and so notify the Construction Administrator.

(d) If approved, the wage rate (including fringe benefits where appropriate) determined pursuant to paragraph (c), above, shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits.

Whenever the minimum wage prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractor, as appropriate shall either pay the

benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

4. Withholding.

The Department shall withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other contract with the same prime contract as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Department may, after written notice to the contractor, take such actions as may be necessary to cause suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

5. Payrolls and basic records.

Payrolls and basic records relating thereto shall be maintained by the contractor or subcontractor during the course of the work and preserved for a period of three years from the date of completion of the contract. The payroll records shall accurately and completely contain the name, address and social security number of each laborer and mechanic, his correct classification, rate of pay, (including rates or contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof) daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by authorized representatives of the State of Kansas. Whenever it is found that the wages of any laborer or mechanic include the amount of any cost reasonably anticipated in providing fringe benefits under a plan or program, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

Submit copies of all payrolls weekly to the Engineer for each week in which any work is performed on the contract by the contractor or any subcontractor. The prime contractor is responsible for the submission of payrolls by all subcontractors. Include on the payrolls all of the information required in paragraph 5 above. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-000014-1), U. S. Government Printing Office, Washington, D.C., 20402.

Once a contractor or subcontractor has performed work and submitted payrolls, they must continue to submit payrolls. If no work is performed, a negative (no work performed) payroll is to be submitted. If for an extended period of time no work is to be performed, note on the last payroll submitted the date in which work will be resumed. Negative payrolls will not be required during the extended period of no work performed.

6. Statement of Compliance.

Each contractor or subcontractor engaged in the construction, prosecution, completion or repair of any highway, street, road or bridge financed by the State of Kansas shall furnish each week a statement with respect to the wages paid each of its employees engaged on the work during the preceding weekly payroll period. Each "Statement of Compliance," shall be signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(a) That the payroll for the payroll period contains the information required to be maintained in paragraph 5, above;

(b) That each laborer or mechanic employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the wages earned, other than permissible deductions provided by law;

(c) That each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

Weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH_347 shall satisfy the requirement for submission of the "Statement of Compliance" required herein.

The willful falsification of any of the above certifications may subject the contractor or subcontractor to debarment under these specifications.

Each weekly statement shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period to the Construction Administrator in charge of the contract.

The contractor or subcontractor shall make the records required under paragraph 5 and 6 of this section available for inspection, copying, or transcription by authorized representatives of the Secretary of Transportation and shall permit such representatives to interview employees during the working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the KDOT may, after written notice to the contractor take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action.

7. Permissible Payroll Deductions.

(a) Any deduction made in compliance with the requirement of Federal, State, or local law, such as Federal or State withholding income taxes and Federal Social Security taxes.

(b) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when cash or its equivalent has been advanced to the person employed in such a manner as to give complete freedom of disposition of the advanced funds.

(c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor or any affiliated person, or when collusion or collaboration exists.

(d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: Provided, however, that the following standards are met:

(1) The deduction is not otherwise prohibited by law;

(2) It is either (i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or (ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees;

(3) No profit or other benefits is otherwise obtained, directly or indirectly, by the contractor or subcontractor or affiliated person in the form of commission, dividend, or otherwise; and

(4) The deduction shall serve the convenience and interest of the employee.

(e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

(f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with the Federal and State credit union statutes.

(g) Any deduction voluntarily authorized by the employee for the making of contributions in governmental or quasi-governmental agencies, such as the American Red Cross.

(h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

(i) Any deduction to pay regular union initiation fees and membership dues, not including fines or special assessments: Provided, however, that a collective bargaining agreement the contractor or subcontractor and representatives of its employees provide for such deduction and the deductions are not otherwise prohibited by law.

(j) Any deduction not more than for "reasonable cost" of board, lodging, or other facilities. When such a deduction is made additional records verifying "reasonable cost" shall be maintained.

(k) Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the employer, if such deduction is not a violation of the Fair Labor Standards Act or prohibited by other law, if the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person, and if the deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

8. Methods of payment of wages.

The payment of wages to laborers and mechanics shall be paid in legal tender of the United States, except that this condition will be considered satisfied if payment is made by a negotiable check, on a solvent bank, which may be cashed readily by the employee in the local community for the full amount, without discount or collection charges of any kind. Where checks are used for payment, the Contractor shall make the necessary arrangements for them to be cashed and shall give information regarding such arrangements.

IV. CONTRACT WORK HOURS.

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay (exclusive of fringe benefits) for all hours worked in excess of forty hours in such workweek.

2. Violations; Liability for unpaid wages; liquidated damages.

In the event of any violations of the clause set forth in paragraph 1, above, the contractor and any subcontractor responsible shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the State of Kansas for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clauses set forth in paragraph 1 of this section, in the sum of \$10 for each calendar day of which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of overtime wages as required by the clause set forth in paragraph 1 of this section.

3. Withholding for unpaid wages and liquidated damages.

The Kansas Department of Transportation shall upon its own action withhold or cause to be withheld, from any monies payable on account for work performed by the contractor or subcontractor under any such contract or any other State contract with the same prime contractor, or any other contract subject to these Required Contract Provisions, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section.

4. Subcontracts.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontract. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

V. FINAL CERTIFICATE.

Upon completion of the contract, the contractor shall furnish to the Construction Administrator a sworn statement (D.O.T. Form 222, "Affidavit of Contractor") certifying that the wages paid to the various classes of laborers and mechanics on the project were not less than those shown on the wage determination contained in the contract.