

INSTRUCTIONS

CONTRACT CLAUSE 1: To be incorporated by prime contractor or upper-tiered subcontractor in contracts with “direct subcontractors” to meet requirements of Section 285.530.5 RSMo for the prime contractor or upper-tiered subcontractor “not being held liable” for a direct subcontractor’s violation of 285.530.1 RSMo (prohibiting “knowing” employment of “unauthorized aliens”). To satisfy the requirement of 285.530.5 RSMo, the direct subcontractor must sign a contract including the attached clause AND submit an affidavit as set out in Affidavit Form 2.

AFFIDAVIT FORM 2: To be provided by prime contractor or upper-tiered subcontractor to a “direct subcontractor” and signed and returned by the “direct subcontractor” to comply with requirements of 285.530.5 RSMo for the prime contractor of upper tiered subcontractor not to be “held liable” for the subcontractor’s violation of section 285.530.1 RSMo.

Some public entities (state agencies, political subdivisions, public institutions) will require contract documents provided in CONTRACT CLAUSE 1 and AFFIDAVIT FORM 2, to be signed by a direct subcontractor to a prime contractor or upper-tiered subcontractor, for the prime contractor or upper-tiered subcontractor to be in compliance with Section 285.530.2 RSMo (compliance by the prime contractor). **For all contracts with public entities in amounts exceeding \$5,000 it is RECOMMENDED that the prime contractor or upper-tiered subcontractor require this affidavit (AFFIDAVIT FORM 2) and the contract clause (CONTRACT CLAUSE 1) from all DIRECT subcontractors to provide the legal protection of “not being held liable” for a direct subcontractor’s violation of the prohibition of 285.530.1 RSMo on “knowingly” employing unauthorized aliens.**

A business entity can make an affidavit only by act of an appropriate corporate officer or agent. Best practice dictates that an appropriate resolution or other document memorializes the designation of one or more corporate officers and/or agents to sign affidavits. A sample resolution is attached. (*See Resolution Form 1*) One or more person(s) may be authorized. The person making the affidavit should do so by personal knowledge or such knowledge as is available by reviewing corporate documents. **The Resolution should be maintained in the corporation’s records. It is not required to be submitted with the Affidavit, unless requested by the public entity or upper tiered contractor.**

The blanks in paragraphs 1 & 2 of Affidavit Form 2 are for the name of the subcontractor. Use the same name in each such blank.

Any such affidavit must be notarized. If the company does not employ a Notary, one can usually be found during business hours at most full service banks and attorneys offices.

Prime contractors and upper-tiered subcontractors on **projects for private owners** may also opt to gain the additional protection of “not being held liable” for a direct subcontractor’s employment of “unauthorized aliens” by requiring this affidavit (AFFIDAVIT FORM 2) to be signed by the direct subcontractor and requiring the contract clause (CONTRACT CLAUSE 1).

CONTRACT CLAUSE 1:

To be incorporated by prime contractor of upper-tiered subcontractor in contract with “direct subcontractors” to meet requirements of Section 285.530.5 RSMo for the prime contractor or upper-tiered subcontractor “not to be held liable” for a direct subcontractor’s violation of 285.530.1 RSMo (prohibiting “knowing” employment of “unauthorized aliens”). To satisfy the requirements of 285.530.5 RSMo, the direct subcontractor must sign a contract including the clause below and submit an affidavit as set out in Affidavit Form 2. (REMOVE THIS EXPLANATION PRIOR TO USE.)

MODEL CONTRACT CLAUSE FOR INCLUSION IN SUB-CONTRACTS IN COMPLIANCE WITH 285.530.5 RSMo (USE THIS IF CONTRACT FORM IS REVISED TO INCLUDE THIS CLAUSE)

By execution of this SUBCONTRACT, SUBCONTRACTOR affirmatively states that it is not knowingly in violation of Section 285.530.1 RSMo (prohibiting “knowing” employment of “unauthorized aliens”), and further, that it shall not violate said section in the future.

ALTERNATE:

MODEL CLAUSE FOR INCLUSION AS ADDENDUM TO CONTRACT (USE THIS IF THE CLAUSE IS SIMPLY ATTACHED TO THE CONTRACT). (BEST PRACTICES SUGGEST THAT THIS AND ANY OTHER ADDENDA BE SPECIFICALLY IDENTIFIED IN THE MAIN PORTION OF THE SUB-CONTRACT)

ADDENDUM TO SUBCONTRACT

By execution of this ADDENDUM TO SUBCONTRACT, SUBCONTRACTOR affirmatively states that it is not knowingly in violation of Section 285.530.1 RSMo (prohibiting “knowing” employment of “unauthorized aliens”), and further, that it shall not violate said section in the future.

/s/ SUBCONTRACTOR

On this ___ day of _____ in the year 20____, before me, _____,
a Notary Public in and for said State, personally appeared _____, known to me
to be the person who executed the within affidavit, and acknowledged to me that he/she executed
the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the
county and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires: