TOWNS ARE REQUIRED TO OBTAIN IC-134 FORMS FROM CONTRACTORS

by
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Before a town can make final payment to a contractor on a contract which required the contractor or subcontractor to employ employees for wages, it must obtain a certified IC-134 form from the contractor. Minn. Stat. § 270C.66. The form is called a “Withholding Affidavit for Contractors” and is used to make sure contractors and subcontractors working for public entities have satisfied the requirements related to income tax withholding.

When a contractor completes a contract with a public entity, it is required to complete an IC-134 form and submit it to the Minnesota Department of Revenue. If everything is in order, the Department will sign the form, keep a copy, and return the original to the contractor. The contractor can then submit the form to the public entity to receive final payment. Keep in mind that the requirement to obtain a certified IC-134 form from a contractor is not tied to a particular dollar amount and so can apply to even relatively small contracts.

Town boards should review their standard contracts to be sure they contain a requirement to submit an IC-134 form. Your contracts should already indicate that final payment (usually 5%) will be withheld until certain conditions are met such as a final inspection and satisfaction of the board that all subcontractors, suppliers, etc. have been paid. The need to submit an IC-134 form certified by the Department of Revenue should be included in the list of conditions for release of final payment.

The broad language of the statute seems to indicate the requirement would apply to nearly every contract towns enter into in a year. However, in 1961 the Attorney General’s Office opined that the term “contractor” as used in this context means those who supply labor or materials, and is not meant to include dealers or merchants. Op.Atty.Gen., 530, Dec. 12, 1961. Furthermore, discussions with the Withholding Division of the Department of Revenue revealed that the Department does not need an IC-134 form from contractors performing maintenance services (such as mowing, road grading, or snowplowing) or from those who only supply materials. The Department focuses on contractors, even sole proprietors, who supply labor as part of a construction or rehabilitation contract for a public entity. For example, it appears a contractor working for a town to rebuild a road would need to supply an IC-134 form, but a gravel pit operator who supplied gravel to the contractor would not need to complete an IC-134 form.

Questions concerning the IC-134 form and requirements can be directed to Gail Callinan (Gail.Callinan@state.mn.us), Withholding Division, Department of Revenue at 651/556-3669, or to the Division generally at 800-282-9999. Though it is not the obligation of the town to provide a copy of the form, town officers interested in obtaining a copy can go to the following web site: http://www.taxes.state.mn.us/taxes/forms/ic134.pdf