

LB 1001 requires all contractors to withhold 5% of the contract amount, without any deductions for materials or other subcontracts, from subcontractors, unless the subcontractor is in the Revenue Contractor Database. NO withholding is required on payments made to subcontractors who are listed on the database.

Withholding requirements will apply to all payments made on or after January 1, 2009 to subcontractors NOT in the Revenue Contractor Database. The database will be available in November, 2008.

The Revenue Contractor Database will be a key tool for all to use in the implementation of LB 1001 and will be accessed via the NDR's website, www.revenue.ne.gov. The database will contain the contractor's legal name, doing-business-as name, address, and contractor option. You will be able to search the database by any of the names, select the correct business, click on the business name and bring up the entity's information. If the company's name is listed on the database you DO NOT have to withhold the 5%. There is a print button that allows you to print a dated copy for your documentation.

The Revenue Contractor Database will be created by having all contractors verify or update their information currently on file with the NDR. In early August, 2008, the NDR will mail a letter and pre-identified Form 16 to all contractors currently in the old database. **CONTRACTOR ACTION IS REQUIRED UPON RECEIVING THE LETTER AND FORM 16.** You will need to verify or update the information pre-identified on the form, sign, and return the Form 16 to the Nebraska Department of Revenue. **IF YOU DO NOT RECEIVE a pre-identified Form by mid-August, 2008, you should print a Form 16 from the website, www.revenue.ne.gov and submit to the address on the form. ONLY CONTRACTORS WHO FILE FORM 16 AFTER AUGUST 1, 2008 WILL BE INCLUDED IN THE REVENUE CONTRACTOR DATABASE.** Now here is a surprise; there is no fee to submit a Form 16.

Here are a few Q & A regarding implementation:

After January 1, 2009 am I required to print a hard copy from the Contractor Database for the job file? No, you are not required by law to keep a copy in the job file. The NDR will have the ability to verify names on database as of a given date. However, it still might be a good idea to print a copy for the file; it is your call.

Do I need to check the database each time I issue a check to a subcontractor? No, once you have verified that the subcontractor is on the list you do not have to check again for the remainder of the calendar year.

What if a subcontractor is not listed on the database? Tell them to complete a Form 16 and get it faxed to the NDR immediately. The NDR is predicting about a three day turn-around time from form submission to appearing on the database. Recheck the database in three to four days.

As a subcontractor, what can I do to ensure that the GC does not withhold the five-percent? Make sure you have completed a Form 16 and have submitted it to the NDR. You also could provide a printed copy of your “info” from the Contractor Database to the GC before the job begins or at the start of each calendar year.

What if the subcontractor is not on the list and does not register? Any payments made to the sub on or after January 1, 2009 must have 5% withheld from and the 5% must be sent in a timely manner to the NDR.

Having to withhold 5% from a subcontractor is going to be an administrative pain. Do we receive any type of administrative fee from the NDR for collecting the 5%?
No.

What if I withheld the 5%, issued the net check to the subcontractor and the 5% to the NDR, and THEN the subcontractor decides to register? The subcontractor has to wait until the end of the year to see if he gets any refund back from the state. However, once you verify that the sub has been added to the database, you will not have to withhold on future payments for the remainder of that calendar year.

Will my company have to register with the NDR each year? No, this is just a one time registration. The NDR felt that this was a good opportunity to update and clean up the existing contractor database.

Is filing the Form 16 with the NDR and Contractor Registration the same thing? No

What is Contractor Registration? On July 18, 2008 The Nebraska Contractor Registration Act will be expanded and require contractors and subcontractors performing construction services in Nebraska to register with the NE Department of Labor and provide proof of workers’ compensation insurance if they have employees. The law previously applied only to contractors performing work in a county of 100,000 or more people.

What does it cost to register with the NE Department of Labor and how do I go about it? There is a \$40.00 annual fee to register. Complete and submit a Contractor and Subcontractor Registration Application. Mail the application form and the \$40 check to Safety & Labor Standards, 5723 F Street, Omaha, NE 68117. Here is the link to the form:

Does the withholding requirement apply to all our vendors? NO, the withholding requirement only applies to vendors being paid for construction services (labor) that DO NOT appear on the Dept. of Revenues database.

Does the law apply to all contracts signed after January 1, 2009? NO, the law states that the withholding requirement applies to all PAYMENTS made after January 1, 2009.

How are we to make payments to NDR after we withhold the 5%? Do we pay it all in one check? Do we have to issue a separate check for each vendor we withhold from? The Department of Revenue has added a line to the document form you now use for transmitting all other withheld payroll taxes.

The response to the following three questions has been provided by James Overcash, Woods & Aitken, LLP:

How does LB 1001's 5% withholding requirement affect our contracts already in place when the bill goes into law? LB 1001 applies to all payments made after January 1, 2009. LB 1001 applies to contracts in place as of January 1, 2009. This means it applies to contracts entered into before January 1, 2009 for which payments are made after January 1, 2009. Thus, a subcontractor must be registered with the Department of Revenue to avoid the withholding requirement.

If we have a signed contract with a subcontractor for \$10,000, the sub is not registered so we withhold 5% and only send the sub a check for \$9,500, are we defaulting on our contract agreement? No. All parties have a requirement, either expressed directly in their contract or implied in their contractual relationship, to comply with state law.

Does LB 1001 require the inclusion of any language in new contracts to deal with this 5% withholding requirement? No. You do not need to include a specific reference to LB 1001. You may choose to include a reference in your new contracts that all subcontractors will comply with all laws. Additionally, in order for the implementation of LB 1001 to proceed smoothly with your subcontractors, it may be a good idea to provide all subcontracts with a copy of the Department of Revenue's notice bulletin regarding LB 1001. This could be done by email or included with a copy of each new subcontract.