



OFFICE MEMORANDUM

DATE: April 29, 2004

TO: Region Engineers
Region Delivery Engineers
TSC Managers
Resident/Project Engineers
Region Construction Engineers

FROM: Larry E. Tibbits
Chief Operations Officer

Myron Frierson
Bureau Director
Bureau of Finance & Administration

SUBJECT: Bureau of Highway Instructional Memorandum 2004-15
Subcontracting Process Change

As a result of the recently completed business process improvement, MDOT will no longer approve subcontracts as specified by Division 1 of the Standard Specifications for Construction. Instead, the attached Process for Subcontracts will be followed to ensure compliance with FHWA and state requirements.

Beginning with the June 2004 letting and all subsequent lettings, the Special Provision for Subcontracts (copy attached for 1996 and 2003 specification) will be included in all proposals.

Questions concerning this instructional memorandum should be directed to Carol Rademacher at 517-373-3382 or via e-mail at rademacherc@michigan.gov.

Chief Operations Officer

Bureau Director, Finance & Administration

BOHD:C/T:JAR:kab

Attachments

Index: Contracts, Subcontracts

cc:	C & T Support Area Staff	OEO - S. El Ahmad	C. Rademacher
	Real Estate Support Area, M. DeLong	V. Blaxton	G. Moore
	Design Support Area, M. VanPortfleet	T. Fudaly, FHWA	J. Mullins
	Maintenance Support Area, C. Roberts	MRBA	MAPA
	Traffic & Safety Support Area, J. Culp	MCPA	MCA
	C & T Support Area, B. O'Brien	MAA	AUC
	MRPA	ACEC	MPA

Revised Process for Subcontracts

The revised process for subcontracts, documented below, will be implemented as a two-year pilot program, with penalties imposed on only those repeated and blatant violations of the revised process, in which case we would implement MDOT's current process for corrective action. The subcontract 'sub' team will continue to meet, in approximately four (4) month intervals, to assess the success of the pilot program and make any adjustments, if necessary. At the end of the two year pilot, the process will be reviewed and a determination will be made as to the final implementation.

Federal Requirements

CFR 23, Section 635.116 requires that:

“Prior to authorizing a subcontract, the State Highway Agency (SHA) shall assure that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. The Division Administrator may permit the SHA to satisfy the subcontract assurance requirements by concurrence in a SHA process which requires the contractor to certify that each subcontract arrangement will be in the form of a written agreement containing all the requirements and pertinent provision of the prime contract. Prior to the Division Administrator's concurrence, the SHA must demonstrate that it has an acceptable plan for monitoring such certifications. Contracts for projects shall specify the minimum percentage of work that a contractor must perform with its own organization. This percentage shall be not less than 30 percent of the total original contract price excluding any identified specialty items.”

Subcontracting Process

- Contractors will be required to submit the subcontract cover page and line items to the TSC responsible for the administration of the contract, prior to the start of the work associated with the subcontract. For Aeronautics projects, contractors will be required to submit the subcontract cover page and line items to Aeronautics, Airports Division, Project Management Section. Contractors will still be able to download Subcontract form 1302 from the Contractor Service Center website. This form will be modified once the new process is in effect.
- Subcontracts will no longer be approved by MDOT. The TSC or Aeronautics, Airports Division, Project Management Section, will fax a copy of the subcontract cover page to the Contract Services Division at 517-373-3707 for data entry.
- Contractors will still be required to submit the Disadvantaged, Minority and Woman Business Enterprises Participation form, “DBE blue sheets” to MDOT, Contract Services Division, for review and approval as part of the award process. This requirement will not change.

- Once a project is underway, Contract Services Division will randomly select projects for an “interim” review. This review will check to see whether the subcontracts to-date are in place and if the contractor is complying with the subcontracting requirements i.e., whether the subcontractor is prequalified with MDOT in the work categories identified in the subcontract, whether the 60 percent maximum subcontracting limit is exceeded, whether the 50 percent limit of subcontract to sub-subcontract has been exceeded; whether the DBE services indicated on the blue sheets have been provided, whether the subcontracts were in place prior to the subcontract work beginning, and whether all pertinent subcontract language is in place. Contract Services Division staff will also randomly select completed projects on which to perform final reviews.
- Contract Services Division personnel will be given access to all records necessary to perform their reviews. The Contractor shall permit MDOT access to their books, records, accounts, other sources of information, and the Contractor’s facilities as may be determined by MDOT to be necessary. The Contractor will be required to assist MDOT staff during the above review process, and will not be entitled to any additional compensation for assisting with MDOT’s review. MDOT will provide, at a minimum, a 24 hour notification to the Contractor of the intended review. Date, time, and location of the review will be mutually agreed upon by MDOT and the Contractor.
- The Prime Contractor will certify prior to MDOT acceptance of the project that they have met all subcontracting requirements, and will be responsible for itemizing the dollar amount of each subcontract, as well as the amount earned on each subcontract.

Implementation Date

The revised subcontracting process will be implemented for all projects beginning with the June, 2004 bid letting and all subsequent bid lettings. All projects included in this letting must comply with the revised process, regardless of project start date. All subcontracts prior to this letting will be handled as they are currently handled.

Work Types Not Requiring Subcontracts Under the Revised Process

Delivery of Materials*	Destructive Testing of Materials
Broker Trucking*	Pavement Sweeping
Delivery of Traffic Control Devices*	Concrete Pumping

Work types not requiring subcontracts if the amount of work does not exceed 5% of the total prime contract amount or \$20,000, which ever is less

Flagging Operations	Sealing Bridge Joints
Stay in Place Forms	Video Taping Pipes
Shear Developers	Saw Cutting
Tree Removal	Bump Grinding
Post Tensioning of Beams	Heat Straightening

*This type of work will not impact the 60% maximum allowable for subcontracting calculation. All other work will impact the 60% maximum allowable for subcontracting.

Post-Certification of Subcontract Compliance

Contract I.D. _____
Contract Amount _____
DBE % Requirement _____

I, _____ of _____ do hereby certify that I have complied with all State and Federal requirements pertaining to subcontracting, including but not limited to the following:

- A. The Prime Contractor has performed not less than 40 percent of the original contract amount unless changed by special provision.
- B. The Prime Contractor has used only prequalified subcontractors (whether or not a subcontract is required) unless there was no prequalified category.
- C. The subcontractors have performed not less than 50 percent of the total value of the subcontract amount with the subcontractor's own organization.
- D. The Prime Contractor has met the project specific D.B.E. participation level requirement or has been granted a written waiver from the Technological Services Division.
- E. The Prime Contractor has used the designated subcontractors indicated on the Designated and Specialty sheet.
- F. All required subcontracts were properly executed and signed prior to any subcontract work beginning.
- G. The Prime Contractor has maintained all required insurances and bonds throughout the life of the contract.
- H. The subcontractor and the sub-subcontractor were prequalified, when applicable, in all work classes that were sub-subcontracted.

The following work types do not require subcontracts. However, they will be included in the 60 percent maximum calculation of the contract amount allowable for subcontracting:

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Work not performed by the Prime Contractor:

<u>Performed By</u>	<u>Subcontract Amount</u>	<u>Amount Earned</u>
1. Expert Paving, Inc.	\$312,550.62	
2. Good Signs Company	\$ 7,330.22	
3. Straight Surveys, LLC	\$130,390.00	
4. Sharp Cut Tree Removers, Inc.	\$ 98,500.30	
5. Green Sod Company	\$122,546.88	
6. Beam Straightening Co.	\$140,398.56	
Total	<u>\$811,716.58</u>	

Volume of Prime Contractor's original contract \$ _____
 Volume of DBE work _____%

Exceptions to any of the subcontract requirements and an explanation for the exceptions should be noted below:

Additional
 Comments: _____

This post certification shall be signed by an official authorized representative of the Prime Contractor.

 Signature

Print Name: _____

Print Title: _____

MICHIGAN
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION
FOR
SUBCONTRACTS

FIN:CRR

1 of 1

C&T:APPR:GCT:JAR:03-09-04
FHWA:APPR:03-17-04

The following deletions and additions are made to Sections 104, 108, and 109 of the 2003 Standard Specifications for Construction.

Delete the word "approved" in the second sentence of the fourth paragraph of subsection 104.01.B, on page 32 of the standard specifications.

Delete the third, fourth, and fifth paragraphs of subsection 108.01, on page 80 of the standard specifications, in their entirety and replace with the following:

The Contractor shall not subcontract any portion of the contract, other than the furnishing of necessary materials, except as provided for in the Department's procedures for Subcontracting. Subcontracting any portion of the work shall not relieve the Contractor of full responsibility for the performance of the contract. The Contractor shall not sell or assign any portion of the contract without the written consent of the Michigan Department of Transportation.

Any bonds furnished by the Subcontractor shall not reduce the Contractor's bonding requirements.

No subcontract will be issued unless the Subcontractor is prequalified by the Department to perform the classification of work proposed, when applicable. The Contractor shall submit the subcontract cover page and line items to the Transportation Service Center responsible for the administration of the contract, prior to the start of the work associated with the subcontract. It is understood and agreed that the Department's prequalification of the Subcontractor is for the benefit of the Department and is not for the benefit of the Contractor or any other person. The Department's prequalification is not a guarantee or warranty of the Subcontractor's ability to perform or complete the work subcontracted.

Delete the words "an approved" in the last sentence of the last paragraph of subsection 108.01, on page 81 of the standard specifications and replace with the word "a."

Delete the word "approved" in the first sentence of subsection 109.07.G, on page 109 of the standard specifications.