



STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

RICK SNYDER
GOVERNOR

KIRK T. STEUDLE
DIRECTOR

December 14, 2016

Mr. Glenn Bukoski, Vice President
Michigan Infrastructure and
Transportation Association
2937 Atrium Drive
Okemos, Michigan 48864

Ms. Denise Donohoe, Director
County Road Association of MI
417 Seymour Street, Suite 1
Lansing, Michigan 48933

Mr. Daniel Gilmartin, Executive Director & CEO
Michigan Municipal League
1675 Green Road
Ann Arbor, Michigan 48105

Dear Mr. Bukoski, Mr. Gilmartin and Ms. Donohoe:

Local Government Involvement on
Michigan Department of Transportation Construction Contracts

It has come to the Michigan Department of Transportation's (MDOT) attention that some local government entities may be performing what is considered contract work on MDOT projects. This letter will serve as MDOT's position on the performance of contract work by a local government agency on any MDOT project, whether it is federal and/or state funded.

Based on our thorough investigation into state and federal law and associated rulings and opinions, it has been determined that contract work on any MDOT project by a local agency is prohibited, regardless how the project is funded.

MDOT federally funded projects: In accordance with federal requirements for all federal aid projects, public agencies are prohibited from entering into any contractual agreement with the prime contractor, which would include trucking activity. This is defined in Title 23 of the CFR, part 635.112(e) which states: "Except in the case of a concession agreement, as defined in section 710.703 of this title, no public agency shall be permitted to bid in competition or to enter into subcontracts with private contractors." A public agency is defined as "any organization with administrative or functional responsibilities which are directly or indirectly affiliated with a governmental body of any nation, state, or local jurisdiction."

On contracts involving two or more job numbers where the type of funding is mixed, and where one source of funding is federal, all job numbers associated with the contract will be required to meet all federal requirements, including subcontracting restrictions as defined above.

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MDOT state funded projects: In a 1943 Attorney General opinion (OAG, 1943-1944, No 0-303), it was indicated that a county road commission lacked the authority to perform work under contract for private entities. No other legal determination has been found to contradict that opinion. In accordance with *People v Penn*, 102 Mich App 731,733 (1981); AG opinions are binding on state agencies. The term contract is intended to represent any contract mechanism including but not limited to; sub-contract, purchase order, or any written agreement.

If your organization believes that material sharing can be accomplished within the terms identified within this letter, please contact our Bureau of Field Services Deputy Director Mark Chaput at 517-322-3331 or chaputm@michigan.gov and we will facilitate a discussion to determine if the proposal can indeed be implemented.

Sincerely,



Mark A. Van Port Fleet, P.E.
Chief Operations Officer

BOH:MVPF:dw

c: R. Van Portfliet M. Bellgowan
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