



Illinois Department of Transportation

2300 South Dirksen Parkway / Springfield, Illinois / 62764

Subject:
Policies and Procedures
For Approval of
Subcontractors

CONSTRUCTION MEMORANDUM NO. 30
SMALL BUSINESS ENTERPRISES MEMO NO. 19-3

Effective: December 12, 2019
Expires: Indefinite

This joint Construction/Small Business Enterprises Memorandum supersedes joint Construction/Small Business Enterprises Memorandum No. 30 dated August, 9 2019.

This memorandum is intended to provide uniform application of policies and procedures to the practice of subcontracting on all contracts awarded by the Department as well as all contracts awarded by local authorities for which approval by the Department is required for subcontractors. Most of the requirements are set forth in the Federal-aid regulations and other federal requirements; however, these same requirements are extended to all contracts noted above.

1. GENERAL

Per Article 108.01 in the Standard Specifications for Road and Bridge Construction, the prime Contractor is required to perform, with their own organization, original contract work amounting to not less than 50 percent of the original total contract price. The Contractor's own organization shall be construed to include only workers employed and paid directly by the prime Contractor and equipment owned or rented by the prime Contractor, with or without operators. Such terms do not include employees or equipment of a subcontractor, assignee or agent of the prime Contractor. However, any items designated in the contract as "Specialty Items" may be performed by subcontract and the amount of any such "Specialty Items" so performed may be deducted from the original total contract price before computing the amount of work required to be performed by the Contractor with its own organization. Materials purchased or produced by the Contractor must be incorporated into the project by the Contractor's own organization if the cost is to be applied to the 50 percent requirement, except as provided in section 4(a). (The changing of the 50 percent figure to any other amount by contract special provisions will not affect other policies pertaining to subcontracting.)

In the case of an award of two or more contracts in combination, each contract is to be considered separately with respect to the 50 percent requirement.

Requests for approval of subcontractors are to be initiated by the prime Contractor only. One copy of each request is to be submitted to the Regional Engineer having supervision of the work in the case of State contracts.

Request for Approval of Subcontractor, [BC 260A](#), is provided by the State for use by prime Contractors in requesting approval of subcontractors. Request for approval of a subcontractor should be made at the earliest possible date and work by the subcontractor shall not commence until approval is granted by the Regional Engineer.

Requests for approval of first tier subcontractors should be numbered consecutively for each contract. The number is to be written at the top of the request form in the space provided. Requests for approval of second (and lower) tier subcontractors should have the same number as the corresponding first tier subcontractor plus the letter A, B, C, etc., consecutively. Subsequent requests which change an original request should bear the original number plus "Revised" to indicate such a modification or change. For Example, "4-Revised."

Prequalification of a firm is not a prerequisite for approval as a subcontractor. However, "non-prequalified" subcontractors shall be registered with the Department. Prequalified firms are automatically registered.

The BC 260A must identify the contract pay item work the prime Contractor desires to be sublet to a subcontractor. The BC 260A must indicate each contract pay item number, pay item description, awarded pay item quantity, and pay item unit price exactly as shown in the prime contract (i.e. the contract awarded to the prime Contractor). The BC 260A must also indicate, for each item, the percentage of pay item desired to be sublet and the corresponding dollar amount. (Note, the prime contract pay item unit price is to be used even though the subcontract may provide for a lesser or greater unit price / basis of payment.) Authorized changes to awarded pay item quantities will not be reflected in the BC 260A. Work authorized in addition to the contract pay items may be subcontracted in part only or in total without regard to the 50 percent limitation, since this limitation pertains to the amount of work a Contractor performs with its own organization with reference to the original total contract price.

Mobilization, including a subcontractor mobilization payment as defined in Article 109.12 of the Standard Specifications, must not be shown on the BC 260A. (A subcontractor mobilization payment, as defined in Article 109.12, is an advance payment based on the reported value of the "subcontract" shown on the submitted BC 260A. In addition, mobilization is not considered as a commercially useful function with respect to satisfying Disadvantaged Business Enterprise (DBE) goals. Subcontracted mobilization does not count towards satisfying DBE Goal credit. In addition to not including mobilization on a BC260A, mobilization cannot be included on the DBE Participation Statement [SBE 2025](#).)

Before subcontractor approval can be granted, the prime Contractor is required to submit the [Subcontractor Financial Disclosures \(Form A & B\)](#) and the [Subcontractor Certification](#) of first tier subcontractors with a subcontract of \$50,000.00 or greater into the Department's [Vendor Document System](#).

The prime Contractor is required to submit the Substance Abuse Prevention Program Certification, [BC 261](#) for each subcontractor along with each BC 260A to the applicable Regional Engineer/District.

The Illinois Procurement Code (30 ILCS 500/50-11 & 50-60(b)) prohibits the use of subcontractors that have delinquent dept owed to the State. Thus, the District is required to check the Comptroller's Offset System and determine if the subcontractor has a delinquent debt; defined as greater than 90 days past due and more than \$1,000.00. See [Comptroller Accounting Bulletin 102](#) for additional information on utilizing the Comptrollers Offset System.

2. SUBCONTRACT AGREEMENT

The prime Contractor is responsible for compliance with all provisions of the contract and providing that all pertinent provisions and requirements of the prime contract are incorporated into the subcontract.

All of the Required Contract Provisions of the contract, all of the labor compliance provisions including the minimum wage rate schedule, and all of the applicable non-discrimination and equal employment opportunity provisions of the prime contract shall be physically attached to or incorporated into the subcontract agreement. Incorporation of these provisions by reference in the subcontract agreement is not acceptable, except in instances where the value of the subcontract work is \$10,000 or less. In these instances, the nondiscrimination and equal employment opportunity provisions of the prime contract may be incorporated into the subcontract agreement by reference.

Since the nondiscrimination and equal employment opportunity provisions of contracts change from time to time and have different provisions with regard to subcontract agreements, the incorporation of these provisions into subcontract agreements will be based upon the requirements of each particular contract.

A subcontract mobilization payment schedule shall be included in the subcontract agreement. The schedule shall show the total subcontractor mobilization payment value (based on the total subcontract value reported on the BC 260A at the percentage required in the prime contract). The Contractor may make a single subcontractor mobilization payment or multiple payments for work to be performed via multiple mobilizations. When multiple mobilization payments are to be made, the schedule shall show the number and value of payments.

In signing the BC 260A, the Contractor certifies a subcontract agreement exists in writing between the prime Contractor and the named subcontractor or the named higher tier (e.g. 1st tier) and lower tier (e.g. 2nd tier) subcontractors and the applicable provisions set forth in the contract are physically incorporated into or attached to it.

Provisions have been made on the BC 260A for the Contractor to certify disadvantaged business enterprises were considered. The District Equal Employment Opportunity (EEO) Officer is responsible for reviewing and assuring each BC 260A is in agreement with the approved DBE Utilization Plan. Should the BC 260A not agree with the approved DBE Utilization Plan, the District must contact the Bureau of Small Business Enterprises' Compliance Section.

Under certain circumstances, related or affiliated companies may not be required to enter into subcontract agreements. The Central Bureau of Construction's Prequalification Section should be contacted to determine the relationship between companies and whether a subcontract agreement is required.

3. SPECIALTY ITEMS

Only items indicated as specialty items in the awarded prime contract will be considered as such with reference to subcontracting.

The contract value of specialty items sublet is to be subtracted from the original total contract value on the BC 260A and this revised figure will be shown on the line "Value of awarded contract less specialty items subcontracted to date". This adjusted value will be the basis for determining the amount of work required to be performed by the prime Contractor's own organization (i.e. "50% of contract awarded value less specialty items subcontracted to date")

4. SUBCONTRACTING PAY ITEMS IN PART

Pay item work may be subcontracted in whole or in part. When pay item work is subcontracted in whole, the "% of pay item sublet" shown on the BC 260A should be 100% for the applicable pay item. When pay item work is subcontracted in part the intended percentage to be subcontracted should be shown on the BC 260A for the applicable pay item. The partial percentage should be supported by an explanation detailing the nature of the portion of work to be subcontracted and how the "% of pay item sublet" was determined.

Following is additional guidance regarding subcontracting pay item work in "part only of unit price" and in "part only of quantity":

- (a) Part Only of Unit Price - An item may be subcontracted in part only of the unit price where the subcontracted portion is a distinct work operation.

The following are examples of subcontracting in part only of unit price items:

1. Erection of structural steel where erection is included with the furnishing and erecting structural steel pay item
2. Erection of precast members where erection is included with the furnishing and erecting precast members pay item
3. Painting of new structural steel where painting is included with the furnishing and erecting structural steel pay item
4. Placing of reinforcing steel supplied by the prime Contractor
5. Drilling for drilled shafts where drilling is included with the drilled shaft pay item
6. Waterproofing of concrete where waterproofing is included in the concrete pay item.

- (b) Part Only of Quantity - An item may be subcontracted in part only of quantity provided it is the intent that the subcontractor perform a specific partial quantity of the pay item. For example, a contract may include a pay item for reinforcement bars. The reinforcement bars may be needed for box culverts as well as for a grade separation structure. If it is the intent to subcontract only the box culverts, the reinforcement bar pay item may be sublet in part only of quantity as required for the box culverts.

5. ADMINISTRATIVE PROCEDURES

It is the responsibility of the District to verify information provided by the Contractor in the BC 260A is correct. (In the case of joint venture awards, the names of both or all firms of the joint venture must be indicated.)

If there are errors in the BC260A, it should be returned to the Contractor, unapproved, for correction. The BC 260A should also be returned to the Contractor, unapproved, for correction, if the "% of pay item sublet" for a pay item to be subcontracted in part, does not reflect a just proportion of the total value of the item.

The Regional Engineer shall disapprove a Request for Approval of Subcontractor only if:

- (a) The proposed subcontractor has been suspended from bidding on Department contracts pursuant to administrative proceedings under [44 Illinois Administrative Code Part 6 Subpart I](#), or has been suspended or debarred by another governmental agency based upon a finding of activities which constitute a violation of the aforementioned Rules; or
- (b) The proposed subcontractor has been convicted in a court of competent jurisdiction of, or has entered a plea of guilty or nolo contendere to, charges of activities which constitute a violation of the aforementioned Rules; or
- (c) Approval of the proposed subcontractor would violate the restriction on the proportion of work which may be subcontracted by the prime Contractor per the contract (typically 50%); or
- (d) The BC 260A is in conflict with the DBE Utilization Plan approved by the Bureau of Small Business Enterprises.

(If a proposed subcontractor is not approved, but is listed in the DBE Utilization Plan, the Bureau of Small Business Enterprises shall be notified immediately so they may instruct the Contractor to submit a revised Plan.)

- (e) The proposed subcontractor is performing unsatisfactory work on existing projects. If the District has concerns about the ability of a subcontractor to perform the proposed items of work under Article 108.01 of the Standard Specifications the Engineer may request the Contractor provide proof that the proposed subcontractor has the experience, ability and equipment the work requires. If the District has these concerns about a DBE firm they should contact the Bureau of Small Business Enterprises' Compliance Section before taking any action on the BC 260A.
- (f) The proposed subcontractor is not prequalified, or, is not registered with the Department.

After approval of a request, the Regional Engineer is to distribute approved copies of the request as follows:

Resident Engineer	1 Copy
Prime Contractor	1 Copy
Bureau of Small Business Enterprises	1 Copy (if a DBE firm is involved)

If the District should have any problem or question regarding subcontractor approval procedures, the Central Bureau of Construction should be contacted.

In addition to serving as the approval form for subcontractors, the BC 260A serves as a tool to verify that subcontractors listed on the DBE Utilization Plan, [SBE 2026](#) and the relevant DBE Participation Statements, [SBE 2025](#), are being utilized on the project. The BC 260A also serves as a modification to the DBE Utilization Plan when the prime Contractor wishes to include additional work for an already approved subcontractor, or to add a DBE firm that was not on the original Utilization Plan.

This will ensure the Contractor and the Department receive credit for this additional work, when approved by the Bureau of Small Business Enterprises, without the necessity of filing revised SBE 2026 and SBE 2025 forms. (Work subcontracted by a first tier DBE subcontractor to a non-DBE second tier subcontractor will not be credited toward the contract DBE goal. Upon acceptance of the subcontract agreement by SBE, work subcontracted to a second tier DBE subcontractor by either a DBE or non-DBE first tier subcontractor will be credited toward the goal.)

Contractors are still required to file a revised DBE Utilization Plan whenever a Contractor initiated action is taken that reduces the amount of work, changes the items of work to be performed by a subcontractor that was included on the original DBE Utilization Plan, or involves a substitution of an approved DBE.

The District will monitor and certify work committed to a DBE is performed by the DBE and in accordance with Federal Regulations. If the District has questions regarding work for which DBE firms may be approved, the Bureau of Small Business Enterprises shall be consulted before any action is taken.

Article 108.01 of the Standard Specifications permits the Engineer to order the Contractor to remove a subcontractor who does not perform satisfactory work. Such action shall not be taken without the prior approval of the Regional Engineer. If the subcontractor is listed in the DBE Utilization Plan, the Bureau of Small Business Enterprises shall be notified immediately so they may instruct the Contractor to submit an amended Plan. The prime Contractor must give written notice of proposal to terminate, including the reasons and allow the DBE five (5) days to respond. If a subcontractor was approved for several categories of work and was removed for poor performance in only one category, the firm should not be precluded from performing work in the remaining categories as long as the work in those categories is satisfactory.

6. Examples

Two example BC 260A requests are attached.

- (a) Request No. 1. This example demonstrates the prime Contractor's desire to subcontract \$94,916.50 worth of contract work to a first tier subcontractor. The request includes one pay item to be subcontracted in part. The request also includes one specialty item.
- (b) Request No. 1A. This example demonstrates the first tier (parent) subcontractor's desire to subcontract \$11,407.00 worth of contract work to a second tier subcontractor.

Note, work proposed to be sublet to a second tier subcontractor is included on the applicable first tier subcontractor request. Thus, first tier subcontractor requests must demonstrate the prime contractor is performing original contract work amounting to not less than 50% of the original contract price. It is not necessary to repeat this check on second and lower tier subcontractor requests.

Attachment



Tim Kell, P.E.
Engineer of Construction



Debra A. Clark, Bureau Chief
Small Business Enterprise



Request for Approval of Subcontractor



Date: 05/05/19 1st Tier 2nd/Lower Tier

Subcontractor Reg. #, Prequalification #: 01102 Request #: 1

Subcontractor Name: Acme Excavating

Address (Street or P.O. Box): 3800 Blank Lane

City: Knowhere State: IL Zip Code: 57911

Phone: (217) 123-4567 FEIN Number: 12-3456789

County: Christian Section Number: 14W-2

Route: IL-29 District: 6

Contract Number: 12345 Job Number: C-96-001-19

Project: 05-ACRS-1109(112) Letting Date: 11/02/18

Specialty Item	Pay Item Number	Pay Item Description	Awarded Pay Item Quantity	Contract Unit Price	% of Pay Item Sublet	Amount
<input type="checkbox"/>	Z0000530	BOX CUL TO BE CLEANED	1	\$2,000.00	100.000%	\$2,000.00
<input type="checkbox"/>	20201200	REM & DISP UNS MATL	23.7	\$85.00	100.000%	\$2,014.50
<input type="checkbox"/>	20700220	POROUS GRAN EMBANK	16.3	\$110.00	100.000%	\$1,793.00
<input type="checkbox"/>	21001000	GEOTECH FAB F/GR STAB	56	\$2.50	100.000%	\$140.00
<input type="checkbox"/>	50102400	CONC REM	17.2	\$600.00	100.000%	\$10,320.00
<input type="checkbox"/>	50800205	REINF BARS; EPOXY CTD*	5,158	\$2.25	95.930%	\$11,133.16
<input type="checkbox"/>		*4,948 LB sublet				\$0.00
<input type="checkbox"/>	5400030	CONC BOX CUL	35.4	\$1,585.00	100.000%	\$56,109.00
<input checked="" type="checkbox"/>	78100100	RAISED REFL PAVT MKR	374	\$30.50	100.000%	\$11,407.00

Value of above subcontracted work:	\$94,916.66
Value of above specialty items:	\$11,407.00
Value of all work subcontracted previously (include specialty items):	\$0.00
Value of specialty items subcontracted previously:	\$0.00
Value of specialty items subcontracted to date:	\$11,407.00
Value of all work subcontracted to date less specialty items subcontracted to date:	\$83,509.66
Value of Awarded Contract:	\$3,777,719.10
Value of awarded contract less specialty items subcontracted to date:	\$3,766,312.10
50% of awarded contract value less specialty items subcontracted to date:	\$1,883,156.05

The Contractor certifies that a subcontract exists in writing between the prime contractor, or a higher tier subcontractor, and the above named subcontractor, that it describes the scope of the services and that the actual dollar amount of the subcontract is: \$90,250.00

The subcontract documents physically incorporate all pertinent provisions and requirements of the prime contract including Equal Employment Opportunity provisions and the minimum wage for labor as stated in the contract shall apply to labor performed on all work sublet. The subcontract will in no way hinder the above-named subcontractor from maintaining his/her progress on any other work under the supervision of the Department of Transportation on which he/she is either a subcontractor or prime contractor. This request is made with the understanding that the prime contractor is not under any circumstances relieved of his/her liabilities and obligations and is responsible for organization, performance and quality of work obtained. The contractor must attach subcontractor's BC 261 regarding Substance Abuse Prevention Program as required by Public Act 95-0635.

The undersigned certifies that affirmative action was taken to seek out and consider disadvantaged business enterprises as potential subcontractors.

Required for DBE Subcontractors only This form serves as confirmation and/or addition to the DBE Utilization Plan.	
Reviewed for compliance:	
Small Business Enterprises	Date
<input type="text"/>	<input type="text"/>

Note: Contractor should send one signed copy of request to the Regional Engineer.

Approved By:

Prime Contractor		
Prime Contractor Inc.		
Address (Street or P.O. Box)		
2300 Any Drive		
City	State	Zip Code
Anywhere	IL	23456
Prime Contractor Signature & Title		Date
<i>John Smith Owner</i>		5/5/19
Regional Engineer Signature		Date
<input type="text"/>		<input type="text"/>



Request for Approval of Subcontractor



Date: 05/05/19 1st Tier 2nd/Lower Tier

Subcontractor Reg. #, Prequalification #: 0505 Request #: 1A

Subcontractor Name: Acme Markers

Address (Street or P.O. Box): 1972 Sunny Lane

City: Somewhere State: IL Zip Code: 57911

Phone: (217) 234-5678 FEIN Number: 23-4567890

County: Christian Section Number: 14W-2

Route: IL-29 District: 6

Contract Number: 12345 Job Number: C96-001-19

Project: 05-ACRS-1109(112) Letting Date: 11/02/18

Specialty Item	Pay Item Number	Pay Item Description	Awarded Pay Item Quantity	Contract Unit Price	% of Pay Item Sublet	Amount
<input checked="" type="checkbox"/>	78100100	RAISED REFL PAVT MKR	374	\$30.50	100.000%	\$11,407.00
<input type="checkbox"/>						\$0.00
<input type="checkbox"/>						\$0.00
<input type="checkbox"/>						\$0.00
<input type="checkbox"/>						\$0.00
<input type="checkbox"/>						\$0.00

Value of above subcontracted work: \$11,407.00

Value of above specialty items: _____

Value of all work subcontracted previously (include specialty items): _____

Value of specialty items subcontracted previously: _____

Value of specialty items subcontracted to date: _____

Value of all work subcontracted to date less specialty items subcontracted to date: _____

Value of Awarded Contract: _____

Value of awarded contract less specialty items subcontracted to date: _____

50% of awarded contract value less specialty items subcontracted to date: _____

The Contractor certifies that a subcontract exists in writing between the prime contractor, or a higher tier subcontractor, and the above named subcontractor, that it describes the scope of the services and that the actual dollar amount of the subcontract is: \$12,500.00

The subcontract documents physically incorporate all pertinent provisions and requirements of the prime contract including Equal Employment Opportunity provisions and the minimum wage for labor as stated in the contract shall apply to labor performed on all work sublet. The subcontract will in no way hinder the above-named subcontractor from maintaining his/her progress on any other work under the supervision of the Department of Transportation on which he/she is either a subcontractor or prime contractor. This request is made with the understanding that the prime contractor is not under any circumstances relieved of his/her liabilities and obligations and is responsible for organization, performance and quality of work obtained. The contractor must attach subcontractor's BC 261 regarding Substance Abuse Prevention Program as required by Public Act 95-0635.

The undersigned certifies that affirmative action was taken to seek out and consider disadvantaged business enterprises as potential subcontractors.

Required for DBE Subcontractors only
 This form serves as confirmation and/or addition to the DBE Utilization Plan.
 Reviewed for compliance:
 Small Business Enterprises: _____ Date: _____

Note: Contractor should send one signed copy of request to the Regional Engineer.

Parent Subcontractor: Acme Excavating

Prime Contractor: Prime Contractor Inc.

Address (Street or P.O. Box): 2300 Any Drive

City: Anywhere State: IL Zip Code: 23456

Prime Contractor Signature & Title: John Smith Owner Date: 5/5/19

Regional Engineer Signature: _____ Date: _____

Approved By: _____