

Illinois Department of Transportation

2300 South Dirksen Parkway / Springfield, Illinois / 62764

Subject: **CONSTRUCTION MEMORANDUM NO. 12-30**
Policies and Procedures **SMALL BUSINESS ENTERPRISES MEMO NO. 12-3**
For Approval of
Subcontractors **Effective: April 2012**
Expires: Indefinite

This joint Construction/Small Business Enterprises Memorandum supersedes joint Construction/Small Business Enterprises Memorandum No. 00-30 dated May 1, 2000.

This memorandum is intended to provide uniform application of policies and procedures to the practice of subcontracting on all contracts awarded by the Illinois Department of Transportation 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

The prime Contractor is required to perform, with their own organization, 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 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. "Specialty Items" are so designated on the plans and are limited to work that requires highly specialized knowledge, abilities or equipment not ordinarily available in the type of contracting organizations qualified to bid on the contract as a whole and in general are limited to minor components of the overall contract. 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 special provisions of a contract 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 first and second tier 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 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 request for approval of a subcontractor should indicate each contract bid item number, bid item description, quantity, unit bid price and amount (for each item) exactly as shown in the prime contract. The contract lump sum or unit price is to be used even though the basic subcontract agreement may provide for a lesser or greater basis of payment. Appropriate exception is made when items are subcontracted in part only of unit price or part only of quantity. Authorized changes in item quantities will not be reflected in the subcontract request. 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.

Before approval can be granted, the prime contractor is required to submit the Financial Disclosures (Form A & B), the Subcontractor Certification, and the Subcontractor Agreement documents of all first tier subcontractors with a subcontract of \$25,000.00 or greater into the Department's Vendor Document System.

In addition to the [BC 260A](#), the prime contractor is required to submit the Substance Abuse Prevention Program Certification, BC 261 for each subcontractor along with BC 260A to the district.

The District is required to check the Comptroller's Offset System and determine if the subcontractor has a delinquent debt that is greater than 90 days past due and more than \$1000.00.

2. SUBCONTRACT AGREEMENT

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

All of the Required Contract Provisions of the contract including supplements, 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 regards to subcontract agreements, the incorporation of these provisions into subcontract agreements will be based upon the requirements of each particular contract.

In signing the [BC 260A](#) the Contractor certifies that the subcontract agreement exists in writing between the prime Contractor and the named subcontractor or the named first and second tier subcontractors and the applicable provisions set forth in the contract are physically incorporated into or attached to it. Contract provisions state that the Contractor will (except where it has obtained identical certifications from proposed subcontractors and material suppliers for specific time periods) obtain Certifications of Nonsegregated Facilities, Form [BC 1012](#), (see Attachment) from proposed subcontractors or material suppliers prior to the award of a subcontract or the consummation of a material supply agreement, exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that the Contractor will retain such certifications in its files.

Provisions have been made on the Request for Approval of Subcontractor, Form [BC 260A](#), for the Contractor to certify that disadvantaged business enterprises were considered. The District EEO Officer is responsible for reviewing and assuring that all [BC 260A's](#) are 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 Compliance Section, Bureau of Small Business Enterprises.

Under certain circumstances, related or affiliated companies may not be required to enter into subcontract agreements. The 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 contract special provisions or plans 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 "Total value of contract." The adjusted total contract value will be the basis for determining the amount of work required to be performed by the prime Contractor's own organization.

The contract value of specialty items sublet should be indicated on the [BC 260A](#) but should not be considered in "Total value of all work proposed to be sublet to date."

Example:

Value of above subcontract	\$2,000.00
Value of all work sublet previously (including specialty items)	\$20,000.00
Specialty items sublet to date (including above subcontract)	\$5,000.00
Total value of all work sublet to date (less specialty items sublet to date)	\$17,000.00
*Total value of contract	\$88,200.00
Specialty items sublet to date	\$5,000.00
Total value of contract (less specialty items sublet to date)	\$83,200.00
50% of total contract value (less specialty items sublet to date)	\$41,600.00

*not shown on [BC 260A](#)

4. SUBCONTRACTING OF PART ONLY OF ITEMS

- (a) Part Only of Unit Price - Items may be subcontracted for part only of the unit price where the subcontracted portion is a distinct work operation. In these instances the exact nature of the portion of work to be subcontracted should be noted on the request or in an attached letter of explanation. It is required that a Contractor perform at least 50 percent of the original total contract price with their own organization. Federal Regulations require that the percentage of subcontracted work shall be based upon the contract, rather than the subcontract unit prices. If a contract item is subcontracted in part only of unit price, the proportional value of the part subcontracted shall be determined administratively. In order to comply with this requirement, it is expected that the subcontract price will be an appropriate proportioned value of the total item. However, in reviewing the value of that portion of an item to be subcontracted, as shown on the [BC 260A](#), if it is felt that this value should be adjusted upward or downward in order to reflect a just proportion of the total value of the item, such adjustment should be made administratively.

When a firm both sells material to a prime Contractor and performs the work of incorporating the materials into the project, these two phases must be considered in combination and as constituting a single subcontract.

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

1. Erection of structural steel
2. Erection of precast members
3. Painting of structural steel
4. Placing of reinforcing steel
5. On-the-job hauling of materials such as borrow, bituminous concrete, special excavation and rock excavation.
6. Drilling for sub-piers, drilled piles and bell caissons
7. Waterproofing of concrete where waterproofing is incidental to the concrete item.

If conditions warrant, other items may be subcontracted in part only of unit price upon approval by the Central Bureau of Construction.

- (b) Part Only of Quantities - An item may be subcontracted as part only in quantities provided it is the intent that the subcontractor perform a specific partial quantity of the bid item. For example, a contract may include Class SI Concrete and Reinforcement Bars for box culverts as well as for a grade separation structure. If it is the intent to subcontract only the box culverts, these items may be sublet as part only in quantity as required for the box culverts.

5. ADMINISTRATIVE PROCEDURES

It is the responsibility of the District to check the request for errors and to verify that the contract number, route, section, county, project number and name of the Contractor 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 request, it shall be returned to the Contractor, unapproved, for correction. 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 Rules and Regulations for Highway Construction by Contract, or has been suspended or debarred by another governmental agency based upon a finding of activities which constitute a violation of Rule 2.3 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 Rule 2.3 of the aforementioned Rules; or
- (c) Approval of the proposed subcontractor would constitute a violation of restriction on the proportion of work which may be subcontracted by the prime Contractor under the Standard Specifications; or
- (d) The [BC 260A](#), Request for Approval of Subcontractor, 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 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 "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 before they take any action on [BC 260A](#).

- (f) The proposed subcontractor is not prequalified, or, is not registered with the Department.
- (g) When an inappropriate split of partially completed items is submitted.

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

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

If the District should have any particular problem or question in regard to subcontractor approval procedures, the Bureau of Construction should be contacted.

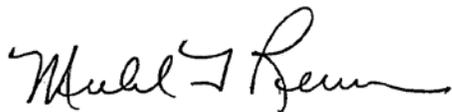
In addition to its purpose of serving as the approval form for subcontractors, the [BC 260A](#) also serves as a tool to verify that subcontractors listed on the DBE Utilization Plan, [SBE 2026](#) and the relevant DBE Participation Statements, [SBE 2025](#), are being utilized on the project. The BC 260-A also serves as a modification to the 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 that 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 subcontract 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 Resident Engineer will monitor and certify work committed to a DBE is actually performed by the DBE and in accordance with Federal Regulations. If the District has any 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.



Michael F. Renner, P.E.
Acting Engineer of Construction



Debra A. Clark, Acting Bureau Chief
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