Montana Department of Transportation

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VISION ZERO
zero deaths
zero serious injuries

Construction Memo

To: Distribution

From: Jake Goettle, PE
Construction Engineer

Date: December 03, 2021

Subject: Subcontract Requirements

This memo is to clarify when a subcontract, consented by Montana Department of Transportation (MDT), is required on a project. This supersedes all prior memoranda on the subject.

A subcontractor is an individual or legal entity, to which a contractor subcontracts, assigns, or otherwise disposes of any part of the work. This includes subcontractors at any contract tier, such as sub-subcontractors, etc. “Work” is the furnishing of all resources necessary to complete the project.

A subcontract is required for any person or entity on the project site, or for any work dedicated to the project and **must** be approved by the CES Bureau prior to commencing site work. Each subcontract item must be tied to a corresponding bid item. An example would be bump grinding would be tied to the plant mix bid item.

The project site is determined by the project limits as defined in the contract and any secondary site dedicated to the project that meets the USDOL definition. The secondary site is determined on a case-by-case basis.

23 CFR § 635.116 Contains Subcontracting and contractor responsibilities and does not differentiate the requirements for subcontractors physically present on jobsites verses subcontractors that perform work remotely. An example would be actuated temporary signals with remote monitoring would require a subcontract.

Allowable Percentage: Perform at least 40% of the original contract cost with the Contractor’s organization. The price of items designated in the contract as “Specialty Items” will be subtracted from the original contract price before the amount required to be performed by the Contractor is calculated.

When an item added by change order is subcontracted, the cost of the item does not count towards the required contract performance in Subsection 108.01.1.

In many cases, subcontract requirements are confused with payroll requirements. These two items are closely related, but not identical. Some items that require subcontracts do not require payrolls. Reference Table 108.1 for exceptions.

Standard Specifications can be found at:
https://www.mdt.mt.gov/business/contracting/standard_specs.shtml

Additional Subcontracting Resources can be found at:
https://www.mdt.mt.gov/business/contracting/resources.shtml

copies: District Administrators
District Construction Engineers
Engineering Project Managers
Construction Administration Section
Construction Engineering Services Bureau
David Smith, MCA
Chris Riley, FHWA