



CHAPTER 14

SUBCONTRACTS

14-1 Subcontracts

Subcontracted Work is Work performed by an Entity having a direct Contract with the Contractor or another Subcontractor to perform a portion of the Work.

Any Work performed by an Entity other than the Contractor under the Contract (including material testing and surveying) requires a subcontract with very limited exceptions. Exceptions to the subcontracting requirement include:

- Rental of operated Equipment
- Fabrication or machining Work that is performed away from the Project Site
- Truck hauling of Materials (including Owner/Operators)

Every agreement to perform Work, including subcontracts, trucking services agreements, purchase orders, and rental agreements shall indicate whether the Work will be performed by a Disadvantaged Business Enterprises (DBE) or non-DBE (00180.20(d)).

Written consent from the Resident Engineer is required prior to forces, other than the Contractor's own, performing Work on the Contract.

The Contractor remains in full control of the Work whether the Work is performed with its own forces or otherwise.

14-2 Disadvantaged Business Enterprises

Committed DBE firms (those committed as a condition of award including approved substitutes) are not allowed to perform Work under the Contract without a subcontract.

Non-committed DBE firms may be allowed to perform Work without a subcontract similar to non-DBE firms.

14-3 Subcontracting Limitations

A. Contractor Self-Performance

Specification 00180.20(a) and FHWA-1273, Section VI (included in any federal aid Contract) require the Contractor's own organization to perform Work amounting to at least 30% of the original Contract Amount.

Specifications 00180.20(b) defines the term "own organization" to include:

- Employees of the Contractor
- Equipment owned or rented by the Contractor
- Incidental rental or operated Equipment
- Truck hauling of materials
- Materials and Equipment to be incorporated into the Work purchased or produced by the Contractor

NOTE: Although the 30% self-performance requirement does not necessarily apply to Design-Build Contracts per 23 CFR 635.116(d), FHWA permits the Agency to specify its own criteria. The self-performance requirement for Design-Build contracts is specified in Subsection DB180.20(a).

For Construction Manager/General Contractor CM/GC Contracts per 23 CFR 635.504(d), no less than 30% of the total cost of all construction services shall be self-performed by the CM/GC Contractor. This self-performance requirement for CM/GC Contracts is specified in Article 9 in the CM/GC contract and Subsection CMGC180.20(a)

B. Rental of Operated Equipment

Rental of operated Equipment may be allowed without a subcontract (except for committed DBE firms which always require a subcontract) subject to the terms of 00180.20(c). Truck hauling of Materials is not considered "rental of operated Equipment".

The use of rented operated Equipment without a subcontract is limited to minor, incidental, short-duration Work or services at the discretion of the RE. The Contractor must submit a written request to the RE describing the Work or service to be provided, its estimated cost, and the estimated duration. If the RE agrees that the Work or service qualifies as "rental of operated Equipment", the RE must approve the request before the Work or service is provided.

Contact the Contract Administration Unit before approving requests for Work or services with high value and/or with a long duration.

If the RE approves the Contractor's request for rental of operated Equipment, the Contractor shall submit a copy of the rental agreement or purchase order covering the Work.

The rental agreement or purchase order must contain:

- An indication whether the Work or service provider is a DBE or non-DBE
- A requirement that the Work or service provider complies with applicable Contract provisions, including without limitation:
 - » Record requirements of 00170.07
 - » Certified payrolls according to Section 00170

The RE may revoke approval to allow Work or services to be performed without a subcontract if it has been determined that the Work or service goes beyond the limitations discussed above and specified in 00180.20(c-2).

C. Trucking

Trucking services agreements (TSAs) are required for all truck hauling of materials (including owner/operators) not performed by the Contractor with trucks owned or leased by the Contractor (except for committed DBE firms that always require a subcontract) subject to the terms of 00180.20(e). Unless a committed DBE, the material delivery by, for, or from a supplier does not require a subcontract or TSA (regardless of who employs the truck). (See [Trucking Matrix](#).)

Trucking services agreements are not considered “subcontracts” but do require that specific provisions be included in the agreement as specified in subsection 00180.20(e)(1).

The Contractor is required to provide the “template” trucking services agreement(s) that they propose to use on the Project to the RE at the pre-construction conference. The RE must approve the proposed trucking services agreement(s) before they are used on the Project.

After the RE approves the form of the “template” trucking services agreement, the Contractor can use the agreement to hire trucking companies and owner/operators as needed to perform the Work of the Contract. The Contractor must submit an executed copy of the agreement to the RE no later than two days after the trucking company or owner/operator has started Work on the Project.

If an owner/operator provides the trucking service, the Contractor must also present the owner/operator data required under 00170.65(b)(4). The name of the owner/operator must be clearly displayed on the side of the truck.

The RE may revoke approval to allow trucking services under a trucking services agreement if it has been determined that the provided service goes beyond the limitations discussed above and specified in 00180.20(e).

14-4 Subcontracting Requirements

If Work is to be performed by an Entity other than the Contractor and the Work is not within the exceptions and limitations discussed above, or if Work is to be performed by a committed DBE, a subcontract is required.

Subcontract requirements include Work performed by material testers (sometimes referred to as “professional services”). However, if the Contractor indicates to the Agency that Work performed through a subcontract is not subject to prevailing wage requirements, certified payroll reports and a public works bond are not required.

Subcontracts are not generally required to be submitted for consultant engineers hired by the Contractor to prepare submittals and perform related Work.

Every agreement to perform Work, including subcontracts, trucking services agreements, purchase orders, and rental agreements shall indicate whether the Work will be performed by a DBE or non-DBE.

The form of a subcontract can vary widely depending on the parties involved and the type of Work being subcontracted. As long as the required language, specified in 00180.21(d), is contained within the document, and the document is in close conformance with other contract requirements, the document can be considered a subcontract for purposes of the Contract.

If the Work in a current subcontract, at any tier, is modified by Contract Change Order (CCO) or Extra Work Order (EWO), the Contractor must submit a subcontract amendment to the RE for approval according to 00180.21(b). The RE must provide written consent to the subcontract amendment before any of the modified Work can start.

The subcontract amendment can be accomplished by revising the original subcontract or by a letter of agreement describing the change. Subcontract amendments must be signed by both the Contractor and the Subcontractor.

14-5 Procedure for Subcontract Consent

The Contractor shall complete and submit a signed original Contractor's Request for Subcontract Consent, form 734-1964 along with one copy of the complete subcontract with all required attachments.

To the extent practical, the units of Work listed on the request for consent should mirror those used in the Schedule of Items. For material testing subcontracts, the request for consent should indicate the Pay Items that the subcontractor will be testing for and the total value of the subcontract. It is not necessary to list each material Pay Items to be tested separately with units, quantities, and testing prices associated with each of the items.

The RE office reviews the submitted request form and will do the following:

- A. Verify that the Subcontractor has the appropriate licenses and certifications:
 - Contractor's license through the Construction Contractors Board (CCB)
 - Business license through the Corporations Division
 - PE/PLS license through the Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS)
 - Inspector/technician certifications through ODOT Quality Assurance Certification Program
 - Landscaper's license through the Landscape Contractors Board
 - Traffic control registration (contact Evergreen Safety Council at 800.521.0778)

- B. Verify that the Subcontractor is not on the CCB list of Contractors that are "not qualified to hold or participate in any public contracts", and that the Subcontractor is not otherwise suspended or barred from performing Work on public works or federal aid projects.
 - BOLI's list of ineligible Contractors can be found at <https://www.oregon.gov/boli>
 - The CCB's list disqualified Contractors can be found at: <https://www.oregon.gov/ccb/Pages/Licensing.aspx#InsuranceAndBondResources>.
 - FHWA also maintains a list of excluded parties. The following website link allows you to search for suspended and debarred parties: <https://www.sam.gov>

NOTE: *Submittal, processing and Agency approval of subcontracts on Design-Build contracts follows a different procedure. Refer to Subsection DB180.21 when processing subcontracts for Design-Build contracts.*

For CM/GC, the CM/GC Contractor is required to submit a subcontracting plan in accordance with Article 9 in the CM/GC contract and Subsection CMGC141.40(h). See the CM/GC Manual, Chapter 9-5 and 12.

- C. Verify that a Public Works Bond has been filed with the Construction Contractors Board (unless otherwise exempt). A Public Work Bond is not required if:
 - Prevailing wages are not required under ORS 279C.800 to 279C.870
 - Subcontractor provides approved exemption documentation
- D. Verify that the Subcontractor has a valid letter of agreement with the Tribal Employment Rights Office (TERO), if applicable.
- E. Verify that the description of the work to be subcontracted is accurate, adequate and complete.
- F. Verify that the statute mandated statements are included as required:
 - Cargo Act requirements 00160.20
 - A statement about the Subcontractor's ability to file a complaint with the Construction Contractors Board (ORS 279C.515) [00180.21(d) 1st paragraph]
 - A prompt payment clause (10 days) (ORS 279C.580) [00180.21(d)(1)]
 - A standard form/application for payment clause (ORS 279C.580(3)(b)) [00180.21(d)(2)]
 - A clause that requires the same form and regular administrative procedures for processing payments during the entire term of the subcontract (ORS 279C.580(3)(c)) [00180.21(d)(3)]
 - An interest penalty clause (ORS 279C.580) [00180.21(d)(4)]
 - A lower tier clause (ORS 279C.580) [00180.21(d)(5)]
 - A provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt [00180.21(d), last paragraph, 1st bullet]
 - A statement indicating that workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 (ORS 279.830) [00180.21(d), last paragraph, 2nd bullet]
- G. Verify that both the Prime Contractor and Subcontractor have signed the subcontract.

- H. Provide OCR Regional Field Coordinator form 734-1964. For subcontracts involving DBEs, provide an electronic copy of entire subcontract to the OCR Field Coordinator, in addition to the consent forms.
- I. Verify that the appropriate documents are checked on 734-1964 and the checked documents are included with the subcontracts, except as noted.
- J. Verify that the total amount subcontracted is no greater than 70% of the original contract amount.

After all of the information has been verified, the RE office will complete and sign the original submitted form 734-1964.

Work may proceed if the Contractor submitted a scanned copy of the Contractor's Request for Subcontract Consent, form 734-1964. The RE may withhold payment if the original submitted form 734-1964 is not received in a timely manner.

The Agency's consent to a subcontract does not create a Contract between the Agency and the Subcontractor. Consent does not convey any rights against the Agency to the Subcontractor, and does not relieve the Contractor, or the Contractor's Surety, of any responsibilities under the Contract.

If the subcontracted dollar amount on a Project is approaching 70% of the original Contract amount, the RE office should discuss with the Contractor whether any subcontracts have been terminated or reduced to verify that unused dollar amounts are not contributing to the percent subcontracted amount for the Project.

