

Chapter 14 - Subcontracts

As specified in Section 00180.21, the Contractor must obtain the consent of the Project Manager before allowing any contract work to be done by forces other than its own. If a subcontractor plans to have some of its work done by forces other than its own, the Contractor also must obtain the consent of the Project Manager before allowing that work to start.

If the Contractor modifies any of the work in a current subcontract, it must submit an amended subcontract to the Project Manager. The Project Manager must consent to the amended subcontract before any of the amended work can start.

Section 00180.20 specifies the minimum percentage of contract amount that must be performed by the prime Contractor's organization. This normally is 30% of the original contract amount.

Subcontracts are required for any work required by the Contract, including materials testing and surveying, that will not be performed by the prime Contractor's organization and is not performed by rented operated equipment. See the exceptions in Section 00180.20(c) and discussed below.*

The Contractor must also obtain the consent of the Project Manager before renting operated equipment, as specified in Section 00180.20(c). The review and consent process is discussed below.

For all work that is included in the Contractor's DBE commitment for the project, the Contractor must submit a subcontract for review and consent by the Project Manager, whether or not the work is excepted by Section 00180.20(c).*

Section 00120.40 requires the Contractor to submit, with its bid, a listing of certain subcontractors that it will use. The Construction Contracts Unit will send the Project Manager a copy of that listing at the time of Notice to Proceed.

Although ORS 279.027 requires the Contractor to submit that listing and states that the Contractor may only substitute from that listing for specified reasons, ODOT and the Project Manager have no responsibility to monitor the listing or any proposed substitutions from the listing. If the listing, however, shows that a portion of the work will be subcontracted and that work should start soon, the Project Manager should remind the Contractor of the need to submit a subcontract for consent before the work can start.

* Revised July 2001

ORS 701 requires the Construction Contractors Board to maintain a listing of contractors and subcontractors who have been determined not to be qualified to hold or participate in a public improvement contract. Before consenting to a subcontract, the Project Manager must access and check that listing, as described below, to determine that the proposed subcontractor is not on that listing.

If the Project Manager becomes aware that a subcontractor has been placed on the Construction Contractors Board listing of firms that are not qualified to hold or participate in public improvement contracts, the Project Manager must require the Contractor to substitute the unqualified subcontractor with a qualified one.

If the Contractor is placed on the Construction Contractors Board listing of firms that are not qualified to hold or participate in public improvement contracts, the Project Manager must suspend work and initiate termination proceedings as discussed in the Termination and Breach of Contract section (35) of this Manual.

Before consenting to a subcontract, the Project Manager should review the items required by the contract or discussed in this section of this Manual. *

Why must the Project Manager review subcontracts?

- Assure compliance with contract and Federal-Aid requirements on the value of work that the *Contractor must accomplish with its own organization.
- Determine that the proposed subcontractor (or owner of rented operated equipment) is not on the Construction Contractors Board listing of firms that are not qualified to hold or participate in public improvement contracts.
- Assure that the subcontract includes the several statements required by contract or by law.
- Prevent brokering that compromises Affirmative Action requirements.
- Provide a method(s) to monitor DBE participation *
- Help to protect subcontractors.
- Assure compliance with other contract requirements, such as use of Tribal Employment Rights Organization (TERO) firms.

When is a subcontract not needed?

As stated above, a subcontract is needed for all work that is part of the DBE commitment for the project.

* Revised July 2001

Section 00180.20(c) allows certain rental of operated equipment, without the need to have a subcontract, unless that work is part of the DBE commitment for the project, including:

- Suppliers
- Trucking
- Rental of operated equipment, short duration, under the direction of the Contractor* or a subcontractor, such as:
 - Sawcutting
 - Crane for beam replacement
 - Equipment that is temporarily unavailable to the Contractor or subcontractor *

A subcontract is needed for all other work that is not performed by the Contractor's own forces.

A subcontract is needed when an entity, other than the Contractor's own forces, is responsible for performing or completing the involved work, rather than just performing activities under the direction and responsibility of the Contractor or appropriate subcontractor.

Although a subcontract is not needed for the work listed above, the Contractor must submit a written request to use the rented operated equipment.

The Project Manager must determine that the involved firm is not on the Construction Contractors Board listing of firms that are not qualified to hold or participate in public improvement contracts. The Project Manager may access that listing as described below.

The Project Manager must consent to the rental of operated equipment before the service is provided. The Project Manager does not need to send copies to the Construction Section or other sections. The value of the rented operated equipment is not included in the amount of subcontracted work.

Payrolls must be submitted for the person(s) operating the equipment if they spend more than 20% of their workweek at the project site. Refer to the Labor Compliance section (19) of this Manual.

* Revised July 2001

Procedure for subcontract consent:

The Contractor completes and submits a "Contractor's Request for Subcontract Consent," form 734-1964, (original copy) (see example in Exhibit A) and 2 copies of the complete subcontract to the Project Manager.

As the Project Manager receives the subcontracts, the Project Manager assigns a number to each subcontract in the order of receipt – 1, 2, 3, etc. If a subcontractor wishes to further subcontract its work, refer to the comments at the end of this section of this Manual.

The Project Manager reviews the submitted form and subcontract for the following, and assures that:

- The subcontractor is not on the Construction Contractors Board listing of firms that are not qualified to hold or participate in a public improvement contract, or is not debarred from performing work on public works or Federal Aid projects by other agencies. (Some also are debarred by BOLI or the FHWA). Access the Construction Contractors Board listing through its website at: www.ccb.state.or.us/Public_Contracts/NotQ2bid.htm
- The description of the work to be subcontracted is accurate, adequate, and complete and that it clearly defines the responsibility of the subcontractor. See discussion below if the subcontract involves a DBE.
- The statute mandated statements about prompt payment, ability to file a complaint with the Construction Contractors Board, interest penalty, and lower-tier clauses required by ORS 279.314(2) and (3), 279.445(4) and (5), and Section 00180.21 of the contract are included.
- The applicable documents are included or incorporated into the subcontract. These items must be referenced on form 734-1964, and may be actually attached to the subcontract or may be included by reference by a statement in the subcontract.
- Both the Contractor and the subcontractor have signed the documents.

Also see the example Subcontractor Consent Checklist in Exhibit B that is used by some offices.

For any subcontracts involving a Disadvantaged Business Enterprise (DBE) firm on a Federal-aid project, also* verify the following and obtain approval from the Office of Civil Rights field representative (this would also apply to TERO requirements):

* Revised July 2001

- If the DBE is part of the project DBE commitment, assure that the subcontract for the DBE includes all of the work listed in the Contractor's DBE commitment for the DBE. The subcontractor may perform more work than is shown in the DBE commitment.
- The DBE has full responsibility and control of performance of the work that is included in the subcontract.
- The subcontract does not contain clauses that negate the intent or purpose of the DBE program or that would hinder the DBE in performing a commercially useful function.

The Project Manager must calculate the amount subcontracted on a Report on Contractor's Request for Subcontract Consent, form 734-1395. See example in Exhibit C. The dollar amount of the subcontract is the actual amount expected to be paid to the subcontractor, as shown on form 734-1964. Refer to Section 00180.20(a).

The Project Manager must assure that the total percentage to be subcontracted does not exceed the percentage specified in Section 00180.20 of the contract. If the percentage specified in the contract differs from the percentage shown in form FHWA-1273, the percentage shown in Section 00180.20* will govern.

The Project Manager completes form 734-1395 and completes and signs form 734-1964, indicating consent to the subcontract.

The Subcontractor must not begin its work until the Project Manager has given consent to subcontract. Rental of operated equipment also must not commence until the Project Manager has consented to the request.

If, during the project, the Project Manager becomes aware that the subcontractor has been placed on the Construction Contractors Board listing of firms that are not qualified to hold or participate in public improvement contracts, the Project Manager must require the Contractor to substitute the subcontractor with a qualified firm.

It may be helpful to maintain a record of subcontracts. See Exhibit D(1) and D(2).

After the Project Manager consents to a subcontract, distribute copies as follows:

- 1 copy of form 734-1964 to the prime Contractor
- 1 copy of form 734-1964 to Region

* Revised July 2001

**OREGON DEPARTMENT OF TRANSPORTATION
CONSTRUCTION MANUAL**

- 1 copy of the entire subcontract including forms 734-1964 and 734-1395, excluding any attached applicable documents, to the Construction Section
- For all Federal-Aid projects, 1 copy of entire subcontract including forms 734-1964 and 734-1395, excluding any attached applicable documents,** to the Office of Civil Rights field representative*
- For Non-Exempt Federal-Aid projects, 1 copy of form 734-1964 to the FHWA. Local agencies and consultants should submit subcontracts through the Region liaison for review before the subcontract is submitted to the Construction Section.

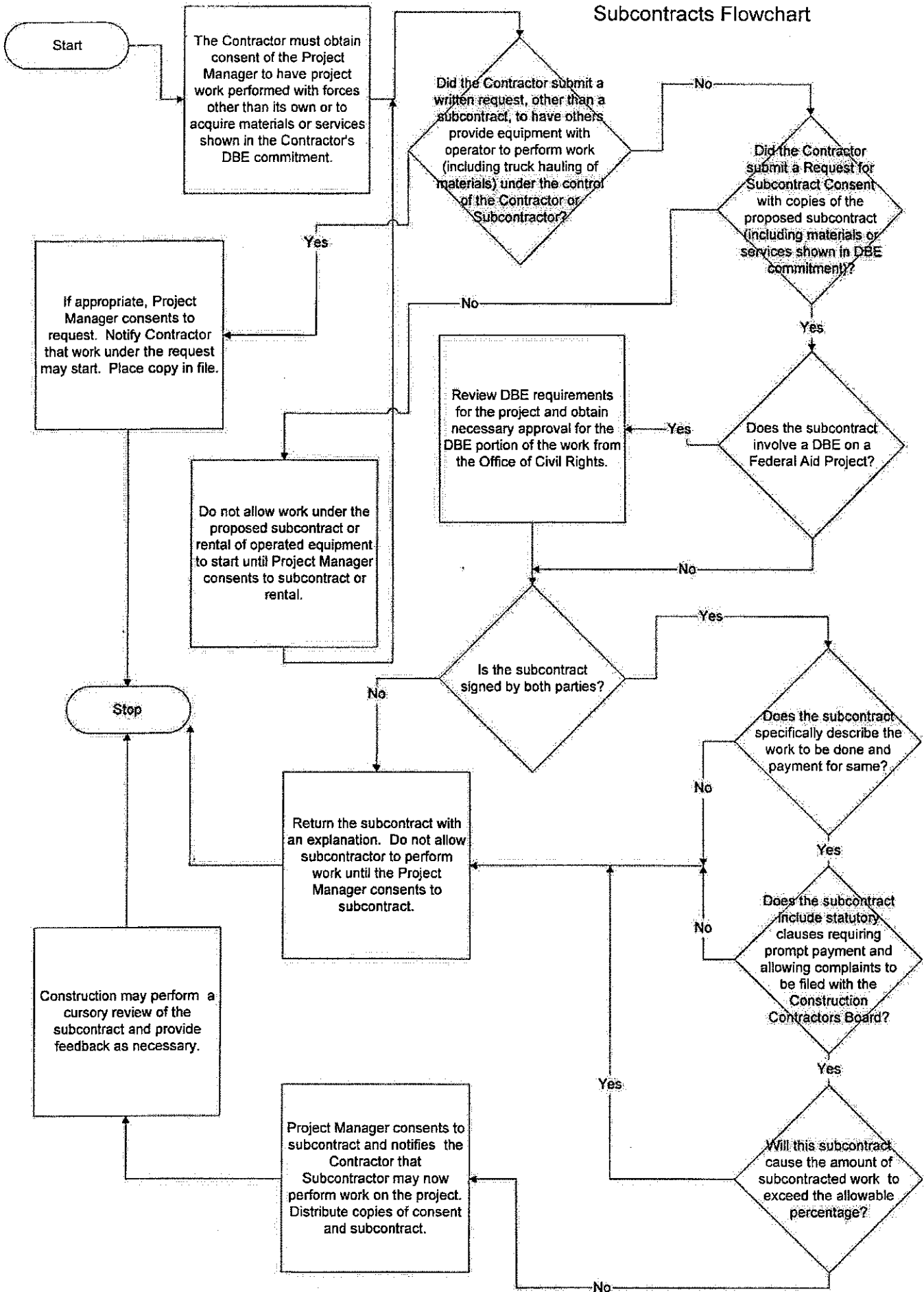
If the subcontractor wishes to further subcontract its work, perform the same review plus the following with the sub-subcontracts:

- Number sub-subcontracts the same as the subcontract, followed by an alphabetical letter. For example, Prime Construction is the prime Contractor. Heavy Duty Construction is subcontract number 4. Heavy Duty sub-subcontracts part of its work to Light Duty Construction. Light Duty's subcontract number would be 4A. If Heavy Duty sub-subcontracts other work, the next company would be 4B, etc.
- On form 734-1395, no dollar amount should appear on lines 3 or 4 for sub-subcontracted work. The bid item, CCO, or EWO numbers should go on line 2.
- The dollar amounts and percentages on lines 5-7 would remain unchanged from the current subcontract (subcontract 4 in the above example).

** Revised July 2002

* Revised July 2001

Subcontracts Flowchart



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CONTRACTOR'S REQUEST FOR SUBCONTRACT CONSENT

PROJECT NAME (SECTION) Here Road - There Drive		CONTRACT NO. C12000			
PRIME CONTRACTOR'S NAME Prime Construction Company		F. A. PROJECT NO. STP-S000(4)			
ESTIMATED STARTING DATE OF THIS SUBCONTRACT WORK 10/1/01		ESTIMATED COMPLETION DATE OF THIS SUBCONTRACT WORK 10/30/01			
SUBCONTRACTOR NAME AND ADDRESS Sub Paving Company PO Box 22 Capital City, USA		SUB-SUBCONTRACTOR NAME AND ADDRESS			
<input type="checkbox"/> DBE <input checked="" type="checkbox"/> NON-DBE		<input type="checkbox"/> DBE <input type="checkbox"/> NON-DBE			
TELEPHONE (503)222-4444	FEDERAL TAX ID NUMBER 66-1234567	TELEPHONE	FEDERAL TAX ID NUMBER		
ITEM NO.	DESCRIPTION OF WORK TO BE SUBMITTED	QUANTITY	UNIT	UNIT PRICE	SUB CONTRACT AMOUNT
1210	Asphalt in Tack Coat	143.00	Mg	\$265.00	\$37,895.00
1220	Lvl 3, 12.5mm Dense HMA	10,650.0	Mg	\$19.50	\$207,675.0
1230	Lvl 3, 19mm Dense HMA	74,515.0	Mg	\$17.00	\$1,266,755
1240	PBA-2 or PBA-5 Asphalt	4,410.00	Mg	\$165.00	\$727,650.0
1250	Extra for Asphalt Approaches	14.00	Each	\$150.00	\$2,100.00
<input type="checkbox"/> SEE ATTACHMENT FOR ADDITIONAL DESCRIPTIONS OR REMARKS				TOTAL AMOUNT OF THIS SUBCONTRACT	\$2,242,075.00

THE APPLICABLE DOCUMENTS CHECKED BELOW ARE A PART OF THIS SUBCONTRACT:
(ALL PROJECTS)

CONTRACT MINIMUM WAGE SCHEDULE

(ALL FEDERAL AID PROJECTS)

REQUIRED CONTRACT PROVISIONS - F.A. CONSTRUCTION CONTRACTS (FORM FHWA - 1273 INCLUDED IN SPECIAL PROVISIONS)

DISADVANTAGED BUSINESS ENTERPRISE, DBE POLICY STATEMENT

(FEDERAL - AID PROJECTS WHEN SUBCONTRACTOR WILL RECEIVE OVER \$10,000)

ON-SITE WORK FORCE AFFIRMATIVE ACTION REQUIREMENTS FOR WOMEN AND MINORITIES

SPECIAL PROVISIONS (PROJECTS WITH ON-THE-JOB TRAINING IF SUBCONTRACT INCLUDES ON-THE-JOB TRAINING)

ON-THE-JOB TRAINING SPECIAL PROVISIONS

I REQUEST CONSENT TO THIS SUBCONTRACT, I CERTIFY THAT THE ORGANIZATION THAT WILL PERFORM THIS WORK IS EXPERIENCED AND THAT THE WORK WILL BE PERFORMED ACCORDING TO THE TERMS OF THE MAIN CONTRACT.

Joe Primo
PRIME CONTRACTOR REPRESENTATIVE

President
TITLE

9-5-01
DATE

INFORMATION BELOW WILL BE COMPLETED BY THE DEPARTMENT OF TRANSPORTATION

DISTRIBUTION AFTER CONSENT <input type="checkbox"/> PRIME CONTRACTOR _____ <input type="checkbox"/> FHWA (FED AID PROJECTS ONLY) _____ <input type="checkbox"/> REGION _____ <input type="checkbox"/> PROJECT MANAGER _____ <input type="checkbox"/> LIAISON _____ <input type="checkbox"/> OCR FIELD COORD. (FED AID PROJECTS ONLY) _____	CONSENT TO THIS SUBCONTRACT IS HEREBY GIVEN. WITH THIS SUBCONTRACT NO. <u>3</u> , THE TOTAL AMOUNT OF SUBCONTRACTED WORK IS \$ <u>\$3,568,425.00</u> OR <u>28.9</u> %
	PROJECT MANAGER Rhoda Head



SUBCONTRACTOR CONSENT CHECKLIST

PROJECT	CONTRACT NO.
SUBCONTRACTOR	SUBCONTRACT NO.
DOES THE SUBCONTRACT INVOLVE A DBE? <input type="checkbox"/> YES <input type="checkbox"/> NO	

1. Verify that the subcontractor is not on the Construction Contractors Board list of contractors that are not qualified to hold or participate in public works contracts. Also assure that the subcontractor is not otherwise barred from performing work on public works or Federal-aid projects.

2. If the contractor requests to modify the listing of subcontractors submitted as required by Section 00120.40(f) of the contract, the Project Manager must approve that modification or substitution.

3. Assure that the description of the work to be subcontracted is accurate, adequate and complete.

4. Assure that the statute-mandated statements about prompt payments are included as required in Section 00180.21 of the contract:
 - A prompt payment clause (30 days).
 - An interest penalty clause (3 times the Federal discount rate as per ORS 279.314 and 279.445).
 - A lower tier clause.

Assure that the subcontract includes a statement about the subcontractor's ability to file a complaint with the Construction Contractors Board as specified in Section 00170.15(d) in the 1996 Standard Specifications and 00170.10(e) in the 2002 Standard Specifications.

5. Assure that both the prime contractor and subcontractor have signed the document.

6. Assure that the Contractor's Request for Subcontract Consent (Form 734-1964) is properly completed and signed.

7. For subcontracts involving DBEs, obtain consent of the Office of Civil Rights Field representative.

8. Calculate the amount subcontracted on the Report on Contractor's Request for Subcontract Consent (Form 734-1395) and assure that it does not exceed that allowed by Section 00180.20(a) of the contract. Enter the percentage subcontracted on Form 734-1964.

9. Assure that the required contract provisions are included on Federal-aid projects. These items must be indicated on Form 734-1964 and may be actually attached to the subcontract or may be included by reference by a statement in the subcontract to that extent.

10. Have the Project Manager sign Form 734-1964, indicating consent to the subcontract.

11. Send out copies:
 - 1 copy of Form 734-1964 to the prime Contractor.

 - 1 copy of Form 734-1964 to the Region office.

 - 1 copy of the entire subcontract, Form 734-1964 and Form 734-1395 to the Construction Section.
Do not include the Federal-aid contract provisions.

 - For Non-Exempt Federal-aid projects, 1 copy of Form 734-1964 to the Federal Highway Administration.

 - For subcontracts on Federal-aid projects, 1 copy of the entire subcontract, Form 734-1964 and Form 734-1395 to the Office of Civil Rights Field representative. Do not include attachments.



REPORT ON CONTRACTOR'S REQUEST FOR SUBCONTRACT CONSENT

SUBCONTRACT NO.

3

PROJECT NAME (SECTION) Here Road - There Drive	CONTRACT NO. C12000
PRIME CONTRACTOR Prime Construction Company	F. A. PROJECT NO. STP-S000(4)
SUBCONTRACTOR (FIRST TIER) Sub Paving Company	<input checked="" type="checkbox"/> NON-DBE <input type="checkbox"/> DBE
SUB-SUBCONTRACTOR (SECOND TIER)	<input type="checkbox"/> NON-DBE <input type="checkbox"/> DBE
SUB-SUB-SUB CONTRACTOR (THIRD TIER)	<input type="checkbox"/> NON-DBE <input type="checkbox"/> DBE
1 TOTAL AMOUNT OF CONTRACT BID ITEMS AS AWARDED	\$12,345,678.90
2 ALL SUBCONTRACTORS: LIST ITEM NUMBERS FOR SUBCONTRACTED "EXTRA WORK" ITEMS. LOWER TIER SUBCONTRACTORS: LIST ITEM NUMBERS FOR SUBCONTRACTED ITEMS.	
3 FIRST TIER SUBCONTRACTORS: LIST ITEM NUMBERS FOR SUBCONTRACTED ITEMS NOT LISTED ON LINE 2 1210-1250 <div style="text-align: right;">TOTAL AMOUNT</div>	\$2,242,075.00
4 TOTAL AMOUNT PREVIOUSLY SUBCONTRACTED (PREVIOUS REPORT LINE 5): <div style="text-align: right;">TOTAL AMOUNT</div>	\$1,326,350.00
5 TOTAL AMOUNT SUBCONTRACTED (TOTAL OF LINES 3 AND 4)	\$3,568,425.00
6 TOTAL PERCENT SUBCONTRACTED (LINE 5/ LINE 1) X100	28.90 %
7 MAXIMUM PERCENT ALLOWED TO BE SUBCONTRACTED. (SEE SUBSECTION 00180.20 IN THE CONTRACT)	70.00 %

REMARKS:

3 DISTRIBUTION: (ATTACH COPY OF SUBCONTRACT)
- PROJECT MANAGER (ORIGINALS)
- CONSTRUCTION

REVIEWER

DATE

O. Dobbie

9-5-01

