

Michigan Department of Transportation Consultant Subcontracting Process

Effective August 1, 2016, the procedure below will replace the current consultant subcontracting process. This process is required for all consultants where people are engaged in an activity, performing any services for which MDOT has contracted with a prime consultant. This includes both first tier and second tier subconsultants.

Consultant Subcontracting Process

1. Consultants must submit [form 5101S](#), Intent to Subcontract, at the time the original or a revised Priced Proposal and other required contract documentation is submitted.
2. Contract Services Division (CSD) will review the form for completeness and accuracy, and will include the form as part of the overall contract/authorization or amendment/revision, as applicable. The contract/authorization or amendment/revision will not be awarded until such time as all the required 5101S forms are received.
3. The Intent to Subcontract does not serve as a replacement for a subcontract agreement between the prime consultant and subconsultant(s). Consultants must continue to develop and retain the original signed subcontract, in their office or project files, **regardless of the subcontract dollar amount**.
4. Form 5101S must be submitted for each subconsultant providing services under the prime contract/authorization, including any amendments/revisions, as identified in the prime consultants technical proposal, **regardless of dollar amount**, and must be signed by an authorized legal signer of the prime consultant and subconsultant.
5. The prime consultant will not subcontract any portion of the project services without the prior written approval of MDOT, as evidenced by the awarded contract/authorization or amendment/revision.
6. The subcontract must be signed, using digitally encrypted signatures, and awarded between the parties prior to the assigned work being performed.
7. MDOT will allow an exception to item number #6, above, for those unique and unusual situations, in which the services required are considered specialty services that occur at the beginning of a project, such as surveying and geotechnical, etc. In these cases, form [5101LN - Limited Notice to Proceed](#) must be completed and signed, using digitally encrypted signatures, by the prime consultant, subconsultant, as well as signed and approved by the MDOT Project Manager. The Limited Notice to Proceed (LNP) allows the subconsultant to work a maximum of thirty consecutive (30) calendar days, from the date of signature, at which time, the subcontract must be signed and awarded, and identifies a maximum dollar amount for work allowable under the LNP.
8. The effective date of the subcontract shall not be prior to the date of signature by both parties, unless a LNP is in place.
9. The LNP shall be included with the subcontract, if applicable, and submitted to MDOT upon request.
10. The Consultant must sign the subcontracts using digitally encrypted signatures, including visible date stamp.
11. MDOT will randomly select contracts/authorizations for an interim and/or post review of subcontracts. Upon request, the Consultant will be required to submit to MDOT any subcontract agreements between the Consultant and subconsultant, **regardless of dollar amount**.

Subcontract Review

Active contracts/authorizations will be randomly selected by CSD for an interim and/or post review of subcontracts. This review is performed to ensure that subcontracting processes are being followed and documented. The following steps will be performed.

1. A list of contracts/authorizations will be generated from the Contract Tracking System (CTRAK) on a quarterly basis. This report will include only those contracts/authorizations awarded during the quarterly reporting period that include subcontracts. The report will be generated 90 days from the end of each quarter, for the prior quarter.
2. Contracts/authorizations provided on the report will be randomly selected and reviewed for compliance with subcontract requirements. The percentage selected will be determined based on the total number of contracts/authorizations awarded that contain subcontracts and will be calculated with a 90% confidence level, or as determined with collaboration with FHWA, provided by the application, Raosoft.
3. MDOT will notify Consultants, via e-mail, that their contract/authorization has been randomly selected. Consultants will have five business days from the date of the notification to provide MDOT, via e-mail, all the subcontracts and subcontract amendments associated with the contract/authorization randomly selected. Failure to comply within the five business day time frame will result in a subcontract infraction.
4. CSD will review each subcontract for compliance with the MDOT requirements.
5. MDOT will review invoices to ensure that subcontracts have been signed prior to work commencing.
6. A Quarterly Report will be provided to OCA and FHWA.

Non-Compliance with Subcontracting Requirements

Failure to provide subcontracting documents to MDOT within the required time frame, and/or noncompliance with the subcontracting requirements will be tracked, and notification of infractions will be sent to the prime consultant via e-mail and hard copy. The consultant will be requested to bring the subcontract in question into compliance, within fourteen (14) calendar days, and resubmit it to MDOT. Failure to secure and provide subcontracts for services provided by subconsultants, or contractors, is a violation of the Prime Contract. Non-compliance with the terms and conditions of the Prime Contract and/or any subcontract may lead to costs not being paid, up to and including termination of the services. Infractions may result in submittal to the Contract Performance Evaluation Review (CPEER) team for review and action, as well as possible recommendations to the Prequalification Committee up to and including the loss of prequalification. With one infraction MDOT will generally request subcontracts be submitted by the Prime Consultant, in the subsequent quarters for review in addition to the randomly selected contracts/authorizations. If MDOT determines not to add additional reviews in subsequent quarters, the reason for this decision will be documented in sufficient detail to allow others to draw the same conclusion.

Infractions may include, but are not limited to the following:

1. Omissions of information
2. Modification of required contract language
3. Language changes that violate the Prime Consultant's Contract with MDOT
4. Failure to provide a subcontract agreement, as requested, within the required time frame
5. Subcontract not awarded prior to work commencing, or lacking a LNP.
6. Subcontractor is not MDOT prequalified in the work categories identified in the subcontract
7. Compliance with the 60% maximum subcontracting limit (Tier I)
8. Compliance with the 50% maximum sub-subcontracting limit (Tier II)
9. Compliance with the DBE participation percentage
10. Compliance with the terms and conditions of the prime contract
11. Compliance with all items identified on 'MDOT's Subcontract Checklist and Payment Example'.

Definitions

- **Subconsultants** – Any person, company, etc., where people are engaged in an activity, performing any services for which MDOT has contracted with a prime Consultant.
- **Suppliers** – Any person, company, etc., that supplies material and/or a commodity/product without an associated service.
- **1st Tier Subconsultant** – Works directly for the prime consultant.
- **2nd Tier Subconsultant** – Works directly for the 1st Tier Subconsultant
- If the subconsultant provides prequalified services on a project, a detailed derivation of cost must be provided.
- If a supplier or subconsultant provides non-prequalified services on a project the prime consultant must submit documentation that the selection was based on a competitive low bid process, with a minimum of three bids solicited.

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