

## SUPPLEMENTAL SPECIFICATION

### SECTION 108 -- PROSECUTION AND PROGRESS

#### SUBSECTION 108.01 – SUBLETTING OF CONTRACT

**108.01 Subletting of Contract.** The Contractor shall not sublet, sell, transfer, assign, or dispose of any portion of the Contract or Contracts without written consent of the Department. The Contractor's organization shall perform work amounting to not less than 50 percent of the total Contract bid amount unless a higher percentage is specified in the Contract. Items designated in the Contract as "specialty items" may be subcontracted and the cost of specialty items performed by subcontract may be deducted from the Total Bid amount before computing the amount of work required to be performed by the Contractor's own organization. Any subcontracts, or transfer of Contract, shall not relieve the Contractor, bonding company or Surety of liability under the Contract and Bonds.

For proposed subcontractor and/or lower tier subcontractor approval, the Contractor shall file a copy of the executed subcontract agreement with the Bureau administering the Contract at least five working days prior to the requested subcontract work being started. Retroactive subcontract and/or lower tier subcontract agreements will not be allowed.

On Federal-Aid projects, it is a requirement that the following documents be incorporated in and made a part of every subcontract agreement (including lower-tier subcontract agreements):

- NH DOT Policy on Subcontracting
- Required Contract Provisions (FHWA-1273)
- Disadvantaged Business Enterprise (DBE) Policy (SPECIAL ATTENTION item)
- DBE Program Requirements (Standard Spec 103.06)
- \*41 CFR 60-4.2 – Solicitations
- \*41 CFR 60-4.3 – Equal Opportunity Clauses
- Payroll/Wage Requirements Summary
- \*\*U.S. Department of Labor wage rates entitled "GENERAL WAGE DECISION" (as contained in the contract)
- \*Applicable only to contracts or subcontracts in excess of \$10,000
- \*\*Does not apply to Material Suppliers, unless performing work on site

In addition to the above requirements in accordance with New Hampshire law (RSA 228:4-b), prior to any on-site work being performed on any highway, bridge or other construction, reconstruction, alteration or maintenance project funded by the Department, each Contractor, Subcontractor, Lower-tier Subcontractor, to include an Independent Contractor, must submit a "Work Certificate" with supporting documentation and obtain approval from the Bureau administering the project.

For unforeseen work of a value less than \$10,000.00, the Contractor may obtain interim consent to sublet work from the Contract Administrator; provided Interim Consent to Sublet Form is executed between the two parties and the Contract Administrator. In addition, the Subcontractor, Lower-tier Subcontractor, or Independent Contractor to perform work must submit a "Work Certificate" with supporting documentation and obtain approval from the Contract Administrator before interim consent is granted. This interim consent to sublet work also requires submission of all documents noted above to the Bureau administering the Contract. Consent by the Bureau

administering the Contract must be granted prior to any payment for work accomplished under this interim agreement process.

The Contractor shall not knowingly sublet, sell, transfer, assign, or dispose of any portion of the Contract or Contracts with any person or entity which, under any federal or state law or regulation, or by voluntary agreement, is currently debarred or disqualified from bidding for construction contracts or participating in construction projects in any jurisdiction of the United States, unless after disclosure of such ineligibility, such participation is authorized by appropriate federal and State authorities, including the Engineer. No payment will be made for work performed by any such contractor.

Submission of certified payrolls as required during the course of the Work shall establish final minimum wage rate certification of all work sublet, assigned, or otherwise disposed of in any manner during completion of the Contract. Truck owner-operators are not subject to the wage rates prescribed by the Department of Labor. Such owner-operators shall be listed on payrolls with the notation "Truck Driver owner-operator" in the Work Classification column. Neither the hours neither worked nor wages paid need to be shown.

The Department will furnish copies of the Required Contract Provisions, notices, report forms, Acknowledgment Certification and Transmittal Requests for subcontractor approval to the apparent low bidder following bid openings.

Transmittal requests shall indicate either "subcontractor," "lower-tier subcontractor" or "material supplier" and shall include a copy of the subcontract agreement attached to a certification that all required Contract provisions, notices and report forms are a part of each subcontract.

If, during the course of the Work, a Subcontractor or Lower-tier Subcontractor fails to complete or perform satisfactory work the Contractor shall complete the Work itself or with another approved subcontractor. The Contractor shall not substitute another subcontractor for an approved subcontractor except for reasons acceptable to the Department nor shall an approved subcontractor be allowed to perform work not prescribed in the executed agreement on file without prior consent by the Department.

Any Contractor, Subcontractor, or Lower-tier Subcontractor found to be in violation of the Required Contract Provisions made part of its contract shall be required to take corrective action before participating in future projects funded by the Department. Corrective action shall include, but is not limited to, the submission of certified payrolls or other records and reports necessary to verify compliance with the Provisions. Any Contractor, Subcontractor or Lower-tier Subcontractor found to have repeatedly violated the Required Contract Provisions may be required to complete 4-hours of Federal Contract Compliance Training conducted by the NH DOT Office of Federal Compliance. When mandated, Federal Contract Compliance Training must be completed before participation on future projects is authorized. This requirement does not relieve the Contractor of its obligations under the prime contract, nor does it prevent the Department from seeking other remedies or enforcement action, as provided by the governing Rules, Laws, and Federal Regulations.

Any Subcontractor, Lower-tier Subcontractor, or Independent Contractor performing work without consent by the Department shall be required to suspend Work until a "Work Certificate" is submitted. Any Subcontractor, Lower-tier Subcontractor, or Independent Contractor that fails to comply with this requirement may be reported to the New Hampshire Department of Labor for review under RSA 228:4-b.