



**Office of Local Programs
Procedures Development Office**

Process Review 98-03

Subcontracting - Contract Compliance

FINAL REPORT

Recommended Approval

Original Signed by Kevin Pokrajac
Office Chief

Approved

Original Signed by Debra Mah
Assistant Program Manager
Design and Local Programs

1/12/00
(Date)

Recommended Approval

Original Signed by Rick Gifford
Process Review Engineer

SUBCONTRACTING - CONTRACT COMPLIANCE

A. Background

The Form FHWA-1273, Required Contract Provisions, is a convenient collection of contract provisions and proposal notices that are required by regulations promulgated by FHWA and other Federal agencies. The provisions contained in Form FHWA-1273 are generally applicable to all Federal-aid construction projects and shall be made a part of and physically incorporated into all Federal-aid contracts.

In the Form FHWA-1273, Section 1, "General," states:

"Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions."

FHWA's 1996 Project Review/Product Evaluation (PR/PE), for subcontracting, recommended that the Office of Local Programs (OLP) develop an ongoing contract compliance review program for monitoring prime contractor's certification. The review program would assure that the Federal requirement (Form FHWA-1273) is incorporated into all Federal-aid subcontracts and lower tier subcontracts. The review program would also assure that firms suspended or debarred from Federal-aid contracts are not able to continue working on Federal-aid projects through subcontracts.

To comply with FHWA's recommendations, OLP's first "Contract Compliance" Process Review, PR 96-05, was conducted during the spring of 1997. The review entailed spot-checking of subcontracts on local agency administered construction projects to make sure Form FHWA-1273 was physically incorporated into the subcontracts. A new approach was taken with this process review. Instead of Caltrans' personnel doing the spot-checking, local agencies were responsible for spot-checking their contractor's files to assure that form FHWA-1273 was included in all subcontracts. Of the 19 local agency projects that were reviewed, five projects were found with the Form FHWA-1273 not included in the subcontracts. In light of the survey results, and FHWA's recommendation, it was recommended that the Subcontracting – Contract Compliance Process Review be conducted again.

B. Objective of Review

The object of this review was to assure that the Federal requirements (Form FHWA-1273) were incorporated into all Federal-aid subcontracts and lower tier subcontracts. Also, the review was to assure that firms suspended or debarred from Federal-aid contracts are not able to continue in working on Federal-aid projects through subcontracts.

C. Review Approach

The approach taken with Process Review, PR 96-05, was continued in this process review. Instead of Caltrans' personnel doing the spot-checking, local agencies were responsible for spot-checking their contractor's files to assure that form FHWA-1273 was included in all subcontracts. The selected local agencies (in Districts 4,6 & 9) that implement Federal-aid construction projects were responsible for spot-checking their contractor's files to assure that Form FHWA-1273 was included in all subcontracts. The District Review Team members (Roland Lee - District 4, Marv Johnson - District 6, and Richard Kizer - District 9) were responsible for determining which local agencies, in their district, did the reviews, and what projects were to be reviewed. Local agencies were only required to do a review of the one project selected. The Process Review Engineer (PRE), Rick Gifford, notified the local agency that they had been selected to take part in the Subcontracting Process Review and provided instructions for completing the review. A goal of 20 local agencies and 75 subcontracts to review was established in the review plan. Nineteen local agencies and 84 subcontracts were reviewed. One local agency project selected did not have any subcontractors on the job.

These selected local agencies did check to see if the Form FHWA-1273 was physically incorporated into the subcontracts (number determined by the PRE) and completed a review form checklist (a sample review form is attached). If the Form FHWA-1273 was not physically incorporated into the subcontract, the local agency would be responsible for taking such necessary action to assure that the prime contractor and subcontractors comply with the contract requirements.

The local agencies agree to this responsibility when they enter into a master agreement with Caltrans. The master agreement requires the local agencies to assure that work performed on their Federal-aid projects is in conformance with all Federal rules and regulations.

In the subject review, the PRE used the local agencies' completed review forms to check prime contractors, subcontractors, and lower tier subcontractors (that were spot-checked by the local agencies) to assure none have been suspended or debarred from working on Federal-aid contracts. The PRE accessed the U.S. General Services Administration "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" via the Internet.

D. Findings, Observations and Recommendations

Finding

Of the 19 local agency projects that were reviewed, six of the projects were found with the Form FHWA-1273 not included in the subcontracts. On all six of the projects the local agencies had included the Form FHWA-1273 into the prime contract. The failure to include the Form FHWA-1273 was on the part of the prime contractor. Attached is a summary table of the findings.

Observation

Just over two-thirds of the prime contractors included Form FHWA-1273 in their subcontracts. Most of those prime contractors that did not include the 1273 were more than willing to correct the deficiency once it was brought to their attention. There were two prime contractors that were not willing to correct the deficiency. Only after the local agency made a monetary deduction did the two prime contractors execute new subcontracts to include Form FHWA-1273.

Recommendations

Continue this process review on an annual basis, rotating it among the districts, until such time that it is found that all prime contractors include Form FHWA-1273 in their subcontracts on a regular basis.

A letter should be sent to the Associated General Contractors letting them know about the result of this process review. The letter should also ask for their help in getting word out about the importance of including Form FHWA-1273 in all their subcontracts on Federal-aid projects.

Finding

None of the prime contractors or subcontractors involved in this process review were found in the U.S. General Services Administration "List of Parties Excluded from Federal Procurement and

Observation

It appears that the prime contractors have fulfilled their responsibilities, and have done some research on the subcontractors before hiring is being done. Also, the prime contractor certifying that they are not excluded from Federal-aid contracts have kept those excluded from bidding on Federal-aid contracts.

Attachments (2)

**Process Review 98-03
Subcontracting - Contract Compliance**

Review Form

Project Locator No.: _____ **Prefix:** _____ **Project No.:** _____

Local Agency: _____

Project Location: _____

Type of Work: _____

Prime Contractor: _____

Address: _____

(1) Subcontractor: _____

Address: _____

FHWA Form 1273 physically was incorporated into (6)'s subcontract: yes no

If "no" is checked above, then check here when the Letter of Commitment and a copy of the amended subcontract, with FHWA Form 1273 physically incorporated, is received

If low tier subcontractor check here

(2) Subcontractor: _____

Address: _____

FHWA Form 1273 physically was incorporated into (7)'s subcontract: yes no

If "no" is checked above, then check here when the Letter of Commitment and a copy of the amended subcontract, with FHWA Form 1273 physically incorporated, is received

If low tier subcontractor check here

(3) Subcontractor: _____

Address: _____

FHWA Form 1273 physically was incorporated into (8)'s subcontract: yes no

If "no" is checked above, then check here when the Letter of Commitment and a copy of the amended subcontract, with FHWA Form 1273 physically incorporated, is received

If low tier subcontractor check here

(4) Subcontractor: _____

Address: _____

FHWA Form 1273 physically was incorporated into (9)'s subcontract: yes no

If "no" is checked above, then check here when the Letter of Commitment and a copy of the amended subcontract, with FHWA Form 1273 physically incorporated, is received

If low tier subcontractor check here

(5) Subcontractor: _____

Address: _____

FHWA Form 1273 physically was incorporated into (10)'s subcontract: yes no

If "no" is checked above, then check here when the Letter of Commitment and a copy of the amended subcontract, with FHWA Form 1273 physically incorporated, is received

If low tier subcontractor check here

Prepared By: _____ (please print)

Phone Number: _____

Process Review 98-03
Attachment #2

Process Review 98-03 Construction Subcontracting --

Summary of Findings

Local Agency	Federal-aid Project No.	# of Subcontracts Reviewed	# of lower tier subcontractor	Prime Contractor did not include 1273
District 4				
County of *****	STPLV-*****(001)	5	0	1
City of *****	STPLE-*****(002)	4	0	0
City of *****	STPMA-*****(005)	3	3	0
City of *****	ER-*****(047)	9	0	0
City of *****	STPLMA-*****(015)	2	0	0
County of *****	BRLS-*****(016)&(017)	8	0	0
County of *****	STPLR-*****(006)	4	0	0
County of *****	STPL-*****(041)	5	0	1
City of *****	CML-*****(008)	0	0	0
*****	*****	5	0	1
District 6				
City of *****	STPLNMA-*****(036)	5	0	1
City of *****	STPLE-*****(012)	4	0	0
County of *****	BRLO-*****(002)	2	0	0
County of *****	STPL-*****(122)	2	0	0
City of *****	STPLH-*****(021)	6	0	0
City of *****	STPLMA-*****(004)	1	0	0
City of *****	CMLG-*****(009)	5	0	1
County of *****	BRLO-*****(006)	7	0	0
District 9				
County of *****	BRLS-*****(008)	5	0	0
City of *****	STPLE-*****(004)	5	0	1
Total Local Agencies	20	87	3	6