

DATE October 18, 2021

TO District Engineers, District Construction Engineers, Assistant District Construction Engineers, Project Managers

FROM James J. Knott

THRU

SUBJECT DIRECTIVE CONSTR 21-02
EXEMPTIONS FROM SUBCONTRACT REQUIREMENTS

CONSTRUCTION DIRECTIVE

Subsection 108.01, Paragraph 1. b. of the Nebraska *Standard Specifications for Highway Construction*, 2017 Edition, provides for the Nebraska Department of Transportation to identify a list of items of work that may be performed without a subcontract.

This construction directive voids all prior guidance regarding activities that may be exempted from subcontract approval requirements. Guidance in the 2019 Construction Manual is superseded by this construction directive.

The following items of work may be exempted from subcontracting approval on contracts for heavy highway construction. Regardless of whether work is exempted from subcontracting procedures, contractors should be reminded that they are still responsible to see that all payroll, insurance, safety, and other contract requirements are being met. (This requirement includes insurance coverage as specified in the contract and that contractors are not debarred from work on federal aid projects.) In the case that a subcontractor is asking for an exemption for a lower tier subcontractor, the prime contractor shall request the exemption. These exemptions do not prohibit the contractor from executing a subcontract if he/she chooses to do so. The prime contractor may prefer that the Construction Division assist them in vetting the subcontractor using the subcontract approval process rather than requesting an exemption.

- **Small amounts of asphaltic concrete:** When small amounts of material are needed to complete the work, such as wedges at bridge ends, tying into existing surfaces, etc., the contractor will be permitted to obtain asphaltic concrete material (including tack oil and placement) from another contractor's portable (or commercial) plant.
- **Bump Grinding:** Operated equipment used for *corrective* grinding on asphaltic or Portland cement concrete pavement may be hired. A subcontract is still required for any milling or grinding included in the original contract.
- **Concrete Pumping:** Concrete pumper trucks may be leased fully operated by the contractor to deliver concrete to the project.
- **Mobile Cranes:** Mobile cranes may be leased fully operated by the contractor.

- **Electrical – minor work:** Miscellaneous electrical services for those situations where minor repairs or adjustments to existing electrical components are required as a result of other work included in the contract. A subcontract is still required for the installation of lighting, ITS, or traffic control components/systems shown in the plans.
- **Engineering and Testing:** Miscellaneous work performed by an independent engineering firm, such as for the relocation of section corners or conducting a mixer performance test. When contractor staking is included in a contract, a subcontract will be utilized when someone other than the prime contractor performs the work.
- **Plumbing:** Miscellaneous plumbing services (e.g. hook-ups, tap-ins) or those situations where minor repairs or adjustments to existing plumbing are required as a result of other work included in the contract may be hired. A subcontract is still required for the installation of new water and sewer services shown in the plans.
- **Potholing.** Miscellaneous potholing work required for those situations where potholing is necessary and when potholing is not included in the contract. A subcontract is still required when potholing has been included as a contract item.
- **Pre-watering.**
- **Sawing of pavement for bridge approach removal.** Operated equipment for sawing pavement associated with removal of bridge approach sections may be hired.
- **Scaffolding suppliers:** Delivery and set up (only) of scaffolding by the supplier when the supplier of the scaffolding is not performing any contract work on the project.
- **Sodding – minor miscellaneous.** Miscellaneous sodding services for those situations where additional installation of a small quantity is required as a result of other work included in the contract.
- **Sprinkler system work:** Hiring person(s) to make minor repairs or adjustments to existing sprinkler systems that are required as a result of other work included in the contract is allowed. A subcontract is still required for the installation of new equipment shown in the plans.
- **Staffing service companies, provided that:**
 - Workers are employed or leased by the hiring contractor and may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be exempted from subcontract requirements if the hiring contractor meets all the following conditions:
 - (1) The hiring contractor maintains control over the supervision of the day-to-day activities of the leased employees;
 - (2) The hiring contractor remains responsible for the quality of the work of the leased employees;
 - (3) The hiring contractor retains the power to accept or exclude individual employees from work on the project.
- **Certified welder work.** Certified welders may be hired without the need for a subcontract. Regardless of whether a subcontract is executed or not, certified welders must submit the appropriate certification for approval by Bridge Division prior to performing welding work.

Other miscellaneous items may be considered for exemption from subcontracting approval requirements. Please contact the Construction Division if you have an item of work which you think may be eligible.