



**ALABAMA
DEPARTMENT OF TRANSPORTATION**

CONSTRUCTION BUREAU
1409 COLISEUM BOULEVARD
MONTGOMERY, ALABAMA 36110
Telephone: (334) 242-6208
FAX: (334) 264-3727



Bob Riley
Governor

Joe McInnes
Transportation Director

November 28, 2005

Construction Information Memorandum No. 3-2005

TO: Division Engineers
ATTN: Division Construction and Division County Transportation Engineers
FROM: Terry McDuffie
Construction Engineer
RE: Payments for Partial Items Performed by Unapproved Subcontractor

As outlined in CIM 3-2004, Article 108.01 of the Standard Specifications was amended effective with the December 3, 2004 letting to include the following statement:

“Work performed without sublet approval will be designated as unauthorized work as noted in Article 105.11.”

Article 105.11 has also been amended to include under the designation of unauthorized work the following – “work performed by forces other than the (prime) contractor’s forces and performed without sublet approval by the Engineer”. By specification, unauthorized work may remain in-place at no pay if the quality is acceptable or, if the quality is unacceptable the unauthorized work shall be removed and replaced.

Recently, an unapproved subcontractor performed a partial item of work. The work performed was determined to be acceptable and allowed to remain in-place at no pay. The question was then posed on how to pay for the remaining part of the item that was performed by the prime contractor.

If the remaining portion of the item of work was authorized to be performed (i.e., done by the prime contractor or an approved subcontractor), the prime contractor shall be compensated for this portion of the work, and the subcontract/sublet unit price for the unauthorized work shall be deducted from the contract unit price. The authorized portion of the work shall be paid for in the same manner as shown in the following example:

Original Contract Item:

| | | | | | |
|----------|---|-------|----|--------|-------------|
| 305A-040 | Soil Aggregate, Section 823, | 4,000 | CY | \$7.50 | \$30,000.00 |
| | Chert or Red Dog (Inert), for Misc. Use | | | | |

New Estimate Line Entry after work performed:

| | | | | | |
|----------|---|-------|----|--------|-------------|
| 305A-040 | Soil Aggregate, Section 823, | 4,000 | CY | \$5.00 | \$20,000.00 |
| | Chert or Red Dog (Inert), for Misc. Use | | | | |
| | (Reduced Unit Price for Unauthorized Work per Article 105.11) | | | | |

In the example above, the partial item of unauthorized work performed was hauling, and the subcontract price was \$2.50/CY. The subcontractor performed the plan quantity for the item.

If a complete pay item was performed by an unapproved subcontractor, the Department would simply not pay for the quantity of the item constructed/installed. This unauthorized work shall still be entered on the monthly estimate in order to properly document the work. It shall be done in the same manner as the previous example except that the unit price will be \$0.00. This method of payment will properly document that the work was performed and that it will be a part of the final quantity calculations.

This new estimate line entry method is basically the same as what is being done for items with varying prices that are based on specification provisions. Examples of these type items (and specification reference) include Muck Excavation (Subitem 210.10(a)1.c.), Crushed Aggregate Base (for failing gradation in Subarticle 301.05(c)), Special Underdrain Outlets (Item 605.05(a)2.) and Underdrain Pipe (Item 606.05(a)2.).

Normally, the subcontract/sublet documents and unit prices are not available for an unapproved sublet. In these cases, you should write the prime contractor (with a copy to this office) notifying them of the unauthorized work performed and request a copy of the actual subcontract in order to properly pay for the remaining work. You should withhold payment for the affected quantity of the pay item until the prime contractor provides the requested subcontract documentation. This will prevent any overpayments. Failure of the prime contractor to respond affects his ability to be paid for the work.

There are situations where a Request to Sublet is submitted but not approved due to missing documents. For these situations, the work is still unauthorized and is subject to no pay. However, the basic subcontract/sublet documents are on file in the Bureau of Office Engineer and may even be entered into CPMS. This will eliminate the need to request the subcontract documents from the prime contractor, but the prime still should be notified about the unauthorized work that was performed.

This method of payment for partial items of work performed by unapproved subcontractors is consistent with other pay items with specification provisions for payment changes. Hopefully, this CIM clarifies the proper contract administration for handling the payment for the authorized part of the remaining work.

Should you have questions concerning this memorandum, please contact this office.

TM/GMB/WJP/wjp

pc: Mr. D. W. Vaughn

Mr. G. M. Harper

Mr. Frank Courson

Mr. Ronnie Baldwin

Ms. Alvena Williams

Mr. Lamar McDavid

Mr. Alton Treadway

Mr. Joe Wilkerson, FHWA

Alabama Roadbuilders Association

Alabama Asphalt Paving Association

Alabama Bridge Construction Association

American Concrete Pavement Association

File