


TO: SUPERSEDED BY EI 01-018 EFFECTIVE 11/1/01	ENGINEERING INSTRUCTION NEW YORK STATE DEPARTMENT OF TRANSPORTATION		
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APPROVED:  R. W. Shtatte, Deputy Chief Engineer, Construction Division			Code: EI-90-38 Date: 10/16/90 Supersedes:

The Department's long standing policy prohibits the assignment of contract work by an approved subcontractor to their subcontractor (second-tier subcontractor) and requires that all subcontractors be approved in writing by the Department. However, we have recently received notices of Labor Law violations and OSHA citations which reveal that second-tier subcontracting is occurring on Department projects.

It is important that second-tier subcontracting or unapproved subcontracting does not occur on Department contracts. All non-supervisory personnel (including owner-operators) performing on-site contract work under the control or supervision of the prime contractor are required to be listed on a certified payroll and actually paid by the prime contractor or an approved subcontractor. Field inspection staff should monitor on-site activities as a check on compliance with this requirement. Appropriate follow-up should be made if non-compliance is discovered. Non-compliance issues which cannot be resolved at the project or Regional level should be referred to the Construction Division.

On-site contract work is considered to include maintaining previously furnished and installed products and providing on-site services. Individuals who deliver materials and supplies on-site or remove excess materials and supplies from the project site are not considered to be performing on-site contract work. These individuals are considered to be material suppliers and are not required to be shown on certified payrolls. However, if material is delivered to the project site and is incorporated directly into the work by the supplier's work force in such a manner that no further handling or manipulation of the material is necessary in order to conform with the construction details of the appropriate specification item, such work should be considered as being subcontract work.

All subcontractors must be approved on Form HC-89. No payment is to be made for any on-site contract work performed by other than the prime contractor or an approved subcontractor.