New Subcontract Requirement

• On Federal funded projects it is required to include the FHWA-1273 with the Subcontract 1302 form

  • The FHWA-1273 must be “physically” incorporated prior to any signatures.

• MDOT has updated the Subcontract 1302 form(s) to accommodate this requirement.

  • 1302-Fed
  • 1302-State
**CONTRACTOR ANNOUNCEMENT**

FHWA Compliance for Subcontracts

FHWA subcontracting regulations require projects with federal aid funding to have the FHWA-1273 physically incorporated with the 1302 subcontract form PRIOR to any signatures.

The Michigan Department of Transportation has created a new 1302 subcontract form to assist with meeting this requirement. Beginning with the November 1, 2019, bid letting, Form 1302-FED must be used for all projects with federal funding. Form 1302-State must be used for projects with only state funding.

Please submit all subcontracts through ProjectWise. After review by the managing office, they will be sent to MDOT-ConstructionSubcontracts@michigan.gov by the ProjectWise workflow.

Lansing, MI
10/29/19
SUBCONTRACT

For use on all Federal Highway Funded Projects

Complete and return a copy of pages 1 and 3 to the Administering Engineer.

<table>
<thead>
<tr>
<th>VENDOR NUMBER</th>
<th>PRIME CONTRACTOR</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>VENDOR NUMBER</td>
<td>SUBCONTRACTOR</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>VENDOR NUMBER</td>
<td>SUB-SUBCONTRACTOR</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

TOTAL DOLLAR VALUE OF SUBCONTRACT

$ _____________________

*TOTAL DOLLAR VALUE OF SAME BID ITEMS IN CONTRACTOR'S PROPOSAL

(This amount is used to calculate the 60% contract maximum allowable to subcontract)

$ _____________________

*In case of a “Partial Item of Work” or “Lump Sum”, only include that portion to be performed by the subcontractor.

Michigan Department of Transportation
1302-State (10/19)

Michigan Department of Transportation
1302-FED (10/19)
108.01 Subcontracting of Contract Work. No portion of the contract may be subcontracted, other than the providing of necessary materials, except as provided for in the Department’s procedures for subcontracting. Subcontracting any portion of the work does not relieve the Contractor of full responsibility for the performance of the contract. Written consent of the Department is required to sell or assign any portion of the contract.

The Contractor must use its own organization to perform work amounting to at least 40 percent of the original contract amount. The phrase “its own organization” includes only workers employed and paid directly, inclusive of employees who are employed by a lease agreement acceptable to the Department, and equipment owned or rented with or without operators; and does not include employees or equipment of a subcontractor, assignee, or agent of the Contractor. All items identified as Designated or as Specialty Classifications may be performed by subcontract. The amount of Specialty Classification work performed may be deducted from the original total contract price before computing the amount of work required to be performed by the Contractor’s own organization. The 60 percent available for subcontracting must include work identified in the contract as designated classifications and all other work, except specialty classifications.

The Department will determine the value of subcontracted work by multiplying the number of units of a subcontracted pay item by the contract unit price for that pay item. If any portion of a pay item is subcontracted, only that portion of the work to be performed by a subcontractor will be used for determining the percentage of the total work subcontracted. The Department will determine if the subdivision of the subcontracted pay item and the unit price is reasonable. Bonds furnished by the subcontractor do not reduce the Contractor’s bonding requirements.

The Contractor must only issue subcontracts to subcontractors that are prequalified by the Department to perform the classification of work proposed, if applicable. The Contractor must submit the subcontract cover page and pay items to the Engineer responsible for the administration of the contract, before the start of the work associated with the subcontract. The Department’s prequalification of the subcontractor is for the benefit of the Department and is not for the benefit of the Contractor or any other person. The Department’s prequalification is not a guarantee or warranty of the subcontractor’s ability to perform or complete the subcontracted work. Before final acceptance, the Contractor must certify that the Contractor has met the subcontracting requirements using Form 1386 Post Certification of Subcontract Compliance. The Contractor must itemize the name of each subcontractor, the amount of each subcontract, and the amount paid for each subcontract.

No subcontractor or supplier may maintain an action against the Department for payment relating to the work; any such action must be brought against the Contractor or other responsible party. A subcontractor must perform not less than 50 percent of the total value of the subcontracted work with the subcontractor’s own organization. This requirement is also applicable to and binding upon successive subcontracts.

If any subcontractor is working or subcontractor’s equipment is being operated in violation of this subsection, the Engineer may direct the immediate removal of the subcontractor or the subcontractor’s equipment. The Contractor is responsible for any costs or damages resulting from such removal. The Contractor’s responsibilities in the performance of the work, in case of a subcontract, are the same as if the Contractor performed the subcontracted work with its own organization.
1302A “Subcontract”

THE PRIME CONTRACTOR WILL STILL BE RESPONSIBLE FOR MEETING THE SUBCONTRACT REQUIREMENTS.

- **Prime Contractor will keep ALL original subcontracts.**

- **Engineer gets a copy of original document**
  - At minimum, the cover page and line item page
Form 1302A “Subcontract” Procedure

- Engineer must enter the date on the cover page when it is received.
  - After entering a date, the state must be changed to forward to CSD.
    - File in Projectwise
    - Email: MDOT-Subcontracts@michigan.gov

- The Contract Services Division needs to receive this so it can be entered into the MDOT system.
  - This will allow the subcontractor to appear in the 2124A biweekly reporting system (MERS).

- Per the Prompt Pay Special Provision, Prime Contractors are required to electronically report progress payments on a biweekly basis (MERS)
### POST CERTIFICATION OF SUBCONTRACT COMPLIANCE

**INSTRUCTIONS:** Contractor complete and retain original form. Submit a copy of the form to Engineer for filing. Submission of this form is required before release of retainage for those projects let prior to January 2006.

<table>
<thead>
<tr>
<th>CONTRACT ID</th>
<th>CONTRACT AMOUNT (ORIGINAL)</th>
<th>DBE % PROPOSED</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

I, of _______________________, hereby certify that I have complied with all State and Federal requirements pertaining to subcontracting, including but not limited to the following:

A. The Prime Contractor has performed not less than 40 percent of the original contract amount, unless changed by special provision.
B. The Prime Contractor has used only prequalified subcontractors (whether or not a subcontract is required), unless there was no prequalified category.
C. The subcontractors have performed not less than 50 percent of the total value of the subcontract amount, with the subcontractor's own organization.
D. The Prime Contractor has met the project specific DBE participation level requirements or received written approval for a good faith effort modification or waiver from MOOT's Office of Business Development.
E. The Prime Contractor has used the designated subcontractors indicated on the Designated and Specialty sheet.
F. All required subcontracts were properly executed and signed prior to any subcontract work beginning.
G. The Prime Contractor has maintained all required insurances and bonds throughout the life of the contract.
H. The subcontractor and the sub-subcontractor were prequalified, when applicable, in all work classes that were subcontracted or sub-subcontracted.

**Work Types not Requiring Subcontracts**
- Delivery of Materials*
- Delivery of Traffic Control Devices*
- Broker Trucking*

* This type of work will not impact the 60% maximum allowable for subcontracting calculation. All other work will impact the 60% maximum allowable for subcontracting.

**Work types not requiring subcontractors if the amount of work does not exceed $25,000.00**
- Flagging Operations
- Shear Developers
- Stay-in-Place Forms
- Post Tensioning of Beams
- Destructive Testing of Materials
- Pavement Sweeping
- Concrete Pumping

**WORK NOT PERFORMED BY PRIME CONTRACTOR**

<table>
<thead>
<tr>
<th>SUB TO SUB</th>
<th>#</th>
<th>DBE</th>
<th>WORK PERFORMED BY (INCLUDING SUB TO SUB WORK)</th>
<th>ORIGINAL AMOUNT</th>
<th>FINAL AMOUNT PAID</th>
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</thead>
<tbody>
<tr>
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<td>IF SUB TO SUB ALSO CHECK BOX ON LEFT (SEE EXAMPLE BELOW)</td>
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<tr>
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<td>1</td>
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<td>$ Amount</td>
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<td></td>
<td>12</td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

**GRAND TOTAL:** $0.00 $0.00

Percentage of actual DBE work performed (See additional comments on page 1)

* Please indicate the final amount paid or the amount that will ultimately be paid.

If more than 12 rows are needed please use form 1386L-F.

---

**EXCEPTIONS TO ANY OF THE SUBCONTRACT REQUIREMENTS AND AN EXPLANATION FOR THE EXCEPTIONS SHOULD BE NOTED BELOW:**

**SIGNATURE**

**DATE**

**PRINT NAME**

**PRINT TITLE**
1386 Post Certification of Subcontract Compliance

<table>
<thead>
<tr>
<th>Work Types not Requiring Subcontracts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delivery of Materials*</td>
</tr>
<tr>
<td>Delivery of Traffic Control Devices*</td>
</tr>
<tr>
<td>Broker Trucking*</td>
</tr>
</tbody>
</table>

* This type of work will not impact the 60% maximum allowable for subcontracting calculation. All other work will impact the 60% maximum allowable for subcontracting.

**Work types not requiring subcontracts if the amount of work does not exceed $25,000.00.**

<table>
<thead>
<tr>
<th>Flagging Operations</th>
<th>Shear Developers</th>
<th>Pavement Sweeping</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stay in Place Forms</td>
<td>Post Tensioning of Beams</td>
<td>Concrete Pumping</td>
</tr>
<tr>
<td>Destructive Testing of Materials</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**WORK NOT PERFORMED BY PRIME CONTRACTOR**
Prompt Pay Special Provision

(MERS)
Prompt Pay Special Provision

MICHIGAN DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION FOR PROMT PAYMENT

APP'D-JLMER 8-27-16
F/RJAMPER 6-28-16

1 of 4

Prompt Pay Special Provision

For the work associated with their subcontractor not later than 10 calendar days from the Contractor makes payment from the Department.

To ensure payment information for previous payments made to all that all DCH companies (subcontractors, suppliers, vendors, etc.) at any any time reflect the final and subsequent activities. For all subsequent renegotiations, the Engineer does not include any for the subcontractor or supplier payments at any time, and if the specifically authorized payment is not included, the payment information is provided through submission of the payment information. System information can be found in the

Invoices/Prompt_Payment_214A_A (Instructions). NER

1. The Engineer shall review the work completed in accordance with the

2. The Engineer shall review the work completed in accordance with the

3. The Engineer shall review the work completed in accordance with the

4. The Engineer shall review the work completed in accordance with the

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34. The Engineer shall review the work completed in accordance with the

35. The Engineer shall review the work completed in accordance with the

36. The Engineer shall review the work completed in accordance with the
Prompt Pay Special Provision

CFS:JJG  2 of 4

The Contractor is required to provide payment information for previous payments made to all first tier subcontractors and all DBE companies (sub-subcontractors, suppliers, truckers, etc.) at any tier before the Engineer will release the third and subsequent estimates. For all subsequent progress pay estimates if 1) the Engineer payment does not include any first tier subcontractors or any DBE company payments at any tier, and 2) the previously submitted payment reporting information remains unchanged, then payment reporting in the system is not required. Reporting is required when the prime contractor makes payments to any first tier subcontractors and any DBE companies at any tier. The payment information is provided through submittal of the information via the 2124A reporting system (MERS). System information can be found at the following web link.
### Construction Contract Inquiry

**PROJECT VOUCHER SUMMARY FOR CONTRACT: 20021-116416**

**Contractor:** Rieth-Riley Construction Co., Inc.

**Surety:** TRAVELERS CASUALTY AND SURETY COMPANY

**Location:** M-72 from Kalkaska/Crawford County Line to M-93.

**Description:** Hot mix asphalt crushing, shaping and resurfacing, safety and drainage improvements.

**Project:** 116416A

<table>
<thead>
<tr>
<th>Voucher</th>
<th>Type</th>
<th>Estimate Date</th>
<th>Transfer Date</th>
<th>Net Payment</th>
<th>Paid to Date</th>
<th>Amount Withheld</th>
<th>Amount Earned</th>
</tr>
</thead>
<tbody>
<tr>
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<td>0001</td>
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<td>$196,699.08</td>
</tr>
</tbody>
</table>
**BIWEEKLY DATA**

Prime Contractor: Ajax Paving Industries, Inc. (Vendor#: 00588)

Contracts List (with last Biweekly submit date): 44011-128445 (11/12/2016) - 5.11 mi of cold milling, joint repairs, and HMA overlay on M

Bi-Weekly Period Ending: 10/30/2016 - 11/12/2016 * #

* Submitted, # = Approved

For each row, click the Edit (pencil) icon to edit. After editing you can click the Save/Cancel icons.

NOTE: You can copy forward values from the last submitted report by checking the box at the bottom of the table.

Approved by Armando Lopez

<table>
<thead>
<tr>
<th>Edit/Save/Cancel</th>
<th>Subcontractor or DBE/VBEB Subcontractor/Trucker/Supplier/Service Provider</th>
<th>DBE/VBEB?</th>
<th>Service/Work Classif</th>
<th>Total Subcontract Amount</th>
<th>DBE Commitment Amount</th>
<th>Dollar Value of Services Completed</th>
<th>Deductions (Bond, Fees, Holdbacks)</th>
<th>Comments</th>
<th>Actual Amount Paid to date</th>
</tr>
</thead>
<tbody>
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<tr>
<td>002</td>
<td>L &amp; L Construction Company, Incorporated</td>
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<td></td>
<td>$110,171.60</td>
<td>$115,701.84</td>
<td>$1,157.02</td>
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<td></td>
<td>$114,544.82</td>
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<td>003</td>
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<td>$60.42</td>
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<td></td>
<td>$5,980.10</td>
</tr>
<tr>
<td>004</td>
<td>P.K. Contracting, Inc.</td>
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<td>$183,528.84</td>
<td>$1,835.29</td>
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<td></td>
<td>$181,693.55</td>
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<tr>
<td>005</td>
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</tbody>
</table>

Final Report: 11/12/2016
MERS 2124A

Below is an example of the report format:

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<thead>
<tr>
<th>Check/ Issue</th>
<th>DBE/WBE?</th>
<th>Service/ Work Class fn</th>
<th>Total Subcontract Amount</th>
<th>DBE Commitment Amount</th>
<th>Dollar Value of Services Completed</th>
<th>Deductions (Bond, Fees, Holdbacks)</th>
<th>Comments</th>
<th>Actual Amount Paid to date</th>
</tr>
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<tbody>
<tr>
<td></td>
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<td>$12,800.00</td>
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<td>$16,949.80</td>
<td>$169.50</td>
<td></td>
<td></td>
<td>$16,780.30</td>
</tr>
</tbody>
</table>
Prompt Pay Special Provision

(Alleged Payment Complaints)
E. **Non-Payment Claims.** The prime Contractor, subcontractor, lower-tier subcontractor or supplier must notify the alleged offending party in writing of any prompt payment violations within 30 calendar days of the date the payment was to be received. Copies of the notifications must be provided to the Engineer and the prime Contractor (only if the prime Contractor is not the offending party).

The alleged offending party must respond in writing to the claimant within 10 calendar days of receipt of the notification of failure to meet prompt payment provisions. Provide copies of the response to the Engineer, the prime Contractor (only if the prime Contractor is not the offending party), and the Engineer of Construction Field Services. The prime Contractor, subcontractor, or supplier must also provide the required sworn statements and waivers of lien from the affected subcontractor or supplier to the Engineer within 10 days of receipt of the notification. The Department will consider the failure of the alleged offending party to respond to the notification from the claimant as an admission of the prompt pay violation which may result in sanctions.

The Engineer will review the written notice and response and will verify in writing if there is a valid prompt pay violation.

Independent of all procedures and requirements in this special provision the non-payment claimant has the additional option of submitting a lien claim to the MDOT Contract Services Division. MDOT will notify the project surety of the non-payment issue. It is the responsibility of
Process for Alleged Prompt Payment Violation

NOTES:

1. If the violation is a clear withholding, the Engineer will require immediate payment to the complainant. The Prime Contractor will propose one or a combination of the following:
   - Prime Contractor issues payment to subcontractor
   - Prime Contractor issues payment directly to the subcontractor’s lower tier subcontractor or suppliers
   - Prime Contractor issues payment to subcontractor in the form of joint checks
   - Request a negative estimate to withdraw the amount confirmed in the prompt payment violation

   If the Prime Contractor fails to provide a resolution and the payment is not relinquished within the 5 day time period then the Engineer will process a negative estimate in the amount of the violation.

2. When the Prime Contractor requests a negative estimate the Engineer may request the Prime Contractor use third party dispute resolution. The Engineer will release the funds in accordance with the dispute resolution.

3. The parties may initiate whatever dispute resolution procedure is specified in their agreement or is available under Michigan law. If dispute resolution or litigation is selected, the actions by both parties must proceed in a timely manner.

Reference: https://mi.dot.state.mi.us/public/desapp/rpsa_source/12SP109Ajv2.pdf

Prompt Pay Special Provision

Complainant must document Alleged Prompt Pay Violation to Alleged Party within 30 days of when payment was to be received.

Project Engineer Reviews and can confirm violation(s).

Resolution can be one or a combination of the following:

- Prime Contractor issues payment to subcontractor
- Prime Contractor issues payment directly to subcontractor’s lower tier subcontractor or suppliers
- Prime Contractor issues payment to subcontractor in the form of joint checks
- Request a negative estimate to withdraw the amount confirmed in the prompt payment violation

(See Note 1)

Prime Contractor Issues Payment to Subcontractor

Prime Contractor Issues Payment Directly to the Subcontractor’s Lower Tier Subcontractor or Suppliers

Prime Contractor Issues Payment to Subcontractor in the Form of Joint Checks

Request a Negative Estimate to Withdraw the Amount Confirmed in the Prompt Payment Violation

(See Note 2)

Dispute Resolution Through a Third Party

(See Note 3)

Resolution Through Proceedings under Michigan Law

The Project Engineer reviews and approves the Prime Contractor’s resolution.

Violation Resolved

Project Engineer determines that there are no confirmed violations.

Copy Prime Contractor (if not Alleged Party)

Copy Prime Contractor (if not Alleged Party)

Copy Project Engineer

Copy Project Engineer

Copy Engineer of CFIS

Response Received

Was the response received in 10 calendar days?

Failure to respond will be considered Admission of Violation

Violation(s) Confirmed

Violation(s) Confirmed and documented with Prime Contractor

Upon notification by the Project Engineer the Prime Contractor must take action to provide resolution within 5 calendar days.

Resolution can be one or a combination of the following:

- Prime Contractor issues payment to subcontractor
- Prime Contractor issues payment directly to subcontractor’s lower tier subcontractor or suppliers
- Prime Contractor issues payment to subcontractor in the form of joint checks
- Request a negative estimate to withdraw the amount confirmed in the prompt payment violation

(See Note 2)