

# MDOT Subcontract / Prompt Pay Changes

**Subcontracts (1302A)**

**Prompt Pay Special Provision (MERS 2124A)**

**Prompt Pay Special Provision (Alleged Complaints)**



Chris Roe – MDOT  
Contract Compliance Analyst  
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# 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

# New Subcontract Requirement

## **\*\*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](mailto:MDOT-ConstructionSubcontracts@michigan.gov) by the ProjectWise workflow.

Lansing, MI  
10/29/19

# 1302A “Subcontract”

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

## SUBCONTRACT

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

VENDOR NUMBER

Subcontract Check Sheet

Clear Form

CONTRACT ID

Subcontract Check Sheet

Clear Form

Page 1 of 5

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

## SUBCONTRACT For use on all Federal Highway Funded Projects

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

Page 1 of 18

VENDOR NUMBER

PRIME CONTRACTOR

VENDOR NUMBER

SUBCONTRACTOR

VENDOR NUMBER

SUB-SUBCONTRACTOR

**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.

**SAME BID  
PROPOSAL**

## Subcontract Check Sheet

Clear Form

CONTRACT ID

**T**  
racting Engineer.

Page 1 of 5

## Subcontract Check Sheet

Clear Form

CONTRACT ID

FEDERAL PROJECT NO. (if applicable)

## Projects

Administering Engineer.

Page 1 of 18

# 108.01 Subcontracting of Contract Work

**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](mailto: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)

# 1386 Post Certification of Subcontract Compliance

Michigan Department  
of Transportation  
1386 (05/17)

## POST CERTIFICATION OF SUBCONTRACT COMPLIANCE

Page 1 of 2

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

CONTRACT ID	CONTRACT AMOUNT (ORIGINAL)	DBE % PROPOSED
		%

I \_\_\_\_\_ of \_\_\_\_\_ do 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 D.B.E. participation level requirement or received written approval for a good faith effort modification or waiver from MDOT'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 subcontracts if the amount of work does not exceed \$25,000.00.

Flagging Operations      Shear Developers      Pavement Sweeping  
Stay in Place Forms      Post Tensioning of Beams      Concrete Pumping  
Destructive Testing of Materials

### WORK NOT PERFORMED BY PRIME CONTRACTOR

SUB TO SUB	#	DBE	WORK PERFORMED BY (INCLUDING SUB TO SUB WORK) IF SUB TO SUB ALSO CHECK BOX ON LEFT (SEE EXAMPLE BELOW)	ORIGINAL AMOUNT	FINAL AMOUNT PAID
<input checked="" type="checkbox"/>	#	<input type="checkbox"/>	Sub-Sub Name (EXAMPLE)	\$ Amount	\$ Amount
<input type="checkbox"/>	1	<input type="checkbox"/>			
<input type="checkbox"/>	2	<input type="checkbox"/>			
<input type="checkbox"/>	3	<input type="checkbox"/>			
<input type="checkbox"/>	4	<input type="checkbox"/>			
<input type="checkbox"/>	5	<input type="checkbox"/>			
<input type="checkbox"/>	6	<input type="checkbox"/>			
<input type="checkbox"/>	7	<input type="checkbox"/>			
<input type="checkbox"/>	8	<input type="checkbox"/>			
<input type="checkbox"/>	9	<input type="checkbox"/>			
<input type="checkbox"/>	10	<input type="checkbox"/>			
<input type="checkbox"/>	11	<input type="checkbox"/>			
<input type="checkbox"/>	12	<input type="checkbox"/>			

**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 1386LF.

MDOT 1386 (05/17)

Page 2 of 2

IF SOME OR ALL OF THE DBE % REQUIREMENT WAS MET THROUGH DELIVERY OF MATERIALS, PLEASE INDICATE HOW THE DBE PERCENTAGE WAS ATTAINED. IF THE DBE % PROPOSED WAS NOT ATTAINED. PLEASE INDICATE THE REASON.

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

## Work Types not Requiring Subcontracts

Delivery of Materials\*

Delivery of Traffic Control Devices\*

Broker Trucking\*

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

Flagging Operations

Shear Developers

Pavement Sweeping

Stay in Place Forms

Post Tensioning of Beams

Concrete Pumping

Destructive Testing of Materials

**WORK NOT PERFORMED BY PRIME CONTRACTOR**

SUB

# Prompt Pay Special Provision (MERS)

# Prompt Pay Special Provision

12SP-109A-03  
06-29-15

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for the work associated with their subcontract no later than 10 calendar days from the date the Contractor receives payment from the Department.

required to provide payment information for previous payments made to all first tier and all DBE companies (sub-subcontractors, suppliers, truckers, etc.) at any time the Contractor makes payments to any first tier subcontractors. For all subsequent payments, the Contractor must provide payment information for all first tier subcontractors if 1) the Engineer payment does not include any first tier subcontractors, or 2) the previously submitted payment reporting information is changed, then payment reporting in the system is not required. Reporting information is provided through submittal of the payment information to the reporting system (MERS). System information can be found at the following link: [http://www.michigan.gov/mdot/0,1607,7-151-9622\\_11044\\_11267-00.html](http://www.michigan.gov/mdot/0,1607,7-151-9622_11044_11267-00.html)

12SP-109A-03  
06-29-15

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review, the Engineer finds the work completed in accordance with the specifications; and,

the Contractor must provide notice to the Engineer if sworn statements are not received for completed work.

if the work meets the standards of satisfactory completion.

release. The Engineer may give written approval to:

from the time frames specified herein,

the prime Contractor to a subcontractor or supplier,

a subcontractor to a lower-tier subcontractor or supplier,

the Department.

dispute resolution procedure is specified in their agreement or contract. The result of the dispute resolution proceeding or litigation is selected, the actions by both parties must be promptly upon the conclusion of the proceeding. The dispute resolution being held by the Department in accordance with the provisions of the contract.

Contractor, subcontractor, lower-tier subcontractor or supplier in writing of any prompt payment violations within 10 days of receipt of the notification. Copies of the notifications must be submitted to the Department (only if the prime Contractor is not the subcontractor).

Writing to the claimant within 10 calendar days of receipt of the notification. Provide copies of the statements and waivers of lien from the affected subcontractors and suppliers to the claimant within 10 days of receipt of the notification. The subcontractor or supplier must respond to the notification and will verify in writing if there is a valid claim.

in this special provision the non-payment claim to the MDOT Contract Services is the responsibility of the Contractor.

12SP-109A-03  
06-29-15

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due payments are made. The submission of a lien claim, a prompt payment violation, the prime Contractor or subcontractor or supplier, or any of the following actions, items for review.

checks to the subcontractor and the Contractor or suppliers.

in the prompt payment process.

an approved course of action or issue a negative rating.

Engineer will be in the field.

12SP-109A-03  
06-29-15

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MICHIGAN  
DEPARTMENT OF TRANSPORTATION  
SPECIAL PROVISION  
FOR  
PROMPT PAYMENT

APPR-IDM/DBP/06-29-15  
FHWA-APPR/07-16-15

109.08 Prompt Payment.

A. Definitions.

Lower-tier subcontract. An agreement between a subcontractor of any tier and any individual or legal entity to perform a part of the subcontract work.

Lower-tier subcontractor. The individual or legal entity that performs part of the subcontract work through a lower-tier subcontract with a subcontractor.

Supplier. The individual or legal entity that agrees to provide materials or services to the prime Contractor, a subcontractor, or a lower-tier subcontractor for the performance of their contract work.

Sworn Statement. A written verification under oath reflecting all persons or entities, which have furnished labor, equipment, services or materials to a subcontractor or lower-tier subcontractor for performance of work on the project. The written verification includes union fringe benefit funds, original contract amount, current amount due, amounts paid to date and balance to finish the work for each person or entity.

Waiver of Lien. A written release and waiver of any claim or right to payment for payments actually received for labor, equipment, services or materials furnished for performance of work on the project.

The sworn statement and waiver of lien documents are used by the prime Contractor and its subcontractors for verifying payments made to lower-tier subcontractors/suppliers and are not to be submitted to the Engineer unless requested as an aid in determining an alleged prompt payment violation. These documents can be found at the following website under the Construction Field Services - Forms heading:

[http://www.michigan.gov/mdot/0,1607,7-151-9622\\_11044\\_11267-00.html](http://www.michigan.gov/mdot/0,1607,7-151-9622_11044_11267-00.html)

B. Progress Payments. For the first payment, or for a one time payment, the prime Contractor agrees to pay each subcontractor for the work associated with their subcontract no later than 10 calendar days from the date the prime Contractor receives payment from the Department.

For the second and subsequent payments, the prime Contractor agrees to pay each

# Prompt Pay Special Provision

CFS:JJG

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12SP-109A-03

06-29-15

subcontractor for the work associated with their subcontract no later than 10 calendar days from the date the prime Contractor receives payment from the Department.

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.

# Prompt Pay Special Provision

## Construction Contract Inquiry

### Project Voucher Summary

#### 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**

Voucher	Type	Estimate Date	Transfer Date	Net Payment	Paid to Date	Amount Withheld	Amount Earned
0000		0	0	\$0.00	\$0.00	\$0.00	\$0.00
0001	Semi Monthly	04/15/2019	04/16/2019	\$107,719.38	\$107,719.38	\$0.00	\$107,719.38
0002	Semi Monthly	04/30/2019	05/01/2019	\$508,916.22	\$616,635.60	\$0.00	\$508,916.22
0003	Semi Monthly	05/14/2019	05/15/2019	\$176,248.84	\$792,884.44	\$0.00	\$176,248.84
0004	Semi Monthly	05/28/2019	05/29/2019	\$196,699.08	\$989,583.52	\$0.00	\$196,699.08



## MDOT 2124A Employment Reporting System

Welcome Christopher Roe

[Bi-Weekly Data Admin Review](#)

[Manage Users](#)

[Reports](#)

[Sign out](#)

### BWEEKLY 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

[Print 2124A](#)

Edit Save/ Cancel	Subcontractor or DBE/WBE Subcontractor/ Trucker/ Supplier/ Service Provider	DBE/ WBE?	Service/ Work Classfn	Total Subcontract Amount	DBE Commitment Amount	Dollar Value of Services Completed	Deductions (Bond, Fees, Holdbacks)	Comments	Actual Amount Paid to date
	001:J. Ranck Electric, Inc.			\$12,800.00		\$12,800.00	\$0.00		\$12,800.00
	002:L & L Construction Company, Incorporated			\$110,171.60		\$115,701.84	\$1,157.02	Bonds...	\$114,544.82
	003:Opperman Grooving Inc.			\$6,269.00		\$6,040.52	\$60.42	Bonds...	\$5,980.10
	004:P.K. Contracting, Inc.			\$189,489.60		\$183,528.84	\$1,835.29	Bonds...	\$181,693.55
	005:State Barricades, Inc.			\$15,542.50		\$16,949.80	\$169.50	Bonds...	\$16,780.30
	006:Nordlund & Associates, Inc.			\$1,720.00		\$1,720.00	\$17.20	Bonds...	\$1,702.80
	007:FMG Concrete Cutting, Inc.			\$2,300.00					
	D/W:Hamlin Trucking, Inc.	DBE	RJ...		\$5,000.00	\$6,121.70	\$0.00		\$6,121.70
	D/W:Hart & Associates Construction, LLC	DBE	RF...		\$10,000.00	\$9,456.17	\$0.00		\$9,456.17

[Final Report:](#) ☒ 11/12/2016

# MERS 2124A

many items to be entered, making you an expert and a professional.   
 es from the last submitted report by checking the box at the bottom of the table.

Print 2124A

Owner/	DBE/	Service/	Total	DBE	Dollar Value of	Deductions	Comments	Actual Amount
Contract	WBE?	Work	Subcontract	Commitment	Services	(Bond,Fees,		Paid to date
Number		Classfn	Amount	Amount	Completed	Holdbacks)		
			\$12,800.00		\$12,800.00	\$0.00		\$12,800.00
			\$110,171.60		\$115,701.84	\$1,157.02	Bonds..	\$114,544.82
			\$8,269.00		\$8,040.52	\$80.42	Bonds..	\$5,980.10
			\$189,489.60		\$183,528.84	\$1,835.29	Bonds..	\$181,693.55
			\$15,542.50		\$16,949.80	\$169.50	Bonds..	\$16,780.30

# MERS 2124A

**MERS:2124A Reporting System** Welcome Chris Roe

[Bi-Weekly Data Admin Review](#) [Manage Users](#) [Reports](#) [Sign out](#)

**BIWEEKLY DATA**

**Prime Contractor:**

**Contracts List (with last Biweekly submit date):**

**Bi-Weekly Period Ending:**

\* = Submitted, # = Approved

**Project Completion:** AC  
OR an Admin clicks the "Manually Incomplete" button  
BUT REMEMBER: you will then have to manually re-open the contract.

**Dates:** CPDT53

**Change Project's Completion Status**

**MERS:2124A Reporting System** Welcome Chris Roe

[Bi-Weekly Data Admin Review](#) [Manage Users](#) [Reports](#) [Sign out](#)

**BIWEEKLY DATA**

**Prime Contractor:**

**Contracts List (with last Biweekly submit date):**

**Bi-Weekly Period Ending:**

\* = Submitted, # = Approved

**Project Completion:** AC  
OR an Admin clicks the "Manually Incomplete" button  
BUT REMEMBER: you will then have to manually re-open the contract.

**Dates:** CPDT53

**Change Project's Completion Status**

**Manual Complete**

# Prompt Pay Special Provision

## (Alleged Payment Complaints)

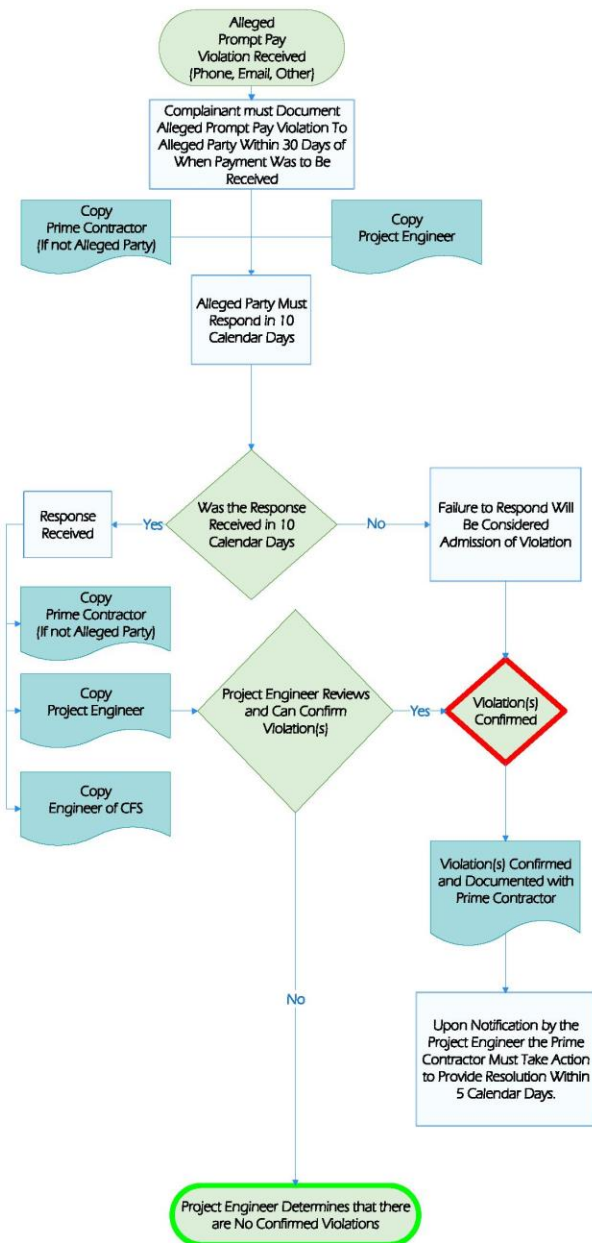
# Prompt Pay Special Provision

**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 payments to subcontractor in the form of Joint-checks
- Request a negative estimate to withdraw the amount confirmed in the prompt payment violation

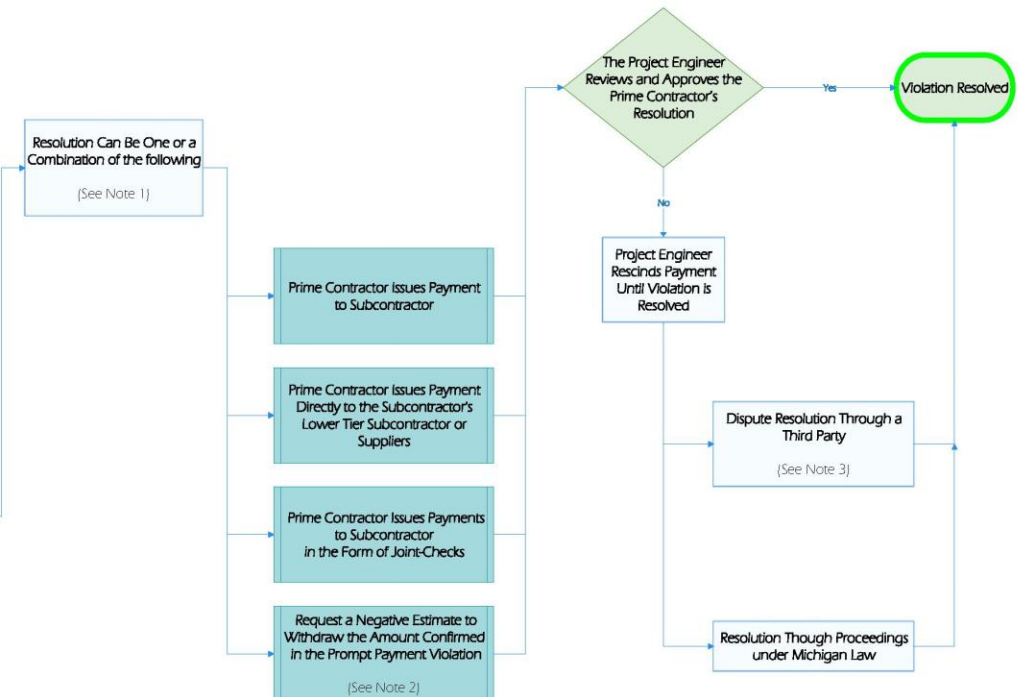
If the Prime Contractor fails to provide a resolution and the payment is not relinquished within the 5 day time period then the Engineer will process a negative estimate in the amount of the violation.

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://mdotcf.state.mi.us/public/de/sssp/spss\\_source/1ZSP109\(A\)v2.pdf](https://mdotcf.state.mi.us/public/de/sssp/spss_source/1ZSP109(A)v2.pdf)





Chris Roe – MDOT  
Subcontract Compliance  
(517) 202-3716  
Roec@michigan.gov

# Thank You

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