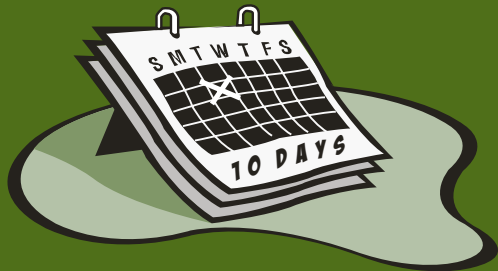


The prime contractor agrees to pay each subcontractor for the work associated with their subcontract no later than ten (10) calendar days from the date the prime contractor receives payment from the Department for said work. Release of payment from the Department for any work is confirmation that the Department has determined the work to have met the standards of satisfactory completion as defined in this brochure. If the prime contractor has concerns about the satisfactory completion of subcontractor work items, this must be brought to the engineer's attention in advance of payment to the prime contractor. This notice may give the prime contractor the option to not release all subcontractor funds within the ten (10) calendar days specified. This requirement is also applicable to all sub-tier subcontractors and suppliers, and shall be made a part of all subcontracts and agreements.



Questions or comments can be addressed to -

Mail:

Michigan Department of Transportation
Office of Business Development
P.O. Box 30050
Lansing, MI 48909

Telephone:

1-866-323-1264

Fax:

517-335-0945



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Michigan Department of Transportation

OFFICE OF
BUSINESS DEVELOPMENT

Special Provision
for

**PROMPT
PAYMENT**



This prompt payment provision is a requirement of 49 CFR 26.29 and does not confirm third-party beneficiary right or other direct right to a subcontractor against the Michigan Department of Transportation (MDOT). This provision applies to both Disadvantaged Business Enterprise (DBE) and non-DBE subcontractors.

Satisfactory Completion

Progress and partial payments for contract work are made based on satisfactory completion. For purposes of this prompt payment provision, satisfactory completion occurs under these two circumstances:

1. Upon preliminary review, the engineer finds the work completed in accordance with the contract, plans and specifications; and
2. Required paperwork, for progress and partial payments, including material certifications, payrolls, etc., has been received and reviewed by the engineer.

The determination of whether work meets the standards of satisfactory completion is the responsibility of the engineer and not the prime contractor.

Less than full payment release

Any delay or postponement of payment from this time frame, or partial payment to a subcontractor, may occur only upon receipt of written approval from the engineer.



Non-Payment Claims

All notifications of failure to meet prompt payment provisions shall be referred by the subcontractor to the prime contractor and must be made in writing, with a copy to the project engineer. All notifications should be sent within thirty (30) calendar days of the date the payment was to be received. The prime contractor must respond in writing to the subcontractor, with a copy to the project engineer and the Engineer of Construction and Technology, within seven (7) calendar days of receipt of the notification of failure to meet prompt payment provisions. Failure of the prime contractor to respond may result in sanctions.

The subcontractor has the option of submitting a lien claim to the MDOT Contract Services Division in order to notify the project Surety of the non-payment issue. It is the responsibility of the Surety to ensure that all legitimate payments are made.

The prime contractor must include, in all subcontract agreements, notice to subcontractors of their right to prompt payment, and of the Department's prohibiting prime contractors from holding retainage from subcontractors under federal regulation 49 CFR 26.29.

The prime contractor must include in all subcontracts, language providing that the prime contractor and subcontractor will use an approved alternative dispute resolution process to resolve prompt payment differences. The arbitration of the dispute will be handled through a member of the American Arbitration Association, 1 Town Square, Southfield, Michigan (248-352-5500), or another third party agreed to by both the prime contractor and the subcontractor. The parties

must agree on a mediator or arbitrator within twenty-five (25) calendar days after a written complaint has been sent by the subcontractor. The cost of mediation or arbitration will be borne by the parties as determined by the mediator. Qualified costs of mediation, for certified DBEs, will be paid by the Department based on current procedures. The DBE must contact the Office of Business Development for information on current procedures and to receive reimbursement. Outcomes of the alternative dispute resolution will be provided to the engineer within 10 days of the decision.

Copies of all documents related to prompt payment claims will be provided to the engineer by the prime contractor for inclusion in the project files.

Failure of the prime contractor to comply with prompt payment provisions may result in sanctions. Sanctions may include, but are not limited to: withholding of estimates on projects where prompt payment violations are confirmed; reduction of prequalification ratings; and/or withdrawal of bidding privileges.

A link to payment information is available on the MDOT Web site at:
<http://mdotwas1.mdot.state.mi.us/public/trnsport/>

Once at this Web site, check "Project Voucher Summary" then type in the project number you are looking for payment information on and click "ok". Now you are in the "PROJECT VOUCHER SUMMARY" screen from here you can see when the prime contractor was paid along with payment information.