

# MDOT Subcontract / Prompt Pay Overview

## **Sec 108.01 Standard Specifications / Prompt Pay Special Provision Subcontract (1302A) Prompt Pay Special Provision**



Chris Roe – MDOT  
Subcontract Compliance  
(517) 202-3716

# 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”

MDOT HAS ADOPTED A POLICY THAT THE PRIME CONTRACTOR WILL BE RESPONSIBLE FOR THE SUBCONTRACTING REQUIREMENTS.

- Prime Contractor will keep ALL original subcontracts.

# 108.01 Subcontracting of Contract Work

## Subcontract Requirements

- A Subcontract is required anytime others are performing contract work, with a few exceptions.
- Work Types NOT requiring a Subcontract
  - Delivery of Material
  - Delivery of Traffic Control Devices (Delivery Only)
  - Broker Trucking

# 108.01 Subcontracting of Contract Work

## Subcontract Required

- Work types not requiring subcontracts if the amount of work does not exceed \$25,000.00
  - Flagging Operations
  - Stay in Place Forms
  - Shear Developers
  - Post Tensioning of Beams
  - Pavement Sweeping
  - Concrete Pumping
  - Destructive Testing of Material
- The work above will still be counted toward the 60% maximum allowable for Subcontracting. Needs to be reported on the 1386.

- Engineer must receive (have in their possession) a signed and dated 1302A subcontract cover page and line item page “**before the start of work**” of the items associated with the subcontract.

[illegible]

# Email Subcontract cover sheet to: MDOT-Awards@Michigan.gov

|   |                   |  |                   |
|---|-------------------|--|-------------------|
| <b>Subcontract Check Sheet</b>  |                   | <b>Clear Page Only</b>   | <b>Clear Form</b> |
| <div style="display: flex; justify-content: space-between;"><div>Michigan Department<br/>of Transportation<br/>1302A (12/14)</div><div style="text-align: center;"><h2 style="margin: 0;">SUBCONTRACT</h2><p style="font-size: small; margin: 5px 0;">Complete and return a copy of pages 1 and 3 to the Adminstrating Engineer.</p></div><div style="border: 1px solid black; padding: 5px; width: 150px;"><div style="border-bottom: 1px solid black; margin-bottom: 5px;">CONTRACT ID</div><div>FEDERAL PROJECT NO. (if applicable)</div></div></div>  |                   |  |                   |
| VENDOR NUMBER   | PRIME CONTRACTOR  |  |                   |
| VENDOR NUMBER   | SUBCONTRACTOR     |  |                   |
| VENDOR NUMBER   | SUB-SUBCONTRACTOR |  |                   |
| <b>TOTAL DOLLAR VALUE OF<br/>SUBCONTRACT</b><br><br>\$ _____  |                   | <b>*TOTAL DOLLAR VALUE OF SAME BID<br/>ITEMS IN CONTRACTOR'S PROPOSAL</b><br><small>(This amount is used to calculate the 60%<br/>contract maximum allowable to subcontract)</small><br><br>\$ _____<br><br><small>*In case of a "Partial Item of Work" or "Lump Sum",<br/>only include that portion to be performed<br/>by the subcontractor.</small> |                   |
| <p>In the event of a discrepancy in the contract between the Contractor and the Michigan Department of Transportation covering this project, and this subcontract, the contract between the Contractor and the Michigan Department of Transportation will govern and be the basis for any and all decisions.</p>  |                   |  |                   |
| <hr/> <b>PRIME CONTRACTOR</b> <hr/>   |                   |  |                   |
| <p>I hereby certify that this subcontract is complete and accurate as executed between the parties shown above and that all required attachments, including but not limited to required wage rates and addenda to the proposal are included. I have provided copies of the required attachments to the subcontractor listed above. I have reviewed the information on the form and it is a complete and accurate statement of the work to be performed under this subcontract. This subcontract is in accordance with the current requirement of Section 108.01 of the Standard Specifications for Construction that not less than 40% of the work under the prime contract be performed by my own forces, and is also in accordance with the DBE Participation Plan submitted for this project, if applicable.</p> |                   |  |                   |
| SIGNATURE   |                   | NAME & TITLE   | DATE              |
| <hr/> <b>SUBCONTRACTOR</b> <hr/>  |                   |  |                   |
| SIGNATURE   |                   | NAME & TITLE   | DATE              |
| <hr/> <b>SUB-SUBCONTRACTOR</b> <hr/>  |                   |  |                   |
| SIGNATURE   |                   | NAME & TITLE   | DATE              |
| <hr/>   |                   |  |                   |
| <b>ADMINISTRATING ENGINEER USE ONLY</b>   |                   |  |                   |
| DATE RECEIVED BY ENGINEER   |                   |  |                   |

# 1302A “Subcontract” Summary

- Engineer must enter the date on the cover page when it is received.
  - After entering a date, the cover page MUST be forwarded to CSD.
    - Fax number: 517-241-4193
    - Email: MDOT-awards@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)



# Prompt Pay Special Provision

Department of  
**Transportation**

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

**i** 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               |                       |                                    |                                    |          |                            |
|                  | DW: Hamlin Trucking, Inc.  | DBE      | RJ...                |                          | \$5,000.00            | \$6,121.70                         | \$0.00                             |          | \$6,121.70                 |
|                  | DW: Hart & Associates Construction, LLC                                  | DBE      | RF...                |                          | \$10,000.00           | \$9,456.17                         | \$0.00                             |          | \$9,456.17                 |

Final Report: ☒ 11/12/2016

# Prompt Pay Special Provision

12SP-109A-03

MICHIGAN  
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION  
FOR  
**PROMPT PAYMENT**

CFS:JJG

1 of 4

APPR:JDM:DBP:06-29-15

FHWA:APPR:07-16-15

Add the following subsection to section 109, on page 106, of the Standard Specifications for Construction:

**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\\_11367---,00.html](http://www.michigan.gov/mdot/0,1607,7-151-9622_11044_11367---,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

- A. Definitions
- B. Progress Payments
- C. Satisfactory Completion
- D. Less than full payment release
- E. Non-Payment Claims
- F. Remedies
- G. Sanctions

# Prompt Pay Special Provision

## C. Satisfactory Completion (defined as)

- 1. Upon preliminary review, the Engineer finds the work completed in accordance with the contract, plans, and specifications; and,
- 2. Required documentation, including material certifications, payrolls, submission of 2124A (MERS), etc., has been received and reviewed and found to be acceptable by the Engineer; and,
- **3. Required subcontractor sworn statements and waivers of lien have been provided to the prime Contractor. The prime Contractor must provide notice to the Engineer if sworn statements and waivers of lien have not been received for completed work.**
- **The Engineer will determine if the work meets the standards of satisfactory completion.**

# Prompt Pay Special Provision

## B. Progress Payments

- For the first payment or for a one time payments,
- And for the second and subsequent payments.
  - 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.

# Prompt Pay Special Provision

## B. Progress Payments

- Prior to release of the third payment and subsequent payments.
  - 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.

# Prompt Pay Special Provision

## B. Progress Payments

- The payment information is provided through submittal of the information via the 2124A biweekly reporting system (MERS) located using the MiLogin.
- The prime Contractor is ONLY required to report biweekly reports if prior estimates included any payments to first tier subcontractors and any DBE companies at any tier.

# Prompt Pay Special Provision

## **B. Progress Payments**

(Contractor concerns about Satisfactory Completion)

- The prime Contractor must bring any concerns about the satisfactory completion of subcontractor or lower-tier subcontractor work items, to the Engineer's attention as soon as the concern is discovered. If the work meets the requirements of satisfactory completion and the prime Contractor has been paid for that work, the Engineer must determine whether:
  - The prime Contractor has demonstrated a valid reason for withholding payment from the subcontractor or supplier, or
  - The subcontractor has demonstrated a valid reason for withholding payment from the lower tier subcontractor or supplier.



# Prompt Pay Special Provision

## B. Progress Payments

(Contractor concerns about Satisfactory Completion)

- If the Engineer determines the reason for withholding payment is valid.
  - The Engineer will process a negative estimate to withdraw the amount involved in the complaint.
  - If payment has not been made for the work related to the complaint, the Engineer will not include those items of work on an estimate until the issue has been resolved.

# Prompt Pay Special Provision

## C. Satisfactory Completion

- 1. Upon preliminary review, the Engineer finds the work completed in accordance with the contract, plans, and specifications; and,
- 2. Required documentation, including material certifications, payrolls, submission of 2124A (MERS), etc., has been received and reviewed and found to be acceptable by the Engineer; and,
- **3. Required subcontractor sworn statements and waivers of lien have been provided to the prime Contractor. The prime Contractor must provide notice to the Engineer if sworn statements and waivers of lien have not been received for completed work.**
- The Engineer will determine if the work meets the standards of satisfactory completion.

# Prompt Pay Special Provision

## A. Definitions

### **Sworn Statement** (MDOT form 5602)

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** (MDOT form 5611, 5612, 5613, 5614)

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.

# Prompt Pay Special Provision

## A. Definitions

- 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.
  - **not to be submitted to the Engineer.**
- The Engineer may request sworn statement and waiver of lien documents as an aid in determining an alleged prompt payment violation.

# Prompt Pay Special Provision

## **B. Progress Payments**

- The prime Contractor must bring any concerns about the satisfactory completion of subcontractor or lower-tier subcontractor work items, to the Engineer's attention as soon as the concern is discovered. If the work meets the requirements of satisfactory completion and the prime Contractor has been paid for that work, the Engineer must determine whether:
  - The prime Contractor has demonstrated a valid reason for withholding payment from the subcontractor or supplier, or
  - The subcontractor has demonstrated a valid reason for withholding payment from the lower tier subcontractor or supplier.

# Prompt Pay Special Provision

## E. Non-Payment Claims

- Alleged prompt pay violations need to be placed in writing to the alleged offending party within 30 days of the date payment was to be received.
- Copies of the notification need to be provided to;
  - Engineer
  - Prime Contractor (if the prime is not the offending party)

# Prompt Pay Special Provision

## E. Non-Payment Claims

- The alleged offending party must respond in writing within 10 calendars days of receipt of notification.
  - Sworn Statements and waivers of lien must also be provided with this response.
- Copies of the response need to be provided to;
  - Engineer
  - Prime Contractor (if the prime is not the offending party)
  - Engineer of Construction Field Services
- The Department will consider the failure of the alleged party to respond to the claimant as an admission of prompt pay<sub>23</sub> violation which may result in sanctions.

# Prompt Pay Special Provision

## F. Remedies

- If the Engineer verifies a prompt pay violation, the prime Contractor must propose a resolution within 5 days to the Engineer for approval.
- The prime Contractor must propose one or a combination of the following action items to resolve the prompt pay violation.
  - Issue payment to subcontractor.
  - Issue payments to subcontractor in the form of joint-checks.
  - Issue payment directly to the subcontractor's lower tier subcontractor or suppliers.
  - Request a negative estimate to withdraw the amount confirmed in the prompt payment violation.

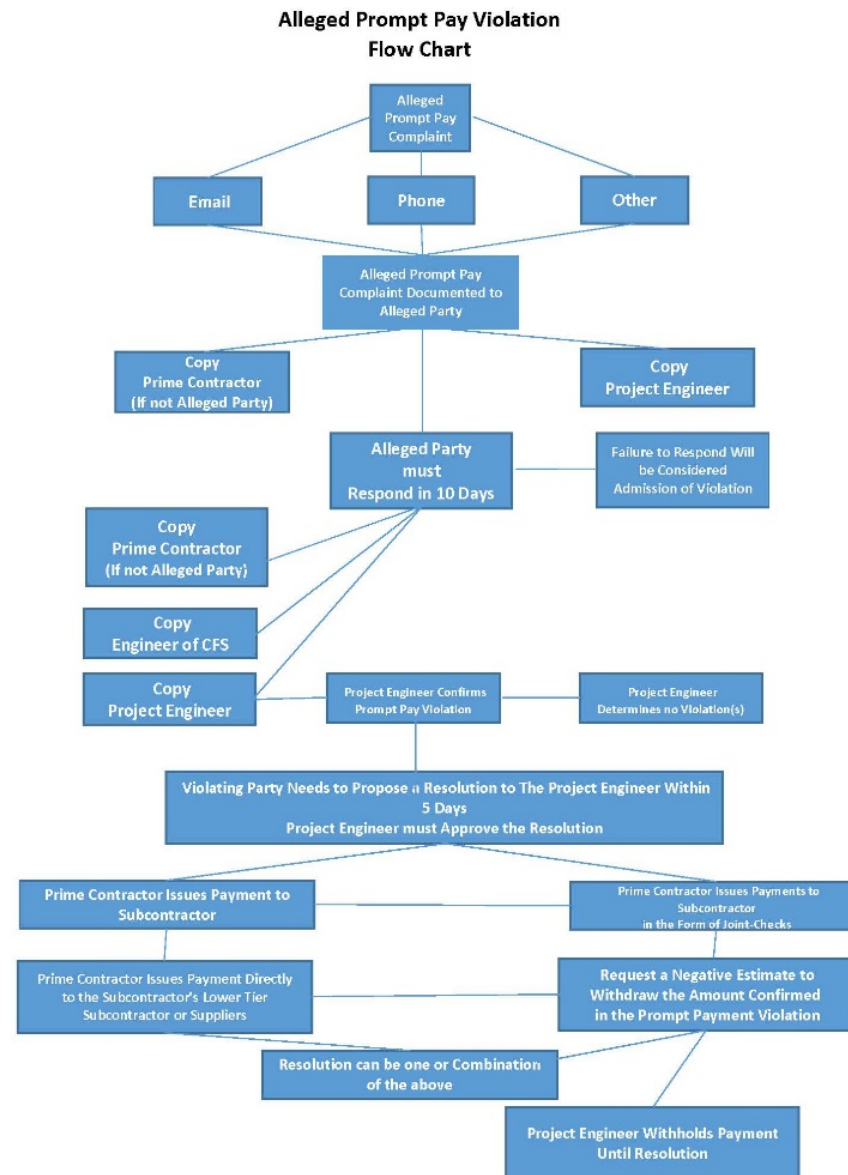


# Prompt Pay Special Provision

## F. Remedies

- If the proposed remedy is to have the Engineer process a negative estimate.
  - The parties will initiate whatever dispute resolution procedure is specified in their agreement or is available under Michigan law.
  - The Engineer will withhold amount until the result of the dispute proceedings or litigation is concluded.
  - The Engineer will release the disputed payment in accordance with the outcome of the proceedings.

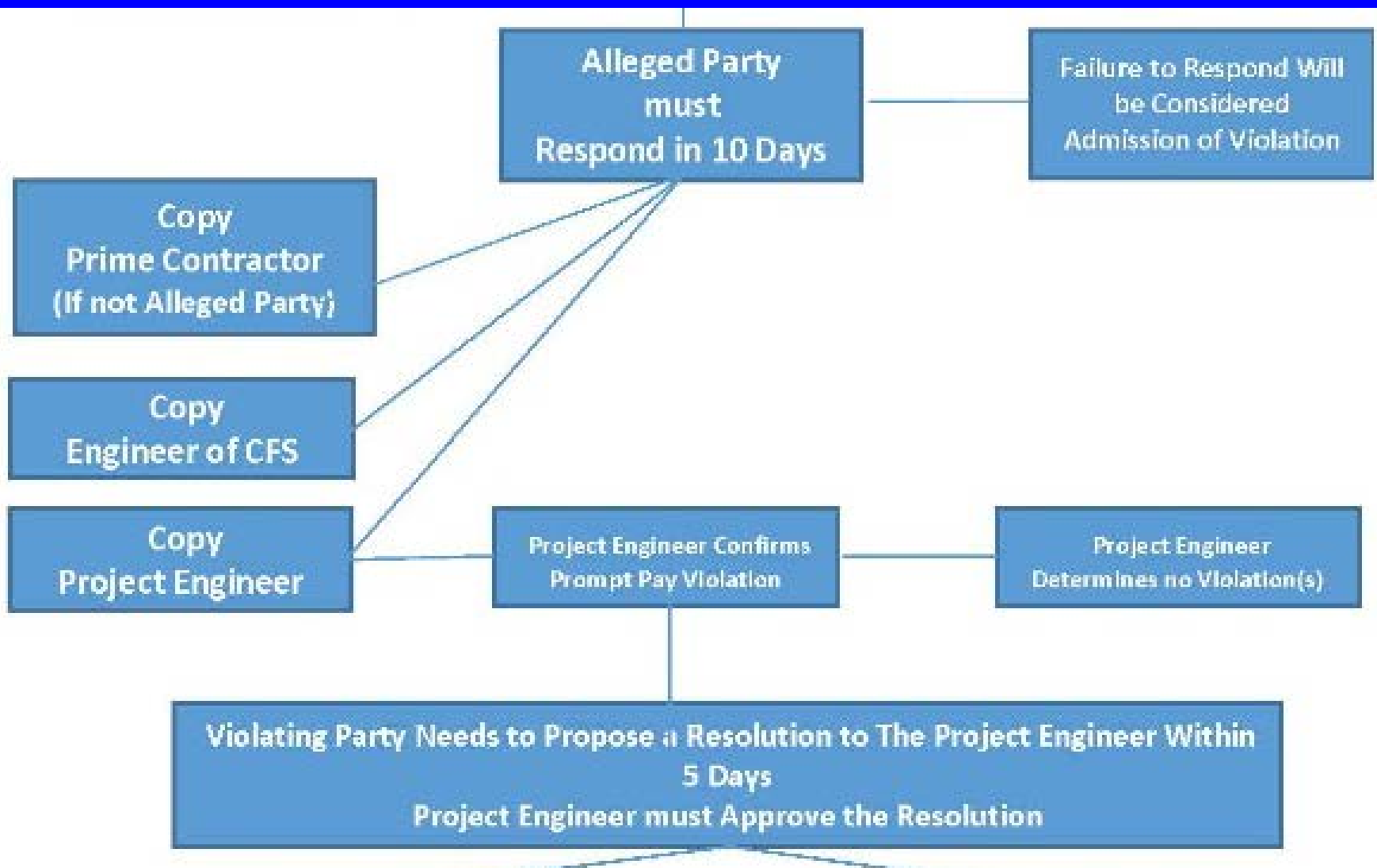
# Prompt Payment Flow Chart



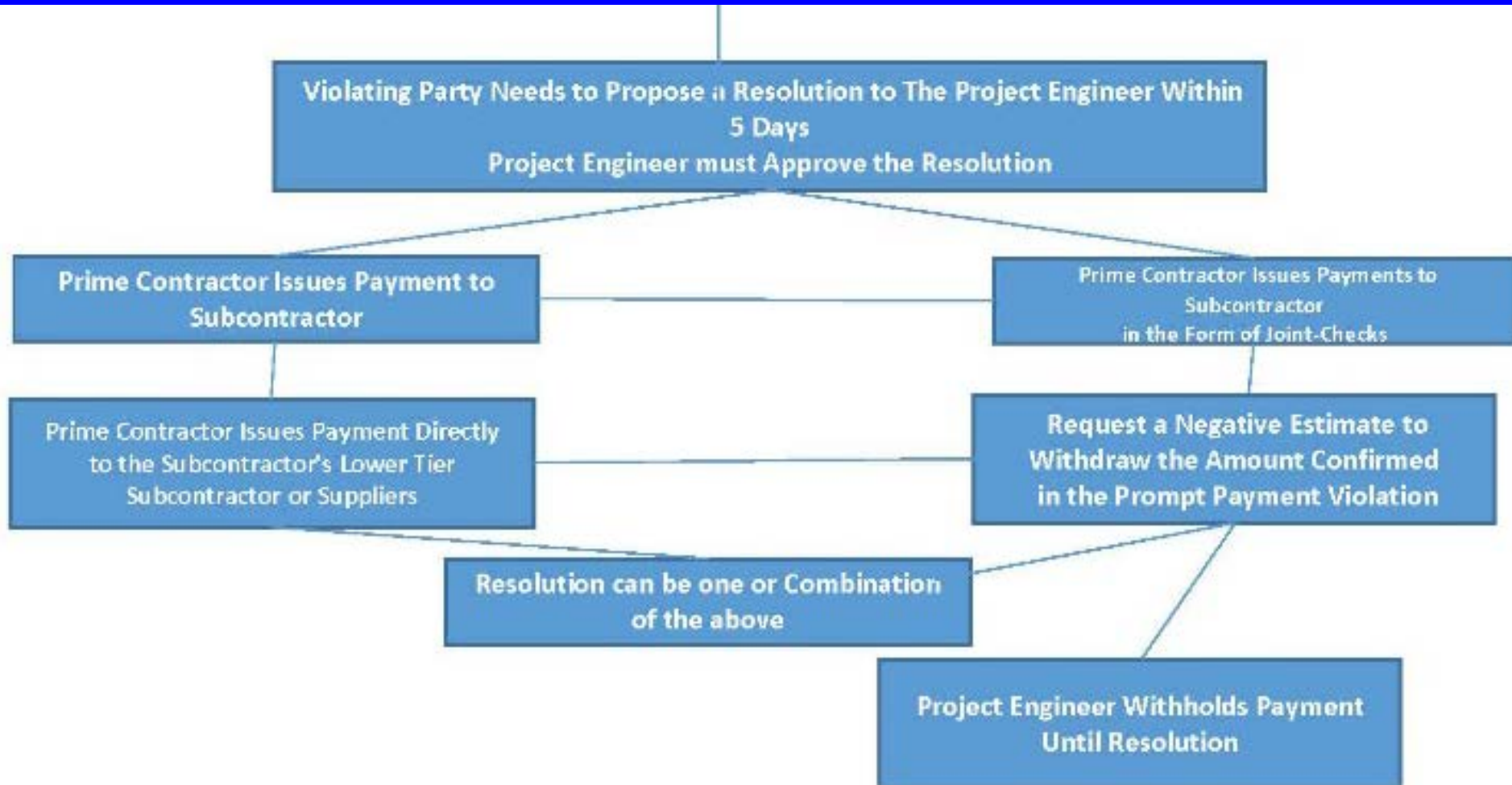
# Prompt Payment Flow Chart



# Prompt Payment Flow Chart



# Prompt Payment Flow Chart



# Prompt Pay Special Provision

## Non-payment Summary

- Alleged complaint placed in writing 30 days from the time payment should have been received.
- Alleged offending party has 10 calendar days to respond.
- Engineer reviews the documentations and if the complaint is validated the offending party has 5 days to propose resolution to the Engineer.
- Only the Engineer will withhold payment beyond 30 days until the prompt pay violation is resolved.



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

# Thank You

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