

Subcontract Checklist and Payment Examples

The following items must be included in all subcontract agreements.
(Please note MDOT may request subcontracts for review at any time.)

1. MDOT/Prime contract number and authorization number (if applicable) must be referenced on the subcontract and on all exhibits.
2. For unique and unusual situations in which the services required are considered specialty services that occur at the beginning of a project, such as surveying and geotechnical, etc., a Limited Notice to Proceed (LNP) shall be included with the subcontract when submitting to MDOT, upon request. The effective date of the subcontract shall not be prior to the date of signature by both parties, unless a LNP is in place.

The LNP is considered a limited term subcontract (maximum 30 days) for specific services where the conditions and terms of the prime contract are applicable to the LNP subconsultant until the subcontract is fully executed. MDOT **will not** reimburse the prime contractor for any costs incurred by the subconsultant prior to the date of a fully executed LNP.

3. The contract award must be prior to work commencing. The expiration date of the subcontract shall be the same as the prime contract unless otherwise mutually agreed upon by both parties and referenced in the subcontract.
4. CONTRACTING CONSULTANT's name and description to be used throughout the subcontract (i.e., Engineer, Consultant, etc.).
5. SUBCONTRACTING CONSULTANT's name and description to be used throughout the subcontract (i.e., Subconsultant, Consultant, etc.).
6. Description of work being performed by the SUBCONTRACTING CONSULTANT, as described in the scope of services. Include job number(s), control section(s), and structure number(s), if applicable.
7. The basis of payment, maximum contract amount, and fixed fee amount (if applicable) must be written into the **body of the** subcontract. A derivation of cost must accompany the subcontract. The derivation of cost can not be used in lieu of the written basis of payment and maximum dollar amount. Amendments, adding additional funds, will need to specify what the basis of payment is, the total amendment and fixed fee (if applicable) amounts, along with new total maximum not to exceed contract and fixed fee amounts.

Following are basis of payment options and the recommended contract language.

Actual Cost: compensation for the services will be on the basis of actual cost and will not exceed \$ _____, as set forth in Exhibit _____.

Actual Cost Plus Fixed Fee: compensation for the services will be on the basis of actual cost plus a fixed fee and will not exceed \$ _____, which amount includes a fixed fee of \$ _____, as set forth in Exhibit _____.

Lump Sum: Compensation for the services will be on a lump sum basis in the amount of \$ _____, as set forth in Exhibit _____.

Milestone: Compensation for the services will be on a milestone basis in the amount of \$ _____, payable on completion of defined milestones, as set forth in Exhibit _____.

Fixed Hourly Rate – Compensation for the services will be on the basis of a fixed hourly rate plus actual direct expenses and will not exceed \$ _____, as set forth in Exhibit _____.

Unit Price: Compensation for the services will be on the basis of a set unit price and will not exceed \$ _____, as set forth in Exhibit _____.

8. Fixed Fee on "as needed" projects is computed by taking the percent of actual labor hours invoiced to labor hours authorized, then applying that percentage to the total fixed fee authorized.
9. Amendments to add additional funds need to specify what the basis of payment is, the total amendment fee and fixed fee (if applicable) amounts, and the new total maximum not to exceed subcontract fee and fixed fee amounts.
10. When applicable, if the SUBCONTRACTING CONSULTANT is performing prequalified services on the project, all classifications in which they will be working on must be identified.
11. A statement must be included in the subcontract that the SUBCONTRACTING CONSULTANT shall be governed by the laws of the State of Michigan and compliant with all applicable Federal laws and regulations, as set forth in the Prime Contract.
12. A statement must be included in the subcontract that the SUBCONTRACTING CONSULTANT shall be governed by all the terms and conditions of the Prime Contract, including any amendments to the original Prime Contract. The terms and conditions of the Prime Contract shall prevail over the services provided for under any subcontract.
13. The CONTRACTING CONSULTANT shall make payment to any SUBCONTRACTING CONSULTANT within (10) days of receipt of payment. The CONTRACTING CONSULTANT shall pay the SUBCONTRACTING CONSULTANT on the basis of payment identified in the Prime Contract.
14. Records, including executed subcontracts, are to be maintained for (3) years from the date of final payment to the CONTRACTING CONSULTANT and all other pending matters are closed.

MDOT, FHWA or its representative may inspect, copy, scan or audit the CONTRACTING CONSULTANT or SUBCONTRACTING CONSULTANT records at any reasonable time after giving reasonable notice. Any audit, examination, review, assessment, inspection and/or investigation performed would allow MDOT to make financial adjustments to charges for which this company has requested reimbursement via an MDOT service contract, and require the company to be directly responsible for any monies owed MDOT.

15. The following certification language must be included in all subcontracts.

"The SUBCONTRACTING CONSULTANT agrees that the costs reported to the CONTRACTING CONSULTANT for this Contract will represent only those items that are properly chargeable in accordance with the Prime Contract. The SUBCONTRACTING CONSULTANT also certifies that upon receipt, it will read the Prime Contract terms and will make itself aware of the applicable laws, regulations, and terms of the Prime Contract that apply to the reporting of costs incurred under the terms of the Prime Contract."

16. The subcontract needs to state:

"The SUBCONTRACTING CONSULTANT certifies that it agrees to use the E-Verify system to verify that all persons it hires during the subcontract term are legally present and authorized to work in the United States."

17. The Prime must be contracted/authorized to perform at least 40% of the work and the SUBCONTRACTING CONSULTANTS cumulatively cannot perform any more than 60% of the work. Compliance will be verified at the time of subcontract review. (40/60 Rule)

18. When there is a secondary SUBCONTRACTING CONSULTANT, the secondary SUBCONTRACTING CONSULTANT can do no more than 50% of the subcontracted total. Compliance will be verified at the time of subcontract review. (50/50 Rule)
19. The DBE Percentage must comply with the required selection amount or the agreement must be accompanied by a post-award waiver. This subcontract, individually or in combination with other vendors under the prime contract, must meet the contract specific DBE goals or a Good Faith Effort (GFE) modification or waiver was submitted and approved prior to contract/authorization award. To be considered a DBE, a vendor must be certified by the MDOT Office of Small Business Development.
20. The MDOT Project Manager shall be notified in writing by the CONTRACTING CONSULTANT in the event the subcontract or amendment is not executed.
21. The individuals signing the subcontract represent and warrant that they have the power and authority to enter into the subcontract (or amendment) and bind the parties for whom they sign.
22. The subcontract **must be signed** using digitally encrypted signatures, and awarded between the parties prior to the assigned work being performed.

MDOT will randomly select contracts/authorizations for an interim and/or post review of subcontracts. Upon request, the CONTRACTING CONSULTANT will be required to submit to MDOT any subcontract agreements between the CONTRACTING CONSULTANT and the SUBCONTRACTING CONSULTANT, **regardless of dollar amount.**

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