

## Ohio Department of Transportation advisory to all prime contractors



Peter D. Welin, John Gambill | Tuesday, February 4, 2020

The Ohio Department of Transportation is requiring all ODOT prime contractors to become compliant with Proposal Note 031 (Prompt Payment) by entering and signing all previously made subcontractor payments (on open projects) by Feb. 1, 2020 and by entering and signing future subcontractor payments as they are made. The proposal note requires contractors to utilize the AASHTOWare Project Civil Rights & Labor (CRL) system to enter these payments. Entered payments must be signed in order for subcontractors/suppliers to affirm their receipt of the payments made.

The Code of Federal Regulations (CFR) at Title 49, Section 26.29 requires that ODOT establish a mechanism to monitor Prompt Payment requirements to all subcontractors. That regulation requires that ODOT, as a participant in federal Transportation Department Financial Assistance Programs, must establish, as part of its Disadvantaged Business Entity (DBE) program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

In turn, ODOT created Proposal Note 031, first effective in 2016, which requires that all Prime Contractors on ODOT Projects notify the department that it has complied with the Prompt Payment requirements set forth in Construction and Materials Specification 107.21 utilizing the AASHTOWare Project Civil Rights and Labor (CRL) System. Section 107.21 of the Construction and Materials Specifications is a restatement of Ohio's Prompt Payment law at Ohio Revised Code section 4113.61 which requires that any contractor who

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receives payment from an owner for work of a subcontractor pay that subcontractor within ten days of receipt of payment from the owner.

The requirement to notify ODOT of all payments made to subcontractors is designed to insure that DBEs are being paid for the work they perform in a timely manner. The AASHTOWare CRL system is designed to keep track of those payments to insure compliance with the DBE requirements of any federal assistance programs.

The affirmation of compliance required of all prime contractors shall include the following information:

- The name of the subcontractor or supplier that was paid.
- The dollar amount of the payment to the subcontractor or supplier.
- The date the subcontractor/supplier was paid.

Subcontractors or suppliers will then be required to affirm the payment was made in the CRL system, on the date and in the amount listed in the affirmation. The prime contractor also is obligated to include this affirmation requirement in all subcontractor and supplier contracts that it enters into and further require that all subcontractors and suppliers place the same payment obligation in each of their lower tier contracts.

If a contractor has not been in compliance with Proposal Note 031, then it must do so immediately and thereafter remain current with the reporting requirement on a going forward basis.

For more information regarding this compliance request contact one of the McDonald Hopkins lawyers below.



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