



2-60.1 Subletting the Contract

[Standard spec 108.1.1](#) requires that before the prime contractor may sublet, sell, transfer, or assign any contract work, or otherwise dispose of the contract, a portion of the contract, or a right, title, or interest in the contract, the written consent of the engineer must first be obtained. Before subletting or subcontracting any portion of the contract work, the contractor must submit form [DT1925](#), Sublet Request and DBE Sublet Purchase Report. Figure 1 provides an example. A separate form must be submitted for each proposed subcontract. The form must be completely filled in and signed by the contractor or the contractor's authorized agent. If the prospective subcontractor is not pre-qualified with the department, evidence of competency to perform the work must be attached.

The engineer will not permit contract work to be performed by a subcontractor until the request for permission to sublet the work has been approved. A subcontract is a direct contractual relationship between the prime contractor and another company where the company operates independently to perform a defined portion of the contract. These contractual relationships are often referred to as first tier subcontracts. The authority to approve or disapprove will reside in the regions within these guidelines.

Occasionally, a question will arise as to whether a contractual relationship between a prime contractor and another company is a subcontract or an employee lease arrangement. FHWA has addressed this question in their Contract Administration Core Curriculum Participant's Manual and Reference Guide. In this manual, FHWA states that employee lease arrangements are acceptable for federal-aid projects if the leased employees are under the direct supervision and control of the contractor's superintendent or supervisor. Leased employees may be considered to be part of the prime's own organization if:

- The prime contractor maintains control over the supervision of the day-to-day activities of the leased employees.
- The prime contractor remains responsible for the quality of the work of the leased employees.
- The prime contractor retains all power to accept or exclude individual employees from work on the project.
- The prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance, and all other federal regulatory requirements.

The key issue is supervision and control of any leased personnel. If the leased personnel are treated as employees of the prime contractor, and would be considered as such but for their actual employment by a leasing agency, then for purposes of 23 CFR Section 635.116(a) they should be considered employees of the prime contractor's organization.

If the above conditions are met, the contractual relationship is an employee lease arrangement, not a subcontract. An employee lease arrangement is not subject to the 30% rule discussed later in this section, and a request to sublet is not required.

Note that [DT1925](#) is also to be used for reporting DBE/WBE work, which may not be an official subcontract, and also for reporting materials or supplies furnished by a DBE/WBE.

Figure 1 Example Sublet Request and DBE Sublet Purchase Report

SUBLET REQUEST AND DBE SUBLET PURCHASE REPORT			Wisconsin Department of Transportation		
DT1925 2002 (Replaces EC469)					
Instructions: Contractor: Furnish 2 signed copies to the District Office. District: Return 1 completely executed original to contractor. Send 1 copy to Project Engineer & 1 copy to Central Office Construction.			Proposal Date 9/10/2005	Submitted Date 10/15/2005	
Project 9511-01-74		Federal Project	County Vilas	<input checked="" type="checkbox"/> DBE <input type="checkbox"/> Non-DBE <input type="checkbox"/> Purchase Service or Materials Only	
Road Name			Highway		
Proposed Subcontractor Acme Concrete & Steel		Address and Telephone Number 740 Muskie Ave., Eagle River, WI 54521			
Permission is requested to sublet the following described work on the above project in the total amount indicated below. Actual agreed unit prices and amounts to be sublet or purchased are to be shown in the following tabulation as appropriate.					
ITEM NO.	QUANTITY	UNIT	ITEM	UNIT PRICE	AMOUNT
602.1000	500	SF	Concrete Loading Zone	\$ 25.00	\$ 12,500
604.0400	100	SY	Slope Paving Concrete	\$ 50.00	\$ 5,000
Contract Total Amount \$1,250,000			% to Sublet 1.4%	TOTAL \$ 17,500	
PREVIOUSLY REQUESTED APPROVED SUBCONTRACTS			AMOUNT	% OF CONTRACT	
Apex Engineering			\$ 100,000	8%	
Lighting Construction Co.			\$50,000	4%	
* Percentages of DBE purchase agreements are not to be shown.			TOTALS	\$ 150,000	12%
I certify that arrangements have been made for the foregoing work with the listed subcontractor. I understand that any willful falsification, fraudulent statement or misrepresentation will result in appropriate sanctions which may include debarment and/or prosecution under applicable state (Trans 504) and federal laws. I certify that for federal projects only, the reference subcontract is in writing and physically includes the pertinent federally required provisions, included in my contract with the Wisconsin Department of Transportation.					
SUBMITTED BY CONTRACTOR					
<i>ABC Construction, Inc.</i>		<i>X Ralph Candon</i>		<i>10/15/05</i>	
(Contractor Name)		(Authorized Agent)		(Date)	
Approved for Wisconsin Department of Transportation					
		<i>X Ed Norton</i>		<i>10/20/05</i>	
		(District Chief Construction Engineer)		(Date)	

In addition to obtaining department approval for all first tier subcontractors, [standard spec 108.1.1](#) requires the prime contractor to notify the department of all lower tier subcontractors and all other parties working on the contract.

This notification is important so the department is aware of all the parties working at the project site, and can properly administer labor compliance regulations.

2-60.2 Prime Contractor Participation

[Standard spec 108.1.2](#) includes the federal requirement that the prime contractor perform at least 30% of the original contract work with the prime contractor's own organization. The purpose of this requirement is to prevent brokering. Brokering occurs when the company under contract with the owner sublets all or virtually all of the work to other companies.

The prime contractor's own organization is defined as workers the contractor employs and pays directly as well as equipment the contractor owns or rents, either with or without operators.

Occasionally, due to a wide variety of work within a single contract, FHWA may approve a reduction in the level of prime contractor participation before the contract is let. If a reduction is approved, it will be identified in the contract special provisions.

The department administers the 30% rule by:

- Reviewing the prime contractor's initial submittal identifying the work they will perform.
- Monitoring the total amount of work the prime contractor is proposing to sublet as shown on the department form

[DT1925](#), Sublet Request and DBE Sublet Purchase Report.

2-60.2.1 Prime Contractor's Initial Submittal

As referred to in [standard spec 108.1.2](#), [standard spec 103.6](#) requires the prime contractor to submit documentation regarding the 30% rule during the same 10 business day time period the prime submits a signed contract, the contract bonds, and other department required forms. The prime contractor must demonstrate compliance with the 30% rule as a condition of contract execution.

The prime contractor is required to submit its 30% rule documentation on WS1081, Prime Contractor Participation. Submit WS1081 using the automated process described below. The submittal must contain the prime contractor's best information, at the time of the letting, concerning the work the prime contractor intends to do.

The department recognizes the information on the prime contractor participation worksheet is subject to change as work proceeds on the contract. The prime contractor is not obligated to perform the work as shown on the initial submittal. At its discretion, the prime contractor may decide to complete the work differently provided it complies with [standard spec 108.1](#).

The department will further monitor compliance of the 30% rule during the course of the contract by reviewing the total amount of work the prime contractor is proposing to sublet as shown on [DT1925](#).

2-60.2.2 Installing the Prime Contractor Participation Worksheet

Users of WS1081 will need to save the worksheet template on their hard drive before using it the first time, by following these steps:

- Create a C:\ws1081 folder
- Open WS1081 by clicking here:
<http://wisconsindot.gov/hcciDocs/contracting-info/ws1081.zip>
- Select Save as
- Go to "C" Drive, select C:\ws1081 folder, then hit save
- If a dialog window appears, ignore it and close window
- Navigate to C:\ws1081 folder and open the ws1081.zip folder

2-60.2.3 Instructions for Completing the Prime Contractor Participation Worksheet

The following set of instructions will detail how to download a file of contract items and unit prices, import the items into the prime contractor participation worksheet, complete the worksheet, and send it to the department. The instructions assume that you are logged on to the WisDOT extranet site where you will begin by downloading the list of contract items. This process can be used for a single contract or multiple contracts. For multiple contracts you will need to repeat Steps 2 - 12 for each contract.

2-60.2.3.1 Download Contract Item File

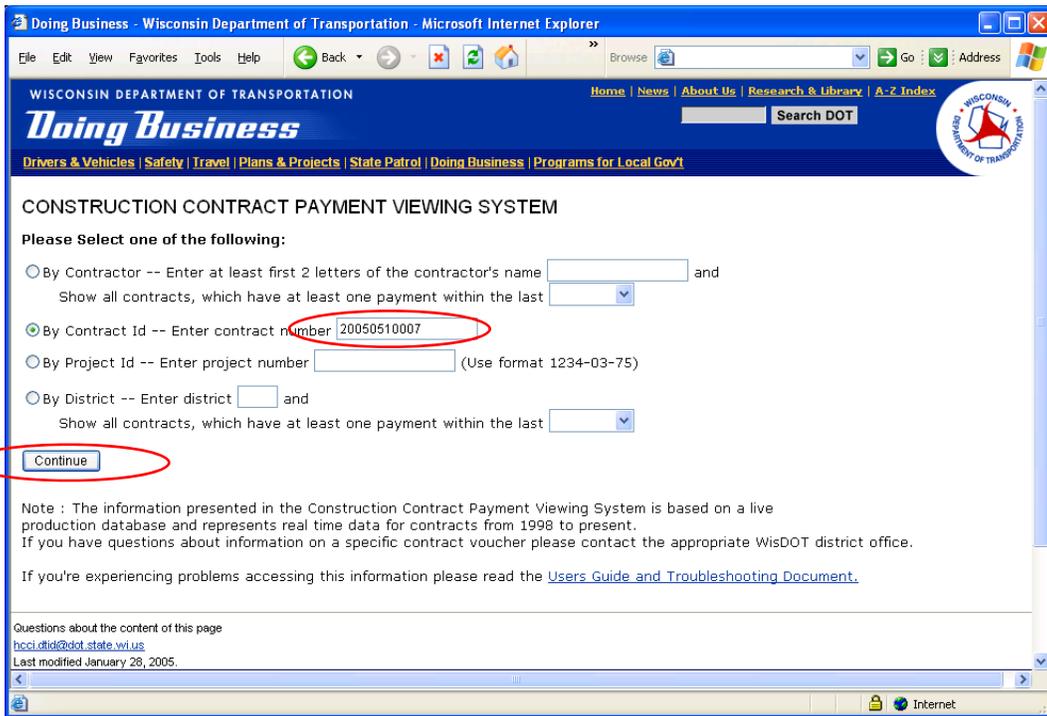
Step 1: Go to the Construction Contract Payment Viewing System at the following link:

<http://wisconsindot.gov/Pages/doing-bus/contractors/cntrct-pymts/default.aspx>

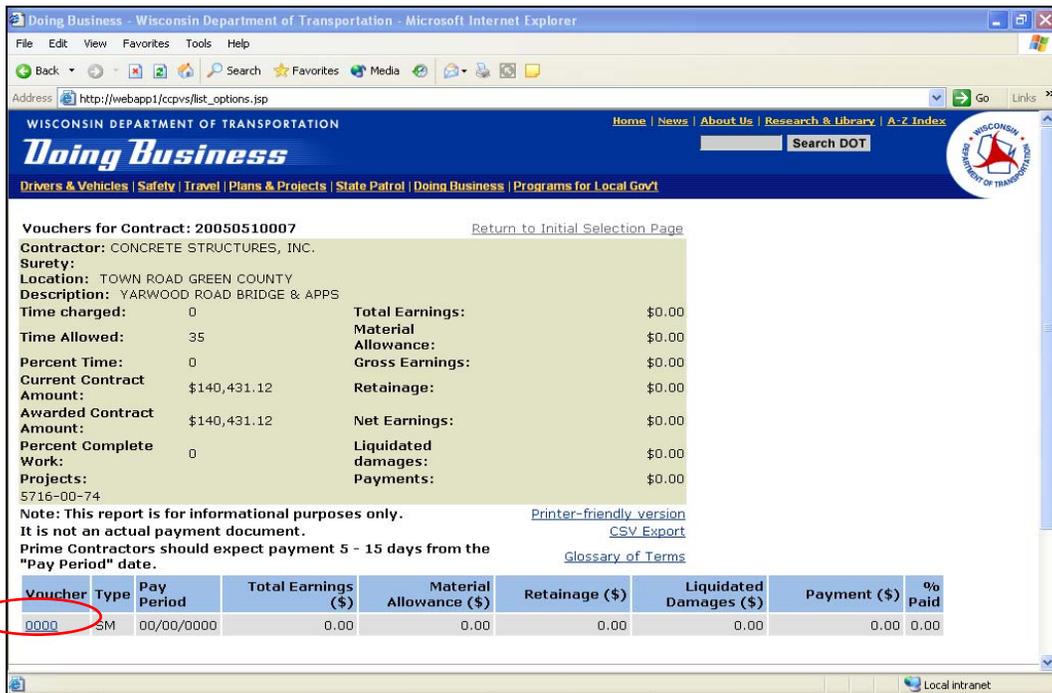
You will need to logon to the WisDOT Extranet web site.

Step 2: Select the **By Contract Id** radio button and **enter the contract number** in the box provided and click

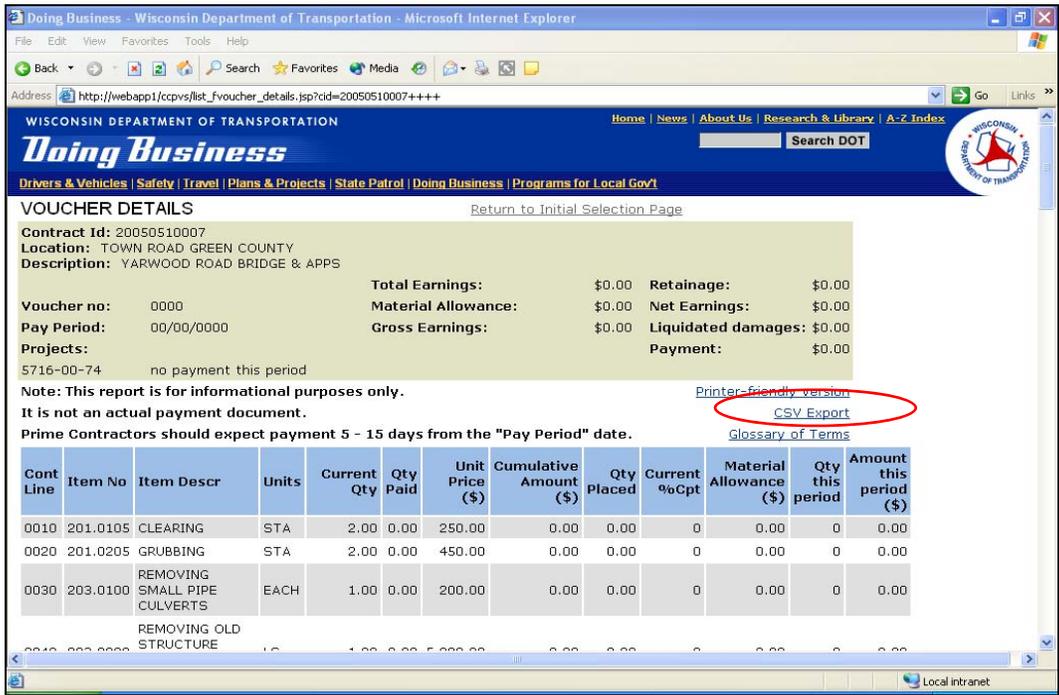
Continue.



Step 3: Select voucher 000.

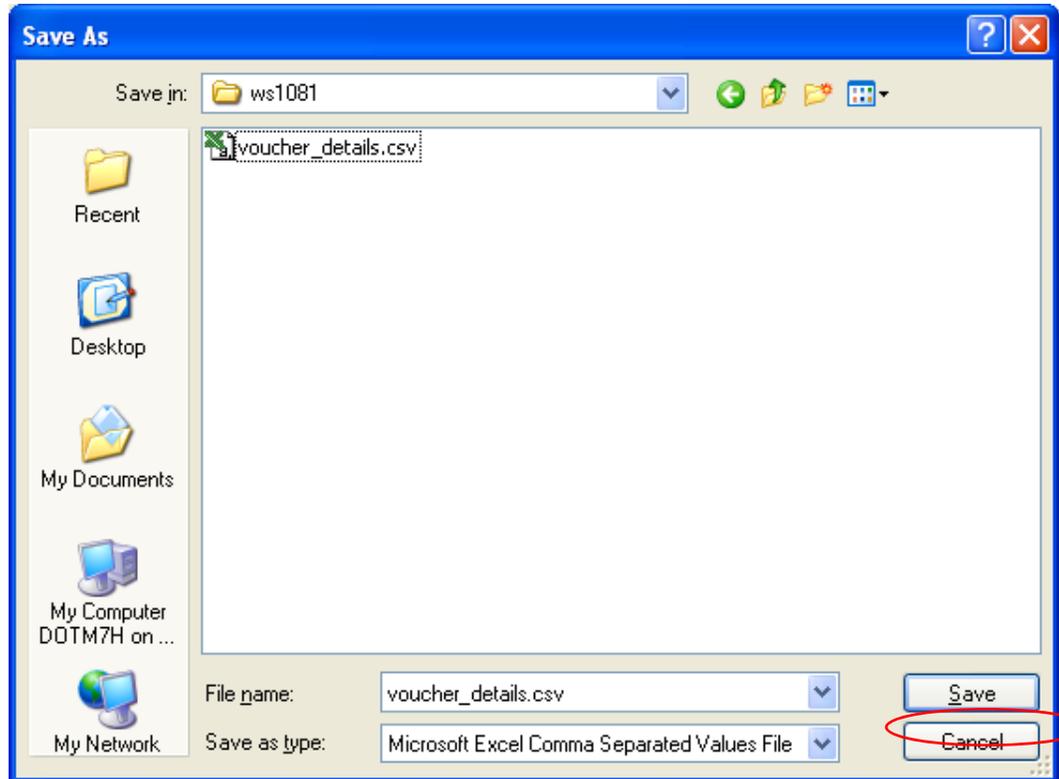


Step 4: Right-click on **CSV Export**, then go to **Save Target As...**



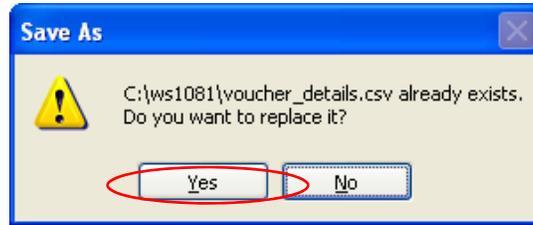
Step 5: Select the C: drive; double click on the ws1081 folder.

Step 6: Click **Save**.



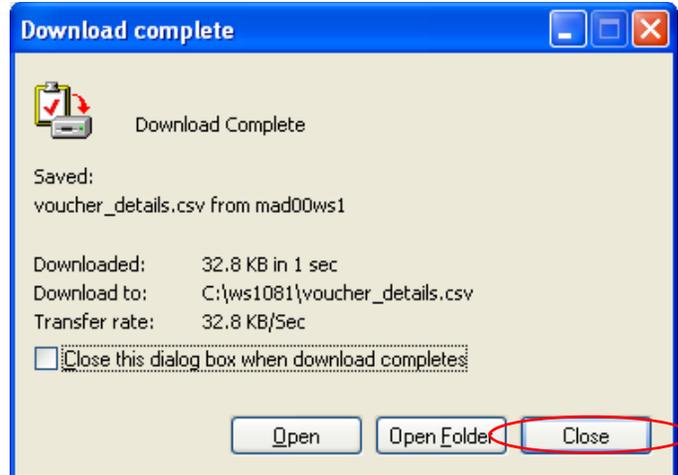
Please do not change the folder location or the file name. The csv file must be saved to the C:\ws1081 folder and the file name must be "voucher_details.csv". If you change either one, the worksheet will not import the 0000 voucher data.

Step 7: When the dialog box shown appears on your screen, click on the Yes button and the download process will start.



This dialog box will not appear the first time you perform Step 7, but will appear each subsequent time. If you have multiple contracts, continue through Step 12 before beginning to download data for the next contract.

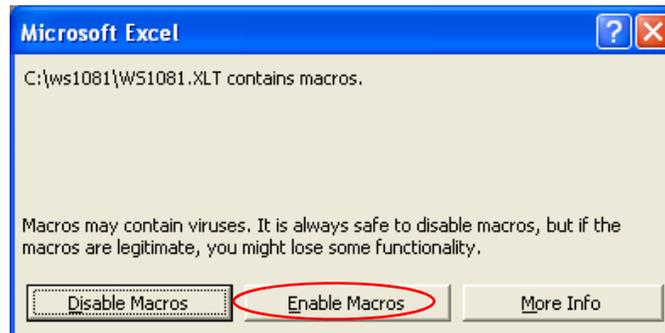
Step 8: After the downloading is completed the following message box will appear. Click on **Close** to exit.



2-60.2.3.2 Import Contract Item File

Step 9: Close excel and all active spreadsheets. Navigate to the C:\ws1081 folder , open ws1081.zip folder, then open the ws1081.xlt file.

Step 10: When you open ws1081.xlt the following dialog box will appear. Click on **Enable Macros**.

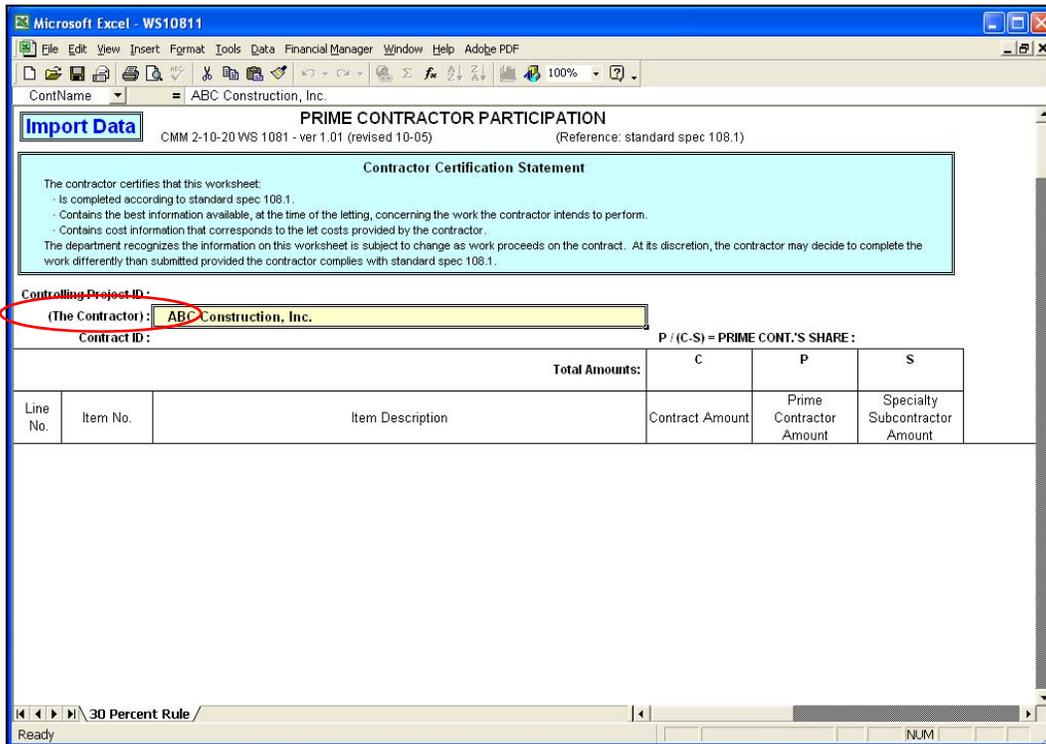


Step 11: Opening ws1081.xlt will create an empty worksheet. You will be prompted to enter the prime

contractor name. Click **OK**.

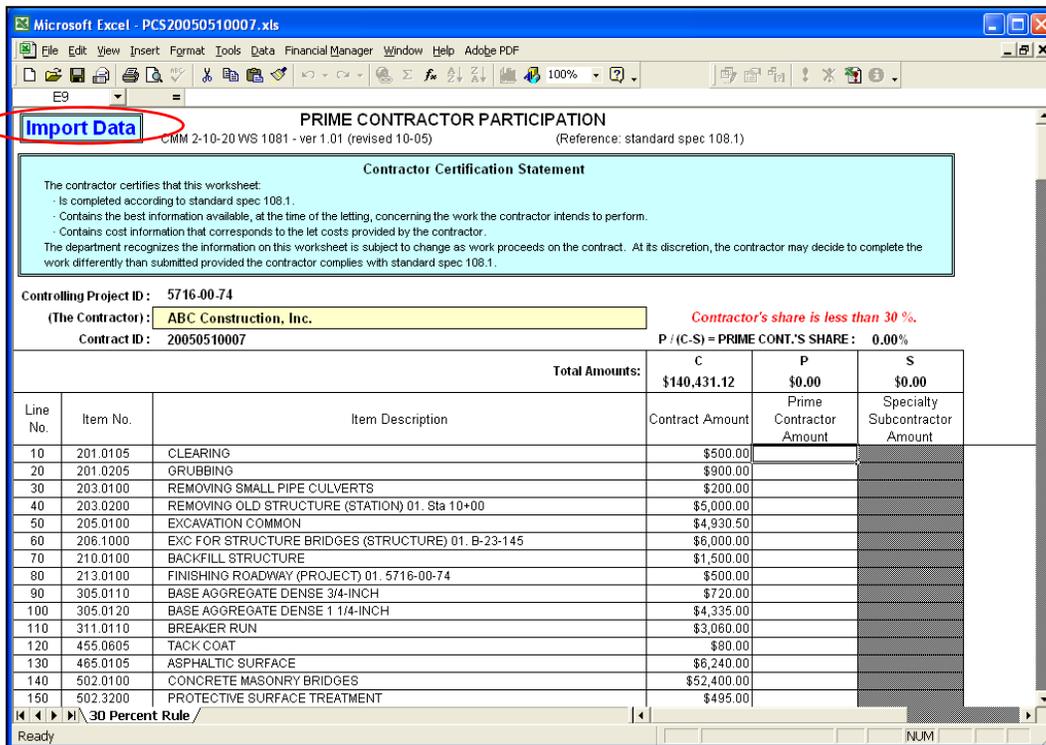


Enter the prime's name in the yellow highlighted box labeled (The Contractor).



By completing the worksheet the contractor agrees to the terms of the Contractor Certification Statement contained in the worksheet header.

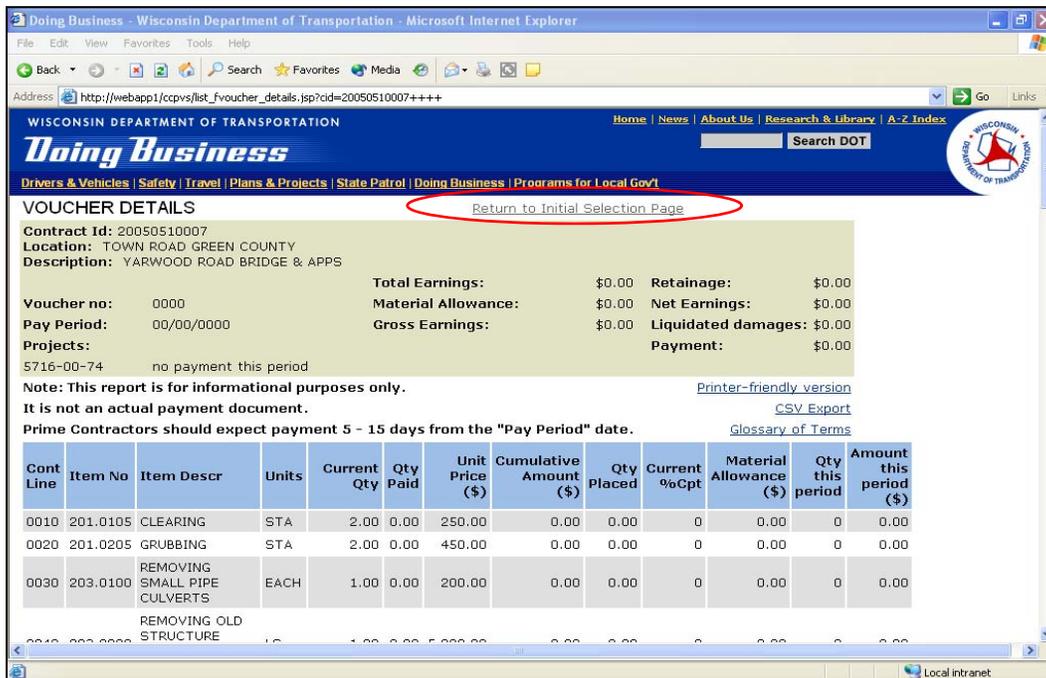
Step 12: Click **Import Data** to populate the worksheet with the contract bid items.



The data from the voucher_details.csv previously saved in Step 6 will be imported into the blank WS1081 worksheet file and will be automatically saved as the PCS"contractID".xls file in the C:\ws1081 folder. The "contractID" designation in the file name is the contract ID for the contract entered in Step 2. You will see the file name displayed in the top blue bar of the open worksheet, for this example Microsoft Excel - PCS20050510007.xls as displayed in the above screen shot.

Step 13: If you want to continue filling out the worksheet, first close the Construction Contract Payment Viewing System and go to Step 14. If you have multiple contracts to download, follow Steps 2 -12 for each contract. Click "Return to Initial Selection Page" to return to the screen described in Step 2.

Remember to open a new ws1081.xlt worksheet file in Step 9 from your C:\ws1081 folder for each new contract ID.



2-60.2.3.3 Complete Worksheet to Determine Prime Contractor's Share

Please see [standard spec 108.1.2](#) for a complete description of the prime contractor's share formula

shown on the upper right. The prime's share is automatically calculated as the contract amounts for each bid item are placed in the desired columns.

As long as the prime's share is less than 30%, a note in red appears indicating such.

You can copy blocks of item "Contract Amounts" to the other columns using standard MS Excel copy and paste features.

Step 14: With desired contract worksheet open, as illustrated in Step 12, fill in the "Prime Contractor Amount" (P) column for each bid item as follows:

- Use let cost information.
- Indicate the dollar amount of work the prime contractor intends to perform, including materials the prime contractor purchases and installs.
- The prime contractor can indicate if it is performing the entire bid item or just a portion of it.
- Prime contractors can include in the (P) column any materials the prime contractor purchases for others to install, and can include the cost of trucking that the prime contractor pays for directly.
- For the mobilization bid item, the prime contractor should only include its mobilization costs in the (P) column.

Step 15: Next, you have the option of filling in the "Specialty Subcontractor Amount" (S) column; however this is not required. Identifying specialty subcontractor work will make it easier for the prime to achieve the required 30%.

Please note that the (S) column is not for identifying all subcontractor work, but is only for specialty subcontractor work. If you decide to fill in the optional (S) column, use let cost information to indicate the dollar amounts of work specialty subcontractors will perform.

[Standard spec 108.1.2](#) describes specialty work as follows:

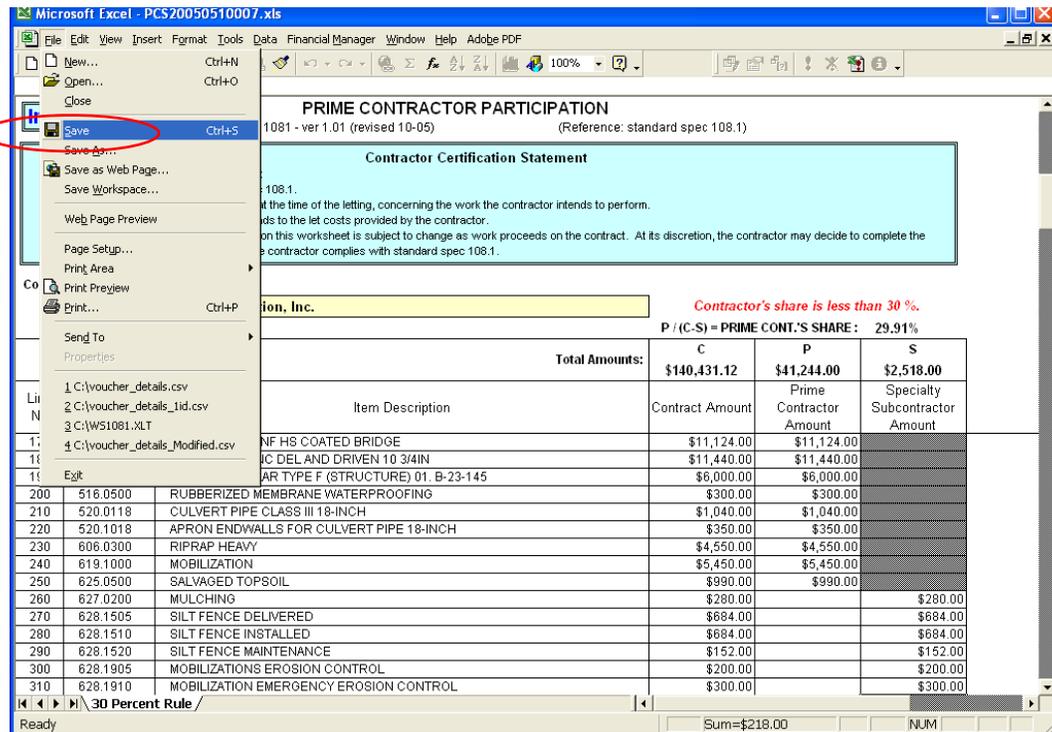
- Work that is subcontracted.
- Sanitary sewer system work and water main system work.
- Standard specification bid items eligible as specialty items.
- XXX.XXXX.S and SPV bid items similar to the identified standard specification bid items.

Standard specification bid items and XXX.XXXX.S bid items that are not eligible as a specialty item have been grayed out on the worksheet, and you will not be allowed to enter a dollar amount. None of the SPV bid items have been grayed out on the worksheet, but they are not all eligible as specialty items.

A bid item should not be included in the (S) column unless it is subcontracted. If the prime contractor is performing the work on an eligible specialty bid item, it should be included in the (P) column.

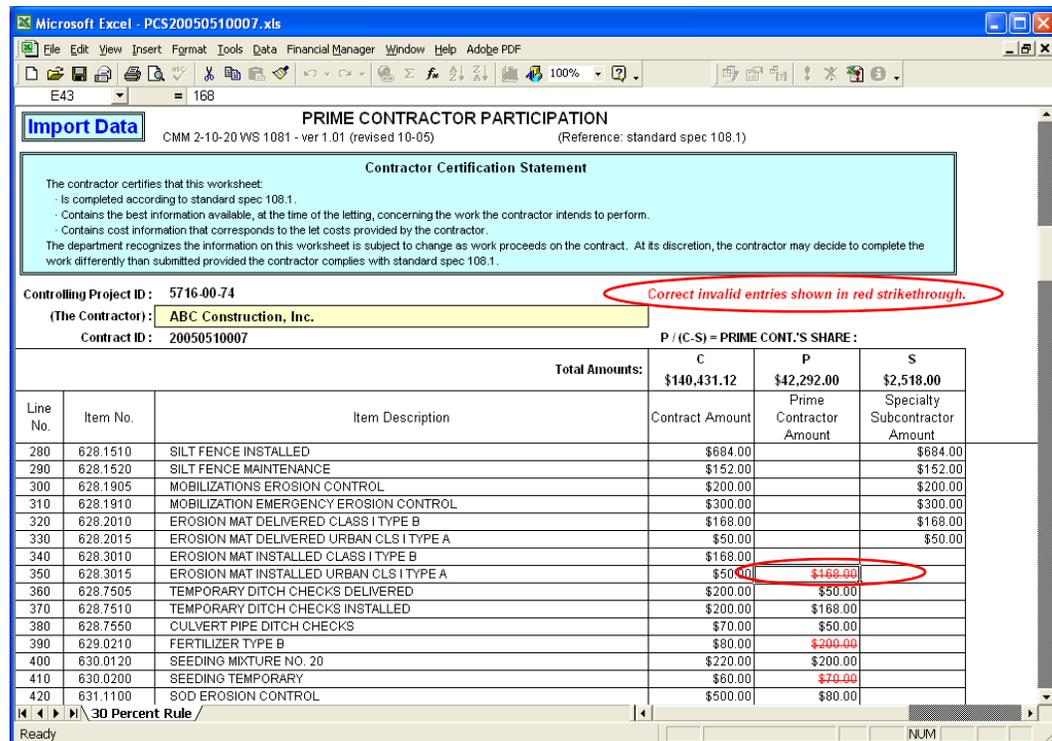
Step 16: When you have completed some or all of the worksheet you can save the worksheet by selecting

File/Save from the MS Excel toolbar.



Step 17: If you make an entry error, the items that require correction will be shown in red strikethrough. A note in red appears indicating error, and the prime contractor's share percentage is not shown.

Errors include filling in a dollar amount that exceeds the contract amount for the item, or copying a block of dollar amounts into the wrong cells resulting in dollar amounts exceeding the contract amount for the item.

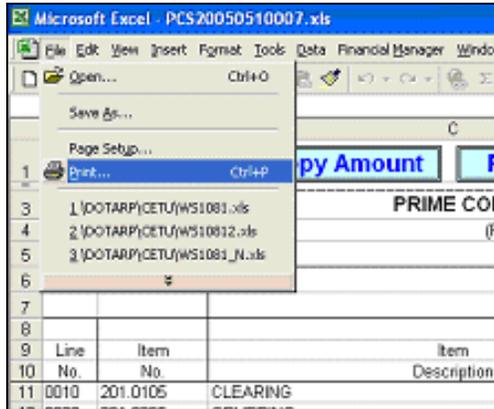


Step 18: Most of the cells in the worksheet are protected and are not available for entry or editing. If you

attempt to make an entry in a protected cell the following warning message will be displayed.



Step 19: To print the worksheet select **File/Print** from the MS Excel toolbar.

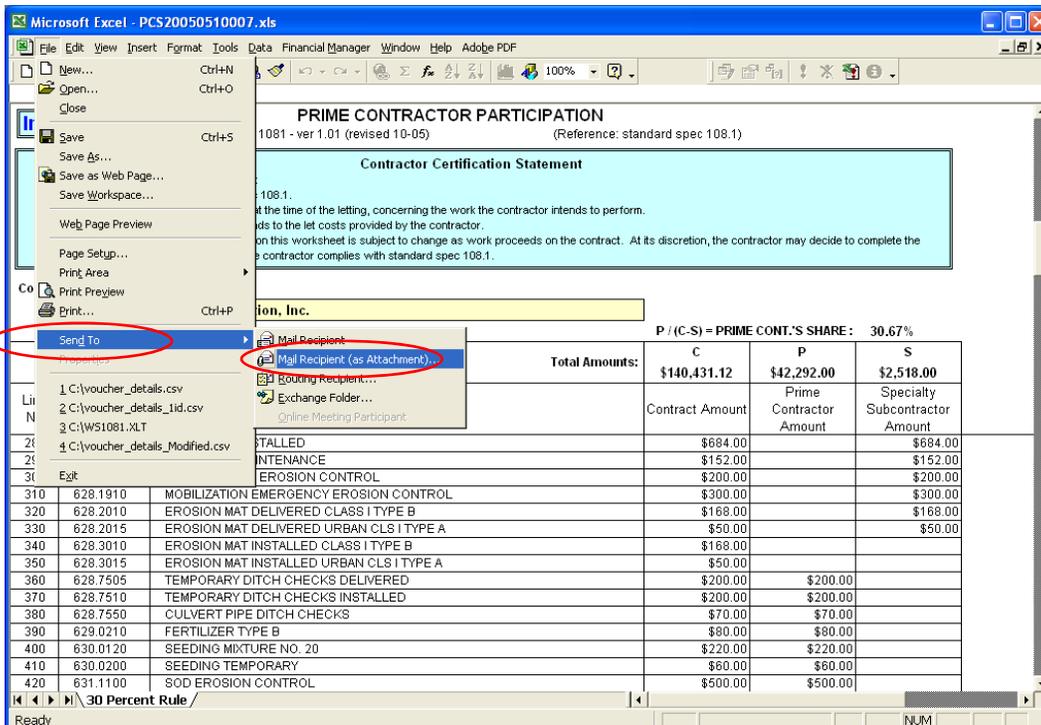


2-60.2.3.4 Send Completed Worksheet to the Department

Step 20: Send the worksheet(s) to the department by attaching them to an email message. Each completed worksheet must be sent by a separate email message. To send, use one of the following two methods.

2-60.2.3.4.1 Method 1: (for Outlook email users only)

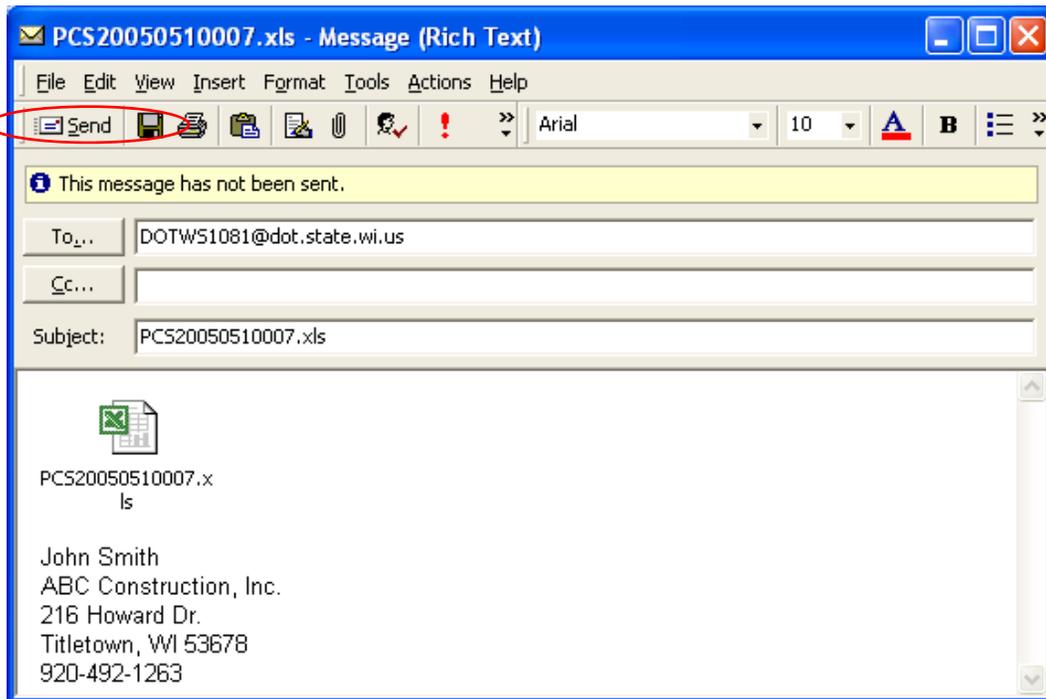
With the worksheet open, select **File/Send To/Mail Recipient (as Attachment...)**.



The email message will be automatically created, with the subject already filled in and formatted, and the worksheet attached. Provide contact information including name and phone number. Enter the following email address in the "To..." field:

DOTWS1081@dot.wi.gov

Click on **Send** to send the email to the department.



2-60.2.3.4.2 Method 2: (for all other email types)

Open your email application and create a new message and format the message as shown in above for method 1. Send to the following email address: DOTWS1081@dot.wi.gov. The subject line should be formatted PCS"xxxxxxxxxx".xls where "xxxxxxxxxx" is the contract id. Attach your worksheet, provide contact information including name and phone number, and send to the department.

2-60.2.4 Region Access to and Use of Contractor's Initial Submittal

As described above, the prime contractor makes their initial submittal to the Bureau of Project Development. Following their review, the Bureau of Project Development will place the contractor's initial submittal on the following shared drive for access by the regions:

N:\Bhc\30% Rule Post-Letting Submittals

Regions can access the contractor's initial submittal; which again, is the prime contractor's best information at the time of the letting as to which bid items and what overall percentage of the work it will perform. This information can be particularly useful to the regions before the contractor submits a sublet request, and may also be of some value during the region's approval of sublet requests.

However, as noted earlier in this procedure, the prime contractor is not obligated to perform the work as shown on the initial submittal. At its discretion, the prime contractor may decide to complete the work differently, provided it complies with standard spec 108.1. In situations where the prime contractor is performing significantly more than 30% of the work, there is little need for the regions to do detailed crosschecks between the contractor's initial submittal and subsequent sublet requests. Conversely, when prime contractor's work is only slightly greater than 30%, regions are more likely to compare the contractor's sublet requests to its initial submittal. If they are quite different, regions may question the contractor on how it intends to maintain compliance with the 30% rule.

2-60.3 Public Improvement Liens

Information on filing a claim for a person providing services or materials to a prime contractor performing work for the department can be found at:

<http://wisconsin.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/lien.aspx>

2-60.4 Review of subcontracts

As part of the oversight agreement with FHWA, the department will perform reviews on any tier of subcontract. The purpose of this review is to ensure that any sublet agreements contain, at a minimum, the required documentation from the contract between the department and the prime contractor. [Standard spec 108.1.1](#) allows the Engineer to request submission of a subcontract or other agreements for review.

The Bureau of Project Development (BPD) Oversight Engineer will review the sublet agreement for the following documentation:

- ASP-4: Payment to all Subcontractors
- FHWA 1273

The Oversight Engineer will choose one of the contractor's or subcontractor's sublet agreements to review. The review can take place at any time during construction of the project. For the sublet agreement that is chosen, the issuing party of the agreement shall provide an executed copy to the Oversight Engineer. The agreement issuer may redact specific financial information in the review copy presented to the Oversight Engineer.

The Oversight Engineer will review the sublet agreement for the required documentation and return the copy of the sublet agreement back to the contractor or subcontractor that submitted it for review.

If any of the required documentation is found to be missing, the Oversight Engineer may elect to review additional sublet agreements. The contractor will add the missing documentation to its sublet agreements and ensure that the missing documentation is attached to any subsequent sublet agreements at any tier.