

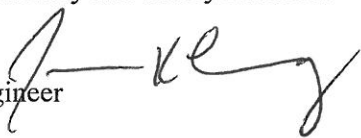


STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

ROY COOPER
GOVERNOR

JAMES H. TROGDON, III
SECRETARY

MEMO TO: Unit Heads
Transportation Mobility and Safety Division

FROM: Kevin Lacy, PE
State Traffic Engineer 

DATE: August 9, 2019

SUBJECT: Experience Rate Modifier Requirements for Outsourced Work

This is a follow-up to my September 13, 2017 memo and is intended to provide clarification in several areas. We will continue to only allow outsourced work to contractors with an experience rate modifier (ERM) of 1.30 or less. However, there may be some isolated and remote occasions where the ERM of a contractor (primes and subs) exceeds the 1.30 maximum but extenuating circumstances may exist due to insurance restrictions. Therefore, effective immediately, the following verbiage shall be included in all new, extended and supplemental contracts and solicitations (professional engineering services, service procurements, etc.) for work with the Transportation Mobility and Safety Division (TMSD):

“Contractors (primes and subs) shall have and maintain an experience rate modifier (ERM) of 1.30 or less and shall provide a copy to TMSD on an annual basis, or at TMSD’s request. Contractors with an ERM greater than 1.30 shall not have any new tasks scoped, negotiated, or assigned until their ERM is 1.30 or less. However, contractors with an ERM greater than 1.30 who can prove through documentation that certain worker’s compensation claims that caused their ERM to exceed the 1.30 cap should have been paid through one or more other entities may request a waiver for those specific claims and have their ERM re-calculated, provided, that any re-calculation will reduce the ERM to 1.30 or less. Administrative errors related to ERM calculations not related to actual claims shall not be considered for waivers, and the State Traffic Engineer has the sole discretion and final authority to grant or deny any waiver of this provision.”

Note that the above verbiage shall also apply equally to contractors doing work for TMSD under non-TMSD contracts, and all Units shall inform the Division Staff Engineer of any and all work needed to be done under non-TMSD contracts, and wait for verification of insurance and ERM requirements, prior to cost negotiations for work under those contracts.

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Examples of administrative errors related to ERM calculations that are not related to actual claims and shall not be considered for waivers include, but are not limited, to the following...

- Incorrect workers compensation insurance classification (class) codes
- Incorrect rates, ratios, ballasts, and/or risk adjustments
- Incorrect exposure (payroll), losses, and/or grouping of claims by injury type

Examples of situations related to actual workers compensation claims that shall not be considered for waivers include, but are not limited, to the following...

- Claims that should be covered by workers compensation insurance
- Claims that roll up to the prime from uninsured or underinsured subs that were uninsured or underinsured at the time they were engaged by the prime
- Claims that, even if waived, would not result in an ERM of 1.30 or less

Examples of situations where claims causing an ERM to exceed the 1.30 cap may be considered for waivers and, if waived would result in an ERM of 1.30 or less, include the following (but must be proved through documentation)...

- Claims that should have been paid through one or more other entities (i.e. an employee involved in a motor vehicle crash with an uninsured/underinsured non-employee who is found to be at fault)
- Claims that roll up to the prime from subs that had workers compensation insurance at the time they were hired by the prime but allowed it to lapse during the employment period

Please inform your staff of these clarifications and contact our Division Staff Engineer if you have any questions.

JKL/rjj

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