

MICHIGAN
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION
FOR
PROMPT PAYMENT

FIN:SEA

1 of 2

C&T:APPR:KB:DBP:11-18-08
FHWA:APPR:11-18-08

Add the following subsection to Section 109, on page 111, of the Standard Specifications for Construction:

109.10 Prompt 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 said work. Release of payment from the Department for any work is confirmation that the Department has determined the work to have met the standards of satisfactory completion as defined below. If the prime Contractor has concerns about the satisfactory completion of subcontractor work items, this must be brought to the Engineers attention in advance of payment to the prime Contractor. This notice may give the prime Contractor the option to not release all subcontractor funds within the 10 calendar days specified. This requirement is also applicable to all sub-tier subcontractors and suppliers, and shall be made a part of all subcontracts and agreements.

This prompt payment provision is a requirement of 49 CFR 26.29 and does not confer third-party beneficiary right or other direct right to a subcontractor against the Department. This provision applies to both DBE and non-DBE subcontractors.

A. Satisfactory Completion. Progress and Partial payments for contract work are made based on this assessment; and satisfactory completion is defined for purposes of this prompt payment provision as:

1. Upon preliminary review, the Engineer finds the work completed in accordance with the contract, plans and specifications; and
2. Required paperwork, for Progress and Partial payments, including material certifications, payrolls, etc., has been received and reviewed by the Engineer.

The determination of whether work meets the standards of satisfactory completion is the responsibility of the Engineer and not the prime Contractor.

B. Less than full payment release. Any delay or postponement of payment from this time frame, or partial payment to a subcontractor, may occur only upon receipt of written approval from the Engineer.

C. Non-Payment Claims. All notifications of failure to meet prompt payment provisions shall be referred by the subcontractor to the prime Contractor and must be made in writing, with a copy to the project engineer. All notifications should be sent within 30 calendar days of the date the payment was to be received. The prime Contractor must respond in writing to the subcontractor, with a copy to the project engineer and the Engineer of Construction and

Technology, within 7 calendar days of receipt of the notification of failure to meet prompt payment provisions. Failure of the prime contractor to respond may result in sanctions. The subcontractor has the option of submitting a lien claim to the MDOT Contract Services Division in order to notify the project Surety of the non-payment issue. It is the responsibility of the Surety to ensure that all legitimate payments are made.

The prime Contractor must include in all subcontract agreements notice to subcontractors of their right to prompt payment, and of the Department's prohibiting prime Contractors from holding retainage from subcontractors under 49 CFR 26.29.

The prime Contractor must include in all subcontracts, language providing that the prime Contractor and Subcontractor will use an approved alternative dispute resolution process to resolve prompt payment differences. The arbitration of the dispute will be handled through a member of the American Arbitration Association, 1 Town Square, Southfield, Michigan (248-352-5500), or another third party agreed to by both the prime Contractor and the Subcontractor. The parties must agree on a mediator or arbitrator within 25 calendar days after a written complaint has been sent by the subcontractor. The cost of mediation or arbitration will be borne by the parties as determined by the mediator. Qualified costs of mediation, for certified DBE's, will be paid by the Department based on current procedures. The DBE must contact the Office of Business Development for information on current procedures and to receive reimbursement. Outcomes of the alternative dispute resolution will be provided to the Engineer within 10 days of the decision.

Copies of all documents related to prompt payment claims will be provided to the Engineer by the prime Contractor for inclusion in the project files.

Failure of the prime Contractor to comply with prompt payment provisions may result in sanctions. Sanctions may include, but are not limited to: withholding of estimates on projects where prompt payment violations are confirmed; reduction of prequalification ratings; and/or withdrawal of bidding privileges.