

## PROMPT PAYMENT

(1-6-1222A)

Subsection 108.01, paragraph 7 in the Standard Specifications is void and superseded by the following:

7. a. (1) The Contractor shall pay first-tier subcontractors within 20 calendar days of receipt of progress payments from the Department for work performed by the subcontractor.
- (2) The Contractor shall return any and all retainage to a subcontractor within 30 calendar days after the satisfactory completion of the work by the subcontractor.
- (3) The Contractor shall not withhold payments except for just cause and payment shall not be withheld, delayed, or postponed without first receiving written approval from the Department. All requests from the Contractor to withhold, delay, or postpone payment shall be submitted to the Department in writing, describing the reason for the request, within 10 calendar days of receiving knowledge of the cause that supports the request.
- b. The Contractor and the upper tier subcontractor(s) shall include language as a part of every subcontract that can be identified as a "Prompt Payment Clause". This "Prompt Payment Clause" shall stipulate:
  - (1) (i) Payment to first-tier subcontractors for work completed to date shall be made by the Contractor within 20 calendar days of receipt of progress payments from the Department for said work.
  - (ii) For lower-tier subcontracts the payment by any upper-tier subcontractor to a lower-tier subcontractor for work completed to date shall be made within 10 calendar days of receipt of progress payments from the upper-tier subcontractor for said work.
  - (2) The return of any and all retainage withheld by any upper-tier subcontractor shall be made within 30 calendar days after the satisfactory completion of the work by the lower-tier subcontractor.
  - (3) Subcontractors at any tier shall return to the Contractor or upper tier subcontractor, as the case may be, any and all overpayments that result from adjustments to measured and recorded quantities (as part of the preparation of subsequent progress payments or the final records) within 20 calendar days of receipt of written notice of the amount of overpayment.
  - (4) Subcontractors at any tier may not withhold from, delay, or postpone

payment to lower-tier subcontractors without just cause and the written approval from the Department. All requests from the upper-tier subcontractor to withhold, delay, or postpone payment shall be submitted to the Department in writing, through the Contractor, describing the reason for the request, within 10 calendar days of receiving knowledge of the cause that supports the request.

- c. The Contractor shall report all payments made to first-tier subcontractors on the date of payment using the prompt payment reporting system specified by the Department. Information on the prompt payment reporting system is available on the Department's website on the Contractor Information webpage. The Contractor shall record in the Department's prompt payment reporting system the amount of the payment, whether the amount paid was subject to withholding, the date of payment, and the name of the subcontractor to which the payment was made. The Contractor shall ensure it has or develops access to the reporting system prior to contract award.
- d. (1) The Contractor's failure to comply with this specification is a breach of this contract. Remedies for a breach of contract may include the Department withholding progress payments to the Contractor, terminating the contract, or applying remedies described elsewhere in the contract. Remedies shall be in the sole discretion of the Department and in no event shall a subcontractor have rights, or cause of action, against the Department under this Section.  
(2) The failure of any subcontractor to comply with applicable terms of this specification shall be communicated by the Contractor or upper-tier subcontractor to the subcontractor or lower-tier subcontractor, as the case may be, in writing and may result in the Department withholding subcontract approval for future work.