

Prompt Pay

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Small Business Development Conference

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Prompt Pay Regulation History

- Prompt Pay was Part of the 1999 DBE Regulations
 - Contractor must pay subcontractors within 30 days of completion of work. Regardless if they had been paid by MDOT
- Construction Industry Lobbied for Changes to US Congress and US DOT
 - US DOT changed DBE regulation in 2003
 - Pay subcontractors upon completion of work AND payment by MDOT

Prompt Pay Process

- Within 10 days of receiving payment contractor must make payment to Subcontractor
- NOTE: Work and paperwork should be complete or they should have not received payment from MDOT for the work

If Payment NOT Received

- Subcontractor should write a letter to the Contractor with a courtesy copy to the Project Engineer (recommended within 30 days)
- Contractor has seven days to reply
- Engineer should be monitoring this situation
 - If payment not paid and/or reply not received promptly
Engineer should take immediate action

American Recovery and Rehabilitation Act National Review Team's Findings

- DOT form 0164 is only required quarterly except on some projects
- No Assurances that Contractor's are paying Subcontractors Promptly
- No explanation or follow-up on what deductions taken on the form are for
- Retainage found in some contract documents
- MDOT Field Engineers not familiar with prompt pay requirements
- LPA engineers not familiar with prompt pay requirements

ARRA NRT Action Plan

- FHWA Complete the Prompt Pay Review
 - Completed
- MDOT Explore Changing the Requirement for 0164 from Quarterly to Shorter Period
 - Completed now 2124 and due every two weeks
- Advisory to Field Engineers on Prompt Pay and Commercially Useful Function to be Issued
 - Not Completed
- Training for Field Engineers both MDOT and LPA
 - Four classes so far and more to come

Prompt Pay Overview

- Reviewed 25 prime contracts from 2009
- Contract DBE Goals were on all projects
- 38 Subcontracts were reviewed
- 24 of those subcontracts had information on payments
- 105 payments tracked
- Anecdotal evidence gathered

Prompt Pay Review

What Did We Look At

- *Process Review Targeted Items*
- FHWA 1273
- Retainage Free
- Prompt Pay SP
- *Other Requirements*
- Form 1302A
- Cover Sheet
- Identification
- Value Items
- Signatures
- *Attachments* Appendix A, Notice to Bidder 03 NB 14, Notice of Requirement Affirmative Action to Ensure Equal Employment Opportunity, Appendix B

Results

Final Summary of Prompt Payment Process Review Subcontract Checklists

Description	Total Yes	Total No	Total Not Identified
Process Review Targeted Items			
FHWA 1273	8	28	2
Retainage Free	31	5	2
Prompt Pay SP	1	35	2
Other Items			
Form 1302A	28	7	3
Cover Sheet	31	5	2
Identification	34	2	2
Value	36	0	2
Items	36	0	2
Signatures	35	1	2
Attachments			
Appendix A	1	35	2
Notice to Bidder 03 NB 14	1	35	2
Notice of Requirement Affirmative Action to Ensure Equal Employment Opportunity	1	32	5
Appendix B	5	22	11

Findings

# of Days LATE	1 to 5	6 To 10	11 to 15	16 to 20	21+	On Time	Paid Early
# of Payments	40	23	3	3	20	7	9
%	38.10%	21.90%	2.86%	2.86%	19.05%	6.67%	8.57%
	65.72%				19.05%	15.24%	
	84.77%						

Action Plan

- MDOT and FHWA will work together to come up with what actions need to be taken
- Two things to look at:
 - How do we get Sub-contractor's paid?
 - MDOT is instituting a procedure requiring proof of payment to subcontractors before the next estimate will be paid.
 - What Happens to those who haven't paid their subs?
 - Team will be making recommendations on sanctions to contractors.
 - Next estimate will not be paid.

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QUESTIONS

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