



GUIDE TO PROMPT PAYMENT FOR NON-CONSTRUCTION SUBCONTRACTORS

In 2008, the prompt payment requirement (already in existence on state-funded construction contracts) was expanded to include state-funded non-construction contracts in excess of \$25,000 by agencies that are members of the Governor's Cabinet.

What does the prompt payment directive mean to subcontractors?

Subcontractors on contracts greater than \$25,000 can expect to receive payment for any undisputed amounts after the prime contractor has received a progress payment. Otherwise, a subcontractor can expect to receive written notice from the contractor as to why payment is being withheld.

What does the prompt payment directive mean to a Minority Business Enterprise (MBE) or Small Business Reserve (SBR) subcontractor?

MBE and SBR subcontractors have the remedies as those described above. In addition, agencies must notify the Governor's Office of Minority Affairs of any complaint of non-payment of subcontractors with MBE or SBR status.

What are the responsibilities of the prime contractor?

The prime contractor has the responsibility to:

- Pay a subcontractor an undisputed amount to which the subcontractor is entitled; OR
- Notify the subcontractor in writing and state the reason why payment is being withheld.
 - If payment is withheld, the prime contractor must provide a copy of the notice to the procurement officer.

What should I do if I am not being paid by the prime contractor?

The subcontractor must notify the procurement officer. It is also advisable to include the chief procurement officer and the MBE Liaison as well. All information should be provided in writing and include the following information:

- The name of the prime contractor from which payment has not been received;
- The project under which the dispute exists;
- The amount in dispute;
- An itemized description on which the amount is based; and
- If known, an explanation for any dispute concerning the payment not received.

I've sent my written notice of non-payment to the procurement officer. What happens now?

The procurement officer, or another agency representative, will contact the prime contractor to ascertain whether the amount withheld is an undisputed amount. If it is determined that part or the entire amount withheld is undisputed, the agency representative will instruct the prime contractor to pay the subcontractor the undisputed amount. The agency representative

is responsible for communicating the results of the discussions with the prime contractor with the subcontractor.

Are there any penalties to the prime contractor for failure to pay subcontractors undisputed amounts?

Yes. The State agency that issued the contract may, consistent with the contract terms:

- Withhold further payments to the prime contractor until payment to the subcontractor is verified;
- Suspend all or some of the contract work;
- Pay or otherwise cause payment of the undisputed amount to the subcontractor;
- Place a payment for an undisputed amount in an interest-bearing escrow account; or
- Take other or further actions as appropriate to resolve the withheld payment.

What is an “undisputed amount”?

An “undisputed amount” means an amount owed by a contractor to a subcontractor for which there is no good faith dispute. This includes any retainage withheld, and any amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

What agencies are members of the Governor’s Cabinet?

The 23 member agencies of the Governor’s Cabinet are:

Aging
Agriculture
Budget & Management
Commerce
Disabilities
Education
Environment
Executive Department
General Services
Health
Higher Education Commission
Housing & Community Development
Human Resources
Information Technology
Juvenile Services
Labor
Military
Natural Resources
Planning
Public Safety & Correctional Services
State Police
Transportation
Veterans Affairs