

REQUIRED CONTRACT PROVISION FEDERAL-AID CONTRACTS

PAYMENT TO SUBCONTRACTORS

1. **Definitions.** For purposes of this Contract Provision, the following definitions shall apply:
 - a) "Local Public Agency (LPA)" means any city, county, township, municipality, or other political subdivision that may be empowered to cooperate with the State transportation department (KDOT) in roadway matters.
 - b) "Subcontract" means a contract for supplies, services or both supplies and services between a Contractor and subcontractor at any tier.
 - c) "Subcontractor" means an entity that provides the Contractor supplies, services or both to complete the Contract at any tier.
2. **Progress Payments.**
 - a) The Contractor shall pay Subcontractors for their work within ten (10) calendar days after receiving payment from the LPA for approved subcontract work.
 - b) Within fifteen (15) calendar days after receiving payment from the LPA and for each subcontract, submit to the LPA certification containing the following representations:
"I certify that the Contractor received payment from the LPA on _____ and, within ten (10) calendar days after this date, paid the Subcontractors named below for work completed on or before the payment voucher's 'Paid to Date'. I also certify that we have no subcontract provision that delays subcontractor retainage payments until the project's final acceptance or final payment in compliance with the Contract Documents." (Signed by the Contractor's representative)
3. **Retainage.**
 - a) **BONDED SUBCONTRACTORS.** Withhold from bonded Subcontractors no greater percentage of retainage that the LPA withholds from the Contractor. If retainage is a lump sum amount, calculate the percentage the lump sum amount bears to the contract amount earned to date and use this percentage for Subcontractor's retainage. Pay reductions in bonded subcontractor's retainage within twenty (20) calendar days after receiving retained funds from the LPA. Pay each bonded Subcontractor the balance of its retainage within twenty (20) calendar days after receiving payment from the LPA for the balance of all that subcontractor's work. Thus, a subcontract shall contain no provision allowing the Contractor to delay subcontractors' retainage payments until the project's final acceptance or final payment.
 - b) **UNBONDED SUBCONTRACTORS.** Withhold from unbonded Subcontractors the percentage of retainage the Contractor feels is necessary to protect itself. Withhold this percentage until the unbonded subcontractor has completed all its subcontract work and has furnished an affidavit that the Subcontractor has paid all indebtedness for supplies, materials and labor used in performing its subcontract work. After the unbonded Subcontractor has furnished this affidavit, pay all retainage within the next seven (7) calendar days. Thus, a subcontract shall contain no provision allowing the Contractor to delay Subcontractors' retainage payments until the project's final acceptance or final payment.
4. **Good Cause Exception.** If the Contractor has "good cause" to delay or withhold a Subcontractor's progress payment or retainage, the Contractor shall identify the cause for delayed or withheld payment, the payment amount and the anticipated payment date, providing this information in the certification of payment letter. If the Engineer determines the Contractor has "good cause" for delayed or withheld payment, the Engineer will not impose sanctions on the Contractor. A Contractor's lack of funds to pay is not "good cause" for delayed or withheld payment.

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SANCTIONS FOR FAILURE TO PAY PROMPTLY

1. If a Contractor fails to comply with the payment requirements of "Payment to Subcontractors", without "good cause", the Contractor shall pay an interest penalty to the affected subcontractor. The interest penalty shall be computed at the rate of 1.5% per month on the amount of money owed the Subcontractor. The interest assessment will begin on the day after payment is due under "Payment to Subcontractor" and will continue until the Contractor has paid the amount of money owed the Subcontractor.
2. If the Contractor fails to comply with the certification requirements of "Payments to Subcontractors", the LPA may impose liquidated damages of \$50.00 per calendar day per subcontractor for each day the certification is late.
3. If a Contractor fails to comply with the payment requirements, without good cause, or repeatedly fails to comply with the certification requirements, the KDOT may adjust a Contractor's qualification rating, suspend a Contractor from bidding or debar a Contractor from bidding.
4. For each violation of "Payments to Subcontractors" a Contractor may receive one or more of the sanctions provided.