

Prompt Pay REQUIREMENTS



NDDOT Standard Specifications for Road and Bridge Construction requires prime contractors to pay subcontractors within 20 days of receiving NDDOT's progress payment.

Q: On what authority can NDDOT require me to pay within 20 days of my being paid?

A: CFR §26.29 requires NDDOT to assure Prompt Pay Mechanisms on all contracts. NDDOT's Standard Specifications Section 109.4D provides this assurance. The NDDOT will apply the prompt payment procedures to all tiers of subcontracts.

Q: How much will the NDDOT retain from the prime contractor?

A: The NDDOT will withhold retainage of 2 percent from all prime contractors.

Q: How is a prime contractor paid for work on NDDOT jobs?

A: NDDOT pay prime contractors as stated in the Standard Specifications for Road and Bridge Construction. Section 109, Measurement and Payment, provides the project engineer and the prime contractor with guidance on measurements,

weights, materials, etc. to be considered as the prime contractor's work progresses. NDDOT project engineers review the prime contractor's progress and prepare progressive estimates based on the satisfactory completion of the work. Progress payments made to the prime contractor are based on the project engineer's estimates.

Q: How much may I retain from my subcontractors?

A: All prime contractors may hold retainage of no more than 2 percent of the subcontracted amount.

Q: When am I required to pay retainage owed to my subcontractors?

A: Prime contractors must pay all retainage owed to the subcontractor for satisfactory completion of the work within 20 days after NDDOT's payment to the prime contractor. The requirement to release retainage applies to all tiers of subcontracts.

Q: When is a subcontractor's work "satisfactorily complete?"

A: The Engineer will determine satisfactory completion of the subcontractor's work. The Department considers satisfactory completion of subcontractor work as the accomplishment of all the tasks included in the subcontract, documented in accordance with the contract, and paid by the Department.

Q: How long can I wait to pay my subcontractors?

A: Within 20 calendar days of receiving NDDOT's payment, the prime contractor must pay subcontractors their portion of the payment less applicable retainage. Subcontractors must also pay their lower tier subcontractors within 20 calendar days of being paid. This applies to all tiers of subcontracting.

Q: What should a subcontractor do if the prime contractor does not make payment within 20 days after they received NDDOT payment?

A: If the prime contractor does not make prompt payment,

the subcontractor should notify the project engineer. A subcontractor who doesn't have the project engineer's contact information may contact the District Office in which the project is located.

Q: Under what circumstances is a prime contractor allowed not to pay a subcontractor within 20 days?

A: The prime contractor may withhold payment to a subcontractor for just cause. If withholding payment from a subcontractor, the prime contractor must immediately provide written notification to the subcontractor and the project engineer with the reasons for withholding the payment. If the Engineer determines the Contractor is withholding payment with just cause, interest will not accrue.

Q: What happens if the prime contractor is withholding payment to a subcontractor without just cause?

A: When the project engineer determines the prime contractor is withholding payment without cause, interest will begin to accrue beginning on the 21st calendar day after the Contractor's receipt of payment from NDDOT. North Dakota law (NDCC 13-01.1-02) provides the rate at which interest will accrue.

Q: How will the online system help me pay subcontractors promptly?

A: Contractors who use the Certification & Compliance System (CCS) will receive an email from the system when NDDOT progress payments are issued. Contractor staff will then enter payment amounts made to subcontractors. The system will track payments, assure that the timeframes are met, and allow subcontractors to confirm the receipt of their payments.



Q: Can final documentation delay payments to subcontractors?

A: Yes. NDDOT Specifications require documentation to be submitted to the project engineer prior to progressive payments being made to subcontractors. Required documentation may include certified payrolls; materials certification; haul road releases; pit receipts of payment; pit releases; night watch person reports; warranties; operating manuals; product literature; verification of final quantities; DBE participation; proof of payment for material bills and wages; and other documents required by the contract for the subcontractor's work.

Q: Are there other benefits for using CCS?

A: Contractors who use CCS will no longer need to send mail, faxes, or emails to submit payment paperwork. All submissions will be made online. Contractors will have access to all documents submitted in their online accounts. All projects awarded to a prime contractor will be stored in and can be accessed from the same location.

The North Dakota Department of Transportation (NDDOT) ensures statewide compliance with the NDDOT federal non-discrimination and affirmative action obligations as a condition of continued federal for highway construction. NDDOT promotes opportunities for socially and economically disadvantaged individuals to participate on federally funded highway projects.

It is the policy of the NDDOT to ensure compliance with Title VI of the Civil Rights Act of 1964, related statutes and regulations to the end that no person shall be excluded from participation in or be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance from the U.S. Department of Transportation on the ground of race, color, sex, age, disability, or national origin.

The guidance explained in this brochure is detailed in the NDDOT Standard Specifications for Road and Bridge Construction. Always refer to the NDDOT Standard Specifications for specific requirements.

Certification and Compliance System: <https://dotnd.diversitycompliance.com/>
NDDOT Standard Specifications: <http://www.dot.nd.gov/dotnet/supplspecs/StandardSpecs.aspx>

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