

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION
49 CFR 26.29**

PROMPT PAYMENT AND RETAINAGE

PROMPT PAYMENT

The prime contractor must pay the subcontractor the amount due for work done or services rendered, less applicable retainage not to exceed 2%, from the current progress payment within 20 calendar days of receipt of payment from the department or owning agency, unless the prime contractor has just cause to not make payment. If the prime contractor withholds payment from the subcontractor, the prime contractor must immediately notify the subcontractor and the project engineer, in writing, the reasons for withholding payment. The subcontractor may also notify the engineer if prompt payment has not been made.

If the department or owning agency determines the prime contractor is withholding payment without just cause, interest will accrue at the rate provided by NDCC §§13-01.1-02. The prime contractor is responsible for paying the accrued interest starting on the 21st calendar day after the prime contractor receives payment. If the prime contractor is withholding subcontractor payments without just cause the department or owning agency may, suspend all payments due to the prime contractor, until the subcontractor is properly paid and the contractor agrees to make payments as specified. If the department or owning agency determines there is just cause for withholding payment, interest will not accrue on the amount due.

These prompt payment procedures apply to all tiers of subcontracts and is based on 49 CFR 26.29.

RETAINAGE

If the prime contractor elects to use retainage on subcontract work, prompt payment shall also include the release of retainage monies that have been withheld from the subcontractor, within 20 days after the subcontractor's work is satisfactorily completed. Non-bonded subcontractors must submit proof of payment for all material bills and wages to the prime contractor before the prime contractor is required to pay the retainage. If retainage is not released as per this provision, interest will accrue at the rate provided by NDCC §§13-01.1-02 beginning the 21st calendar day after the subcontractor's work is satisfactorily completed.

The department or owning agency will determine whether the subcontractor's work has been "satisfactorily completed." A subcontractor's work is satisfactorily completed when all of the tasks called for in the subcontract have been accomplished, documented in accordance with the contract and paid for on a pay estimate. To be satisfactorily complete a subcontractor must provide all necessary final documentation required in the contract. Final documentation may include, but is not limited to: certified payrolls, materials certification, haul road releases, pit receipts of payment, pit releases, night watchman reports, warrantees, operating manuals, product literature, and verification of final quantities, and the DBE Certification (SFN 14268).

The release of retainage applies to all tiers of subcontracts.

NO CIRCUMVENTION

On federal-aid contracts the contractor shall not include any provision in its subcontract that would circumvent 49 CFR Part 26.29.