

Non-Payment and Prompt Pay

Recordkeeper Job Aid

Construction Division

Construction Recordkeeper Job Aid

Overview

TxDOT Standard Specifications, Article 9.9., "Payment Provisions for Subcontractors," requires all prime contractors to pay each subcontractor for satisfactory performance under the subcontract no later than 10 days from receipt of each payment the prime contractor receives from TxDOT. Prompt payment is required for both state and federally funded projects.

The goal of this document is to provide information regarding the Prompt Payment requirements and the resources for nonpayment complaints when received related to a project.

Resources

- Prompt Pay [49 CFR §26.29](#)
- TxDOT Standard Specifications, Article 9.9., "Payment Provisions for Subcontractors" (2014 and 2024 spec books)
- *Construction Contract Administration Manual* (CCAM), Chapter 11, [Section 4, "Prompt Payment"](#)
- [Prompt Payment Requirements for Design-Bid-Build Highway Contracts](#)
- [SiteManager Checklist Events, Key Dates and Critical Dates Guidance Document](#)

Applications Used

- SiteManager
- ProjectWise
- TxDOT DMS

Forms

- [Form 2177](#), "Prompt Payment Certification"
- [Form 2177A](#), "Prompt Payment Audit" (internal access only)

Reports

- [SiteManager Reports](#) (internal access only)
 - Contractor's Estimate Package
 - Contract Line Items
- [Contract Bonding](#) Tableau dashboard

Prompt Payment and Nonpayment Complaints

The prime contractor and subcontractor perform work through the estimate cycle. The TxDOT inspector verifies the work as acceptable and submits payment for processing. The work performed is paid through the monthly estimate cycle. The prime contractor receives payment around the 10th of the month following the month in which the work was performed. The prime contractor then has ten days from receipt of payment to pay subcontractors, unless a dispute is identified. Subcontractors then have ten days from receipt of payment to pay their 2nd tier subcontractors, unless a dispute is identified. If payment is not received, the subcontractor can notify the payment bonding company and the TxDOT office managing the project. If the complaint involves a DBE subcontractor, the recordkeeper should notify the District DBE Coordinator, who may reach out to the Civil Rights Division for further guidance.

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Once a nonpayment complaint is received for a project, review the following items.

1. Verify the Department has approved the work in question and that the prime contractor has received payment for the work performed by reviewing the most recent Estimate Package or the Contract Line Items report.
2. Identify whether the subcontractor has contacted the prime contractor and its payment bond surety to attempt to resolve the issue.
3. If the subcontractor was unable to resolve the issue after outreach to the prime and the payment surety, they must submit a written complaint to the Area Engineer, including evidence of their efforts to resolve the issue.
4. Review CCAM, Chapter 11, Section 4 regrading Subcontractor and Materials Supplier Non-Payment Notices and Contractor Compliance to determine if a valid dispute exists and for additional steps to follow regarding nonpayment complaints.

Review TxDOT DMS monthly to identify any DBE subcontractors that indicate nonpayment or payment discrepancies.

Prompt Payment Certification, Form 2177

The prime contractor must submit a completed Form 2177 the month after they receive payment for the work identifying they have paid their subcontractors for their work. Any disputes should be recorded on Form 2177. Review the form to verify it is received by the due date and any payments withheld are based on a valid dispute.

File the received form within ProjectWise according to the Project File Index.

Record receipt of the monthly Form 2177 in the SiteManager Checklist Events in accordance with the SiteManager Checklist Events, Key Dates and Critical Dates Guidance Document.

Prompt Pay Audit, Form 2177A

To ensure appropriate means of enforcing the requirements of Prompt Pay, conduct a minimum of one audit per quarter per project. The audits are to be conducted on a calendar year basis starting January 1. Use Form 2177A to complete the audit. Once completed, file the form in ProjectWise according to the Project File Index.

Record completion of the audit process and Form 2177A in the SiteManager Checklist Events in accordance with the SiteManager Checklist Events, Key Dates and Critical Dates Guidance Document.

If the prime contractor fails to comply with any component of the Prompt Pay requirements included in the contract, escalate the issue to the Area Engineer. Ensure that the Area Engineer is aware of any issues concerning prompt payment related to the contract. Ensure that the District DBE Coordinator is aware of any issues concerning prompt payments to DBE contractors on the project. The Area Engineer may take actions including suspending work, withholding all or a portion of the estimate, withholding project acceptance, placing the prime contractor in default for breach of contract, or other actions deemed appropriate.