

SUPPLEMENTAL SPECIFICATION**AMENDMENT TO SECTION 109 -- MEASUREMENT AND PAYMENT****AMENDMENT TO SUBSECTION 109.09 – PAYMENTS TO SUBCONTRACTORS****109.09 Prompt Payment to Subcontractors.–**

The Prime Contractor shall pay all Subcontractors for the work performed no later than 21 calendar days from the date the Prime Contractor received payment from the Department for said work, including materials in accordance with 109.07 and/or 109.08 paid for in the progress payments. Subcontractors, ~~at any tier,~~ are required to pay their Subcontractors and/or material suppliers, within 21 calendar days from the date they receive payment for satisfactory work performed or supplies received. This Prompt Pay requirement shall be made part of all subcontracts and agreements.

If the Prime Contractor believes that any portion of the payment should be withheld from the Subcontractor, the Prime Contractor shall notify the NHDOT Contract Administrator, ~~or Resident Engineer,~~ in writing, prior to the estimate being processed. The NHDOT Office of Federal Compliance shall be made part of this notification. The NHDOT may withhold payment for the portion of work in dispute pending resolution.

This prompt payment provision is a requirement of 49 CFR 26.29 and does not confer third-party beneficiary right or other direct right to a Subcontractor against the Department. This provision applies to both DBE and non-DBE Subcontractors.

~~A. Satisfactory Completion Work Performed. – Progress and Partial payments for contract work are made based on this assessment; and satisfactory completion is~~ Satisfactory work performed shall be defined for purposes of this prompt payment provision as:

1. Upon review, the Engineer finds the work completed in accordance with the contract, plans and specifications, and;
2. Required paperwork, for Progress and Partial payments, including material certifications and payrolls, has been received.

The determination of whether work meets the standards ~~of satisfactory completion set forth above~~ is the responsibility of the Engineer. If the Subcontractor becomes insolvent after ~~satisfactory completion of its obligations it~~ satisfactorily performs work as defined above but before payment is due, the obligation to pay is not extinguished.

The Pprime Contractor must include, in all subcontract agreements, notices to sSubcontractors of their right to prompt payment, and of the Department's policy prohibiting Pprime Contractor's from holding retainage from Ssubcontractors under 49 CFR 26.29.

Failure of a Prime Contractor, ~~s or a Subcontractor (any tier) or material supplier~~ to comply with these prompt payment provisions may result in sanctions.

Non-Payment Claims. All notifications of failure to meet prompt payment provisions shall be referred by Ssubcontractors, in writing, to the NHDOT Office of Federal Compliance with a copy supplied to the respective Contract Administrator/~~Resident Engineer~~.

Payment Certifications. ~~Any~~ The Prime eContractor or any Subcontractor who receives payment for work ~~that was performed by a subcontractor (any tier), and~~ or materials ~~supplied, (specifically supplied to the project in excess of \$10,000)~~ shall submit a "Monthly Prompt Pay Certification," OFC Form 18, to the NHDOT Office of Federal Compliance no later than the 10th calendar day of each month.