

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
CONSTRUCTION DIRECTIVE MEMORANDUM**

GENERAL SUBJECT: Guidelines for Prompt Payment **NUMBER:** CD-2005-4
DATE: March 22, 2005

SPECIFIC SUBJECT: Prompt Payment of Subcontractors by
Prime Contractors **SUPERSEDES:** CD-2000-13
**SUNSET/
EXPIRES:** March 22, 2010

Original with signature on file in the office of the
Scheduling and Contract Division

W. BYRON COBURN, JR., P.E.
SCHEDULING & CONTRACT ENGINEER

Purpose – The purpose of this memorandum is to clarify the obligation for prompt payment of subcontractors by Prime Contractors as required by the Specifications and the Code of Virginia, as well as the Department's position and responsibility when payment disputes arise.

DIRECTED TO - DISTRICT ADMINISTRATORS

In order to assure prompt payment of funds owed to subcontractors by prime Contractors the following guidelines are issued in accordance with Article 2.1 of Chapter 7 of Title II of the Code of Virginia (Virginia Procurement Act),

1. The Contractor is obligated to take one of the two following actions within 7 calendar days after receipt of amounts paid to the Contractor by the Department for work performed by the subcontractor under that contract:
 - a. Pay the subcontractor for their proportionate share of the total payment received from the Department attributable to the work performed by the subcontractor under that contract per Section 109 of the Specifications; or
 - b. Notify the Department and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

When the Department provides payment for work completed and detailed on the monthly progress estimate, the Contractor shall fully compensate any subcontractors for that portion of the work for which they were responsible within 7 calendar days after receipt of payment. If the Contractor withholds any funds as part of his agreement with the subcontractor to ensure satisfactory compliance and completion of the specified work and the subcontractor successfully achieves the specified work as verified by payment from the Department to the Contractor, the Contractor shall make full payment (including any retainage, etc.) to the subcontractor or supplier within 7 calendar days after receipt of payment from the Department. Payment to subcontractors by the prime

Contractor in no way relieves the Contractor of his responsibility for the work in accordance with Sections 107.16 and 108.01 of the Specifications.

2. The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor that remain unpaid after 7 calendar days following receipt by the Contractor of payment from the Department for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.b. of this section. Should a subcontractor advise the Department of a late payment issue in accordance with Section 109.10 of the Specifications, the Department will investigate the complaint by obtaining the necessary documentation and facts associated with the subcontractor's claim. If the results of this investigation indicate that the subcontractor was not paid within 7 calendar days of satisfactorily completing its portion of the work, except as allowed by subsection 1.b. of this section, the Department will notify in writing the Contractor and subcontractor of its findings and instruct the Contractor to pay interest to the subcontractor in accordance with the provisions of Section 107.01 of the Specifications. Unless otherwise provided under the terms of the contract, interest shall accrue at the rate of one percent per month, except for the amounts withheld. Notification of failure by the Contractor to make prompt payment to the subcontractor as hereinbefore provided will result in the Department notifying in writing the Contractor's bonding company of this Specification and Code violation.
3. The Contractor is required to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.
4. The Contractor's obligation to pay an interest charge to the subcontractor(s) pursuant to the conditions described in the Code of Virginia and the Specifications will not be construed to be an obligation of the Department. No modification to the contract or claim for damages shall be made for the purpose of providing reimbursement for such interest charge.
5. Should either the Prime Contractor or subcontractor advise the Department of a non-payment issue, the Department shall use the procedures as stipulated in CD-99-12. However, should the issue involve a DBE Contractor, both the Scheduling and Contract and EO Divisions shall be notified so as to investigate, as appropriate.

Your continued cooperation in the administration of this aspect of the Department's construction program is appreciated.

DL: wskjr

CC: Mr. Philip A. Shucet
Mr. Donald R. Askew, P.E.
Commissioners Staff
Division Administrators
District Construction Engineers
District Maintenance Engineers
District Civil Rights Managers
District Contract Managers
Residency Administrators
Assistant Resident Engineers
Construction Managers
Project Inspectors
Federal Highway Administration
American Concrete Pavement Association
Virginia Ready-Mixed Concrete Association

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Precast Concrete Association of Virginia
Virginia Department of Minority Business Enterprise
Virginia Transportation Construction Alliance
Old Dominion Highway Contractors Association
Virginia Asphalt Association