

MBE / WBE Advisory Committee Contract Enhancements

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Financial Enhancements Implemented

- ▶ Partial Payment
 - ▶ 2/04/15
- ▶ Release of Retainage
 - ▶ 2/04/15
- ▶ Mobilization Prompt Payment Program
 - ▶ 10/19/15
- ▶ Quick Pay Program
 - ▶ ABIA Terminal Expansion Project

Partial Payment Program

- ▶ In instances when payment is withheld to the prime contractor due to issues unrelated to a subcontractors work, the subcontractor may request payment for approved work performed by the subcontractor. If the request is approved, the City will approve payment from the prime contractor to the subcontractor.
- ▶ Offered on all construction contracts
- ▶ <http://www.austintexas.gov/page/bid-docs> -- Section 00700, General Conditions, 14.4.3

Partial Payment Program

Contract Language

- ▶ SUBCONTRACTORS MAY REQUEST PARTIAL PAYMENT WHEN THE OWNER WITHHOLDS PAYMENT OF AN INVOICE TO THE CONTRACTOR FOR ANY REASON LISTED IN SECTION 14.4.1. IF PAYMENT IS WITHHELD BY THE OWNER, THE CONTRACTOR SHALL NOTIFY ALL AFFECTED SUBCONTRACTORS WITHIN TWO (2) WORKING DAYS OF NOTICE THAT PAYMENT IS BEING WITHHELD. UPON NOTIFICATION, SUBCONTRACTORS MAY SUBMIT A FORMAL WRITTEN REQUEST FOR PARTIAL PAYMENT TO THE CONTRACTOR AND OWNER. IF DIRECTED BY THE OWNER, THE CONTRACTOR SHALL WITHIN THREE (3) WORKING DAYS RESUBMIT TO THE OWNER AN INVOICE FOR THE SAME PERIOD THAT INCLUDES ONLY THE WORK PERFORMED BY THE REQUESTING SUBCONTRACTORS DURING THIS PERIOD. THE OWNER WILL REVIEW THIS RESUBMITTED INVOICE IN ACCORDANCE WITH SECTION 14.3.1. UPON RECEIPT OF PAYMENT FOR THE RESUBMITTED INVOICE, CONTRACTOR SHALL PAY THE SUBCONTRACTOR WITHIN TEN (10) CALENDAR DAYS IN ACCORDANCE WITH SECTION 6.4.7.

Partial Payment Program

Process Steps

1. Will only be approved when there are no issues relating to Subcontractor's work. If an invoice is submitted for three scopes of work and the first two are approved, but the third one is not, the first two will be paid and the third will not be paid until it is approved by the City.
2. Contractor will submit invoice for payment to the City. To confirm payment, a subcontract can go to Austin Finance Online or contact the project manager assigned to the project.
3. If Payment is withheld, Contractor is required to inform all affected subcontractors in writing, within two (2) working days of receiving notice, that payment is being withheld by the City.
4. When Subcontractor has received notification from Contractor, Subcontractor may submit a formal written request for Partial Payment to Contractor and the City.
5. If the City approves request, Contractor must resubmit an invoice, *within three (3) working days*, for the same period to include only the work performed by Subcontractor(s) requesting Partial Payment, in accordance with Section 14.3.1.
6. Within ten (10) calendar days of Contractor receiving payment of resubmitted invoice, Contractor shall pay Subcontractor(s) in accordance with Section 6.4.7.
7. At any time, Subcontractor may contact the Capital Contracting Office (CCO), the project manager, or the Small and Minority Resources Department (SMBR) for assistance with Partial Payment process. All three of the parties will work to resolve any issues. The project manager will approve payment.

Release of Retainage

- ▶ Allows subs to be paid for all work performed once the warranty period has expired for their specific scope of work, instead of having to wait until the end of the project warranty period when the overall project retainage is released to the prime
- ▶ Applies to all construction contracts
- ▶ Eligibility contingent upon work sequence and degree that subs scope is tied to remaining work on project
- ▶ <http://www.austintexas.gov/page/bid-docs> -- Section 00700 General Conditions, 14.1.5

Release of Retainage Contract Language

▶ WHERE THE ORIGINAL CONTRACT AMOUNT IS LESS THAN \$400,000, OWNER WILL PAY CONTRACTOR TOTAL AMOUNT OF APPROVED APPLICATION FOR PAYMENT, LESS TEN PERCENT (10%) OF AMOUNT THEREOF, WHICH TEN PERCENT (10%) WILL BE RETAINED UNTIL FINAL PAYMENT, LESS ALL PREVIOUS PAYMENTS AND LESS ALL OTHER SUMS THAT MAY BE RETAINED BY OWNER UNDER THE TERMS OF THIS AGREEMENT. WHERE THE ORIGINAL CONTRACT AMOUNT IS \$400,000 OR MORE, OWNER WILL PAY CONTRACTOR TOTAL AMOUNT OF APPROVED APPLICATION FOR PAYMENT, LESS FIVE PERCENT (5%) OF AMOUNT THEREOF, WHICH FIVE PERCENT (5%) WILL BE RETAINED UNTIL FINAL PAYMENT, LESS ALL PREVIOUS PAYMENTS AND LESS ALL OTHER SUMS THAT MAY BE RETAINED BY OWNER UNDER THE TERMS OF THIS AGREEMENT. IN EITHER CASE, IF THE WORK IS NEAR COMPLETION AND DELAY OCCURS DUE TO NO FAULT OR NEGLECT OF CONTRACTOR, OWNER MAY PAY A PORTION OF THE RETAINED AMOUNT TO CONTRACTOR. CONTRACTOR, AT OWNER'S OPTION, MAY BE RELIEVED OF THE OBLIGATION TO COMPLETE THE WORK AND, THEREUPON, CONTRACTOR SHALL RECEIVE PAYMENT OF THE BALANCE DUE UNDER THE CONTRACT SUBJECT TO THE CONDITIONS STATED UNDER PARAGRAPH 15.2. A SUBCONTRACTOR MAY SUBMIT A WRITTEN REQUEST TO THE CONTRACTOR AND PROJECT MANAGER REQUESTING RELEASE OF RETAINAGE FOR WORK BY THE SUBCONTRACTOR THAT HAS BEEN COMPLETED AND APPROVED. THE PROJECT MANAGER WILL EVALUATE THE REQUEST AND IF IT IS APPROVED, THE PROJECT MANAGER WILL REQUEST THE CONTRACTOR TO INCLUDE THE REQUEST FOR RELEASE OF AN APPROPRIATE AMOUNT OF RETAINAGE IN THE NEXT PAY APPLICATION.

Release of Retainage Contract Language Continued

- ▶ 14.1.6 APPLICATIONS FOR PAYMENT SHALL INCLUDE THE FOLLOWING DOCUMENTATION:
 - . 1 UPDATED PROGRESS SCHEDULE;
 - . 2 MONTHLY SUBCONTRACTOR REPORT;
 - . 3 ANY OTHER DOCUMENTATION REQUIRED UNDER THE SUPPLEMENTAL GENERAL CONDITIONS.

Release of Retainage Process Steps

1. Subcontractor should verify participation eligibility in Release of Retainage Program with Project Manager and Contractor. Eligibility will be contingent upon the sequence of work and the degree the Subcontractors scopes are tied to work remaining on the project.
2. If eligibility is verified by Project Manager, Subcontractor may only request Release of Retainage after completion and approval of work.
3. Subcontractor will submit written request for Release of Retainage to Contractor and Project Manager.
4. Request will be evaluated by Project Manager.
5. If approved, Project Manager will request Contractor to include Subcontractor's appropriate retainage amount to be included in next pay application.
6. Contractor must include the following documents in pay applications: Contractor's Updated Progress Schedule, Contractor's completed Monthly Subcontractor Expenditure Report (SubK), any other documentation required under the Supplemental General Conditions.
7. At any time, Subcontractor may contact the Capital Contracting Office, Small and Minority Business Resources, or the Project Manager for assistance with Release of Retainage process.

Mobilization Prompt Payment Program

- ▶ The goal of the Mobilization Prompt Pay Program (MPP) is to provide prime contractors and subcontractors quicker access to payments by allowing prime contractors the ability to submit pay applications twice a month during critical mobilization phases on the contract (as submitted by the prime contractor and approved by the City), allowing subcontractors to invoice twice per month.
- ▶ MPP will be offered on all City of Austin construction greater than \$2 million.
- ▶ <http://www.austintexas.gov/page/bid-docs> -- Section 00810 Supplemental General Conditions

MPP Contract Language

- ▶ **INSTRUCTION BOX:** For construction projects with a cost estimate greater than \$2,000,000 include the Mobilization Prompt Payment Program by including the following paragraph 1.57 (renumber as needed); otherwise delete. Also add edits to 2.4.2.1 and 14.1.1.
- ▶ *Add the following definition:*
 - “**1.57 Mobilization Prompt Payment Program** - The Owner’s Mobilization Prompt Payment Program, will allow bimonthly payments during “critical mobilization stages” as specified in the Contract Documents by the Prime Contractor. The Mobilization Prompt Payment Program will only apply to projects with a construction cost of greater than \$2,000,000.”
- ▶ *Add the following modification to the end of 2.4.2.1:*
 - .1 The Baseline Schedule and schedule submittals for Projects in the Mobilization Prompt Payment Program, must identify periods of “critical mobilization.” The periods of critical mobilization will include the first two months of the Contract Time and additional periods identified by the Contractor and approved by Owner when peak Subcontractor mobilization will occur.

MPP Contract Language continued

- ▶ **14.1 Application for Progress Payment:** Delete 14.1.1 and replace with the following (changes to the original text are identified by underling):

“14.1.1 No more often than once a month, unless authorized as part of the Mobilization Prompt Payment Program, CONTRACTOR shall submit to Owner's Representative for review a completed and executed Application for Payment, in a form acceptable to OWNER, covering the Work completed as of the date of the Application and not previously paid and accompanied by such supporting documentation as required by the Contract Documents.

- ▶ Add the following .1:

.1 - Mobilization Prompt Payment Program. During critical mobilization periods, as identified by the CONTRACTOR and as approved by OWNER in accordance with 00700 2.4.2.1 of this Contract, CONTRACTOR shall submit bi-monthly Applications for Payment. The additional Pay Applications will include any costs accrued during the periods of critical mobilization. The Program will allow the CONTRACTOR and Subcontractors to invoice for costs as they are accrued during periods of critical mobilization. The CONTRACTOR shall submit bi-monthly invoices to the OWNER for such costs. The CONTRACTOR shall pay Subcontractors for costs within 10 days of receipt of payment from OWNER.

MPP Process Steps

1. Contractor identifies period of critical mobilization and submits them to the Project Manager for approval.
2. Project Manager, on behalf of the owner, approves the critical mobilization periods.
3. During such periods, Contractor will submit bimonthly pay applications to the City. Bimonthly pay applications should include costs accrued by Contractor and Subcontractor(s).
4. Upon receipt of payment from the City, Contractor must pay Subcontractor(s) within ten (10) days, in accordance with the contract.
5. At any time, Subcontractor may contact Capital Contracting Office (CCO), SMBR, and/or Project Manager for assistance with Mobilization Prompt Pay process.

Quick Pay Program

- ▶ Allows subcontractors to be paid within 10 days of work being accepted and approved by the City. The subcontractor invoices the prime contractor when their work is complete and the prime contractor pays the subcontractor when it is approved by the project manager or the construction inspector, depending on the project specifications.
- ▶ Available to all businesses that are certified by the City of Austin's Small & Minority Business Resources (SMBR) department as MBEs, WBES, DBEs, or SBEs on all (eligible) Alternative Delivery Method construction contracts (Design Build and Construction Manager At-Risk).

Quick Pay Program Contract Language

- ▶ Quick Pay Program - An Owner's program which will require the CM to pay Owner-designated Subcontractors, who are participating in the Quick Pay Program ("Program Subcontractors"), from a Quick Pay Program allowance, within ten (10) days of approval of an acceptable invoice from the CM for satisfactory completion of a portion of the Work by a Program Subcontractor and the Owner's inspection of the Work, regardless of whether the CM has submitted a pay application or been paid by Owner for such portion of the Work. The Quick Pay Program allowance is to be funded by the Owner for an amount equal to the total amount of the Program Subcontractors' subcontract amount in each GMP or Work Package or an amount authorized by the Owner.

Quick Pay Program Contract Language Continued

- ▶ A Program Subcontractor must be approved by the Owner to participate in the Quick Pay Program and must be a City certified MBE/WBE/DBE/SBE firm. The Quick Pay Program allowance (“Program Allowance”) will be included in the Work Packages and Partial and Final GMP as a funding source for Quick Pay Program payments and will act as a revolving line of credit account to be used to temporarily fund payments to Program Subcontractors for completed and accepted Work by the Owner, subject to periodic reimbursement of the Program Allowance in the monthly payment process with a reconciliation of the Program Allowance and Contract Amount at Final Payment.”

Quick Pay Program Process Steps

1. City of Austin SMBR Department and Construction Manager (CM) jointly develop the list of qualified subcontractors.
 - ▶ CM / SMBR presents program to subcontractors
 - ▶ Subcontractor submits Enrollment form to SMBR and the CM for review and approval
2. CM determines the Quick Pay Allowance amount and presents it to City for approval.
3. CM submits initial pay application, with supporting documentation, to City for payment of Quick Pay Allowance amount. Documentation includes:
 - ▶ A list of approved enrolled subcontractors.
 - ▶ A copy of each subcontract.
4. If City approves Allowance amount, City makes payment to CM which establishes the Quick Pay Program Fund to be managed by the CM.
5. On the CM's pay application Schedule of Values (SOV), a separate line item for each Division of Work is identified as 'Quick Pay Allowance Fund'. (examples for 3 months attached)

Quick Pay Program Process Steps

6. During weekly project meetings, CM and City project team review work performed by the “Quick Pay Contractors” and approve (or disapprove). Documentation from CM for City approval includes:
 - ▶ Quick Pay Allowance Request form along with a Quick Pay Allowance Log.
 - ▶ Subcontractors’ payment application for the period covered.
7. CM’s monthly Pay App SOVs will show amounts previously paid by CM per Division per subcontractor. These corresponding amounts will be deducted from the Quick Payment Program Fund. (see 3 month examples)
8. Each monthly Pay Application should include the following documentation:
 - ▶ Releases or affidavits from Quick Pay Subs who were paid during the month.
 - ▶ Quick Pay Allowance Log and reconciliation of Quick Pay Program Fund.
9. CM is responsible for managing the Quick Pay Allowance Fund account.
10. At the end of the project per GMP, a reconciliation of the Quick Pay Program Fund account is conducted by the CM and City before final payment is made.

Quick Pay Enrollment Form

CITY OF AUSTIN
QUICK PAY PROGRAM ENROLLMENT FORM

To:
Project: ABIA Terminal/Apron Expansion and Improvements

Date:

As a MBE/WBE/SBE/DBE subcontractor on the referenced project, I am interested in being considered for the Quick Pay Program set forth in the Construction Manager-at-Risk Agreement. My enrollment information is below:

SUBCONTRACTOR BUSINESS NAME:
SUBCONTRACTOR SCOPE OF WORK:
Commodity Code and Description:
CITY OF AUSTIN VENDOR ID NUMBER:
M/WBE/SBE/DBE CERTIFICATE NUMBER:

Subcontractor Authorized Signature _____ **Date** _____
The Subcontractor identified above is approved to participate in the Quick Pay Program for this project.

COA, SMBR Representative Signature _____ **Date** _____
Construction Manager Signature _____ **Date** _____

Questions?

SMBR: 512-974-7650

CCC: 512-974-7141