



**Massachusetts Bay
Transportation Authority**

Prompt Payment

Implementation of Prompt Payment

- The MBTA intends to implement Prompt Payment Reporting Requirements on all contracts in January 2023.
- The first report will be due no later than February 15, 2023, to allow the MBTA to collect data for CY2023
- Training will be available for anyone who is interested in January 2023 (date is TBD).
- Forms will be submitted through e-Builder and are not linked to invoices (more details to follow).



Key Contacts

- For questions or concerns about the Prompt Payment Reporting, please contact:
- Doug Shea (dshea@mbta.com) - Acting Deputy Chief of Contract Services
- Wystan Umland (wumland@mbta.com) – Assistant Director of Federal Programs



Prompt Payment as referenced in Federal Code of Regulations (CFR)

(49 CFR Part 26.29)



Federal Requirements Prompt Payment and Retainage

What is Prompt Payment?

(49 CFR Part 26.29)

Federal requirements of Prompt Payment/Return of Retainage as per 49 CFR Part 26.29

- The DBE regulations require MBTA to ensure prime contractors pay ALL subcontractors:
 - Promptly (no later than 30* days of receipt) and,
 - Prompt and full payment of retainage 30 days after the subcontractor's work is SATISFACTORILY completed.

*Up to 30 days is the federal requirement

- **However, the MBTA policy is more restrictive at 10 days**
- DBE Regulations require affirmation that the recipient has **contract clauses** for prompt payment and return of retainage regardless of the subcontractor tier



Federal Requirements Prompt Payment and Retainage

(49 CFR Part 26.29)

- Under 49 CFR Part 26.29 (a), the MBTA is required to include a Prompt Payment clause in all federal contracts (See - Article 3, Section - 7 of PS Contracts)
- Under 49 CFR Part 26.37, the MBTA must have appropriate mechanisms to ensure compliance with 49 CFR Part 26 requirements – including Prompt Payment
- Enforcement is expected since non-compliance with Prompt Payment is considered a breach of contract



Who is responsible for Prompt Payment?

- Any recipient of Federal funding – Transit Agencies, State DOTs, Subrecipients, and other federal grants
- Prime contractors, Developers on Private Public Partnerships, Design-Builders, and any awardee of the federally-funded project(s)
- Subcontractors, subconsultants, suppliers, fabricators, truckers, and any firm associated with a federally-funded contract at any tier of subcontracting. (e.g. 1st, 2nd, 3rd, 4th tier)



Which Firms Must be Paid Promptly?

All subcontractors with SATISFACTORILY completed/accepted work!

- On and off-site
- Race neutral requirement (DBEs and non-DBEs)
- Trade contractors, truckers, suppliers, service providers, etc.
- **All firms associated with the project**



What is Satisfactorily Completed? (49 CFR Part 26.29(c))

A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient (MBTA).

When the recipient (MBTA) has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.



What is Acceptable Work?

- USDOT/FTA does not define
- The Prime has responsibility for the determination of acceptable work
- The industry has standards of performance to define acceptable/completed work
- If the work has been paid for by the MBTA to the Prime, then the work has been accepted
- If the Prime has been paid, then the subcontractors providing any work under that payment must be paid



Contract Remedies or Sanctions

- The MBTA can also require Primes to obtain written consent in advance for delays in Prompt Payment or enforce penalties
- Examples of penalties:
 - Terminating the contract
 - Withholding progress payments
 - Assessing sanctions
 - Disqualifying contractor on future federal contracts



Forms and Instructions

- FORM F - Payments to Subcontractors/Vendors Report



Form F (Contracts and Task Orders)



Form F Instructions (Contractors)



Form F Instructions (Task Orders)

- FORM F2 - Subcontractor/Vendor Payments Received Monthly Report



Form F2 Subcontractors and Vendor Payments Received Monthly Report



Form F2 Instructions



Questions and Comments

