

**Massachusetts Bay
Transportation Authority**

Prompt Payment Introduction

Session Objective

Introduction to MBTA Prompt Payment Process



Defining Acronyms

- CFR – Code of Federal Regulations
- DBE – Disadvantaged Business Enterprise
- USDOT – United States Department of Transportation
- DOT – Department of Transportation
- FTA – Federal Transit Administration



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

(49 CFR Part 26.29)



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
- 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



Federal Requirements Prompt Payment and Retainage

(49 CFR Part 26.29)

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

- The DBE regulations require the 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 requires payment within 10 days from receipt of payment, regardless of the tier
- DBE Regulations require affirmation that the MBTA has contract clauses for prompt payment and return of retainage regardless of the subcontractor tier



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 MBTA.

When the 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.



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)



Retainage

- 49 CFR Part 26.29(b) requires that retainage be paid to subcontractors promptly and in full. Retainage is withholding a certain percentage of payment until the subcontractor's work is SATISFACTORILY completed

There are **3 options** for the release of retainage in 49 CFR Part 26.29(b):

- Decline to withhold/hold retainage from prime and prohibit the prime from withholding retainage from the subcontractors
- MBTA does not hold retainage from prime – but prime can withhold from a subcontractor – must pay 30 days from satisfactorily completed subcontract
- MBTA can hold retainage from prime and pay retainage based on payment for portions of work (incremental acceptance) [Best represents current MBTA Standard Contracts]



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

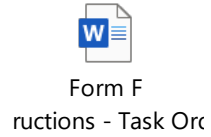


MBTA Policies & Procedure

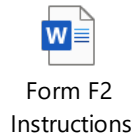


Forms and Instructions

- FORM F - Payments to Subcontractors/Vendors Report



- FORM F2 - Subcontractor/Vendor Payments Received Monthly Report



Key Takeaways

- As a recipient of federal funds, the MBTA is required to monitor and enforce prompt payment
- The MBTA has the Forms F (Prime payments) and F2 (Subcontractor receipt of payment) and instructions to monitor prompt payment
- Enforcement is focused on the Primes paying subcontractors promptly (not MBTA payments to Primes)



Questions and Comments

