

SECTION 240 Prompt Payment

240.1 Prompt Payment Compliance and Procedures

240.1.1 General

Payment issues should be discussed at preconstruction meetings. Additional Special Provision 4 (ASP 4) covers prompt payment while payroll reporting requirements are covered under ASP 7.

ASP 4 requires contractors to pay subcontractors for completed work within 10 calendar days of receiving a progress payment. If the prime contractor will not be making payment to a first-tier subcontractor within the prescribed 10 calendar days, they are required to notify that subcontractor and the engineer in writing and explain why they will be withholding payment.

ASP 4 affords similar prompt payment responsibilities and rights to lower-tier contractors and their subcontractors. Lower-tier contractors must notify their subcontractors and explain the reason for withholding payment in writing, but there is not a requirement to directly notify the engineer.

ASP 4 is incorporated in department contracts and is available online at:

<https://wisconsindot.gov/hcciDocs/contracting-info/asp-4.pdf>

The engineer determines whether a relationship constitutes subcontracting under ASP 4. Arrangements between contractors and suppliers frequently contain industry-standard delivery and payment terms. The department typically will not consider supplier relationships as subcontracting. Likewise, the department will not consider lower-tier contractual relationships a supplier might have as subcontracting.

The engineer should provide acceptance and payment information and attempt to facilitate discussions aimed at resolving first-tier prompt payment issues. Typically, the engineer needs to contact the affected subcontractor to hear their side of the issue. Hopefully follow-up conversations can resolve the issue before the subcontractor files a written complaint.

The department expects a lower-tier prompt payment issue to be resolved by the parties to that lower-tier subcontract. The engineer may offer an opinion as to whether the relationship in question constitutes subcontracting under ASP 4 and can provide acceptance and payment information. The department will entertain written complaints from lower-tier subcontractors.

240.1.2 Complaint Procedure

240.1.2.1 Complaints from First-Tier Subcontractors

The engineer should contact both parties and attempt to resolve the complaint. It is critical that the engineer document department actions when a prompt payment complaint is received as follows:

1. The project engineer writes a memo to the project files regarding the complaint received.
2. The project engineer/manager sends letters to all subcontractors asking if they have been paid promptly. Try to be as specific as possible. Cite the particular estimate dates that the complaint involves. Ask the subcontractors to respond within ten days regardless if they have, or have not, been paid promptly. Copy the Bureau of Project Development oversight engineer for the region. An example letter is shown in figure 240-1.
3. If the subcontractors' replies indicate that more than the complainant have payment issues, the project manager/area supervisor sends the prime contractor a letter directing them to pay within ten days or provide a "just cause" explanation for withholding payment. Direct the prime contractor to inform the engineer when all payments have been made. An example letter is shown in figure 240-2. Copy the Bureau of Project Development oversight engineer for the region.
4. If the issue is not resolved, inform (via registered mail) the prime contractor that they are in default and that the department is referring the matter to the Bureau of Project Development for appropriate action. The Regional Project Development Chief should write this letter. An example letter is shown in figure 240-3. Copy the Bureau of Project Development oversight engineer for the region. Copy the prime contractor's bonding company also.
5. If the issue is resolved send a closure letter to the complainant. Copy the Bureau of Project Development oversight engineer for the region.

240.1.2.2 Complaints from Lower-Tier Subcontractors

The engineer should notify the contractor when complaint is received and ask them to resolve the issue among the parties to the lower-tier subcontract. It is critical that the engineer document department actions when a prompt payment complaint is received as follows:

1. The project engineer calls or emails the contractor to notify them that a complaint was received and to request that the contractor resolve the issue.
2. The project engineer writes a memo to the project files regarding the complaint received and notification of contractor.

FIGURE 240-1 Example Letter



Wisconsin Department of Transportation
DIV OF TRANS SYSTEMS DEVELOPMENT
SOUTHEAST REGION
PO Box 798
WAUKESHA, WI 53187-0798

Scott Walker, Governor
Mark Gottlieb, P.E., Secretary
Internet: www.dot.wisconsin.gov

Telephone: (608) 555-5555
Facsimile (FAX): (608) 123-4567

E-mail: WAUKESHA.DTD@dot.wi.gov

May 10, 2013

ATTN:
SUBCONTRACTOR XYZ
120 ROY ROAD
MADISON, WI 53711

Subject:
ID 1202-02-72
Main Street; N. Village to S. Village Limits; Village of Waukesha;
STH XX

Dear Subcontractor XYZ,

Our records indicate that your firm either performed work of furnished materials for *A1 Construction* on the above referenced report.

Addition Special Provision 4 states, "Within 10 calendar days of receiving a progress payment for work completed by a subcontractor, pay the subcontractor for that work."

We are asking all subcontractors on the approved sublet list if they have indeed been paid promptly in accordance with SDP-4

Please respond back to *John Smith* stating whether you have or have not been receiving prompt payment on this project. If payments have been received late or have not been received at all, please include details such as estimate numbers, dates payment was received, balances owed, and any other pertinent information.

I kindly request that you reply back to me on this matter by *May 20, 2013* so that we can resolve any potential issues in a timely manner. If you have any questions regarding this issue or would like more clarification, please contact me at 608-555-5555.

Sincerely,

John Smith

John Smith
Project Manager

Cc: A1 Construction (Contractor)
BPD Oversight Engineer

FIGURE 240-2 Example Letter



Wisconsin Department of Transportation
DIV OF TRANS SYSTEMS DEVELOPMENT
SOUTHWEST REGION
3550 Mormon Coulee Road
LaCrosse, WI 54601-6767

Scott Walker, Governor
Mark Gottlieb, P.E., Secretary
Internet: www.dot.wisconsin.gov

Telephone: (608) 785-9022
Facsimile (FAX): (608) 785-9969

E-mail: LACROSSE.DTD@DOT.WI.GOV

January 26, 2013

AAA CONSTRUCTION
6301 E. MARTIN STREET
PO BOX 8905
EAU CLAIRE, WI 54700-8905

Subject:
Prompt Payment to Subcontractors; Project ID 1001-06-72
Manhat Street; City of Osseo; CTH XX; Trempealeau County

Gentlemen:

It has come to our attention that you have not compensated your sub-contractors for all of their work completed on the subject project.

Addition Special Provision 4 states, "Within 10 calendar days of receiving a progress payment for work completed by a sub-contractor, pay the sub-contractor for that work."

This letter serves to inform you that you have ten (10) days to either pay for the satisfactory work performed to your sub-contractors or provide the Department with "Good Cause" for non-payment. Absent of "Good Cause", when payment is made, please send a copy of the check to the Region Office as verification that you followed through on your contract obligations. If you fail to comply, the Department may proceed with "Terminating the Contract for Default" per subsection 108.12 of the Standard Specifications.

If you have any questions regarding this issue or would like more clarification, please contact me at 608-555-5555.

Sincerely,

Roy Robbe

Roy Robbe
Project Manager

Cc: BPD Oversight Engineer
Bonding Company
Region File

FIGURE 240-3 Example Letter



Wisconsin Department of Transportation
DIV OF TRANS SYSTEMS DEVELOPMENT
SOUTHWEST REGION
3550 Mormon Coulee Road
LaCrosse, WI 54601-6767

Scott Walker, Governor
Mark Gottlieb, P.E., Secretary
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January 26, 2013

AAA CONSTRUCTION
6301 E. MARTIN STREET
PO BOX 8905
EAU CLAIRE, WI 54700-8905

Subject:
Prompt Payment to Subcontractors; Project ID 1001-06-72
Manhat Street; City of Osseo; CTH XX; Trempealeau County

Gentlemen:

It has come to our attention that you have not compensated your sub-contractor(s):
Sub-contractor BBB, for all their work completed on the subject project.

Addition Special Provision 4 states, "Within 10 calendar days of receiving a progress payment for work completed by a sub-contractor, pay the sub-contractor for that work."

Below are the pertinent details relating to this issue:

Subcontractor BBB has a total of \$8000.00 yet to be paid on this contract. \$4000.00 of this total is for the item High Strength Bar Steel. High Strength Bar Steel was paid in full in estimates 1, 2, and 3 for a total of \$7000.00. \$4000.00 is to be paid for additional accessories that were required through this contract due to a contract change order between Contractor AAA and Sub-contractor BBB.

This letter serves to inform you that you are in default of contract and the matter is being referred to the Bureau of Project Development. You have ten (10) calendar days to either pay for the work performed by Sub-contractor BBB or provide the Department with "Good Cause" for non-payment. Absent of "Good Cause", when payment is made, please send a copy of the check to the Region Office as verification that you followed through on your contract obligations. If you fail to comply, the Department may proceed with "Terminating the Contract for Default" per subsection 108.12 of the Standard Specifications.

If you have any questions regarding this issue or would like more clarification, please contact me at 608-444-4444.

Sincerely,

Tom Chief

Tom Chief
Regional PD Chief

Cc: BPD Oversight Engineer
Bonding Company
Sub-contractor BBB
Region File