



CHAPTER 25

PAYMENTS TO CONTRACTORS/RETAINAGE

25-1 Resident Engineer Responsibilities

The Resident Engineer (RE) must:

- Become familiar with conditions pertaining to all Pay Items.
- Verify Project quantities, including Bid quantities and estimated total quantities.
- Organize methods for determining and recording quantities to be paid on progress estimates. [Refer to Chapter 12 - Project Records.]
- Control and record engineering costs on each Project and enter those costs on the progress estimate or other reports as required.
- Assure that the Project cost does not exceed the Construction Authorization.
- Update the corrected estimate quantities each month to monitor the budget to ensure expenditures do not exceed the Construction Authorization or approved overrun. [Refer to Chapter 5 - Construction Authorization.]
- At the Project semi-final, update the "correct estimate quantity amount" to match the "performed to date quantity amount" in CPS, with the exception of Pay Items with an Establishment Period.

NOTE: Projects let under alternative contracting methods such as Design-Build, Construction Manager/General Contractor (CM/GC) and Indefinite Delivery/Indefinite Quantity (ID/IQ) have different progress measurement and payment procedures, submittal timelines and protocols. Please refer to the Contract-specific requirements for these alternative contracting methods.

For CM/GC, pre-construction services and construction services payment processes are located in the CM/GC Manual, Chapters 11 and 12.

All Project costs must be charged to the proper funding source. The Expenditure Accounts (EA) and Participation Indicators (subjobs) for those funding sources are defined in a letter distributed by the Program & Funding Services Unit of the Active Transportation Office (ATO) at the start of each Project. This information can be found within Doc Express in the Contract Documents drawer and by Contract number in ODOT's Electronic Contract Files at:

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For consultant-managed Projects, contact ODOT's Consultant Project Manager or Local Agency Liaison for assistance. Contact the ATO or the Contract Administration Unit (CAU) if there are questions on cost allocation.

25-2 Progress Estimates

The preliminary progress payment estimate or "progress estimate" is the document that summarizes the quantities of Work completed and the value of the completed Work. Specific payment conditions are referenced in Section 00195.50.

After Contract Work begins, the RE must prepare and submit the monthly progress estimate electronically using the web-based Contract Payment System (CPS) program as discussed below. The CPS consists of a web-based front end application used by the Agency and Consultant REs, and CAU in support of payments made to Contractors for services provided and Materials used for ODOT Commission Services Contracts.

Consultants will need to contact the CAU for details on requesting access to the CPS. Once Consultants have external access, they will prepare the progress estimate and then contact the ODOT Transportation Project Manager/Resident Engineer-Consultant Projects (TPM/RE-CP) or ODOT RE to submit it for payment.

Each progress estimate shall include payment for Work performed under the Contract through the last day of the month.

The RE will review the following items with the Contractor, prior to the 8th of the month, before submitting the progress estimate for payment, if applicable:

- All Work performed under the original Contract Bid Items
- Contract Change Orders (CCOs)
- Price adjustments
- Materials on Hand (MOH)
- Extra Work paid on a Force Account basis

The Contractor must be allowed enough time to compare the quantities on the progress estimate with the quantities that they have recorded as Work performed for that pay period. This will help ensure that the Contractor has been paid correctly for Work performed during that payment period, and that no items will be subject to Federal-Aid non-participating costs for late payment interest.

If the RE and Contractor do not agree on the quantity of Work performed for the payment period, and are unable to resolve the issues prior to the upload date, submit the progress estimate for payment. Continue to work with the Contractor to resolve the disputed quantities of Work. If additional payment for Work is determined, submit the quantities on the next scheduled progress estimate. The RE must also determine if late payment interest is owed to the Contractor for these quantities. [Refer to Section 25-7 Interest for Late Payment below.]

Use the corrected estimate field in CPS each month to increase or decrease anticipated quantities as the Project progresses. This will allow the RE to compare the corrected estimate amount for the Project against the original authorized amount to determine if the Project will be completed within budget or if an overrun or increase in authorization will be needed. [Refer to Chapter 5 - Construction Authorization.]

Submit progress estimates through CPS to the CAU on or before the 8th of the month. If it is past the 8th, an estimate can still be submitted, but contact the CAU.

The CAU will process the progress estimate and request ODOT Financial Services to make payment to the Contractor prior to the 30th of the month or within 15 days of the CAE signing the estimate, whichever one is sooner. Financial Services will mail a voucher to the Contractor. CAU will send a copy of the payment voucher to the ODOT RE or LAL.

Both ORS 279C.570 and the DBE Supplemental Required Contract Provisions require the Contractor to promptly pay each of its Subcontractors. After each payment has been received from the Agency, the Contractor must submit an affidavit certifying payments made to all Subcontractors and committed DBE suppliers, non-committed DBE suppliers and services providers with estimated total payments for the Project over \$10,000, as required in 00170.10(g). [Refer to Chapter 18 – Workforce and Small Business Equity Programs.]

25-3 Preparation of Project Estimate

The CPS is basically two different “programs”; a program that is web-based and a program that runs on the ODOT mainframe. For access and training on the web-based system, contact the CAU.

The following are general steps for making payments to the Contractor:

1. An email is generated notifying the CPS user that the Contract is available to make payment in the web-based CPS.
2. As the Contractor performs Work, the RE documents the Work and enters the information into the web-based CPS. [Refer to Chapter 12D – Quantities.]
3. As CCOs are received and signed, the CAU enters them into the web-based CPS, generating an email to the CPS user that the CCO has been entered and is available for payment if needed.
4. The RE makes a copy of the preliminary progress payment report containing payment information for the Work performed through the payment period and provides it to the Contractor. If both parties concur with the preliminary progress payment quantities, the RE approves and signs the report. [If both parties do not agree, refer to discussion in Section 25-1.]
5. On or before the 8th of the month, the CPS user electronically submits the approved progress estimate for payment generating an email notification to the CAU. Consultants need to contact the TPM/RE-CP and/or RE to submit the progress estimate for payment. If any data entry errors or omissions are found after submitting the estimate, contact the CAU immediately.

If the monthly estimated payment to the Contractor is negative, contact the CAU.

6. When the RE electronically submits the estimate for payment in CPS, the CAU receives an email notification stating that a progress estimate is ready to be processed.
7. The CAU payment specialist reviews the estimates and approves for upload. CPS generates an automated email to the RE and the Contractor containing copies of the approved preliminary progress payment report and the retainage Bid Item report.
8. The CAU payment specialist moves the estimate from the web-based CPS to the CPS mainframe and prints the "ODOT Highway Division CPS – Summary of Work" report for the CAE to approve.
9. The CAU payment specialist sends the "Progress Estimate and Cost Report Oregon State Highway" report to the RE/TPM mainframe printer.
10. The RE needs to compare the mainframe report to the web-based CPS report. If they do not match, contact the CAU immediately.

11. The signed "ODOT Highway Division CPS – Summary of Work" report is sent to Financial Services, where the Contract Payment Voucher report is attached and one copy is sent to the Contractor with payment. Two copies are sent to the CAU; one is forwarded to the RE Office.
12. Steps 2 - 11 are repeated for each progress estimate until the Contractor completes all Contract Work.
13. CAU will generate the final payment or post-final payments as necessary. Contact CAU if there are questions about this process.

Note: Records must be kept to support and justify the quantities for audit purposes from the time payment is made until the retention schedule has been reached. [Refer to Chapter 12 - Project Records and Chapter 37 – Submittal of Final Project Documentation.]

25-4 Items Added to the Pay Estimates

The following items are added to the progress estimate after the Contract begins. These items include Change Orders, Adjustment Items, Extra Work Orders and Materials On Hand, and must also have adequate supporting documentation to justify payment or deductions made to the Contractor.

A. Change Orders (CCO) (4000 Series)

[Refer to Chapter 15 – Change Orders/Force Account/ Work by Public Forces.]

The CAU will:

- Review the CCO document and obtain the CAE's signature.
- Label the Pay Items with the appropriate reason codes.
- Enter the CCO Pay Items into CPS. (An email will automatically be sent for each Pay Item to the RE office.)

The RE shall:

- Prepare, obtain appropriate signatures, and submit to the CAU.
- Review the information entered in CPS for the CCO (e.g., line item number description, unit, unit price, corrected estimate quantity, subjob, etc.).
- If the CCO added a Pay Item, enter a "paynote" for the Work completed by the Contractor for the pay period. Refer to the Contract Payment System User Guide, Paynotes.

B. Adjustment Items (6000 Series)

[Refer to Chapter 13 - Contract Time, Chapter 12B - Quality, Chapter 12C - Quality Price Adjustments, and Chapter 12E - Adjustments to Lump Sum and Other Items.]

The RE shall:

- Enter adjustment line item, use the appropriate subjob, and, when possible, reference the line item to the Pay Item or Bid Item in CPS. Items may include the following:
 - » Adjusting payments for Material or Work that is not within close conformance with Contract requirements. (See 00150.25.)
 - » Paying a premium price adjustment (bonus), if allowed, in the Contract.
 - » Decreasing the payment to the Contractor for Contract Work performed by State or other public forces under an Order for Force Work.
 - » Withholding liquidated damages. (In CPS, begin the line item with "liquidated".)
 - » Paying for increased or decreased quantities of Work on some Lump Sum items.
- Use the escalation/de-escalation tool to pay fuel, asphalt or steel escalation/de-escalation.
- Use the Lot number in the description of a StatSpec line item.

[Refer to The Contract Payment System User Guide, "Creating a New Adjustment Item".]

C. Materials On Hand (MOH) (7000 Series)

[Refer to Chapter 12F - Materials Stored or On-Hand and Section 00195.60 of the Contract for conditions that must be satisfied before payment can be made.]

The RE shall:

- Meet the requirements of 00195.60.
- Enter the line item as shown in the CPS manual. [Refer to The Contract Payment System User Guide, "Creating a New MOH Item".]
- Consolidate Materials for a Pay Item to reduce the number of MOH entries on the estimate, if possible.
- Assure that the price paid for MOH leaves a value that is adequate to complete the required installation.

- As the Work is paid under the Pay Item, reduce the appropriate MOH line items.
- All MOH line items must be at zero upon completion of the Project.

D. Extra Work Performed on a Force Account Basis (EWO) (800 Series)

[Refer to Chapter 12G – Extra Work Performed on a Force Account Basis.]

The CAU will:

- Review the EWO document and obtain the CAE's signature.
- Label the Pay Items with the appropriate reason codes.
- Enter the EWO Pay Items into CPS. (An email will automatically be sent for each Pay Item to the RE office.)

The RE shall:

- Prepare, obtain appropriate signatures, and submit to the CAU.
- Review the information entered in CPS for the EWO (e.g., line item number, description, corrected estimate quantity, subjob, etc.).
- Enter a paynote for the performed-to-date amount for the pay period.
- Once the CAU has performed its final check of the Force Account billings, make any revision to the current total value on the next progress estimate.
- If actual costs will substantially overrun the approved amount of an EWO, the RE must submit a supplemental EWO for approval.

25-5 Additional Project Budget Tracking Items

The following items are included on the "Preliminary Progress Estimate Report", however are not associated with payments made to the Contractor. All the items in the 90000 series are included for budget tracking purposes. CPS provides a place to track these items, but it is not the mechanism to pay the Contractor. These items include Orders for Force Work, Anticipated Items, approved increases, decreases and overruns in Construction Authorization, additional anticipated items, contingencies and engineering costs.

A. Orders for Force Work (OFW) (92000 Series)

[Refer to Chapter 15 – Change Orders/Force Account/ Work by Public Forces and Chapter 24 - Work Done by Utilities and Railroads.]

The CAU will:

- Review the FO/SFO document and obtain the CAE's signature.
- Label the Pay Items with the appropriate reason codes.
- Enter the FO/SFO Pay Items into the CPS. (An email will automatically be sent for each Pay Item to the RE office.)

The RE shall:

- Prepare, obtain appropriate signatures.
- Attach appropriate Letter of Public Interest Finding (LPIF) or Cost Effectiveness Finding and submit to the CAU.
- Review the information entered in CPS for the FO/SFO (e.g., line item number, description, corrected estimate quantity, subjob).
- Update the FO/SFO line items in the CPS using a paynote. The current amount paid is shown in the ODOT accounting system (TEAMS). To view TEAMS charges, use the Active Expenditure Account Report in the CPS. This report shows current FO/SFO and engineering charges needed to update the CPS.
- Submit a revised FO/SFO for approval if costs will substantially overrun the approved amount of a FO/SFO. [Contact the CAU for questions.]
- Refer to The Contract Payment System User Guide, "Active Expenditure Account Report".

B. Anticipated Items (94000 Series)

These items are determined during the development of the Project. They are included as line items in CPS to allow additional funds to cover anticipated Work that was not part of the original Contractors bid.

The RE should reduce the corrected estimated amount of the Anticipate Items once payment has been made under the appropriate adjustment or FO/SFO.

C. Approved Increases or Decreases in Construction Authorization (98799 – 98795 Series)

[Refer to Chapter 5 - Construction Authorization.]

CAU will enter the item number (98799, 98798, etc.), the item description, and the amount of the approved increase (or decrease) in Construction Authorization. An email will automatically be sent to the RE office.

For approved increases in Construction Authorization, the amount will be added to the original authorization amount. For approved overruns, no amount will be added to the original authorization amount.

D. Pending Contract Change Order Items (98899 Series)

This item allows the CPS user and the RE to identify anticipated over/underruns.

The RE shall update the corrected estimate amount monthly to monitor the status of the Construction Authorization. Contact CAU for additional information.

[Refer to the Contract Payment System User Guide, "Creating New Pending Contract Change Orders".]

E. Contingencies (98999 Series)

This item typically adds 3.5% to the Original Authorization amount and is money budgeted for unforeseen items.

The corrected estimate column for this item will automatically be zeroed out on the first progress estimate. Use the Pending Contract Change Order Items (98899), as referenced above, to manage the corrected estimate.

F. Engineering (99999 Series)

This item allows the CPS user and the RE to track engineering costs associated with the Project.

Update the engineering line items in the CPS using a paynote. The current amount paid is shown in the ODOT accounting system TEAMS. To view TEAMS charges, use the Active Expenditure Account Report in CPS. This report shows current FO/SFO and engineering charges that need to update to CPS.

[Refer to The Contract Payment System User Guide, "Active Expenditure Account Report".]

25-6 Retainage

As of 1-1-2020 Retainage will not be held on ODOT projects.

25-7 Withholding Payment

The Agency may withhold payment to the Contractor for the just causes specified in 00195.50 of the Contract.

Specific to 00195.50(e), withholding payment is a serious matter and should be used only when justified and when other measures have failed. The RE must inform the Contractor of the reason that payment is being withheld, as well as what actions the Contractor must fulfill to allow payment to be made. Send a copy of the written correspondence to the CAU.

If the amount due to the Contractor is less than \$1,000, the RE office may delay payment until the next estimate becomes more than \$1,000, as specified in 00195.50(a), unless requested by the Contractor. Good communication is essential. [Refer to Chapter 9 - Responsibilities of Project Manager.]

If it is determined that a progress payment will be withheld, do not submit the progress estimate to the CAU. All payments submitted through CPS will be processed.

Do not withhold payment because of claims made by the Contractor or against the Contractor's bond. [Refer to Chapter 26 - Prompt Payment/Claims Against Contractor's Bond.]

Contact the CAU if there are questions about withholding payments to the Contractor.

25-8 Interest for Late Payments

State law requires that the Agency pays interest to the Contractor when payments are not made within the statutory time requirements.

Interest for late payments is not eligible for federal-aid participation.

Contact the CAU if late payment interest is due or if there are questions about late payment interest. The CAU, or in some cases Financial Services, will calculate the amount of interest due the Contractor.