

Chapter 25 - Payments to Contractors/Retainage

The Project Manager (PM) 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 verify that the estimated expenditures will not exceed the Construction Authorization or approved overrun. Refer to **Chapter 5 - Construction Authorization**.

All project costs must be charged to the proper funding source. The Expenditure Accounts (EA) and Participation Indicators (sub-jobs) for those funding sources are defined in a letter distributed by the Program & Funding Services Unit of the Highway Program Office (HPO) at the start of each project. Contact HPO or the Contract Administration Unit (CAU) of the Construction Section if you have questions on cost allocation.

Progress Estimates

The Progress Estimate is the document that summarizes the quantities of work completed and the value of the completed work. After contract work begins, the PM must submit the Progress Estimate monthly. Specific payment conditions are referenced in the Contract Specifications Section 00195.50.

Prepare and submit the 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 ODOT, consultant and local agency PMs, and the ODOT CAU in support of payments made to construction Contractors for services provided and materials used for ODOT highway and bridge construction projects.

Local agencies and consultants have external access to the Web based CPS. Using the Web based CPS, they will prepare the Progress Estimate and then contact the ODOT Local Agency Liaison (LAL) or ODOT consultant PM (CPM) to submit it for payment.

Local Governmental Agencies and consultants will need to contact the CAU for details on requesting access to the Web based CPS.

Each Progress Estimate shall include payment for work performed under the Contract through the last day of the month.

Prior to the 8th of the month, review information with the Contractor on amounts to be paid on each Progress Estimate before submitting the Progress Estimate for payment. 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.

Review, with the Contractor, the estimated quantities to be paid for all work performed under the original contract bid items, contract change orders, price adjustments, materials on hand and extra work on a force account basis. 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 PM 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 work. If additional payment for work is determined, submit the quantities on the next scheduled Progress Estimate. The PM must determine if late payment interest is due the Contractor for these quantities. Refer to "**Interest for Late Payment**" below.

Update the Corrected Estimate quantities each month to verify that the estimated expenditures will not exceed the Construction Authorization or approved overrun.

Use the Corrected Estimate field in the CPS to increase or decrease anticipated quantities as the project progresses. This will allow the PM to compare the Corrected Estimate Amount for the construction 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 the Web based CPS to the CAU on or before the 8th of the month.

CAU will process the Progress Estimate and request Financial Services to make payment to the Contractor prior to the 30th of the month. Financial Services will mail a voucher to the Contractor. CAU will send a copy of the payment voucher to the ODOT PM, LAL, or CPM.

Withholding Payment

ODOT may withhold payment to the Contractor for the just causes specified in the contract:

1. If amount due the Contractor is less than \$1,000, unless requested by the Contractor. The PM must notify the Contractor why no payment will be made and send a copy of the letter to the CAU.
2. If the PM orders payment to be withheld for one of the reasons cited in section 00195.50(e) of the contract. The withholding of a progress payment is a serious matter and should be used only when justified and when other measures have failed. Good communications are essential. Refer to **Chapter 9 - Responsibilities of Project Manager**.

The PM 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 letter to the CAU.

If it is determined that a Progress Payment will be withheld, do not submit the Progress Estimate to the CAU. All payments submitted through the Web based 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 you have questions.

Interest for Late Payment

State law requires that ODOT pay interest to the Contractor when payments are not made within the statutory requirements. The CAU or HPO will calculate the amount of interest due the Contractor. This interest is not eligible for Federal-Aid participation.

Preparation of the Estimate for Payment

The ODOT 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.

Note: If the monthly estimated payment to the Contractor is zero or negative, contact the CAU.

There are many steps in the processing of a payment to the Contractor. Following is a chronological listing of the steps:

1. The funding for the contract is established.
2. A contract is executed with the Contractor.

3. The contract information is electronically made available in ODOT's Transport system.
4. The contract information is electronically transferred to the mainframe CPS.
5. CAU verifies and corrects the information in the mainframe CPS.
6. The mainframe CPS transmits a Zero Progress Estimate and Cost Report (CPPROEST) to the PM and CAU mainframe printers over the ODOT mainframe network.
7. The contract information is electronically transferred from the mainframe CPS to the Web based CPS.
8. An e-mail is generated notifying the CPS user that the Contract is available in the Web based CPS.
9. As change orders are received and signed, the CAU enters them into the Web based CPS.
10. An e-mail is generated and sent to the CPS user notifying that the CCO has been entered and is available for payment if needed.
11. As the Contractor performs work, the PM documents the work and enters the information into the Web based CPS. Refer to **Chapter 12-D - Quantities**.
12. The PM prints a copy of the Preliminary Progress Payment Report containing payment information for the work performed through the payment period and provides the information to the Contractor. If both parties concur with the estimated progress payment, the PM approves and signs the report. The payment period is for one month's work and starts at the first day of the month and ends the last day of that month.
13. On or before the 8th of the month, the CPS user electronically submits the approved Progress Estimate file for payment. This generates an e-mail notification to CAU. Local Agencies and Consultants need to contact their LAL and/or CPM to submit the Progress Estimate file for payment. If any data entry errors or omissions are found contact the CAU immediately.
14. CAU receives an e-mail notification stating that a Progress Estimate payment is ready to be processed.
15. CAU will promote the payment information to the mainframe and an e-mail notification will be sent containing the CPEdit Report and any mainframe errors. This report contains all changed bid items and CCOs (4000 series) through engineering (99999). If any mainframe errors are identified on the report contact the CAU.

16. CAU generates a preliminary voucher and calculates a retainage amount. Refer to “**Retainage/Reduction of Retainage**” below.
17. The Contract Administration Engineer approves the payment voucher.
18. CAU submits the payment voucher to Financial Services for payment. The Progress Estimate and Cost Report (CPPROEST) are sent to the ODOT PM, CPM or LAL Offices and CAU mainframe printers over the ODOT mainframe network.
19. Steps 9 - 18 are repeated for each Progress Estimate until the Contractor completes all contract work.
20. CAU will generate the Final payment or Post Final payments as necessary. Contact CAU if you have questions about this process.

The PM must maintain, in the project office files, the records necessary to support and justify the quantities and payments made on each Progress Estimate. Each payment must have all required documentation if subjected to an audit. Refer to **Chapter 12 - Project Records**.

Following is a detailed explanation for some items on the original Progress Estimate and items that are added to the Progress Estimate after the contract begins. These items must also have adequate supporting documentation to justify payment. Contact the CAU if you have questions.

Contract Change Orders (CCO) (4000 Series)

CAU enters the CCO item number (4001, 4002A, etc.), Participation Indicator (sub-job), description, unit, unit price, and corrected estimate quantity as shown on the approved CCO. A standard item code will be assigned to the individual line items. An e-mail will automatically be sent to the CPS users in the PM's office.

How to Use

The CPS user shall:

- Review the information entered for the contract change order (i.e., description, unit, unit price, corrected estimate quantity).
- If the contract change order is an added pay item, enter a pay note for the quantity of materials or work performed by the Contractor for the pay period. Refer to The Contract Payment System User Guide, “Pay Notes.”

Adjustment Items (6000 Series)

➤ 6000- 6599

Adjust payment for material or work that is not within close conformance with contract requirements, or to pay a premium price adjustment (bonus) if included in the contract. Refer to Section 00150.25. Also refer to **Chapter 13 - Contract Time, Chapter 12-B - Quality, Chapter 12-C - Quality Price Adjustments, and Chapter 12-E - Adjustments to Lump Sum and Other Items.**

Decrease the payment to the Contractor for contract work performed by state or other public forces under an Order for Force Work.

Withholding Liquidated Damages.

Pay for increased or decreased quantities of work on some lump sum items (Always reference the adjustment to the pay item or Bid Item in the Contract Payment System.)

- 6600 (A-Z) - Adjust payment for fuel escalation
- 6700 (A-Z) - Adjust payment for asphalt escalation
- 6800 (A-Z) - Adjust payment for steel escalation

How to Use

The CPS user shall:

- Enter item number (6001, 6002, etc.) and item name. When possible, reference the adjustment to the pay item or bid item in the CPS.
- Enter Participation Indicator (sub-job), see participation codes assigned by Program & Funding Services Unit. Refer to **Exhibit 25A Expenditure Account Letter.**
- Enter unit and unit price, typically “DOLLAR” and +1.00 or -1.00. For Liquidated Damages use “DAY” or “HOUR” whichever is applicable.
- Enter corrected estimate quantity. Quantities must always be of a positive value.
- Enter the performed to date quantity using a source document (termed “pay note” in the CPS). Quantities must always be of a positive value, with the exception of reducing the performed to date.
- Enter a Standard Item Code for the adjustment. Refer to The Contract Payment System User Guide, “**Creating a New Adjustment Item.**”

Materials on Hand (MOH) (7000 Series)

Refer to **Chapter 12-F - Materials on Hand** and Section 00195.60 of the Contract for conditions that must be satisfied before payment can be made.

How to Use

The CPS user shall:

- Enter item number (7123A, 7123B, etc.). Reference the item number to the pay item, bid item, or CCO in the CPS. If more than one type of material is on hand for the same item, use A, B, etc., after the item number or combine under one item number, as long as total dollars are justified and documented.
- Enter item name.
- Enter Participation Indicator (sub-job). The Participation Indicator will be the same as the associated pay item.
- Enter unit.
- Enter unit price. When appropriate, use the same units as the pay item. Keep the number of entries to a minimum by including freight charges and incidental small items of hardware all under the major item.
 - If possible, consolidate materials for a bid item to reduce the number of MOH entries on the estimate. Do this by establishing a maximum theoretical price for all materials for the item as 100%, and then paying for the actual materials on hand as a percent of the maximum theoretical price. Another suggested method is to use a unit of “DOLLAR” and a unit price of one (1). The quantity and amount are then the same, reducing the chance of error.
 - The PM must assure that the price paid for MOH leaves a value that is adequate to complete the required installation. The balance amount for the MOH cannot exceed the available balance amount for the bid item. Use force account procedures to estimate installation costs.
- From the drop down menu in CPS, choose the appropriate bid item that the MOH will be associated with. Refer to The Contract Payment System User Guide, “**Creating a New MOH Item.**”
- Enter performed to date using a pay note. As the material is installed, and payment is made under the bid item, remove the corresponding quantity of the material from the MOH item, with a negative quantity.

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

CAU enters the item number (801, 802, etc.), Participation Indicator (sub-job), description, and corrected estimate amount as shown on the approved EWO. A standard item code will be assigned to the individual line items. An e-mail will automatically be sent to the CPS user in the PM's office.

How to Use

The CPS user shall:

- Enter a paynote for the Performed to Date amount. This is the total value (not quantity) of each billing when it is approved by the PM. When 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 a EWO, the PM must submit a supplemental order for approval.

Orders for Force Work (FO) (92000 Series)

The CAU enters the item number (92001, 92002, etc.), Participation Indicator (sub-job), description, and corrected estimate amount as shown on the approved FO. A standard item code will be assigned to the individual line items. An e-mail will automatically be sent to the CPS user in the PM's office.

How to Use

The CPS user shall:

- Enter a paynote for the performed to date amount. This is the current amount paid as shown in the ODOT accounting system. Refer to The Contract Payment System User Guide, "**Active Expenditure Account Report.**" The Active Expenditure Account Report automatically calculates the FO and Engineering charges to date. Update the performed to date amount from the report using a pay note in the CPS.
- If costs will substantially overrun the approved amount of a FO, the PM must submit a supplemental order for approval.

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.

Approved Increases (or Decreases) in Construction Authorization (98799 - 98795 Series)

CAU will enter the item number (98799, 98798, etc), the item description, and the amount of the approved increase (or decrease) in Construction Authorization. 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. An e-mail will automatically be sent to the CPS user. Refer to **Chapter 5 - Construction Authorization**.

Additional Anticipated Items (98899)

This item allows the CPS user and the PM to identify anticipated over/underruns. Refer to The Contract Payment System User Guide, “**Creating New Pending Contract Change Orders.**”

How to Use

The CPS user shall:

- Enter an item name (up to 40 characters), in the remarks section, to briefly describe the nature of the probable over/underrun.
- Enter the total estimated amount of all outstanding CCO’s, and proposed additional work in the corrected estimate column.
- Update the corrected estimate amount monthly to monitor the status of the Construction Authorization. Contact CAU for additional information.

Contingency (98999)

The corrected estimate column for this item will automatically be zeroed out on the first Progress Estimate. Use the Additional Anticipated Items (98899), as discussed above, to manage the corrected estimate.

Engineering (99999)

This item allows the CPS user and the PM to track engineering cost associated with the project.

How to Use

The CPS user shall:

- Enter a paynote for the performed to date amount. This is the current amount paid as shown in the ODOT accounting system. Refer to The Contract Payment System User Guide, “**Active Expenditure Account Report.**” The Active Expenditure Account Report automatically calculates the FO and engineering charges to date. Update the performed to date amount from the report using a pay note in the CPS.

Retainage/Reduction of Retainage

Section 00195.50(b), as derived from ORS 279C.570, states that ODOT may retain amounts from payments made to the Contractor in order to protect ODOT's interests. ODOT has elected to hold retainage on all projects. ODOT will hold all retainage as cash in an interest bearing account, unless the Contractor elects to provide an alternate form of retainage that has been approved by the Highway Program Office and DAS.

For projects awarded after May 25th, 2005, retainage calculations will be based on 2.5% of the value of the work performed by the Contractor excluding Force Account Work and Price Adjustments. ODOT maintains the option of holding as much as 5% of actual value of the work performed but, unless otherwise determined, the amount retained will be no greater than 2.5% of the original Contractor's bid amount.

ODOT will administer retainage until Second Notification as specified in Section 00195.50(d). The following processes have been developed for reduction of retainage on a project:

1. Request for reduction of retainage for subcontracted project work.

When a Subcontractor completes all of its work on a project, it may request the Contractor return retainage. The Contractor must request ODOT to release the retainage on the Subcontractor's work by submitting a completed Request for Release of Retainage for Subcontracted Work, Form 734-2510, to the PM. Refer to "Release of Subcontractor Retainage" in **Chapter 37 - Final Documentation**.

When the request is received and approved by the CAU, the amount retained by ODOT will be calculated at 2.5% of the value of contract work performed to date for original and contract change order work less the value of the work performed by the Subcontractor.

ODOT must process the request and reduce retainage within 60 days after the end of the Progress Estimate cycle in which the Contractor certified completion of the Subcontractor's work in order to avoid paying late payment interest.

2. Until issuance of Second Notification, 2.5% of the original contract amount or 2.5% of the actual contract amount (excluding Force Account and Price Adjustments), whichever is less, will be retained. The actual contract amount excludes Subcontracted amounts in which retainage was previously reduced.

When Second Notification is issued, retainage will be held at the above amount or reduced to the value of the items in the following Retainage Table, whichever is less.

Retainage Table

<u>Item Required</u>	<u>Amount of Retainage</u>
Final Quantities	0.8% (\$40,000 maximum)
Final Material Certification	0.8% (\$40,000 maximum)
*Labor Compliance Certification	0.3% (\$10,000 maximum)
Third Notification	0.1%

As each item is accepted, the CAU will reduce retainage accordingly. *When the Labor Compliance Certification is received, and the only work remaining on the project is plant establishment, the amount of retainage held for Labor Compliance will be reduced to \$1,000 until all the final Labor Compliance Certification for the plant establishment is received.

3. At Third Notification, all remaining retainage will be released to the Contractor within 30 days of issuance. If payment has not been made in 30 days, late payment interest will accrue on the amount due the Contractor.

Both ORS 279C.570 and the DBE Supplemental Required Contract Provisions require the Contractor to promptly pay each of its Subcontractors. After each payment received from ODOT, the Contractor must submit an affidavit certifying payments made to DBE Subcontractors or suppliers. Refer to **Chapter 18 - Affirmative Action Programs**.

If a Contractor fails, neglects, or refuses to make payment to a Subcontractor furnishing labor or materials, refer to **Chapter 26 - Prompt Payment/Claims Against Contractor's Bond**.