

## \*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 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.

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 Active Transportation Office (ATO) at the start of each Project. This information can be found by Contract number in ODOT’s Electronic Contract Files at:

[\\scdata2\oper\ContractElectronicFiles](#)

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 have questions on cost allocation.

### 25-1 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 PM 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

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the Agency and Consultant PMs, 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 Local Agency Liaison (LAL) or ODOT PM 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 PM will review the following items with the Contractor, prior to the 8<sup>th</sup> 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 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 quantities of Work. If additional payment for Work is determined, submit the quantities on the next scheduled progress estimate. The PM 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 the CPS each month to increase or decrease anticipated quantities as the Project progresses. This will allow the PM 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 the CPS to the CAU on or before the 8<sup>th</sup> of the month. If it is past the 8<sup>th</sup>, 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 30<sup>th</sup> 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 PM 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](#).

## **25-2 PREPARATION OF THE PROGRESS ESTIMATE**

The CPS is basically two different “programs”; one that is web-based and another 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 PM 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 PM 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 PM approves and signs the report. [If both parties do not agree, refer to discussion in Section 25-1.]
5. On or before the 8<sup>th</sup> of the month, the CPS user electronically submits the approved progress estimate for payment generating an email notification to CAU. *Consultants need to contact the LAL and/or Agency PM 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 zero or negative, contact the CAU. If the payment is zero or negative, but a release of retainage makes the total payment positive, the PM can submit the estimate to the CAU.*

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6. When the PM 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 PM 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 CPS web-based to 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 PM/LAL mainframe printer.
10. The PM needs to compare the mainframe report to the CPS web-based 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 PM 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.](#)]

### **25-3 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 PM office.)

The PM 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 PM 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 Stat Spec 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 PM 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 PM office.)

The PM 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 a EWO, the PM must submit a supplemental EWO for approval.

## 25-4 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 (FO/SFO) (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 PM office.)

The PM 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 PM 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 PM 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)**

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

The PM 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)**

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)**

This item allows the CPS user and the PM 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 the CPS. This report shows current FO/SFO and engineering charges needed to update the CPS.

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

## **25-5 QUARTERLY RELEASE OF RETAINAGE**

Subsection 00195.50(b), as derived from ORS 279C.570, states that the Agency may retain amounts from payments made to the Contractor in order to protect the Agency's interests. The Agency has elected to hold retainage on all projects. The Agency will deposit 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 ATO and the Department of Administrative Services (DAS).

Retainage calculations will be based on 2.5% of the value of the Work performed by the Contractor excluding Force Account Work, price adjustments, and Material on Hand payments. The Agency maintains the option of holding as much as 5% of the actual value of the Work performed but, unless otherwise determined, the amount retained will be no greater than 2.5% of the actual value of work performed.

As the Work progresses, ODOT will release retainage to the Contractor for all Pay Items in the Schedule of Items, and all Contract Change Order Work that has been satisfactorily completed and meets all requirements of the Contract. Release of Retainage for completed Pay Items and CCOs will begin the fourth month after First Notification and every third month thereafter.

The PM must ensure that the Contractor has provided all of the required project documentation prior to the release of retainage. This includes all quality documentation for the materials incorporated into the Project and labor compliance documents. Refer to [Chapter 19 - Labor Compliance](#). The contract requirements for Affirmative Action, EEO, DBE OJT, Apprenticeship Training and TERO (if required) must also be met. Refer to [Chapter 18 – Workforce and Small Business Equity Programs](#).

A tool has been developed in the web-based CPS to assist the PM, the RAS and the CAU in tracking the status of the documentation for the Pay Items and with the release of retainage for the completed items.

Once the PM has determined that both the Work and all of the required documentation (quality, quantity and labor compliance) is complete, the PM will mark the Pay Items in CPS on which to release the retainage.

The RAS will review the Project's quantity and quality documentation at the following frequency:

- The first review, between the third or the fourth month after First Notification, and
- Every three months after the first RAS review.

If the RAS concurs with the PM that the quality and quantity documentation is complete, and if the PM has received all of the required labor compliance documentation, then retainage will be released on the next scheduled progress estimate payment.

*Do **not** delay the release of retainage to the Contractor for items that the PM is responsible for documenting (e.g., paynote or installation sheet, field inspection report "FIR", etc.).*

*If the quantity, quality or labor compliance documentation is received, the PM must release the retainage quarterly, even if no other Work is performed in that month. Contact the CAU if there are any questions regarding the release of retainage.*

If the labor compliance documentation is the only outstanding item, the retainage will not be released. Once the required labor compliance documentation is received, then the retainage is required to be release on the next quarterly retainage release.

A preliminary progress estimate report and a retainage report will automatically be emailed to the Contractor. These reports show the status of the Pay Items regarding which items have been completed and which retainage is being released. The reports also indicate which items still require additional documentation. The PM should communicate to the Contractor specifically what documentation is still needed in order to release retainage on items where the work has been completed.

As stated in subsection 00195.50(d), a determination of satisfactory completion of Pay Items or Work or release of retainage shall not be construed as acceptance or approval of the Work and shall not relieve the Contractor of responsibility for defective Materials or workmanship or for latent defects and warranty obligations.

Within 10 days after the Contractor receives the retainage, Subcontractors must be paid released retainage pertaining to the Work of each Subcontractor, as referenced in 00195.50(d). Within 20 days of receipt of payment from the Agency, the Contractor must submit a Paid Summary Report, as required in 00170.10(g).

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](#).

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

## **25-6 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 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 written correspondence to the CAU.

If the amount due to the Contractor is less than \$1,000, the PM 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 the 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.

## **25-7 INTEREST FOR LATE PAYMENTS**

State law requires that the Agency pay 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 questions about late payment interest. The CAU, or in some cases Financial Services, will calculate the amount of interest due the Contractor.