

Prompt Payment & Retainage Compliance

When does the time period for payment or release of retainage begin to run?

The prime contractor must pay its subcontractor(s) for satisfactory completion of their work within 10 days after the contractor receives payment from INDOT for the work performed by the subcontractor(s). Satisfactory completion means when all the tasks called for in the subcontract have been accomplished and documented as required by INDOT. Although prime contractors may withhold retainage, those monies must be paid to the subcontractor within 30 days after work by the subcontractor has been satisfactory completed. The practice of prime contractors withholding retainage until INDOT has made final payment is not permitted.

Does the prompt payment and release of retainage requirements apply only to DBE subcontractors?

No. The prompt payment and release of retainage obligations are race- and gender-neutral requirements that apply to DBE and non-DBE subcontractors alike. These rules also apply to all forms of contractual agreements (e.g., subcontracts, lease agreements, purchase orders, etc.).

What are some of the contractual penalties that may be imposed by INDOT when contract participants are not paid promptly?

Failure by a contract participant to honor the prompt payment provisions is considered to be a material breach of contract that is subject to penalties. Penalties that may be imposed include: contract termination, withholding of progress estimates, assessing sanctions, imposition of liquidated damages, disqualification from bidding or participating on future contracts, or other remedies that INDOT deems appropriate.

What happens when there is a dispute over the satisfactory completion of work?

The obligations of prompt payment and release of retainage does not arise if there is a legitimate dispute over a contract participant's performance. Contract participants may not withhold payment to another participant that has satisfactorily completed work on a contract as a means to address a dispute on an unrelated contract. Any concerns over prompt payment should be brought to the attention of INDOT for review and possible dispute resolution.