

Approved:

Effective: September 3, 1997
Responsible Office: Highway Management
Policy Number: 512-003(P)

Jerry Wray
Director

PAYMENT FOR CONTRACT WORK

PURPOSE:

This policy is to establish uniform Statewide criteria for the prompt payment of completed contract work and the termination of Contractor responsibility after satisfactory completion of all contract requirements.

AUTHORITY:

The "Construction and Material Specifications" (C&MS), Sections 109.06 and 109.08

REFERENCES:

C&MS Sections 108.09, 109.06, 109.07, 109.08, 109.09 and 451.16

Ohio Revised Code (ORC) Sections 126.30, 1311.25 - 1311.32, 5525.16, 5525.18, and 5525.19

Appendix 1: Sample Termination Letter

SCOPE:

This policy is for use by District for processing estimates in the Construction Management System (CMS) for completed work on construction projects and processing of the final estimate.

BACKGROUND:

The Department is obligated to pay for completed contract work promptly in accordance with ORC Sections 126.30 and 5525.19. This payment must be made to the Contractor within thirty (30) days of the completion of the first estimate date after the completion of the work, except for payments found during the finalization process. Currently, it is the Department's goal to pay the final estimate on the project within six (6) months of the project being completed. Failure to meet the progressive payment time will result in interest penalty payment being deducted from the appropriate District Budget.

CMS automatically generates an estimate on the assigned estimate days for electronic approval by the Project Engineer or Project Supervisor (PE/PS) and the District. When approved on the CMS EST screen by both the PE/PS and Estimate Approval Authority and there are no deficient payrolls or unapproved materials for the work involved, CMS will automatically print the estimate in the Office of Accounting. The Office of Accounting then produces a voucher and sends it to State Accounting Division in the Office of Budget and Management. State Accounting then issues a warrant (check) to the Contractor or electronically transfers funds to the Contractor's account. CMS will make all necessary deductions to the estimate for retainage, delivered materials, and liquidated damages. Liens are deducted from estimates by the Office of Accounting.

After all finalization documents are received by the District, the final estimate is generated by CMS, printed in the District and signed by the District person who has been given estimate approval authority. The signed final estimate is submitted to the Office of Accounting with the final project report for payment. The District prepares and sends a letter to the Contractor informing them of the termination of their responsibilities on the project.

Projects that lack necessary documentation are referred to the Office of Highway Management for an Administrative Closing.

DEFINITIONS:

CMS: Construction Management System, the Department wide computer system for administration of construction projects.

C&MS: Construction and Material Specifications

Estimate: The District authorization of monetary payment to a Contractor for contract work completed. Also termed Partial Payment or Partial Estimate when generated before the completion of the work. The Final Estimate authorizes the last payment to the Contractor.

Lien: A Public Improvement Lien, the right to hold payment from the Contractor as security for a debt to a material supplier, laborer, or subcontractor.

ORC: Ohio Revised Code

PE/PS: Project Engineer or Project Supervisor

PWC: Physical Work Completed

Retainage: Portion of a payment automatically withheld to assure Contractor completion of the remaining contract work.

PROCEDURE STATEMENT:

I. Responsibilities for Estimates

- A. The District shall establish procedures for approving estimates. These procedures shall include the following minimum requirements:
1. Setting the first estimate date. The first estimate date should be two (2) weeks after the first day of work or as otherwise agreed to by the Contractor at the Preconstruction Conference.
 2. Assigning project and District office personnel the CMS authorities with the limitation that a person with PE/PS Approval Authority on a project cannot be assigned Estimate Approval Authority on the same project. CMS authorities include Estimate Approval, PE/PS Approval, and Project Update.
 3. Review each work day the current PE/PS Approved Estimates on the CMS PEAPR screen and approve all proper estimates.
 4. Overriding an unjustified CMS hold on an estimate. Unjustified holds are limited to the following:
 - a. The estimate is being held for deficient payrolls, but the District establishes that all required payrolls were submitted, reviewed, and are acceptable. The hold is caused by the payroll data not being processed by CMS in time for estimate.
 - b. The estimate is held for the lack of material approval, but the PE/PS establishes that the material used is approved and the hold is caused by the approval not being processed in time for the estimates.

5. Establishing the security of the estimate process and assuring that project personnel are including only completed contract work and actual delivered materials on estimates for payment. The inclusion on an estimate of work that was not performed or materials not delivered or not necessary to perform contract work is improper and constitutes falsification of documents and is subject to disciplinary action.
 6. Establish and confirm correctness of the pay quantities and delivered material quantities entered into CMS.
 - a. Project inspectors are allowed update authority to enter these quantities.
 - b. Delivered materials, in accordance with C&MS Section 109.07 and ORC Section 5525.19, are limited to durable items that have a significant value in comparison to the total price of the contract and shall not be in excess of what is required to do the contract work. The unit cost allowed is the invoiced material cost and reasonable delivery charges less any Contractor discounts. The allowed unit cost shall not exceed the applicable contract unit price. Delivered material invoices shall be kept in the project file. Costs for stockpile materials may be established by documents other than invoices.
 7. Entering into CMS liquidated damages due to failure to meet an interim completion when these damages accrue.
 8. Eliminating from a held estimate any item that is deficient in material approval and is not eligible for an override as defined in Section I.A.4.b. of this policy.
 9. Payrolls are entered into the CMS PAYRL screen after they are reviewed and approved for prevailing wage compliance. This is done by either the PE/PS or District Wage Coordinator.
 10. An estimate for payment of bond items should be made upon request by Contractor by the CMS RGEN screen, provided the contract has been signed.
- B. Liens are applied against contract funds by the Office of Accounting in accordance to ORC Sections 1311.25 - 1311.32.

II. Final Estimates and Processing Estimates after Physical Work Completed

- A. Enter the PWC date into CMS when all field work is done and the project is ready for final inspection by the District Deputy Director's Appointee for Final Inspections.
 - 1. The District shall process estimates as agreements are reached with the Contractor on final quantities and resulting change orders are approved. The District shall assign RGEN PE/PS and Estimate Approval Authority such that the same person does not have both authorities on a project.
 - 2. The final estimate shall be from zero dollars (\$0.00) to no more than five-hundred dollars (\$500.00).
- B. The final estimate shall be generated and submitted to the Office of Accounting within the Department's current goals.
- C. The District shall certify the correctness of the final estimate by signing it. The quantities shall agree with the contract quantities as adjusted by the approved change orders on the final report. Copies of the final estimate and final report shall be submitted to the Office of Accounting as follows:
 - 1. Non-Federal Projects - Submit one (1) signed copy each of the Capital Final Estimate, State Auditor Final Estimate and Contractor Final Estimate, all with the final report attached.
 - 2. Federal Projects - Submit one (1) signed copy each of the Capital Final Estimate and State Auditor Final Estimate and two (2) signed copies of the Contractor Final Estimate, all with the final report attached.
- D. The District shall inform the Contractor by letter that the final estimate is signed, the final contract amount, and that this constitutes final acceptance in accordance with C&MS Section 109.09. This letter shall be in the standard form given in Appendix 1, with copies to the Surety and others as indicated on the sample letter.
- E. The District shall enter the date of Final Estimate Approved by Construction into CMS.
- F. The District shall generate the final estimate when the following are accomplished:

1. Agreement is reached with the Contractor on final quantities, all change orders are processed authorizing all deviations from the original contract, all postponements of contract completion dates and waivers of liquidated damages are processed, and all Contractor claims are resolved. The Contractor shall be allowed fourteen (14) days to sign a final quantity change order. The District shall inform the Contractor of this deadline in a cover letter with the transmitted change order. When the Contractor does not meet this time limit and has not indicated a disagreement with the final quantities or requested more time, the change order shall be processed without the Contractor's signature.
2. Measurement of thickness of portland cement concrete pavement or base as specified in C&MS Section 451.16.
3. Submission of Statement of Materials and Labor used by Contractors (Form FHWA-47, formally Form PR-47) to the FHWA in duplicate on Federal Projects on the National Highway System more than one million dollars.
4. Final inspection and acceptance of a project in accordance with current policies and form C-85 issued.
5. For all Federal Projects - Testing of record samples required by FHWA and issuance of certification of materials by the Department that materials and work on the project substantially conformed to the plans and specifications.
6. All payroll transcripts and affidavits are received and are accepted.
7. The required project finalization documents are received, accepted, distributed, and filed in the District project file. These documents are as follows:
 - a. The CMS final report listing all changes to the original contract.
 - b. Certification by the District in accordance with the current policies on material documentation that require all materials incorporated into the work were tested and approved in accordance with the contract specifications. Copies should be sent to FHWA on Federal Oversight projects.
 - c. Letter of Acceptance by the County Commissioners, County Engineer, City Engineer, or other State Agencies for projects off the State System stating that the work is accepted. If this letter cannot be obtained and the work is acceptable in the

judgement of the District Deputy Director, this requirement is waivable by a written statement by the District Deputy Director.

- d. On State projects without any Federal funding, the Contractor's Final Wage Affidavit as required by C&MS Section 108.09.

III. Administrative Closing

- A. If the District cannot obtain all the required documentation and judges that the Contractor will not supply these documents, the District will refer the project to the Office of Highway Management for an Administrative Closing.
- B. The Administrative Closing referral will consist of:
 1. The signed final estimate copies.
 2. Received finalization documents.
 3. Written explanation of why the Contractor has not provided the required documents.
 4. Written explanation and documentation of the efforts the District has made to obtain these documents.

- IV. The Office of Highway Management will perform Quality Assurance Reviews of the District project files to assure proper finalization of projects in conformance to this policy.

TRAINING:

Each District shall review this policy with all Project Engineers, Project Supervisors, and any other District personnel assigned to estimates and project finalization. Such reviews will be conducted as necessary to assure the involved personnel know and understand this policy.

FISCAL ANALYSIS:

This policy will not have any fiscal impact.

[Date of final estimate]

[Contractor Name]
[Contractor Address]
[Contractor City]

Re: [Project County]
Project No. xxx (19xx)
Federal No. xxxxxxxxxxxxxxxx
PID No. xxxxx
Termination of Contractor's Responsibility

Dear Contractor:

The final estimate for the subject project has been signed for the Director on this date. The final contract amount was \$xxx,xxx.xx.

This constitutes final acceptance of the project in accordance with the provisions of Section 109.09 of the Construction and Material Specifications.

Respectfully,

[Name]
[Title]

c: Office of Structural Engineering
Tony Palka, Office of Contracts
Surety
Flexible Pavements, Inc.
Ohio Contractors Association
[FHWA on Federal Aid Projects]
[District Files]