**PN 031 – 04/17/2020 - PROMPT PAYMENT - ODOT- LET CONSTRUCTION PROJECTS**

The U.S. Department of Transportation’s (DOT’s) rules related to Disadvantaged Business Enterprises are published in the Code of Federal Regulations (CFR), 49 CFR Part 26. Within 49 CFR Part 26, 49 CFR 26.29 lays out the prompt payment requirements that apply to ODOT (the Department) and, by extension, its Prime Contractors and Subcontractors (including non-DBEs). The 49 CFR 26.29 requirements apply only to federally funded contracts (i.e., contracts with DOT financial assistance). The State of Ohio’s laws related to prompt payment are published in Ohio Revised Code (ORC) 4113.61. ORC 4113.61 applies to all contracts. Prompt payment is also part of ODOT’s standard specifications (Construction and Materials Specifications (C&MS) 107.21). The Prime Contractor must comply with this Proposal Note, ORC 4113.61, C&MS 107.21 and, where applicable, 49 CFR 26.29.

The Department monitors the payments made by Prime Contractors and Subcontractors for compliance with this Proposal Note, ORC 4113.61, C&MS 107.21 and, where applicable, 49 CFR 26.29. To facilitate this monitoring, the Department requires Prime Contractors to report their payments to Subcontractors, and Subcontractors to report their payments to Sub-subcontractors. The payment data reported must include any retainage withheld and any previously withheld retainage released. All such reporting must take place within the AASHTOWare Project Civil Rights and Labor (CRL) system. The payer must enter and sign payments within 7 calendar days of making the payment. The payer must also enter and sign return of retainage within 7 calendar days of release back to the payee.

Prime Contractors and Subcontractors must report payments to Subcontractors (DBE and non-DBE), Sub-subcontractors (DBE and non-DBE), suppliers (DBE only), and trucking firms (DBE only).

An interactive training guide on reporting Subcontractor payments in CRL can be found at [http://www.dot.state.oh.us/Divisions/ConstructionMgt/CRL/Pages/Program-Information.aspx](https://www.dot.state.oh.us/Divisions/ConstructionMgt/CRL/Pages/Program-Information.aspx) under “Ohio DOT Reference Materials”.

The payer (whether Prime Contractor or Subcontractor) must report the following information:

1. The name of the payee;
2. The dollar amount of the payment to the payee;
3. The date the payee was paid;
4. The amount of retainage withheld (if any).

The payer must report the return of retainage in a standalone payment entry.

The payer must sign each reported payment. The payee cannot verify a payment until the payer signs it.

Payees must verify, in CRL, each payment reported by the payer within 30 days of the payment being signed by the payer. This verification must include:

1. Whether the payment was received, and if so, whether it was as expected or not;
2. The dollar amount of the payment received;
3. The date the payment was received.

The Prime Contractor must include the aforementioned prompt payment and reporting requirements in all Subcontractor agreements that it enters into and further require that all Subcontractors place the same prompt payment and reporting obligation in each of their lower tier agreements.

SANCTIONS AND ADMINISTRATIVE REMEDIES

Failure by the prime contractor to follow Prompt Payment requirements may result in the issuance of sanctions as follows:

1 st Tier: Letter of Reprimand

2 nd Tier: Damages equivalent to the daily liquidated damages amount found in section 108.07 for each incident of non-compliance

3 rd Tier: If a pattern of paying damages persists or the Contractor has falsified, misrepresented or withheld information, ODOT can pursue other remedies available by law including suspension, revocation, and/or debarment.

Factors to be considered in issuing sanctions may include, but are not limited to the following:

· the magnitude and the type of offense;

· the degree of the Contractor’s culpability;

· any steps taken to rectify; and

· the Contractor’s record of performance on other projects the number of times the Contractor has been previously sanctioned by ODOT.