



GUIDE TO PROMPT PAYMENT FOR NON-CONSTRUCTION SUBCONTRACTORS

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Prompt payment requirements already exist on State-funded construction contracts. Recently, prompt payment requirements became effective on all State-funded non-construction contracts in excess of \$25,000 by agencies that are members of the Governor's Cabinet.

What does the prompt payment directive mean to subcontractors?

Subcontractors on contracts greater than \$25,000 can expect to receive payment for any undisputed amounts after the prime contractor has received a progress payment. Otherwise, a subcontractor can expect to receive written notice from the contractor as to why payment is being withheld.

What does the prompt payment directive mean to a Minority Business Enterprise (MBE) or Small Business Reserve (SBR) subcontractor?

MBE and SBR subcontractors have the remedies as those described above. In addition, agencies must notify the Governor's Office of Minority Affairs (GOMA) of any complaint of non-payment of subcontractors with MBE or SBR status.

What are the responsibilities of the prime contractor?

The prime contractor has the responsibility to:

- Pay a subcontractor an undisputed amount to which the subcontractor is entitled; OR
- Notify the subcontractor in writing and state the reason why payment is being withheld.
 - If payment is withheld, the prime contractor must provide a copy of the notice to the procurement officer.

What should I do if I am not being paid by the prime contractor?

The subcontractor must notify the procurement officer. GOMA recommends that notice be given in writing. The notice will include:

- The name of the prime contractor from which payment has not been received;
- The project under which the dispute exists;
- The amount in dispute;
- An itemized description on which the amount is based; and
- If known, an explanation for any dispute concerning the payment not received.

Who should I contact at the agency?

Subcontractors who have not received payment of any undisputed amount should contact the agency's chief procurement officer. Contact information for the Cabinet agencies' chief procurement officers can be found at the end of this document.

I've sent my written notice of non-payment to the procurement officer. What happens now?

The procurement officer, or another agency representative, will contact the prime contractor to ascertain whether the amount withheld is an undisputed amount. If it is determined that part or the entire amount withheld is undisputed, the agency representative will instruct the prime contractor to pay the subcontractor the undisputed amount. The agency representative is to communicate to the subcontractor the results of the discussions with the prime contractor.

Are there any penalties to the prime contractor for failure to pay subcontractors undisputed amounts?

Yes. The State agency that issued the contract may, consistent with the contract terms:

- Withhold further payments to the prime contractor until payment to the subcontractor is verified;
- Suspend all or some of the contract work;
- Pay or otherwise cause payment of the undisputed amount to the subcontractor;
- Place a payment for an undisputed amount in an interest-bearing escrow account; or
- Take other or further actions as appropriate to resolve the withheld payment.

What is an “undisputed amount”?

An “undisputed amount” means an amount owed by a contractor to a subcontractor for which there is no good faith dispute. This includes any retainage withheld, and any amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

What agencies are members of the Governor’s Cabinet?

The 23 member agencies of the Governor’s Cabinet and their chief procurement officers are:

Agency	Procurement Officer	Email
Aging	Ivey Gilliam	ilg@ooa.state.md.us
Agriculture	Joe Harrington	harrinjm@mda.state.md.us
Budget and Management	Joel Lieberknight	jlieberkn@dbm.state.md.us
Business and Economic Development	Debi Chronister	dchronister@dbed.state.md.us
Disabilities	John Brennan	jbrennan@mdod.state.md.us
Education	Albert Annan	aannan@mdse.state.md.us
Environment	Mike Gallagher	mgallagher@mde.state.md.us
Executive Department	Jeremy Rosendale	jrosendale@gov.state.md.us
General Services	Michael Haifley	michael.haifley@dgs.state.md.us
Health and Mental Hygiene	Gary Goldberg	ggoldberg@dhhm.state.md.us
Higher Education	G. Edward Ommert	eommert@mhec.state.md.us
Housing and Community Development	Eleanor Kennedy	kennedy@mdhousing.org
Human Resources	Jane Bailey	jbailey@dhr.state.md.us
Information Technology	Sue Howells	Sue.Howells@doit.state.md.us
Juvenile Services	Marcus Filson	filsonm@djs.state.md.us
Labor, Licensing, and Regulation	Latesa Thomas	lthomas@dllr.state.md.us
Military	Nancy Fabula Hevey	heveyn@mdmildep.org
Natural Resources	Diane Russell	drussell@dnr.state.md.us
Planning	Samer Atiya	satiya@mdp.state.md.us
Public Safety and Correctional Services	Behira J. Said-Pompey	BSaid-Pompey@dpscs.state.md.us
State Police	Jonathan Beam	jbeam@mdsp.org
Transportation	Carmina Perez-Fowler	Cperez-fowler@mdot.state.md.us
Veterans Affairs	John Kearns	jkearns@mdva.state.md.us