

OKLAHOMA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISIONS FOR PAYEMENT TO SUBCONTRACTORS

The DBE regulation, 49 CFR Part 26.29, requires the recipient to establish a contract clause to require prime contractors to pay all subcontractors for satisfactory performance of their subcontracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. When the DBE regulation changed in 1999 to require prompt payment, the U.S. DOT left it up to the recipients to determine the period for payment, as long as it did not exceed 30 days. At the time, ODOT chose to utilize the 30-day prompt payment period, which applies to all subcontractors, DBE, and non-DBE.

The Code of Federal Regulations require that Contractors pay subcontractors, suppliers, and vendors promptly for work performed or materials provided, and release retainage promptly after the subcontractor, supplier, or vendor completes the work or provides material certifications. The Department has established that, when criteria for payments are met, 15 calendar days is a reasonable time to make payment or release retainage, and requires that payment be made within that time. The 15 calendar day period for subcontracted work or materials and services provided will commence on the date the Contractor receives payment from the Department for the work. If the Contractor holds retainage for subcontracted work or materials/services provided, the 15 day period shall commence on the date that the Resident Engineer determines that the subcontracted unit portion of the Contract has been completed in accordance with Subsection 105.17, "Project Completion and Acceptance," or the project is deemed complete by the Department. Services provided to a Contractor for support of construction operations or as deemed necessary by the Contractor for upkeep of machinery or facilities used directly or indirectly for construction operation shall be paid within 15 calendar days of the last services provided. If payment is not made for work, materials, or services, or if retainage is not released within the required 15 day period, the subcontractor will be entitled to make a formal written complaint to the Department detailing the amount and date due, and the work performed or material provided. The Department will then institute a formal investigation and, if warranted conduct a formal hearing. Upon finding that the Contractor failed to perform in accordance with the terms of the Contract requirements, the Department may impose sanctions as provided in Subsection 102.01, "Refusal of Proposals," Subsection 102.14, "Rejection of Proposal," or both.