

## Prompt Payment Clause (26.29)

As part of its DBE Program, the NDOR requires prime contractors to include as a part of every subcontract (including second tier subcontracts) for work and material a *Prompt Payment Clause*. The *Prompt Payment Clause* will require payment to all subcontractors, not only DBEs, for all labor and material for work completed, within twenty (20) days of receipt of progress payments from the NDOR for said work. The *Prompt Payment Clause* will also stipulate the return of retainage within thirty (30) days after the subcontractor achieves the specified work as verified by payment from the NDOR.

The NDOR will include the following clauses in each DOT-assisted prime contract:

“The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than twenty (20) days from receipt of each payment the prime contractor receives from the Nebraska Department of Roads. The prime contractor agrees further to return retainage withheld to ensure satisfactory completion of the work, to each subcontractor within 30-days after the subcontractor achieves the specified work as verified by payment from the NDOR.”

“Any disputes that arise regarding the satisfactory completion of work by a subcontractor may be brought to the attention of the NDOR, which will make a determination. Any delay of payment from the above-referenced time frame may occur only for good cause following written approval from the NDOR. This clause applies to both DBE and non-DBE subcontractors.”

“The failure by the prime contractor to carry out the requirements of the *Prompt Payment Clause* and/or timely return of retainage, without just cause, is a material breach of this contract, which may result in the NDOR withholding payment from the prime contractor until all delinquent payments have been made (no interest will be paid for the period that payment was withheld), termination of this contract, or other such remedy as the NDOR deems appropriate.”

**NOTE:** The prime contractor may withhold payment only for just cause, and must notify the NDOR in writing of its intent to withhold payment prior to actually withholding payment. The prime contractor shall not withhold, delay or postpone payment without first receiving written approval from the NDOR.

**Please allow 3-5 days from the date shown on the “Contractor Payments” page to determine when the Prime Contractor has actually received payment. The Prompt Payment Clause will begin at that time.**