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DBE Prompt Payment Policy

Program & Contract Requirements

Per FTA prompt payment requirements established in 49 CFR Part 26.29, the Luzerne County Transportation Authority (“LCTA”) shall make prompt payments to all DBE contractors and subcontractors within 30 days of invoice.

LCTA Contract Provisions Relating to Prompt Payment

Each federally funded contract the Luzerne County Transportation Authority signs with a contractor will include the following provisions:

“The contractor shall promptly pay any and all subcontractors by an instrument that guarantees availability of funds immediately upon deposit of said instrument. The contractor shall include, in its monthly invoice submission to LCTA, amounts to pay for all subcontractors’ acceptable invoices, no later than 30 days after receipt of such invoices. Unless otherwise approved in writing by the Luzerne County Transportation Authority, the contractor shall, within ten (10) days after receipt of the payment made by LCTA, pay to each of its immediate subcontractors for satisfactory performance of its contract, the amounts to which they are entitled, after deducting any prior payments and any amount due and payable to the contractor by those subcontractors. Any delay or postponement of such payment may take place only for good cause and with the LCTA’s prior written approval. If the contractor determines the work of the subcontractors to be unsatisfactory, the contractor must immediately notify in writing to LCTA (with a separate notice to the LCTA’s Office of Civil Rights if the subcontractor is a DBE) and state the reasons. Failure by the contractor to comply with this requirement will be construed to be breach of contract and may be subject to sanctions as specified in the contract.”

“Should the Luzerne County Transportation Authority make incremental inspections and, upon approval of the contractor’s work at various stages of the contract, pay a portion of the retainage, the contractor shall promptly, within 30 days after LCTA has made such payment, pay to the subcontractor who has satisfactorily completed all of its work and whose work is covered by LCTA’s inspection and approval, all retainage owed to the subcontractor. LCTA’s incremental inspections, approval or release of a portion of the retainage under this section shall not constitute acceptance.”

LCTA DBE Program Provisions Prompt Payment Mechanisms (49 CFR § 26.29)

LCTA, as part of its DBE program, has established as per the requirements of 49 CFR Part 26.29, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

LCTA shall ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. LCTA will utilize one of the following methods to comply with this requirement:

- (1) LCTA may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.
- (2) LCTA may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.
- (3) LCTA may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.
- (4) LCTA 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 30 (thirty) days from the receipt of each payment the prime contract receives from LCTA Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of LCTA or its designated project manager, engineer or agent. This clause applies to both DBE and non-DBE subcontracts."

"The prime contractor agrees to return retainage payments to each subcontractor within 30 (thirty) days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of LCTA or its project manager, engineer or agent. This clause applies to both DBE and non-DBE subcontracts."

For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

Monitoring Responsibilities (Section 26.37)

The LCTA implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and set forth these mechanisms in the LCTA's DBE program.

Monitoring Payments to DBEs and Non-DBEs

The LCTA's DBE program provides the appropriate means to enforce the requirements of this section. LCTA shall include appropriate penalties for failure to comply, the terms and conditions of which are established in both the DBE program and contracts. LCTA's DBE program shall also provide that any delay or postponement of payment among the parties may take place only for good cause, with LCTA's prior written approval.

Communication is made between LCTA and the DBE firms to assure payments have been made in a timely manner. Any delay in payments being made by the prime contractor to the subcontractor can result in LCTA withholding payments to the prime contractor or paying the subcontractor directly and deducting that amount from the total amount owed the prime contractor, as explained in Section VI, Subparagraph B. LCTA, may, under extenuating circumstances, exclude the prime contractor from future procurement projects funded by federal funds.

LCTA will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26, sections 103, 107 and 109. LCTA will also consider similar action under its own legal authorities, including responsibility determinations in future contracts.

The LCTA undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

- (1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.
- (2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.
- (3) LCTA has established prompt payment contract clauses and reporting requirements to monitor and enforce that prompt payment and return of retainage is in fact occurring. LCTA will apply all legal and contract remedies available to it under federal, state and local law to ensure compliance with Part 26 requirements by all participants in the DBE program.

- (4) Posting prime contractor payments to a website, database, or other place accessible to subcontractors to alert them to the start of the 30-day clock for payment.
- (5) Use of an automated system that requires real time entry of payments to, and receipts by prime contractors and subcontractors and regularly monitoring that system.

The LCTA requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the LCTA's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the LCTA or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

This reporting requirement also extends to any certified DBE subcontractor. The LCTA shall perform interim audits of contract payments to DBE's. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

The LCTA proactively reviews contract payments to subcontractors including DBEs on a monthly basis. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the LCTA by the prime contractor.

Internal Prompt Payment Procedures

1. When the LCTA Purchasing Manager makes a purchase for goods and/or services from a DBE vendor, the Purchasing manager will alert both the LCTA DBELO and Accounting Clerk of the purchase date, vendor name, items purchased, and delivery date or finish date.
2. The LCTA DBELO will enter the purchasing information into the tracking spreadsheet.
3. For contract purchases of services from a prime vendor or subcontractor, the LCTA Purchasing Manager and DBELO will monitor the progress of performance for completeness on a bi-weekly basis until the project is completed. This progress will be notes in the tracking spreadsheet.
4. Upon completion for both goods delivered and invoiced and services completed and invoiced, during the reconciliation process, the LCTA Purchasing Manger will forward the invoice to both the LCTA DBELO and Accounting Clerk for expedited payment within the 30-day window. The invoice date will be entered into the tracking spreadsheet.

5. The LCTA DBELO will follow up on all pending invoices needing payment, and coordinate with the LCTA Accounting Department to ensure payment is made within the 30-day window. Calendar reminders for payment will be made in the email software system at a one week interval to make payment. The payment date and check number will be entered into the tracking spreadsheet.
6. After all invoice and payment information is entered into the tracking sheet, the LCTA DBELO will retain one paper copy of the invoice in a file to be stored in the DBELO's office.
7. The LCTA DBELO will track all payments made, via the use of the tracking spreadsheet. The LCTA DBELO will review prompt payment statistics with both the LCTA Purchasing Manager and Director of Finance on a monthly, but not to exceed a quarterly basis, as a means to ensure compliance with the Prompt Payment Policy.

Prompt Payment Dispute Resolution

The LCTA shall take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of § 26.29.

The LCTA has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

(1) Alternative dispute resolution (ADR) Reconsideration Official:

The LCTA designates the Executive Director as the Reconsideration Official who will operate as a separate entity from the DBE Liaison Officer. The Reconsideration Official will overview any dispute that may arise due to an apparently successful bidder/offerer failing to meet the requirements of a DBE contract goal and prompt payment requirements. Once a decision has been reached by the Reconsideration Official, the bidder/offerer will be given two (2) weeks to meet with the Reconsideration officer and provide written documentation or discussion concerning the issue of whether or not the DBE goal and prompt payment was achieved or, as an alternative, a "good faith" effort was put forth. A final decision will be rendered within two (2) weeks from the time the Reconsideration Official and the bidder/offerer meet with that decision being forwarded to the bidder/offerer. The final decision is not appealable to the U.S. DOT/FTA.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure.

If affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate the complaint.

If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the LCTA to resolve prompt payment disputes, affected subcontractor may contact the responsible FTA contact.

Enforcement Actions for Noncompliance of Participants

LCTA will apply all legal and contract remedies available to it under federal, state and local law to ensure compliance with Part 26 requirements by all participants in the DBE program.

LCTA will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution and referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109. LCTA will also consider similar action under its own legal authorities, including responsibility determinations in future contracts. LCTA will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

LCTA, in addition to the above, will include a monitoring and enforcement mechanism to ensure that work committed to DBE's at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBE's to which the work was committed. This mechanism will include certification and review of contracting records and monitoring of all work sites for this purpose. The above on site monitoring and certification applies to all work being performed by DBE prime(s) and/or subcontractor(s) in accordance to the signed contract(s).

The LCTA will provide appropriate means to enforce the requirements of § 26.29. These means include:

- In accordance with the contract, assessing liquidated damages against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor.

- Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract.
- Pay subcontractors directly and deduct this amount from the retainage owed to the prime.
- Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met.
- Other penalties for failure to comply, up to and including contract termination.

The LCTA DBELO will actively implement the enforcement actions detailed above.