DATE: October 10, 2012

TO: Region Engineers
    Region Associate Operations Engineers
    Region Construction Engineers
    TSC Managers
    TSC Construction Engineers

FROM: Gregory C. Johnson, P.E.
      Chief Operations Officer

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SUBJECT: Bureau of Highway Instructional Memorandum 2012-12
         Timely Progress Payments to Contractors

MDOT has always provided a clear message to construction offices regarding the expectations for timely contractor payments. This has been discussed in a number of recent venues including the previous two annual MDOT Statewide Construction Alignment Conferences as well as region wide construction business team meetings. The industry has recently provided several examples of concern regarding our payment and construction administration practices. While MDOT Executive Leadership believes that these cases are isolated and not a reflection of our overall success, they do believe there are a few messages that warrant field engagement in order to ensure continued efficient construction contract administration.

Michigan and its contracting industry are still experiencing tough economic times; therefore, it is imperative that we keep contract payments flowing to contractors for satisfactorily completed work. MDOT field staff need to be pro-active in resolving project level disputes on quantities/claims and timely in processing pay estimates and contract modifications on all projects. Similar expectations are placed on the administration of local agency construction projects and MDOT needs to have an active role in the oversight of the local agency program.

Industry has been encouraged to follow standard protocol when seeking resolution on unresolved project level issues they feel are not receiving timely attention. If issues are unresolved at the project level, they are expected to first contact the TSC manager. The next and subsequent contacts will be the Region Engineer then the Engineer of Construction Field Services (CFS). Direct contact with executive leadership has been discouraged as this eliminates efficiencies and hinders local relationships.
With the recent changes to the State Administrative Board and State Transportation Commission processes for approving project level changes, it is important to establish a sound internal quality assurance plan through the regions and CFS. MDOT is also expanding our performance measures to track the progress of a number of our contract administration activities such as overdue finals, contractor claims, timely progress payments, and contract modification processing.

This BOH IM provides guidance that field staff is to follow regarding timely progress payments on all construction projects. There are a couple of embedded checklists that should be discussed with the contractor at the pre-construction meeting, as well as provided to them through the pre-construction meeting notes document.

**Progress Payment Topics to be discussed at the Pre-Construction Meeting**

The following topics are to be discussed at the pre-construction meeting. All decisions and outcomes are to be placed into the meeting notes to provide a clear direction on progress payments.

1. The contractor must be aware of and diligent in promptly submitting material documentation and supporting documentation per the specifications and special provisions in the contract. If they have any questions on submittal requirements they should immediately contact the engineer. This includes items such as material source lists, load tickets, form 1386, form 2124A (electronic submittal), Buy America certification, certified payrolls, testing certifications, etc.

2. The contractor should have a quality assurance check on documentation submittals to ensure that the submittals are in the correct format with identifying project information, dates, and signature(s).

3. The contractor should request daily measurements in the presence of the engineer’s representative and/or provide a daily copy of measured quantities to the engineer’s representative so discrepancies can be identified promptly.

4. The contractor should discuss any timely progress payment issues at the pre-construction meeting and present any issues at subsequent progress meetings. Contractors should not assume the issue is known or being dealt with, they need to bring it to the engineer’s attention.

5. All subcontractor names and agreement cover sheets should be provided at the pre-construction meeting and promptly thereafter when engaging the services of a subcontractor.

6. Contractors should not perform disputed, unauthorized, or extra work until an agreement on cost is established.
7. Contractors are strongly encouraged to utilize the read only or full contractor version of FieldManager. Read only files will be provided to the contractor and any subcontractors as requested when pay estimates are processed or when specifically requested. This will allow the contractor to review documentation deficiencies and address issues in a timely manner.

8. Contractors must perform acceptable quality work in accordance with the contract documents, as unacceptable work will result in delayed or no payment until the problem is addressed.

9. There should be discussion on the Frequently Used Special Provision for Prompt Payment (12SP109(A)) including the following information:
   a. Progress Payments
      i. Start Date
      ii. Frequency of Pay Estimates
   b. Prime Contractor Payment Time Requirements
      i. First (or one time) Payment
         1. Payment to sub-contractors within 10 calendar days
      ii. Subsequent Payments
         1. Payment to sub-contractors within 10 to 30 calendar days
   c. Required Form Submittal
      i. Sworn Statements
      ii. Waivers of Lien
      iii. MDOT form 2124A, Prime Contractor Bi-Weekly Statement of Subcontractor/Supplier Payments
      iv. MERS Database

10. The contractor and engineer must agree to unit prices or negotiate costs for contract revisions (formerly extra work) upon encountering revised work. The contractor should submit unit costs as promptly as possible and before commencing field operations. Negotiated work costs should be agreed upon prior to the commencement of the work. This will reduce the time a pay item does not have a unit price and will not be able to be placed on a contract modification.

11. Retainage of any kind (formal or informal) between contractors or suppliers at any level is not permitted per MDOT procedures.

12. The use of electronic signatures by contractor staff for contract modification approval is strongly encouraged. Usage by MDOT is dependent on the contractor.

13. Provide the contractor with the following checklist:
   - MDOT Authorized Signature Form (form 1979)
   - Prevailing Wage Compliance
     - [http://www.michigan.gov/mdot/0,4616,7-151-9622_11044_11367-222170--,00.html](http://www.michigan.gov/mdot/0,4616,7-151-9622_11044_11367-222170--,00.html)
   - Documentation Guide - Minimum Acceptance Requirements for Materials Approvals and Documentation
14. Provide the following checklist to the prime contractor for their usage as well as subcontractors (as appropriate):

- Is my subcontract signed?
- Has my subcontract been submitted to MDOT? Check MDOT contract inquiry screen: [http://mdotwas1.mdot.state.mi.us/public/transport/](http://mdotwas1.mdot.state.mi.us/public/transport/)
- Are all of my subcontracts current? Check contract inquiry screen.
- Has my current certificate of insurance been submitted?
- Are my testing orders completed, signed and submitted?
- Have all my material certifications been completed and submitted? Check FieldManager insufficient material report.
- Are my certified payrolls completed, signed and submitted?
- Do I have items of work yet to complete?
- Has the prime contractor been paid for my items of work? Check MDOT contract inquiry screen.
- Has a lien been placed on the project by one of my suppliers? Are joint checks required?
- Do I have signed waivers / statements from my last checks?
- Are there pending penalties or disincentives associated with my items of work?
- Is there a pending claim for additional compensation associated with my item(s) of work?
- Have daily force account records been reviewed, signed and submitted?
- Has any extra work and compensation been approved by the owner?
- Have I communicated payment issues to the prime's project manager/foreman/superintendent?

### Action Items for Field Staff to Ensure Timely Progress Payments to Contractors

1. Field staff need to measure quantities placed in a timely manner and confirm placed quantities with contractor personnel. This should occur on a daily basis as practical and possible. Final field measurements should be taken at the end of each day rather than waiting to the end of the project.

2. When possible, final field measurements should be measured in the presence of a designated contractor representative to avoid multiple measurements and disagreements.
3. Field staff is to diligently work to resolve project level claims at the lowest possible level in a timely manner. Time constraints on MDOT actions on claim processing must be adhered to or extensions requested to the contractor. Waiting to resolve claim issues until the end of the project is not acceptable.

4. Agreed upon extra work is to be immediately reported on an Inspector’s Daily Report (IDR) and quantities are to be agreed to when reporting.

5. Work items placed in the field must be fully reported on an IDR. Field staff must report accurate quantities placed, if 500 feet of curb and gutter are placed, 500 feet is to be reported and not a lesser quantity for unofficial retainage, material documentation reduction, or any other reason. Work completed and accepted must be fully reported. Non-accepted work is to be reported to the engineer.

6. Local agencies must process a contract modification and/or pay estimate for claim resolutions as provided by MDOT (region office review or central office review) within seven (7) days of receipt of the claim decision.

7. The contractor or subcontractor should be informed by field staff (or office technician) when material deficiencies or missing documentation will prevent payment for completed work. The contractor is responsible to submit the missing documentation or address the issue promptly in order to ensure payment on the next pay estimate.

8. Consultant oversight record reviews should begin when the contractor submits documentation stating that all work is complete. Project record reviews can begin before punch list work is completed.

**Action Items When Processing Progress Pay Estimates and Contract Modifications**

1. Pay estimates are to be processed for reported quantities even if there is a dispute on the final quantity. An example is when the field office states that 50 feet of curb was completed and the contractor states that 60 feet was completed, the field office is to pay the 50 feet of curb and timely resolve the discrepancy in final quantity.

2. Field offices need to ensure that payment is processed in a timely manner when all required documentation is received, reviewed, and approved. Procedures to ensure timely payments are encouraged (e.g. FieldManager reports reviewed by engineer, etc.).

3. Contract modifications are to be processed on a weekly basis or when there is a minimum of $10,000 in items over authorized quantity, whichever occurs first to ensure timely payment for work completed. With electronic approvals, more frequent contract modification processing is suggested. Waiting until the end of the project to process balancing contract modifications for increased quantities is not appropriate.
4. Engineers are to ensure that unit costs for contract revisions are incorporated per subsection 109.05 of the 2012 Standard Specifications for Construction. Any related correspondence is to be maintained in the project files.

5. Budgeted pay item quantities for extra work or monetary amounts for force account work are to be immediately processed via a contract modification to allow timely payment for extra work.

6. Prior to processing pay estimates, certified payrolls must be current and checked by project staff to ensure compliance with proper wage rates.

7. Material and supporting documentation must be provided, reviewed and approved. This information must be incorporated into the FieldManager files and placed in the project files.

8. Partial or stockpile payment is for work items that have been reviewed, inspected, and approved for use but are waiting to be incorporated into the project work. Partial payment is not for withholding money to generate action by the contractor for other items of work or material documentation.

Best Practices for Timely Progress Payments to Contractors

1. Provide the contractor with the insufficient materials report from FieldManager after each estimate as a minimum or on a weekly basis. This is recommended even if the contractor does not use FieldManager or simply receives read only FieldManager files.

2. For lack of payment of work greater than $10,000 when proper documentation has not been provided, the project office will contact the contractor or subcontractor directly to request this information.

3. Provide contractors with read only files several days before the estimate or weekly so they can review what documentation is needed to ensure timely payment.

4. Provide the contractor correspondence regarding final estimate processing and what documentation is necessary when approaching the end of contract work; this has been noted as a Contractor Checklist for Final Estimate Processing. The body of the correspondence would include the following applicable information as a suggestion:
   a. The following documentation is required in order for our office to final out project XXXXX-XXXXXXA.
      i. Per section 109.07 of the 2012 Standard Specifications for Construction, the contractor needs to submit written notification that all the work is complete.
      ii. Submit form 1386, Post Certification of Subcontractor Compliance (form attached).
      iii. Submit any extension of contract time requests (form 1100A).
      iv. Submit paper copy of form 2124A (final submittal only).
v. Resolve any pending damage claims.
vi. Submit As-Constructed (As-Built) final plans.

vii. Ensure that concrete initiative summaries have been provided.
viii. Ensure that HMA initiative summaries have been provided.
ix. Ensure that all material certification and other specification or special provision documentation requirements have been provided.

5. The project office should have a back-up person for generation of pay estimates to account for illness, vacation, out of the office issues, etc.

6. Project offices should honor requests for weekly pay estimates where weekly payments are consistently greater than $1,000,000 in value. A request to process weekly estimates is to be submitted to the Contract Services Division.

The Bay Region has developed a Contractor Prompt Payment Process – Abbreviated Summary that is available to other regions and TSCs. Although this document is related to the actual Prompt Payment requirements from prime contractors to subcontractors, etc., it is believed this document may help with understanding and processing of timely progress payments to contractors.

If you have questions, please contact Jason Gutting, Engineer of Construction Operations, at 517-636-6334 or guttingj@michigan.gov.

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FHWA Approval: 10/01/2012

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