Payments to Contractors/Retainage

Among other things, the Project Manager must:

- Become familiar with conditions pertaining to all pay items
- Verify project quantities, including bid quantities and estimated total quantities*
- Organize methods for determining and recording quantities to be paid on progress estimates
- Control and record engineering costs on each project and must enter those costs on the Progress Estimate or other reports as required
- Assure that the cost of each project does not exceed the Project Authorization (also see the Project Authorization section (5) of this Manual)

All project costs must be charged to the proper funding source. The Participation Indicators (sub-jobs) for those funding sources are defined in a letter distributed by the Program & Funding Services* Unit of the Financial Services Branch at the start of each project. Contact them or the Contract Services Group of the Construction Section if you have questions on cost allocation.

Policy on Progress Estimates

The Progress Estimate is the document that summarizes the quantities of work completed and the value of the completed work. After contract work begins, the Project Manager must submit the Progress Estimate monthly unless the amount due the Contractor is less than $1,000 and the Contractor does not request payment.

If the net payment to the Contractor will be negative, contact the Contract Services Group before transmitting the Progress Payment information.

Prepare and transmit the Progress Estimate electronically using the Contract Payment System (CPS) program. The computer inputting the Progress Estimate data will typically be connected to the ODOT mainframe computer.

Local agencies and consultants will not have access to ODOT's mainframe computer. They will need to submit this information through their ODOT liaison, either the ODOT Region Liaison or a pre-designated ODOT Project Manager.

The local agency or consultant must either:

1. Produce a floppy diskette of the Progress Estimate data from the CPS and furnish the floppy diskette to the ODOT liaison, or
2. Arrange with the ODOT liaison to electronically mail the Progress Estimate data to the liaison.

The ODOT liaison will transmit the Progress Estimate data to the mainframe.

ODOT will provide copies of the CPS program to local governmental agencies and consultants. Contact the Contract Services Group for details.

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Each Progress Estimate shall include payment for work performed under the contract through the last day of the month. There may be situations, however, where just cause exists to establish a different payment cutoff date than the last day of the month. Those situations must be limited because of the additional responsibility to assure prompt payment for the different cutoff date.

Contact the Contract Services Group to request a payment cutoff date different from* the last day of the month, since Contract Services and the Financial Services Branch must assure that ODOT pays the Contractor within the agreed timeframe.

Review information with the Contractor on amounts to be paid on each Progress Estimate before submitting the Progress Estimate* for payment.

It is also helpful to update the Corrected Estimate quantities each month to verify that the estimated expenditures will not exceed the Project Authorization or approved overrun.*

Submit Progress Estimates electronically to the Contract Services Group on or before the 8th of the month. If Contract Services has agreed to a payment cutoff date different from the last day of the month, submit the Progress Estimate to Contract Services no later than 8 calendar days after the cutoff date.

Contract Services will process the Progress Estimate and request Financial Services to make payment to the Contractor by the 23rd of the month. Financial Services will mail a voucher to the Contractor. Contract Services will send a copy to the Project Manager. The CPS will also automatically generate a variety of printouts for the Region and Project Manager.

Withholding Payment

ODOT may withhold payment to the Contractor only for the just causes specified* in the contract. One of following two situations usually exists:

1. The amount due the Contractor is less than $1,000. No payment will be made unless requested by the Contractor. The Project Manager must notify the Contractor why* no payment will be made. Send a copy of the letter to the Contract Services Group. The Contractor, however, may request that payment be made* anyway and the Project Manager must then process the Progress Estimate.

2. The Project Manager orders payment to be withheld for one of the reasons cited in section 00195.50(e) of the contract. The withholding of a progress payment is a serious matter and should be used only when justified and when other measures have failed. Good communications are essential. Also refer to the Responsibilities of Project Manager section (9) of this Manual.

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The Project Manager must inform the Contractor of the reason that payment is being withheld, as well as what actions the Contractor must fulfill to allow payment to be made. Send a copy of the letter to the Contract Services Group.*

Do not submit the Progress Estimate to the Contract Services Group until the dispute has been resolved and payment is to be made. If the payment was held due to the fault of the Contractor, set the Semi-final payment flag to H, for Held, when transmitting* the Progress Estimate, in order to have correct information in the submittal database. Setting the flag to H does not hold the estimate or affect the payment.

Do not withhold payment because of claims made by the Contractor or against the Contractor's bond. Contact the Contract Administration Engineer if you have questions.

Interest for Late Payment

State law requires that ODOT pay interest to the Contractor when payments are not made within the statutory requirements. The Contract Services Group or Financial Services Group will calculate the amount of interest due the Contractor. This interest is not eligible for Federal-Aid participation.

Preparation of the Estimate for Payment

The ODOT CPS is basically two different "programs", a program that runs on a PC in the Project Manager's office, and a program that runs on the ODOT mainframe.

The program that runs on the PC is available in two different formats:

1. A compiled version of dBase III+, called Clipper, that was originally written in 1989 and last updated in 1992. This program runs on IBM compatible computers in a DOS operating system. The four available printers are hard coded in the program and are set to print at LPT1.

2. A somewhat compiled version of Access 97, that had an initial release in June, 1998. The program may be run on computers that have Access 97 installed or those where a runtime version of Access 97 can be installed with the program. This version was written for* computers that are running Microsoft Windows 9x or NT. Files from the older version may be converted and the export files to the mainframe remain in the same format.

For installation of these programs, or training on either of these versions, contact the Contract Services Group.

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There are many steps in the processing of a payment to the Contractor. Following is a chronological listing of most of the steps:

1. A contract is executed with the Contractor.
2. The funding for the contract is established and electronically coded.
3. The contract information is electronically made available in ODOT's Trans*port system.
4. The contract information is electronically transferred to CPS.
5. Contract Services verifies and corrects the information in CPS.
6. Contract Services initializes CPS with the Project Manager and Region, which allows the contract information (Zero Estimate) to be downloaded to the PC.
7. CPS transmits a Progress Estimate and Cost Report (CPPROEST) to the Region, Project Manager, Financial Services, and Contract Services mainframe printers over the ODOT mainframe network.
8. The Project Manager, having received the Zero Estimate on the printer in the project office, downloads or electronically transfers the Zero Estimate from the mainframe to the PC in the project office.
9. As Contract Services receives change orders, it initializes them into the CPS mainframe system.
10. Contract Services generates a print log report (PRTLOG) that contains everything Contract Services has done on the mainframe CPS system, sorted by contract number. The Project Manager must* use information from that report to input change orders into the PC system the same way they were input into the mainframe. Contract Services sends PRTLOG (generally weekly) to the Project Manager and Contract Services mainframe printers over the ODOT mainframe network. (See additional discussion below.)*
11. As the Contractor performs work, the Project Manager documents the work and enters the information into the PC program. (See additional discussion below.)*
12. On or before the 8th of the month (or appropriate date if payment cutoff is different from the end of the month), the Project Manager approves the CPPROEST for the monthly payment and uploads or electronically transfers the CPPROEST to the ODOT mainframe computer. (See additional discussion above.)*
13. The Project Manager initiates a mainframe program to process the transferred information. (See additional discussion below.)*
14. CPS runs in the evening and generates a modified CPPROEST called a CPEDIT for the Project Manager and Contract Services. This report is in a slightly different format than the CPPROEST, in that it prints changed bid items and then all the items beginning with the Contract Change Orders (4000 series). (See additional discussion below.)*
15. If the Project Manager does not receive the printout the following morning, or if the printout is inaccurate, the Project Manager must contact Contract Services immediately.
16. Contract Services receives the Progress Estimate (CPEDIT), generates a preliminary voucher, and recommends changes in retainage.

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17. The Contract Administration Engineer approves the preliminary voucher, including any changes in retainage.
18. Contract Services runs the payment program that prints the payment voucher at the computer center in the Revenue building. This program also prints the CPPROEST at the Region, Project Manager, Financial Services, and Contract Services mainframe printers over the ODOT mainframe network.
19. Steps 9 to 18 are repeated for each Progress Estimate until the Contractor completes all* contract work.
20. Contract Services will generate the Final payment or Post Final payments as necessary. Contact Contract Services if you have questions about this process.

(If a Project Manager, such as a local agency or consultant*, does not have mainframe access, some additional work and coordination is required. Specifically, the Project Manager must modify or coordinate steps 7, 8, 10, 12, 13, 14, and 18 with the Region liaison or appropriate ODOT Project Manager to access the ODOT mainframe.)

To prepare a Progress Estimate (step 11 above), the Project Manager must update the electronic files for the project, including quantities of work performed*. The Project Manager electronically submits the Progress Estimate to the mainframe computer and signs and dates a printed copy for the project file. CPS then prints a preliminary estimate at the Contract Services Group and a copy at the Project Manager's office.

This preliminary estimate (steps 13 and 14 above) verifies that the estimate was appropriately transmitted. If the Project Manager does not receive this printout by the following business day or discovers errors in the information*, the Project Manager must contact the Contract Services Group immediately*.

The Project Manager must resolve, with the Contract Services Group before the next estimate is submitted, any discrepancies that are found on the Progress Estimate. This would include any changes that were made to the "Performed To Date" quantities after the estimate was submitted.

In all cases, the Project Manager must maintain, in the project office files, the records necessary to support and justify the quantities and payments made on each Progress Estimate. Each payment must "stand on its own" if subjected to an audit.

Following is a detailed explanation for some items on the Progress Estimate. All entries must have adequate supporting documentation to justify payment. Contact the Contract Services Group if you have questions.

- Contract Change Orders (CCO) (4000 Series)
  -Enter the Item number* and Participation Indicator (sub-job) as shown in the PRTLOG report, after Contract Services receives each order and approves and codes it.**

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- Adjustment items (6000 Series)
  Ways to Use (Also refer to other sections of this Manual on Contract Time (13), Quality (12-B), Quality Price Adjustments (12-C),* and Adjustments to Lump Sum and Other Items (12-E).)
  -Adjust payment for material or work that is not within reasonably close conformance with contract requirements, or to pay a premium price adjustment (bonus) if included in the contract (Always reference the adjustment to the pay item or Bid Item in the Contract Payment system.)*

  -Decrease the payment to the Contractor for contract work performed by State or other public forces under an Order for Force Work

  -Withhold Liquidated Damages

  -Enter an approved adjustment of contract time, to return liquidated damages,* only if liquidated damages have been withheld on a previous estimate

  -Pay for increased or decreased quantities of work on some lump sum items (Always reference the adjustment to the pay item or Bid Item in the Contract Payment system.)*

  -Adjust payment for Fuel and Asphalt escalation.

  How to Use
  -Enter Item number (6001, 6002, etc. Always reference the adjustment to the pay item or Bid Item in the Contract Payment system.*) and Item name - Describe and indicate authority (specifications, letters, etc.).

  -Enter Participation Indicator (sub-job) - see participation codes assigned by Program & Funding Services* Unit.

  -Enter Unit and Unit Price, typically “DOLLAR” and +1.00 or -1.00.

  -Enter Corrected Estimate and Performed to Date. Enter current total quantity. Quantities must always be of a positive value.

- Materials on Hand (7000 Series) (Refer to the Materials on Hand section (12-F) of this Manual and Section 00195.60 for conditions that must be satisfied before payment can be made.)
  -Enter Item number and Item name - Reference the Item Number to the pay item, Bid Item, or Contract Change Order in the Contract Payment system*. If more than one type of material is on hand for the same item, use A, B, etc. after the item number* or combine under one item number, as long as total dollars are justified and documented.

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-Enter Participation Indicator (sub-job) assigned by Program & Funding Services* Unit, typically the same as for the associated pay item.

-Enter Unit and Unit Price - When appropriate, use the same units as the pay item. Keep the number of entries to a minimum by including freight charges and incidental small items of hardware all under the major item.

It is helpful to consolidate materials for some items to reduce the number of materials on hand entries on the estimate. Do this by establishing a maximum theoretical price for all materials for the item as 100% and then paying for the actual materials on hand as a percent of the maximum theoretical price.

Another suggested method is to use a unit of "Dollar" and a unit price of one (1). The quantity and amount are then the same, reducing the chance of error.

The Project Manager must assure that the price paid for material on hand leaves a value that is adequate to complete the required installation. Use force account procedures to estimate installation costs, which are typically at least 10% of the bid amount.*

-Corrected Estimate - Make no entries.

-Performed to Date - As material is delivered or to be paid as material on hand, enter the total quantity. As the material is installed and must be removed from the material on hand quantity, enter a source document (termed "pay note" in the CPS), with a negative quantity, to reduce the current quantity of material on hand*.

- Extra Work Performed on Force Account Basis (EWO) (800 Series)
  -Enter the Item number and Participation Indicator (sub-job) as shown in the PRTLOG report, after Contract Services receives each order and approves and codes it*.

  -Unit and Unit Price - Make no entries.

  -Corrected Estimate - Enter amount (not quantity) of order or revised estimate.

  -Performed To Date - Enter the total value (not quantity) of each billing when it is** approved by the Project Manager. When Contract Services has performed its final check of* the force account billings, make any revision to the current total value on the next Progress Estimate.

  If actual costs will substantially overrun the approved amount of an EWO, the Project Manager must submit a supplemental order for approval.

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- Orders for Force Work (FO) (92000 Series)
  -Enter the Item number and Participation Indicator (sub-job) as shown in the PRTLOG report, after Contract Services receives each order and approves and codes it*.

  -Unit and Unit Price - Make no entries.

  -Corrected Estimate - Enter amount (not quantity) of order or revised estimate of cost.

  -Performed to Date - Enter the current amount paid, as shown in the ODOT accounting system. The CPS* does not automatically enter Force Order charges. If costs will substantially overrun the approved amount of a FO, the Project Manager must submit a supplemental order for approval.

- Anticipated items (94000 Series)
  -When Anticipated items (94001, 94002, etc.) are activated by change orders (CCO, EWO, or FO), cross reference the Anticipated item to each change order by entering the related series number (94001, 4001A, 801, 92001, etc.) in the appropriate Anticipated Item*.

- Approved increases (or decreases) in Project Authorization (98799 down through 98795 Series)
  -Contract Services will enter the amount of the increase (or decrease) in project authorization on the Progress Estimate.

  -Contract Services will also include an item on the Progress Estimate for each approved overrun, but will not include the amount of the approved overrun.*

  -Enter the Item number from the PRTLOG report.

- Additional Anticipated Items (98899)
  -Use this item as a tool, as needed by the Project Manager, to identify anticipated over/underruns that cannot be identified elsewhere on the report. Show the estimated dollar amount of each probable* over/underrun in the Corrected Estimate column. Show an item name (up to 40 characters), in the remarks section, to briefly describe the nature of the probable over/underrun. Examples include “Extend Project Limits”, “Slide at Sta. 238”, etc.* or, if preferred, leave the space blank.

  Update this item monthly for both name and amount, as necessary, to help monitor the status of the Project Authorization*. Contact Contract Services for additional information.

- Contingency (98999)

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-Enter zero in the Corrected Estimate column on the first Progress Estimate and, thereafter, make no entries. Use the Additional Anticipated Items (98899), as discussed above, to manage the Corrected Estimate*.

Retainage/Reduction of Retainage

Section 00195.50(b), as derived from ORS 279.435, states that ODOT may retain amounts from payments made to the Contractor in order to protect ODOT's interests. ODOT has elected to hold retainage on all projects. ODOT will hold all retainage as cash in an interest bearing account, unless the Contractor elects to provide a retainage bond or deposit securities*.

ODOT will administer retainage until Second Notification as specified in Section 00195.50(d). ODOT has developed the following two procedures for reduction of retainage on a project:

1. Reduction of retainage when a subcontractor requests its retainage be released upon completion of its project work.

   When a subcontractor completes all of its work on a project, it may request return of its retainage from the Contractor. The Contractor must request ODOT to release the retainage on the subcontractor's work by submitting a completed Request for Release of Retainage for Subcontracted Work, form 734-2510, to the Project Manager.

   The procedure for accepting the subcontractor's work and releasing its retainage is shown at the end of the Submittal of Final Documentation section (37) of this Manual.

   ODOT must release that retainage within 60 days after the end of the Progress Estimate cycle in which the Contractor certified completion of the subcontractor's work, in order to avoid payment of interest.

2. Reduction of retainage for the project.

   <u>a. Reduction after contract work is 50% complete.</u> A Contractor may request to have no more retainage withheld after contract work is 50% complete. The Contractor must submit that request, with consent of its surety, to the Project Manager.

   ODOT may grant that request if it determines that the work is "progressing satisfactorily". Use at least the following criteria to evaluate whether the work is "progressing satisfactorily":
   1. Is the work progressing as indicated in the Contractor's current schedule or at better rate?
   2. Is the quality of the work acceptable?
   3. Other determinations deemed necessary by ODOT

The Project Manager must recommend approval or denial of the request, including an evaluation of whether the work is "progressing satisfactorily", and send it to Region (local agencies or consultants* would send to the ODOT liaison). Region may or may not agree with the Project Manager's recommendation and would then send its recommendation to the Construction Section for needed action.

Process* these requests when they are received except that, if you receive them long before work is 50% complete, you may wait until the time that work is approaching 50% complete.

b. Reduction when contract work is 97½% complete. When progress payments show that contract work is 97½% complete, the Contract Services Group will automatically reduce retainage to 2½%, unless the Contract Administration Engineer determines differently including any recommendation from the Project Manager and Region*. When the Project Manager recommends so, the Group may withhold additional amounts for other deficiencies, such as wage improprieties, defects that need to be corrected, failing materials, etc.

When the Project Manager issues Second Notification, the Contract Services Group will reduce retainage to the sum of the following (percentages are based on the original contract amount less the subcontract amounts for which retainage has been released):

Item Required	Amount of Retainage
Final Quantities	0.8% ($40,000 maximum)
Final Material Certification	0.8% ($40,000 maximum)
Labor Compliance Certification	0.3% ($10,000 maximum)
FHWA-47 (when required)	$10,000
Third Notification	0.1%

As each item is* accepted, the Contract Services Group will reduce retainage accordingly. Known amounts of other deficiencies may be withheld in addition to those amounts, as approved by the Contract Administration Engineer*.

It is important to reduce retainage unless the funds are needed to cover ODOT's liability for deficiencies. As noted in other sections of this Manual, it is also important to make final payment within 30 calendar days of issuance of Third Notification to avoid paying interest on any unpaid funds, including retainage.

Both ORS 279.445 and the DBE Supplemental Required Contract Provisions require the Contractor to promptly pay each of its subcontractors. The Contractor also must submit, after each payment received from ODOT, an affidavit certifying payments made to DBE subcontractors or suppliers, as described in the Affirmative Action Programs section (18) of this Manual.

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If a subcontractor, supplier, or Contractor worker feel that they have not been paid adequately, refer to the Prompt Payment/Claims Against Contractor's Bond section (26) of this Manual.