



APRIL 25, 1996

Los Angeles County
Metropolitan
Transportation
Authority

TO: BOARD OF DIRECTORS

FROM: STANLEY G. PHERNAMBUCQ

SUBJECT: S.B. NO. 1286 - PAYMENT TO DESIGN PROFESSIONALS

One Gateway Plaza
Los Angeles, CA
90012

ISSUE

S.B. No. 1286 established a new procedure to insure the prompt payment of invoices and retention funds by a public agency to a prime design professional, and by a prime design professional to a subconsultant design professional.

213.922.6000

BACKGROUND

Mailing Address:
P.O. Box 194
Los Angeles, CA 90053

A design professional is defined as a person licensed as an architect, registered as a professional engineer, or licensed as a land surveyor.

A prime design professional (PDP) is a design professional that has a contract with a public agency. A subconsultant design professional (SDP) is a design professional that has a contract with a prime design professional.

The legislation went into effect on January 1, 1996, and requires the public agency to make payment to the PDP within 30 days of receipt of a written demand for progress payment, in accordance with the contract and the final retention payment within 45 days of a receipt of a demand for payment; and for the PDP to make payment to the SDP within 15 days of receipt of each progress or final retention payment. The legislation also allows for an amount not-to-exceed 150% to be withheld by either the public agency or the PDP, if there is a good faith dispute regarding the amount of the payment. If the amount is wrongfully withheld or payment not made timely there is a penalty of 1½ % per month for every month that payment is not made in lieu of any interest otherwise due.


Staff has incorporated the above legislative language into the Professional Services Contract General Conditions. The MTA and all future professional services consultants, that fall under the definition of a prime/subconsultant design professional, will be required to abide by these requirements.

Prepared by:
Stan Lotterman, Manager of Contracts
Augustin Zuniga, County Counsel

cost to the AUTHORITY. If the Contractor fails or refuses to repair the damage promptly, the AUTHORITY may have the necessary services performed and charge the cost to the Contractor.

★ SP-20

MODIFICATIONS TO GENERAL CONDITIONS

Yes No 

A. Modify the Article entitled GRATUITIES AND CONFLICTS OF INTEREST (GC-40), as follows:

1. Subarticle B is deleted in its entirety and replaced by the following:

Neither the Contractor nor its agents shall give or offer to give any campaign contribution to any member of the AUTHORITY Board's Construction Committee or AUTHORITY Board of Directors in violation of the California Government Code Section 84308 and the AUTHORITY's Ethics Policy. The Contractor will be required to submit a Certification of Campaign Contributions with all CCRs of two hundred thousand dollars (\$200,000) or more.

B. Modify the Article entitled GLOSSARY OF TERMS (GC-1); add the following definitions:

Design Professional (DP): A person licensed as an architect, registered as a professional engineer or licensed as a land surveyor.

Prime Design Professional (PDP): A design professional with a written contract directly with the AUTHORITY.

Subconsultant Design Professional (SDP): Design professional hired by a prime design professional.

C. Modify the Article entitled PAYMENT TO SUBCONTRACTORS (GC-16), as follows:

A. The Contractor shall pay all Subcontractors for and on account of Services performed by such Subcontractors in accordance with the terms of their respective Subcontracts not later than fifteen (15) days after receipt of each progress or final retention payment as required by the California Civil Code Section 3321. Such payments to Subcontractors shall be based on the measurements and estimates made pursuant to the Article entitled INVOICING of the Compensation and Payment Provisions (Part D).

B. Before the Contractor may receive any payment, for monies due it as a result of a percentage of the Services completed, it must furnish the AUTHORITY with a certificate stating that all Subcontractors and Suppliers who have furnished any Goods or labor prior to the date of the certificate have been paid all amounts due them pursuant to the terms of their Subcontracts or purchase orders. The Contractor shall maintain proof of payment to each Subcontractor and Supplier at its offices, consisting of canceled checks, evidence of electronic transfers, or other documentation, which shall be subject to examination and review by the AUTHORITY at any time during the duration of the Contract. Failure of the Contractor to furnish the foregoing certificates, or the improper certification of any payments made to Subcontractors and Suppliers, may result in the AUTHORITY withholding the amount in dispute until said dispute is resolved, or in exercising any other rights the AUTHORITY may have under the Contract.

C. If the AUTHORITY deems that the Contractor has failed to comply with this Article the AUTHORITY may give written notice to the Contractor, that if the

default is not remedied, within a specified period of time (at least five (5) days) the Contract may be terminated. The Contract may be terminated for cause in accordance with the Article entitled TERMINATION FOR DEFAULT herein.

- D. 1) If Subcontractor is a SDP, any amount wrongfully withheld, or not timely paid, is subject to a penalty of one and one-half percent (1½%) of the improperly withheld amount, in lieu of any interest otherwise due, per month for every month that payment is not made, as required by Civil Code Section 3321. The above penalty shall be separate from, and in addition to, the provisions established for Stop Notices.
- 2) Civil Code Section 3321 currently provides that in the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the PDP to a SDP, then the PDP may withhold from the payment an amount not to exceed one hundred fifty percent (150%) of the disputed amount. The disputed amount withheld shall not be subject to any penalties authorized by Civil Code Section 3321.

★ SP-21 **MODIFICATIONS TO COMPENSATION AND PAYMENT PROVISIONS**

A. Modify the Article entitled INVOICING AND PROGRESS PAYMENTS (CP-5), as follows:

~~??CHOOSE ONE OF THE FOLLOWING TWO ARTICLES~~

- 5A INVOICING AND PROGRESS PAYMENTS: ~~??CPFF, CPAF Contracts and T & M~~
Yes No
With CWO Without CWO
- 5.1 INVOICING

The Contractor shall submit, a monthly invoice ~~??for each CWO~~, covering those Reimbursable Costs incurred by the Contractor in the previous months for the Services shown on the Progress Report and the Fee earned. The invoice shall be prepared in a form acceptable to the AUTHORITY and shall correlate with the related Monthly Progress Report. The Monthly Progress Report shall show the Contractor's workers participating in each activity, the number of hours spent on each activity, and other allowable costs. An acceptable invoice shall be accompanied by a certified statement, signed by an authorized officer of the Contractor, similar to the CERTIFICATION FOR REQUEST FOR PAYMENT (Exhibit 7), that the invoice is a true and correct statement of those Reimbursable Costs incurred by the Contractor and that Subcontractors and Suppliers have been paid from the previous Progress Payment.

Upon receipt of the acceptable invoice and Monthly Progress Report, the AUTHORITY shall process payment to the Contractor within thirty (30) days from the date of receipt of an acceptable invoice.

If Contractor is a Prime Design Professional (PDP), any amount wrongfully withheld, or not timely paid, is subject to a penalty of one and one-half percent (1½%) of the improperly withheld amount, in lieu of any interest otherwise due, per month for every month that payment is not made, as required by Civil Code Section 3320. The above penalty shall be separate from, and in addition to, the provisions established for Stop Notices.

Civil Code Section 3320 currently provides that in the event that there is a good faith dispute over all or any portion of the amount due on a progress payment to

the PDP, then the AUTHORITY may withhold from the payment an amount not to exceed one hundred fifty percent (150%) of the disputed amount. The disputed amount withheld shall not be subject to any penalties authorized by Civil Code Section 3320.

The Contractor shall provide the name, classification, and hours charged (by date) of all Direct Labor personnel who were directly employed in providing Services during the period covered by the Invoice. The Contractor shall attach to the monthly invoice, copies of payroll data submitted by a contractor's parent company or home office and from subcontractor firms for any outstanding monthly periods. In addition, Contractor shall attach copies of employee time sheets retained at the Contractor Project Office for the month immediately preceding the submittal of the invoice.

5B INVOICING AND PROGRESS PAYMENTS ~~Fixed Price Contracts~~ Yes No
With CWO Without CWO

5.1 INVOICING

The Contractor shall submit, a monthly invoice ~~for each CWO~~, based on the Contractor's estimate of the percentage of Services completed. The invoice shall be prepared in a form acceptable to the AUTHORITY and shall correlate with the related Monthly Progress Report. The Monthly Progress Report shall show the Contractor's workers participating in each activity, the number of hours spent on each activity, and other allowable costs. An acceptable invoice shall be accompanied by a certified statement, signed by an authorized officer of the Contractor, similar to the form in CERTIFICATION FOR REQUEST FOR PAYMENT (Exhibit 7), that the invoice is a true and correct statement of those Reimbursable Costs incurred by the Contractor and that Subcontractors and Suppliers have been paid from the previous Progress Payments.

Upon receipt of the acceptable invoice and Monthly Progress Report, the AUTHORITY shall process payment to the Contractor within thirty (30) days from the date of receipt of an acceptable invoice.

If Contractor is a Prime Design Professional (PDP), any amount wrongfully withheld, or not timely paid, is subject to a penalty of one and one-half percent (1 1/2 %) of the improperly withheld amount, in lieu of any interest otherwise due, per month for every month that payment is not made, as required by Civil Code Section 3320. The above penalty shall be separate from, and in addition to, the provisions established for Stop Notices.

Civil Code Section 3320 currently provides that in the event that there is a good faith dispute over all or any portion of the amount due on a progress payment to the PDP, then the AUTHORITY may withhold from the payment an amount not to exceed one hundred fifty percent (150%) of the disputed amount. The disputed amount withheld shall not be subject to any penalties authorized by Civil Code Section 3320.

The Contractor shall provide the name, classification, and hours charged (by date) of all Direct Labor personnel who were directly employed in providing Services during the period covered by the Invoice. The Contractor shall attach to the monthly invoice, copies of payroll data submitted by a contractor's parent company or home office and from subcontractor firms for any outstanding monthly periods. In addition, Contractor shall attach copies of employee time sheets

retained at the Contractor Project Office for the month immediately preceding the submittal of the invoice.

- B. Modify the Article entitled RETENTION (CP-5.2), as follows:

5.2 RETENTION

From each invoice, ten percent (10%) will be deducted and retained by the AUTHORITY until forty-five (45) days after Services under the ~~Contract~~CWO have been completed and accepted by the AUTHORITY. After the retained amount reaches ~~one hundred thousand (\$100,000)~~ for each CWO and progress on the Services is satisfactory, no further additional deductions will be made on the remaining invoices. However, if in the opinion of the AUTHORITY progress on the Services is unsatisfactory, deductions will be reinstated in such amounts as to cause the total retention to increase to a maximum of ten percent (10%) of the Firm Fixed Price ~~of a CWO~~. Upon Final Acceptance of the ~~Contract~~CWO, the Contractor shall submit an invoice for release of retention in accordance with the terms of the Contract.

~~THE FOLLOWING SPECIAL PROVISIONS REQUIRE CONTRACT MANAGER APPROVAL~~

★ SP-22 SOFTWARE LICENSING AGREEMENT AND PROVISIONS FOR USE

~~Use if the Contractor is developing software~~

Manager Approval _____ 

A. Definitions: As used herein:

1. Software

The computer programs and products required to be developed and delivered by the Contractor to the AUTHORITY under the Contract, in object code (but excludes commercial software developed at private expense and not in the public domain).

2. Source Code Materials

A human-readable copy of the Software and related materials and documentation generated in preparing the Software, including programmer notes, flow charts, logic diagrams, and listings.

3. Documentation

Systems and user manuals sufficient to enable a person skilled in the applicable art to operate, maintain, and support the Software for its intended purposes.

B. Deliveries

The Contractor shall deliver to the AUTHORITY the Software, Source Code Materials, and Documentation, in such tape, disk, or hard copy format as the AUTHORITY may designate.

C. Ownership

The Contractor shall retain ownership of the Software, Source Code Materials, and Documentation with the right to exploit the same, subject to the AUTHORITY's rights as herein provided. The AUTHORITY shall place such copyright notices affirming the