

## **Part I Chapter 18 Contract Payments**

**A. Methods of Payment.** Contract payments will normally be made on a reimbursement invoice basis. Other methods will not be approved or authorized except when required by law or in accordance with this paragraph and approved by the Office of the Budget, Office of Comptroller Operations.

**1. Advance Payments.**

- a. Payments in advance on annual maintenance contracts to guarantee service on an on call basis may be made only when it is required by the contractor's standard maintenance agreement and the contractor will not negotiate a contract without this term or condition included.
- b. Payments in advance on contracts may be made when a cost savings to the Commonwealth can be realized through the advance payment or a contractor's standard operating procedure requires receipt of an advance payment. Advance payment provisions must be stated in the contract terms.
- c. Advance payments cannot be made for services to be performed in a contingent year without written approval from the Secretary of the Budget.

To obtain Office of the Budget, Office of Comptroller Operations approval for advance payments or advance payments for services to be performed in a contingent year, complete and submit the [Advance Payment Request Form](#).

- 2. Progress Payments.** Purchasing agencies may, through a contract, authorize payments to contractors at various stages during the contract (such as down payment, completion of design, delivery, at increments of completion of installation, acceptance) for construction of \$50,000 or less or for unique or specialized supplies or services or for supplies or services which have a lengthy production schedule.
- 3. Installment Payments.** Purchasing agencies may, through a contract, authorize payment to the contractor on an installment payment basis after acceptance of supplies, services, or construction (this does not prohibit a down payment).
- 4. Lease Payments.** Purchasing agencies may, through a contract, pay a contractor on a regular time-specified basis as it uses supplies or construction.
- 5. Design and Construction Services Exceeding \$50,000.**
  - a. Agencies are required to pay contractors and design professionals for public works contracts exceeding \$50,000 strictly in accordance with the contract. If the contract does not contain a term governing time for payment, the contract or design professional can make application for payment for progress payments.

- (1) Payment, less applicable retainage, must be made within 45 calendar days of the date the application for payment is received.
  - (2) If a payment is not made when due, interest computed at the rate determined by the Secretary of Revenue on overdue taxes or the refund of taxes, shall be payable. No interest is payable if payment is made on or before the 15th day after the required payment date.
- b. Contractors and subcontractors are required to pay subcontractors by the due dates established in the subcontract or within 14 days after the contractor or subcontractor receives a progress payment unless payment is withheld for a good faith claim. If any progress payment is not made to a subcontractor by the due date established in the contract or within the 14 day period, the contractor is required to pay interests computed in the same way as interest is computed against the Commonwealth. The contractor has a similar 14-day grace period.
- c. The payee must be notified of the deficiency item within the same period specified in the contract or 15 calendar days of the date that the application for payment is received. If it is determined that the amount was withheld in bad faith, the payee is also entitled to an interest penalty in the amount of one percent per month and attorneys' fees.
- d. Contracts may include a provision for the retainage of a portion of the amount due the contractor to ensure the proper performance of the contract, except that the sums withheld cannot, for public works contracts exceeding \$50,000, be more than:
  - (1) For DGS, six percent of the total estimates until 50 percent of the contract is completed and three percent of the contract amount after the contract is satisfactorily completed.
  - (2) For other public bodies, 10 percent of the amount due the contractor until 50 percent of the contract is completed and five percent of the completed work based on monthly progress payment requests, after the contract is 50 percent completed. When the contract is 50 percent completed, one-half of the amount retained shall be returned to the contractor.
- e. When a retainage provision is included in the contract, the architect or engineer must make a final inspection within 30 days of the contractor's receipt. If the work is substantially completed, the architect or engineer shall issue a certificate of completion and a final certificate for payment and the agency shall make payment in full within 45 days, less one and one-half times such amount as is required to complete any then remaining, uncompleted minor items.

- f. Final payment shall bear interest at the rate of six percent per annum for contracts without provisions for retainage and at a rate of 10 percent per annum for all contracts with provisions for retainage.
- 6. **Commonwealth Purchasing Card.** Commonwealth agencies may have the option of using the Commonwealth Purchasing Card to pay for procurements. It cannot be used for payment of procurements from DGS statewide requirements contracts unless the contract specifies that it is p-card accepted/enabled. The Commonwealth's Purchasing Card is similar to a credit card in that there will be a small fee which the contractor will be required to pay and the contractor will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the contractor. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the contractor or any other charges incurred by the contractor, unless specifically stated in the terms of the contract or purchase order. Some contractors may not agree to payment through the Purchasing Card. (Refer to [Management Directive 310.23, Commonwealth Purchasing Card Program](#)). Payment through the Commonwealth Purchasing Card is a method of payment, not a method of contract award. Procedural requirements for awards of contracts and orders must still be followed.
- 7. **Prompt Payment Discounts.** Prompt payment discounts will not be considered in making an award. However, if prompt payment discounts are offered by any bidder, the Commonwealth will take advantage of such offer.
- 8. **Interest.**
  - a. **Services and Supplies.** If a Commonwealth agency does not make payment to qualified small business concerns for the acquisition of supplies or services by the required payment date, it must pay interest.
    - (1) **Qualified Small Business Concern.** An independently owned and operated for profit concern employing 100 or fewer employees and not a subsidiary or affiliate of a corporation otherwise not qualified.
    - (2) **Required Payment Date.** The required payment date is:
      - (a) The date on which payment is due under the terms of the contract.
      - (b) Thirty calendar days after receipt of a proper invoice for the amount due if a specific date is not established by contract.
    - (3) **Interest.** Interest is computed at the rate determined by the Secretary of Revenue for interest payments on overdue taxes or the refund of taxes. No interest will be paid if payment is made on or before the 15th day after the required payment date.

(4) **Eligibility.** To be eligible for interest, qualified small business concerns must include the following on the face of every invoice presented to the Commonwealth: "Name of vendor is a qualified small business concern as defined in *4 Pa. Code § 2.32.*"

b. **Construction.** Commonwealth agencies are required to pay contractors and design professionals for public works contracts exceeding \$50,000 strictly in accordance with the contract.

(1) Payment, less applicable retainage, must be made within 45 calendar days of the date the application for payment is received.

(2) If payment is not made when due, interest, computed at the rate determined by the Secretary of Revenue on overdue taxes or the refund of taxes shall be payable. No interest is payable if payment is made on or before the 15th day after the required payment date.

B. **Unexpended Funds.** Upon termination of a contract, the agency shall require and promptly initiate action to recover any unexpended funds in the contractor's possession in accordance with [Management Directive 310.10, Collection Requests for Write-Off of Delinquent Claims](#).

C. **Reimbursing Contractors for Travel and Per Diem.** When the Commonwealth finds it appropriate to reimburse contractors for travel, lodging, and meals, a provision allowing such reimbursement must be included in the contract. Reimbursement shall be at or below state rates found in the most current version of Commonwealth [Management Directive 230.10, Travel and Subsistence Allowances](#), and shall require the same documentation as required of state employees. Transportation and hotel orders should not be issued by agencies to contractors doing business with the Commonwealth. The Commonwealth may accept higher rates normally paid by a contractor, if those rates were approved by the firm's officials and published prior to entering into contract negotiations with the Commonwealth. A copy of the minutes or other official document justifying and authorizing the rates shall accompany the contract.

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**References:**

1. [Advance Payment Request Form](#)
2. [Management Directive 310.23, Commonwealth Purchasing Card Program](#)
3. [Management Directive 310.10, Collection Requests for Write-Off of Delinquent Claims](#)
4. [Management Directive 230.10, Travel and Subsistence Allowances](#)