


To: Superseded By EI 14-021 Effective 1/8/15		New York State Department of Transportation ENGINEERING INSTRUCTION	EI 08-029
Title: REVISION TO STANDARD SPECIFICATIONS - §109-07 PROMPT PAYMENTS BY THE CONTRACTOR			
Distribution: <input checked="" type="checkbox"/> Manufacturers (18) <input checked="" type="checkbox"/> Local Govt. (31) <input checked="" type="checkbox"/> Agencies (32)		<input checked="" type="checkbox"/> Surveyors (33) <input checked="" type="checkbox"/> Consultants (34) <input checked="" type="checkbox"/> Contractors (39) <input type="checkbox"/> _____ ()	Approved _____ _____ James F. Tynan, P.E. Deputy Chief Engineer (Construction)

8-7-08
Date

ADMINISTRATIVE INFORMATION:

- This Engineering Instruction (EI) is effective with projects submitted for the letting of 01/08/09.
- This EI does not supersede any other issuance.
- These revisions will be incorporated into a future update of the Standard Specifications.

PURPOSE: This EI issues a revision to §109-07 *Prompt Payments by the Contractor* of the Standard Specifications.

TECHNICAL INFORMATION:

- This revision to §109-07 *Prompt Payments by the Contractor* requires contractors to make payments to subcontractors and materialmen within 7 days of receipt of payment from the State.
- Prior to modification of the contract specification, Contractors have an obligation to follow all State laws, as noted in §107-01 *Laws, Rules, Regulations and Permits*.

IMPLEMENTATION:

- Main Office Design Quality Assurance Bureau will insert the standard specification shelf note beginning with projects submitted for the letting of 01/08/09.
- Engineers-in-Charge of ongoing contracts and those let prior to the inclusion of the shelf note in the contract proposal should provide a copy of this EI to the Contractor, and file a copy of this EI in the contract records as documentation of the change in accordance with the Contract Administration Manual (CAM) §104-02.

TRANSMITTED MATERIALS:

This EI transmits standard specification shelf notes *Prompt Payments By The Contractor*. Both Metric and U.S. Customary shelf notes are attached.

BACKGROUND: The Wicks Reform Act of 2008 revised State Finance Law §139f, which reduces the time period from a prime contractor receiving payment from the State to making payment to a subcontractor or materialman from 15 days to 7 days. The law is effective with all projects advertised on or after July 1, 2008, which includes the lettings of 8/14/08 and later.

CONTACT: Direct questions regarding this issuance to John Grady of the Office of Construction at (518) 457-6472 or via e-mail at JGrady@dot.state.ny.us.

PROMPT PAYMENTS BY THE CONTRACTOR

Make the following changes to the Standard Specifications of May 4, 2006 and the Standard Specifications of May 1, 2008:

Page 140 **Delete** §109-07 *Prompt Payments by the Contractor* and **Replace** it with the following:

109-07 PROMPT PAYMENTS BY THE CONTRACTOR. In accordance with Section 139-f(2) of the State Finance Law, the Contractor shall pay each Subcontractor and materialman for the value of work performed pursuant to contract no later than seven (7) calendar days from the receipt of each payment the Contractor receives from the State. Payment by the Contractor to Subcontractors or materialmen shall reflect the quantities or percentage of work completed by the Subcontractor or materials furnished by the materialmen, and paid by the State; and such payment shall be based upon the actual conditions of the subcontract or purchase order. The Contractor shall not hold any retainage, but may deduct an amount necessary to satisfy any claims, liens or judgments against a Subcontractor or materialman which have not been fully discharged.

The Contractor shall maintain an accounting system acceptable to the Department to track payments made by the State to the Contractor and payments made by the Contractor to each Subcontractor, Manufacturer, Fabricator or Material Supplier by item and by date. The Contractor shall enter payment data into the current Department approved civil rights reporting system in accordance with §105-21 *Civil Rights Monitoring and Reporting*, with any exceptions noted and explained.

Make the following changes to the Standard Specifications of May 1, 2008:

Page 139 **Delete** §109-07 *Prompt Payments by the Contractor* and **Replace** it with the following:

109-07 PROMPT PAYMENTS BY THE CONTRACTOR. In accordance with Section 139-f(2) of the State Finance Law, the Contractor shall pay each Subcontractor and materialman for the value of work performed pursuant to contract no later than seven (7) calendar days from the receipt of each payment the Contractor receives from the State. Payment by the Contractor to Subcontractors or materialmen shall reflect the quantities or percentage of work completed by the Subcontractor or materials furnished by the materialmen, and paid by the State; and such payment shall be based upon the actual conditions of the subcontract or purchase order. The Contractor shall not hold any retainage, but may deduct an amount necessary to satisfy any claims, liens or judgments against a Subcontractor or materialman which have not been fully discharged.

The Contractor shall maintain an accounting system acceptable to the Department to track payments made by the State to the Contractor and payments made by the Contractor to each Subcontractor, Manufacturer, Fabricator or Material Supplier by item and by date. The Contractor shall enter payment data into the current Department approved civil rights reporting system in accordance with §105-21 *Civil Rights Monitoring and Reporting*, with any exceptions noted and explained.