



IRTBA White Paper Opposition to Direct Payments to Subcontractors

Requiring direct payments to subcontractors is bad for subcontractors, bad for unions, bad for prime contractors, bad for suppliers, and bad for agencies. The threshold question an agency should consider before supporting direct payments to subcontractors is whether there is a documented widespread delinquent payment crisis that has precipitated the introduction of legislation. To date, no such documentation has been presented to industry. Similarly, industry has requested that various agencies who have considered adopting a direct payments to subcontractors program to confirm that it supports assuming the functions and responsibilities currently borne by the prime contracting community associated with payments to subcontractors. To date, no agency has ever indicated that it would support such a transfer of duties.

As a preliminary matter, it must be noted that agencies have no contractual relationship with subcontractors. Accordingly, it is unclear under what authority or agreement could any agency be authorized to make any payment to a party with whom it has no contract or agreement. Nor is it clear that direct payments to subcontractors would withstand federal scrutiny if projects are funded in whole or in part with federal funds.

In the event that the contractor is not to be involved in the payment to their subcontractors, the nature of the relationship between contractors, their subcontractors and agencies will be fundamentally altered. Much of the burden of contract performance would be removed from the prime contractor and placed squarely onto the public sector. Scores of specifications, rules and special provisions would no doubt be implicated and would require modification. In addition, the workload to agencies associated with this change cannot be understated. A preliminary list of what most agencies would be required to do prior to payment to subcontractors includes:

- Ensuring that the subcontractor performs all work in accordance with the specifications
- Be assured that the subcontractor has the proper personnel and equipment necessary to maintain the contract schedule

- Require that each subcontractors conforms to OSHA rules, and has all safety measures in place
- Understand how weather and other factors may impact the performance of the subcontractor
- Maintain current insurance certificates showing the necessary insurance coverage for all of the contracted parties
- Confirms that all material inspection reports are in place prior to payment
- Submit all subcontractors' weekly certified payrolls
- Provide monthly EEO reporting
- Have accurate waivers of lien to make sure second tier subs and suppliers are paid
- Make sure the subcontractor is current with unions (pension and welfare payments, etc.)
- Track and process all extra work and T&M billings
- Offset any payments with any back-charges for use of contractors' equipment or material, site restoration, trucking, waste disposal, etc.

This is just a small list of some of the things prime contractors do to manage projects on behalf of the public sector, and make sure they are all done safely and effectively. Preparing and signing checks is the easiest thing contractors do when it comes to working with their subcontractors; the devil is always in the detail. The prime contractors protect the State of Illinois and its citizens with their bond, and with the assurance that they will do the job right.