

# CITY OF OAKLAND

## AGENDA REPORT

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
2008 OCT 16 PM 6:52

TO: Office of the City Administrator  
ATTN: Dan Lindheim  
FROM: Department of Contracting and Purchasing  
DATE: October 28, 2008

RE: **An Informational Report on the Status of the Prompt Payment Policy**

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### SUMMARY

This is an informational report on the status of the implementation of the Prompt Payment Policy. Staff was asked to return to Council in six months with a review on the accrual and collection of penalties to date, as well as any other issues arising out of or as a result of policy implementation. Recommendations for better implementation are stated below.

### FISCAL IMPACT

Since implementation the City has paid out a total of one hundred sixty four dollars and thirty three cents (\$ 164.33) in interest penalties, paid out to 19 vendors, ranging from as low as \$1.07 to as high as \$27.90.

### BACKGROUND

On January 15, 2008 the City Council enacted Ordinance No. 12857 CMS, which provided for the establishment of a Prompt Payment Policy requiring payment within twenty business days after receipt of an invoice for purchase of goods and/or services applicable to:

- the City with respect to contracts let directly to local businesses; and
- to non-profit and for profit entities contracted to manage or operate City facilities or public programs or concessions on City-owned property; and
- to City contractors with respect to their subcontractors and imposes interest penalties for violations.

Full implementation of the prompt payment policy went into effect on February 1, 2008.

### KEY ISSUES AND IMPACTS

The tenets of the Prompt Payment Policy require:

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- Hiring a Business Liaison to assist contractors in navigating the policy and facilitating payment of invoices where necessary.
- Implementation of an interest penalty formula to calculate interest due on unpaid invoices. Interest is paid on the amount of the unpaid invoice at a rate of 10% annually (.833% per month) from the date the invoice is received until the check is issued. Interest penalty is automatically calculated in the financial system and separately accounted for in account 58742 (Interest Expense – Prompt Payment Ordinance).

As a result of staff cuts mandated by the budget shortfall for the 2008-2009 fiscal year it was necessary to eliminate the vacant position earmarked for the business liaison as a part of the overall requested budget reductions for the department. It is proposed that the status quo will prevail, wherein the staff person currently involved in processing prompt payment issues on an acting basis will continue to do so until such time that the Urban Economic Analyst IV position can be fully funded.

Several steps were undertaken to assist policy implementation:

- A series of forms were developed to help contractors correctly submit invoices for payment, including an Invoice Transmittal form, Prompt Payment Complaint and Investigation Form, and an Affidavit of Subcontractor Payments (Attachment A)
- A Task Force was convened; comprised of staff from FMA Accounting, Community and Economic Development (CEDA), the Department of Health and Human Services (DHHS), the Public Works Agency (PWA) and the Department of Contracting and Purchasing (DCP). They were charged with developing the payment process, vetting user concerns around the payment process and training. The Task Force meets periodically to discuss issues encountered with the process and identify solutions to implementation issues.
- Implementation of the interest payment calculation using the existing Oracle system. Accounting staff developed and implemented a methodology where the Oracle system will identify local Oakland vendors and apply a formula calculation based on the date the invoice is entered into the accounts payable module and the time that the check is cut. Then the check run is reviewed to ascertain that all of the calculations performed are legitimate.
- Development of a rules and regulations document (Attachment B) which outlines the policy's implementation. An Administrative Instruction also has been developed and is under final review.

More than 100 City associates have been trained on the prompt payment policy. Training focused on those responsible for projects (project managers) and those responsible for accounts payable in each department and agency. Going forward, training will be on-going for any

employee who wishes to take the course. Staff is working with the Office of Personnel to make the course a part of the city-wide training curriculum.

Oakland businesses received letters announcing the implementation of the prompt payment policy. Additionally, they received copies of all forms necessary to facilitate payment of invoices. Contractors also receive information and are allowed to ask questions during pre-bid and pre-proposal meetings, during which time staff makes a presentation regarding the policy and the contractors' and City staff's responsibilities. Information regarding the policy has also been posted to the City's website, and has been translated into Spanish, Chinese and Vietnamese.

Staff has received and reviewed anecdotal evidence of the impact of the prompt payment policy on local contractors. Questions have been received from contractors regarding: 1) the methods employed by the City on the release of retention, 2) the payment of mobilization fees, 3) the contractor's need to work in tandem with the precepts of the policy, 4) the company's established policies and procedures as they relate to payments made to subcontractors, and 5) the City's policy with regards to decision making in light of dispute resolution.

To date, the staff person acting as the business liaison has processed twenty-nine (29) complaints from contractors since implementation of the policy. Of that amount, five (5) are pending completion. Fourteen (14) complaints dealt with construction contracts and progress payments or payment of retention. Four complaints were associated with professional service contracts and payment of invoices and ten complaints were associated with the purchase of commodities and payment thereof.

Accounting staff are working through some issues around processing invoices. In some cases where invoices are paid under a direct payment request rather than a purchase order, accounting staff must refer back to the initiating department to ascertain whether the vendor should be paid interest. There have been other instances where Accounting has had to delay check runs so that the initiating department could be contacted to clarify certain payment issues. At this time the payment timeline established by the Ordinance, 20 business days to turn around a payment, appears to be sufficient.

## **POLICY DESCRIPTION**

The purpose of the Prompt Payment Ordinance is to establish policies and procedures to ensure that local contractors and all subcontractors working on City of Oakland purchase contracts receive prompt payment, and to enhance and increase local business contracting opportunities with the City of Oakland by establishing: 1) shortened payment cycles for City of Oakland businesses contractors and all subcontractors, regardless of location, that provide goods and/or

services in connection with a City of Oakland purchase contract , and 2) a City liaison to serve as a single point of contact to address payment delays and other issues relative to City of Oakland purchase contracts.

The payment requirement is applicable to: 1) the City with respect to purchase contracts let directly to local businesses, 2) to non-profit and for-profit entities contracted to manage or operate City facilities or public programs or concessions on City-owned property, and 3) to City purchase contractors and subcontractors with respect to their subcontractors. Invoices that are paid after 20 business days of receipt are subject to interest penalties.

City prime purchase contractors are also required to 1) release retention held for services in proportion to the percentage of subcontractor services for which payment is due and undisputed within five (5) business days of payment and to file notice with the City within five (5) business days of release of retention, 2) pay subcontractors that will render goods and/or services their portion of mobilization fees within five (5) business days of being paid such fees; and 3) complete, under penalty of perjury, an Affidavit Reporting Subcontractor Payments, and forward to the City within five (5) business days following receipt of payment.

This policy is codified at Oakland Municipal Code, Title 2, Chapter 2.06

## **SUSTAINABLE OPPORTUNITIES**

**Economic:** No sustainable economic opportunities have been identified.

**Environmental:** There are no environmental opportunities contained in this report.

**Social Equity:** The Prompt Payment Policy helps to build the capacity of local and small local businesses by promoting more effective and efficient use of funds.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

There are no ADA or senior citizen access issues.

## **RECOMMENDATION(S) AND RATIONALE**

In light of concerns voiced by contractors affected by the policy as well as internal staff responsible for facilitating its implementation, staff recommends that Council consider making the following modification to the ordinance:


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- Add a penalty of 1% or \$1,000 per day, whichever is less, against contractors for non-submittal of subcontractor affidavits. This will assist City staff in expeditiously reconciling issues and improve turnaround for disputed invoices. Without the proper information, staff must make repeated telephone inquiries to obtain information, which slows the process.

**ACTION REQUESTED OF THE CITY COUNCIL**

Receive this informational report.

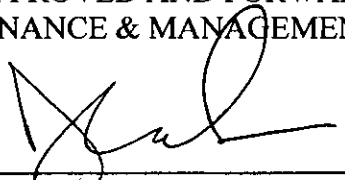
Respectfully submitted,

  
Deborah Lusk Barnes, Director  
Department of Contracting and Purchasing

Prepared by:  
Mary M. Mayberry, Administrative Services Manager I  
Administration Unit

Attachments:  
Attachment A - Prompt Payment Forms  
Attachment B – Prompt Payment Rules and Regulations

APPROVED AND FORWARDED TO THE  
FINANCE & MANAGEMENT COMMITTEE:

  
\_\_\_\_\_  
Office of the City Administrator

Item: \_\_\_\_\_  
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# Prompt Payment Complaint & Investigation Form

Department of Contracting and Purchasing (DC&P)

**Section A CONTACT INFORMATION**

1) Person Making Complaint (Name)	1a) Complaint Against (Name)
2) Company Name	2a) Company Name
3) Address	3a) Address
4) City State Zip Code	4a) City State Zip Code
5) Phone	5a) Phone
6) Email Address	6a) Email Address
7) Authorize the following person(s) to handle complaint on my behalf:	

**Section B PROJECT INFORMATION**

1) Project No.	2) Project Name/Title			
3) Amount Paid on Contract To Date:	4) Balance Remaining:	5) Amount of Retainage Withheld:	6) Date Work Started	7) Date Completed
8) Contract Date	9) Describe briefly the scope of the work for which you were contracted (i.e, painting, plumbing, concrete etc.) Please attach copy of contract.			
10) Total Contract Amount				

**Section C Reason for Dispute**

Describe in detail. Use extra sheets if necessary.

**Remedy Requested**

Description of proposed remedy. Use extra sheets if necessary.



# Prompt Payment Complaint & Investigation Form

Department of Contracting and Purchasing (DC&P)

**Section D Additional Information**

1 Have you made any attempts to contact the City/Contractor/Operator/Manager?  Yes  No

2 Have you notified the City/Contractor/Operator/Manager in writing ? If so attach a copy of the correspondence.  Yes  No

**NOTE:**

- 1 The City of Oakland collects this information in order to follow up on your complaint.
- 2 Possible Disclosure of Personal Information: The City of Oakland will make every effort to protect the personal information you provide us. In order to follow up on your complaint, however, we may need to share the information you give us with the business you complained about or with other governmental agencies.
- 3 The information you provide may also be disclosed under the following circumstances:
  - \* In response to a Public Records Act request as allowed by the Information Practices Act.
  - \* To another governmental agency as required by state or federal law.
  - \* In response to a court or administrative order, a subpoena, or a search warrant.
- 4 Contact Information: For questions regarding the above, contact the Prompt Payment Business Liaison, Department of Contracting & Purchasing, 250 Frank Ogawa Plaza, Suite 3341, Oakland, CA 94612, 510-238-6261

5 I declare under penalty of perjury that the information contained on this Complaint Form is true and correct to the best of my knowledge and that this declaration was signed at (city) \_\_\_\_\_, (state) \_\_\_\_\_ on (date) \_\_\_\_\_.

6 I will assist in the investigation, and will, if necessary, attend hearings and testify to facts.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

<b>For Office Use Only</b>	Date Received _____	Complaint Number _____	DC&P Staff: _____
Project Type PS/CS/Other _____	Initiating City Agency _____	City Project Manager _____	
Remedy/Resolution _____			
Status _____	Closure Letter Date _____	Date Mailed _____	



# Prompt Payment Invoice Transmittal

Receiving Department Date Stamp Here

**HELP YOUR INVOICE SPEED THROUGH THE PROCESS**

This form was designed to collect necessary information and to quickly and accurately route undisputed invoices to the responsible approval and payment authorities. Contact Vivian Inman, Acting Prompt Payment Business Liaison via e-mail [vinman@oaklandnet.com](mailto:vinman@oaklandnet.com) or (510) 238-6261 regarding this Prompt Payment Invoice Transmittal form.

ATTENTION  
20-Day Processing  
REQUIRED

**NOTE: BUSINESSE MUST ATTACH TO THIS FORM, TWO FULLY EXECUTED COPIES OF THE COMPANY INVOICE TO THIS TRANSMITTAL.**

**To: City of Oakland**  
  
 Department Name: \_\_\_\_\_  
  
 Attention: \_\_\_\_\_  
City staff responsible for approving this invoice.  
  
 Address \_\_\_\_\_  
  
 Phone # \_\_\_\_\_  
  
 e-mail \_\_\_\_\_  
  
 Undisputed Invoice? Y \_\_\_\_\_ N \_\_\_\_\_

**From: Contractor Name:** \_\_\_\_\_  
  
 Contact Name (if different) \_\_\_\_\_  
  
 Address \_\_\_\_\_  
  
 City/State/Zip \_\_\_\_\_  
  
 Vendor/Federal ID No. \_\_\_\_\_  
  
 Business Tax No. \_\_\_\_\_  
  
 Contractor Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Re: Project Name:** \_\_\_\_\_ **Project Number:** \_\_\_\_\_

Invoice No.	Invoice Date	PO#	Amount of Payment	Balance Remaining
Brief Description of Services:				

FOR OFFICE USE ONLY

Project Manager/Supervisor /Inspector \_\_\_\_\_ Date \_\_\_\_\_  
 Contract Compliance Reviewer \_\_\_\_\_ Date \_\_\_\_\_  
 User Agency Fiscal Reviewer \_\_\_\_\_ Date \_\_\_\_\_  
 Accounts Payable Reviewer \_\_\_\_\_ Date \_\_\_\_\_  
 Check No. \_\_\_\_\_ Check Date \_\_\_\_\_ Mail Date \_\_\_\_\_





# Affidavit Reporting Subcontractor Payments

(Prompt Payment Ordinance)

Project Number \_\_\_\_\_ Project Name \_\_\_\_\_

In accordance with the City's Prompt Payment Policy, this Affidavit of Payment shall be completed by all prime contractors/consultants, and submitted to the Prompt Payment Business Liaison, at 250 Frank Ogawa Plaza, Suite 3341, Oakland, CA 94612, within five (5) business days following receipt of a payment from the City, and is signed under penalty of perjury, that he or she has paid all subcontractors.

Contractor Name \_\_\_\_\_  
 Contractor Address \_\_\_\_\_  
 Phone (\_\_\_\_) \_\_\_\_\_

Contact Person \_\_\_\_\_  
 City, State, Zip \_\_\_\_\_  
 Email Address \_\_\_\_\_

Please complete the following and attach additional sheets if necessary.

#	Subcontractor Information			Payment Information				Retention Information				
	Name	Address	Discipline or Trade	Contract Amount Including Change Orders	Total Amount Paid to Sub Previous to this Period	Sub's Invoiced Amount This Period	Amount Paid Sub This Period	Amount Paid to Date	Amount Held	Amount Released	Amount Remaining	Date Paid

Original amount of mobilization fees: \_\_\_\_\_ Amount returned: \_\_\_\_\_ Outstanding amount: \_\_\_\_\_

I certify under penalty of perjury that I (Contractor Name) \_\_\_\_\_ received payment from the City of Oakland on \_\_\_\_\_ and the above persons have been contracted with, and have furnished or are furnishing and preparing materials for, and have done or are doing labor on the above referenced project. The above sub-contractors/consultants/suppliers/operators have been paid the amounts set opposite their names. I also certify that this statement is a full, true and complete statement.

Name and Title \_\_\_\_\_

Date \_\_\_\_\_

**RULES & REGULATIONS  
FOR THE IMPLEMENTATION OF THE PROMPT PAYMENT POLICY  
FOR THE CITY OF OAKLAND AND  
REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND**

**Purpose**

The purpose of the Prompt Payment Ordinance is to establish policies and procedures to ensure that local contractors and all subcontractors working on City of Oakland purchase contracts receive prompt payment, and to enhance and increase local business contracting opportunities with the City of Oakland by establishing: 1) shortened payment cycles for City of Oakland businesses contractors and all subcontractors, regardless of location, that provide goods and/or services in connection with a City of Oakland purchase contract, and 2) a City liaison to serve as a single point of contact to address payment delays and other issues relative to City of Oakland purchase contracts.

Ordinance No. 12857 C.M.S., adopted on January 15, 2008, established a prompt payment policy requiring payment within 20 business days after receipt of an invoice for the purchase of goods and/or services. The payment requirement is applicable to: 1) the City with respect to purchase contracts let directly to local businesses, 2) to non-profit and for-profit entities contracted to manage or operate City facilities or public programs or concessions on City-owned property, and 3) to City purchase contractors and subcontractors with respect to their subcontractors. Late payments are subject to interest penalties.

City prime purchase contractors are also required to 1) release retention held for services in proportion to the percentage of subcontractor services for which payment is due and undisputed within five (5) business days of payment and shall file notice with the City within five (5) business days of release of retention, 2) pay subcontractors that will render goods and/or services their portion of mobilization fees within five (5) business days of being paid such fees, and 3) complete, under penalty of perjury, an Affidavit Reporting Subcontractor Payments, and forward to the City within five (5) business days following receipt of payment.

This policy is codified at Oakland Municipal Code, Title 2, Chapter 2.06.

**Administrative Procedures and Regulations**

Administrative procedures and regulations for determining City, Manager/Operator, prime contractor and subcontractor compliance with, and full implementation of the Ordinance, including establishment of an interest penalty scheme and investigation procedures, as required by the Prompt Payment Ordinance, are set forth below.

**Regulation # 1 - Definitions**

The Ordinance sets forth the following definitions for interpretation and implementation purposes:

- a) **“City”** shall mean the City of Oakland as a municipal organization, City Agencies or Departments or City officials authorized by the City Council or City Administrator to enter into purchase contracts on behalf of the City of Oakland when acting in his/her official capacity.
- b) **“Claim”** shall mean a bill, invoice or written request for payment provided by the vendor. Written request includes “contract” as defined below.
- c) **“Claimant”** means a prime local contractor or subcontractor that files a claim with the City for overdue payment and associated interest penalties.
- d) **“Disputed Invoice”** means an improperly executed invoice or invoice that contains errors or requires additional evidence of its validity.
- e) **“Goods”** means products, goods, materials, equipment or other tangible items rendered pursuant to a purchase contract.
- f) **“Invoice”** means a bill or claim that requests payment for goods and/or services rendered pursuant to a City purchase contract by a local prime contractor or by a subcontractor.
- g) **“Local Business”**, in accordance with the City of Oakland Local and Small Local Business Enterprise Program, means a business: (a) with a substantial presence in the City of Oakland's geographic boundaries, (b) with a full operation conducting business for at least 12 consecutive months in the City of Oakland, (c) with a valid City of Oakland business tax certificate, and (d) that is an independent business headquartered in Oakland.
- h) **“Local Prime Contractor”** means a “local business” as defined above that is in direct or in privity of contract with the City of Oakland.
- i) **“Managers and Operators”** shall mean a non-profit or for-profit business that is contracted by the City of Oakland to operate and/or manage City programs, programs open to the public on City of Oakland property, City facilities or concession businesses on City of Oakland property.
- j) **“Mobilization Fees”** shall mean the cost of work in advance of construction operations.
- k) **“Purchase Contract”** means any enforceable City of Oakland agreement executed expressly for the purchase, lease or rental of goods and/or services, including purchase orders, sub-purchase orders, delegated purchase orders, service agreements or subcontracts. Purchase contracts must be approved and executed in accordance with all purchasing requirements of the City of Oakland. Claimants shall not be entitled to relief, hereunder, for payment delays that occur prior to the proper execution of a purchase contract.

- l) **“Services”** means any and all services rendered pursuant to a purchase contract including, but not limited to, professional, scientific or technical services.
- m) **“Stop Notice”** means a notice served to stop work going on pending the outcome of an appeal.
- n) **“Subcontractor”** means a subcontractor, supplier, vendor or any business or organization, other than the prime contractor, that delivers goods and/or services in connection with a purchase contract.
- o) **“Undisputed Invoice”** means an invoice executed by the claimant for goods and/or services rendered in connection with a purchase contract for which additional evidence is not required to determine its validity. Undisputed invoices include:
  - 1. a once disputed invoice which has been corrected or for which additional evidence of its validity has been provided and received by the City, the prime contractor or subcontractor responsible for issuing payment.
  - 2. an improper invoice whether goods and/or services have been received by the City, the prime contractor or subcontractor responsible for issuing payment, but the City, the prime contractor or subcontractor responsible for issuing payment fails to notify the claimant that the invoice is improper within 15 working days of receipt of the invoice.

**Regulation #2 - Forms**

Attached are the 1) Prompt Payment Compliant & Investigation Form, and 2) Affidavit Reporting Subcontractor & Supplier Payments Form. These forms must be included in all notices inviting bids, requests for proposals/qualifications or any other bid documents, formal or informal, and contracts to which the Ordinance applies.

- 1. Prompt Payment Compliant & Investigation Form – To dispute an invoice, City contract administrators and Contractors are required to file this form disputing an invoice with the Liaison within 5 business days of receipt of an invoice.
- 2. Affidavit Reporting Subcontractor & Supplier Payments - Prime Contractors are required to accurately complete and submit this affidavit to the City within 5 business days of each payment received from the City. The affidavit shall show all payments made to subcontractors and suppliers during the prior payment period, showing subcontractor and supplier names, addresses and amount paid to each.

**Regulation # 3: Local Business and Subcontractor Payment Liaison**

- A City Liaison, situated in the Department of Contracting and Purchasing, has been appointed to address invoice payment or other issues raised by City contract administrators, City Manager/Operators, Contractors or any subcontractors in connection with any City of Oakland purchase contracts for goods and/or services.

- The Liaison will be the City's central point of contact for local prime contractors and subcontractors, and will be responsible for coordinating the actions required to resolve issues with City agencies and departments and Manager/Operators.
- The Department of Contracting and Purchasing will establish a City-wide procedural mechanism to identify local contractors subject to prompt payment at the prime contract tier.
- Businesses will be educated about the program through electronic means as well as through existing and ongoing training programs and workshops.
- "Prompt Payment" provisions concerning the duties and responsibilities of purchase contractors and subcontractors shall be included in City notices inviting bids, requests for proposals/qualifications and boilerplate and modified contracts for the purchase of construction, goods and/or services.

#### **Regulation # 4: City's Prompt Payment Duties and Responsibilities**

Local Prime Contractor Prompt Payment - The City is required to pay undisputed invoices for the purchase of goods and/or services submitted by Local Prime Contractors within twenty (20) business days after receipt of the invoice.

Prompt payment applies to purchase contracts that have been approved and fully executed in accordance with City of Oakland Charter and Municipal Code requirements for the purchase of goods and/or services. Invoices submitted in the absence of such properly approved and executed purchase contracts shall not be subject to prompt payment requirements. In the event that a contractor or subcontractor begins work and submits invoices ahead of properly approved and executed purchase contracts, payment will be due on any undisputed amounts prematurely invoiced within 20 business days of the date of the actual date of execution, not the effective date, of the contract.

Contract Language – The City will include the same or substantially equivalent Prompt Payment terms and conditions as set forth in Regulation 7 below in its purchase contracts and Manager/Operator contracts. Notwithstanding the foregoing, City's failure to include such provisions in a purchase contract or Manager/Operator contracts shall not eliminate or reduce a Manager/Operator's, prime contractor's or subcontractor's prompt payment duties and responsibilities under the Prompt Payment Ordinance. Contractors are deemed to be on notice of their prompt payment obligations as of January 15, 2008, the date the Prompt Payment Ordinance (Ordinance No.12857 C.M.S.) was adopted.

Late Payment Interest Penalty - If the City does not timely pay a Local Prime Contractor for goods and/or services rendered pursuant to a purchase contract in accordance with the Ordinance, the Local Prime Contractor is entitled to interest penalty in the amount of ten percent (10%) of the improperly withheld amount per year for every month the payment is not made, provided the Local Prime Contractor agrees to release the City from any and all further claims for interest penalties that may be claimed or collected on the amount due and paid.

Receipt of Invoices - Invoices should be date stamped on the date first received at any location of the City. Invoices will be considered "received" for the purposes of "Prompt Payment" as of the first date received stamp, regardless of the location of receipt.

Disputed Invoice - The City (I.e., department, agency, official, employee, etc.) may dispute an invoice, in whole or in part, only for cause. To dispute an invoice, the City department, agency, official, employee, etc. is required to notify the Contractor and Liaison in writing within five (5) business days of receiving the disputed invoice that there is a dispute. Thereafter, City is required to pay any undisputed amount within the original 20 business days, however, the City may withhold the disputed amount until the Liaison investigation is complete and pay or not in accord with the Liaison determination. .

City Administrator Review - The Liaison will investigate the dispute as set forth below in Regulation 8. Invoices for goods and/or services delivered prior to or in the absence of an approved and properly executed a purchase contract shall not be subject to payment or late interest penalties under the Prompt Payment policy until and unless a purchase contract is approved in accord with Oakland Municipal Code Chapter 2.04 and fully executed (i.e., signed by the contractor and authorized City representative(s)). For invoices submitted in advance of a properly approved and/or executed contract, payment of undisputed invoices or portions thereof shall be due within 20 business days of the execution date of the contract and late interest penalties for undisputed amounts shall be due on the 21<sup>st</sup> business day of the execution date of the contract.

Retention - The City may not withhold any monies as project retention associated with the rendering of goods. Therefore, retention may only be applied to purchase contract amounts intended to cover services.

Website Posting - Information regarding City's retention release and payment of mobilization fees will be posted on the City's website within five (5) business days of such payment or release. Information regarding Manager/Operators, prime contractor and subcontractor retention release and payment of mobilization fees, and affidavits reporting subcontractor payments will be posted on the website within five (5) business days of the filing of such notices and affidavits with the City.

## **Regulation # 5: Manager/Operator, Contractor and Subcontractor Duties and Responsibilities**

Prompt Payment - All Manager/Operators, City prime contractors and subcontractors are required to pay their subcontractors for goods and/or services rendered in connection with a purchase contract within twenty (20) business days of receipt of the subcontractor's undisputed invoice.

Late Payment Interest Penalty - If Manager/Operator, prime contractor or payor subcontractor fails to timely pay an invoice for goods and/or services rendered pursuant to a City purchase contract in accordance with the Ordinance, the payee/claimant is entitled to interest

penalty in the amount of ten percent (10%) of the improperly withheld amount per year for every month that payment is not made, provided the payee/claimant agrees to release the Manager/Operator, prime contractor or payor subcontractor and City from any and all further claims for interest penalties that may be claimed or collected on the amount due and paid. Payee/claimants that receive interest penalties for late payment may not seek further interest penalties on the same late payment in law or equity.

Contract Language – All Manager/Operators, prime contractors and subcontractors are required to include the same or similar provisions as those required for City contracts, set forth in Regulation 7 below, in their contracts with a contractor or subcontractor that delivers goods and/or services pursuant to or in connection with a City of Oakland purchase contract.

Dispute by Payor –

*Filing of Dispute* - Manager/Operators, prime contractors and subcontractors may dispute an invoice, in whole or part, only for cause. Such disputes must be filed in writing within five (5) business days of receiving the disputed invoice. Thereafter, the payor is required to pay any undisputed amount within the original 20 business days, however, the payor may withhold the disputed amount until the Liaison investigation is complete and pay or not in accord with the Liaison determination.

*Posting of Security* – Payors are required to post security with the Liaison sufficient to cover any disputed amounts in the form of cash, certified check or bond. At the conclusion of the investigation, the Liaison will release the security to the payor or payee in accord with the final determination. If the payor refuses to post security, the Liaison may withhold payment from a future City progress payment and release payment to a payee in accord with a determination in favor of payee.

*Investigation* - The Liaison will investigate the dispute as set forth below in Regulation 9. The Liaison's determination is a final decision and there shall be no further administrative review by the City.

*Stop Notice* – If a subcontractor files a stop notice, then the State stop notice laws will prevail. The Prompt Payment Business Liaison will not address a payment claim(s) for which a Stop Notice has been filed.

Dispute by Payee -

*Filing a Claim for Payment and Interest* - Subcontractors may file a claim for all or a portion of an unpaid invoice plus penalty interest pursuant to Section 2.06.080 of the Ordinance,

*Investigation* - The Liaison will investigate the dispute as set forth below in Regulation 9. The Liaison's determination is a final decision and there shall be no further administrative review by the City.

Affidavit Reporting Subcontractor Payments. All prime contractors are required to submit an affidavit to the Liaison, under penalty of perjury, that he or she has paid all subcontractors within five (5) business days following receipt of a payment from the City. The affidavit shall set forth the names and addresses of all subcontractors and the amount paid to each.

Retention -

*No Retention for Rendering of Goods - Manager/Operators, prime contractors and subcontractors are prohibited from withholding any monies for project retention associated with the rendering of goods.*

*Release of Retention for Rendering of Services - Manager/Operators, prime contractors and subcontractors are required to release retention held for services in proportion to the percentage of subcontractor services for which payment is due and undisputed within five (5) business days of payment.*

*Notice of Release of Retention - Manager/Operators, prime contractors and subcontractors are required to file an Affidavit of Subcontractor Payments with the Liaison within five (5) business days of release of subcontractor retention.*

*Prompt Payment of Mobilization Fees - Prime contractors and subcontractors are required to pay subcontractors that will render goods and/or services their portion of mobilization fees within five (5) business days of being paid such fees by the City.*

*Notice of Payment of Mobilization Fees - Prime contractors and subcontractors are required to file notice with the City within five (5) business days of payment of mobilization fees to a subcontractor.*

**Regulation #6: Interest Penalty Calculation**

As indicated above in Regulations 4 and 5, the Prompt Payment Ordinance imposes interest penalties for undisputed or unjustified late payments. Such late payments are subject to late interest penalties of ten percent (10%) of the improperly withheld amount per year for every month that payment is not made and shall be calculated as follows:

Interest Penalty equals Invoice Amount x .8333% per month (10% per year), pro-rated.

**Regulation # 7: Bid Solicitations, Request For Proposals/Qualifications, Contracts**

A. The City will include the following or substantially equivalent Prompt Payment terms and conditions in its notices inviting bids, requests for proposals/qualifications, City contracts for the purchase of goods and/or services or amendments thereto, and requests for proposals/qualifications and contracts, or amendments thereto, for Manager/Operators:



This contract is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06. The Ordinance requires that, unless specific exemptions apply, Contractor and its subcontractors shall pay undisputed invoices of their subcontractors for goods and/or services within twenty (20) business days of submission of invoices unless the Contractor or its subcontractors notify the Liaison in writing within five (5) business days that there is a bona fide dispute between the Contractor or its subcontractor and claimant, in which case the Contractor or its subcontractor may withhold the disputed amount but shall pay the undisputed amount.

Disputed payments are subject to investigation by the City of Oakland Liaison upon the filing of a compliant. Contractor or its subcontractors opposing payment shall provide security in the form of cash, certified check or bond to cover the disputed amount and penalty during the investigation. If Contractor or its subcontractor fails or refuses to deposit security, the City will withhold an amount sufficient to cover the claim from the next Contractor progress payment. The City, upon a determination that an undisputed invoice or payment is late, will release security deposits or withholds directly to claimants for valid claims.

Contractor and its subcontractors shall not be allowed to retain monies from subcontractor payments for goods as project retention, and are required to release subcontractor project retention in proportion to the subcontractor services rendered, for which payment is due and undisputed, within five (5) business days of payment. Contractor and its subcontractors shall be required to pass on to and pay subcontractors mobilization fees within five (5) business days of being paid such fees by the City. For the purpose of posting on the City's website, Contractor and its subcontractors, are required to file notice with the City of release of retention and payment of mobilization fees, within five (5) business days of such payment or release; and, Contractors are required to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors, within five (5) business days following receipt of payment from the City. The affidavit shall provide the names and address of all subcontractors and the amount paid to each.

Contractor and its subcontractors shall include the same or similar provisions as those set forth above in this section in any contract with a contractor or subcontractor that delivers goods and/or services pursuant to or in connection with a City of Oakland purchase contract.

### **Regulation # 8: Complaint and Investigation**

Any disputed invoices or claims for payment made pursuant to the Ordinance are subject to investigation and resolution by the Liaison. A local prime contractor or subcontractor who alleges violation of any provision of the Ordinance may report such acts to the Liaison.

#### Filing of Disputed Payments -

1. The City department, agency, official, employee, etc., or manager/operator or payor contractor or subcontractor shall submit written notice of dispute to the City of Oakland, Department of Contracting & Purchasing, Social Equity Division, 250 Frank Ogawa Plaza, Suite 3341, Oakland, CA 94612, Attn: Prompt Payment Business Liaison.

2. The Liaison shall collect a security deposit in the form of cash, certified check, or bond in an amount sufficient to cover the claim including possible penalty interest from the Manager/Operator or contractor that has disputed the invoice. If a Manager/Operator or contractor that is required to post security fails or refuses to do so, the Liaison may withhold funds from the next progress payment sufficient to cover the claim. Upon the Liaison's determination that the invoice is valid, the cash, certified check or bond shall be released to the claimant. If the Liaison finds in favor of the Contractor the cash, certified check or bond shall be returned to the Contractor.

Filing of Complaints for Payment -

1. The complainant must submit a completed complaint form and copies of invoices or billing documents that have been submitted to the City, to a City purchase contractor or to a Manager/Operator. To expedite investigation, complainant shall also submit any documents in their possession showing that his/her goods and/or services or other deliverables have been rendered to and inspected or reviewed and accepted by the City or Manager/Operator in connection with the claim.

Investigation and resolution of disputes and claims will be handled as follows:

Filing of Disputes or Claims - The Liaison shall contact the City agency, department, Manager/Operator or contractor responsible for payment within five (5) businesses days of receipt of the dispute or complaint form to investigate.

Guidelines for Review of Invoices - The Liaison's determination of whether an invoice is valid shall be based on the following:

- Whether the invoice meets the requirements of an "undisputed invoice" as defined above in Regulation 1.d and Oakland Municipal Code Section 2.06.010.
- Whether the invoice is rendered in connection with a "purchase contract" as defined above in Regulation 1.k and Oakland Municipal Code Section 2.06.010;
- Whether there is a discrepancy between the invoice or claimed amount and the provisions of the purchase contract,
- Whether there is a discrepancy between the invoice or claimed amount and either the contractor's actual delivery of goods and/or services to the City, or the City's acceptance of such goods and/or services,
- Whether the City Agency, Prime Contractors or subcontractor responsible for payment provided timely notice of the disputed invoice; and
- Whether additional evidence supporting the validity of the invoice or claimed amount must be provided by the claimant.

Liaison Determination for Payee/Claimant - When the Liaison determines that a violation of the Ordinance has occurred, the Liaison shall assess interest penalties at the rate specified in Regulation 6 above and Oakland Municipal Code Section 2.06.060. A demand for payment of the improperly withheld payment and interest will issue to the City department, agency, officials, employee etc. responsible for administering the related purchase contract, or the

Manager/Operator, the prime contractor or the subcontractor responsible for the late payment. The City shall issue a check for the amount of the undisputed claim and interest penalties assessed by the Liaison to the Local Prime Contractor within five (5) business days of the date of the Liaison determination.

Liaison Determination for City, Manager/Operator, Payor Contractor – If the Liaison determines that the claimant’s invoice provides insufficient evidence for payment, the claimant will be advised of the additional information required for payment and given an opportunity to provide the same. However, such deficient invoices are not be subject to the calculation of interest penalties.

City Appeal - The City may seek review by the City Administrator of Liaison determinations for claims submitted by Local Prime Contractors within five (5) business days of the date of determination.

### **Regulation # 9: Exemptions**

City and Manager/Operator purchase contracts are exempt from the Ordinance under the follow circumstances:

- A. When issued in response to a local disaster or emergency provided: i) the emergency or disaster is acknowledged by a public declaration of emergency or disaster of the United States, State of California, County of Alameda, Oakland City Council or City Administrator, ii) the purchase contract is issued without advertising or competitive bid pursuant to the City Administrator’s emergency authority in Oakland Municipal Code, Title 2, Chapter 2.04, Sections 2.04.020.G or H, and iii) the purchase contract is completed within the declared period of emergency or disaster.
- B. When State or Federal laws preempt the local or other regulation of the purchase, in which case State or Federal mandates shall take precedence,

### **Regulation # 10: Effective Date**

Except for procurement or construction contracts for which fixed, sealed bids were required on a date prior to the date of final adoption of this ordinance set forth below, the provisions of this Ordinance shall apply to any purchase contract or Manager/Operator contract, or amendment, extension, change order or modification of such contracts, entered into or consummated on or after February 1, 2008.