



Prime Contractor and Subcontractor Disputes

What can a sub do when the prime contractor is paying slowly or not paying?

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Objective

- ▶ Contract definitions of Primes, Subcontractors, Suppliers, Individual and Contract Personnel.
- ▶ Responsibility of the Prime and Subcontractor.
- ▶ Recommended steps to reduce conflict.

Prime Contractor – Subcontractor – Travis County

- ▶ Travis County is under contract with the prime contractor to perform the required work.
- ▶ The subcontractor is under contract with the prime contractor.
- ▶ Travis County is NOT under contract with any subcontractors.
- ▶ The sub can monitor payments to the prime by the Vendor Tracking System (VTS) administered by the HUB Program Staff.
- ▶ The sub has the right to file a claim against the Payment Bond if there is a delay or refusal by the prime to pay during the course of the project or to release final payment (retainage).

Responsibility of all Contractors



- ▶ Enter into a signed contract.
- ▶ Make sure the work is clearly explained and expectation are clearly defined.
- ▶ Make you have a schedule.
- ▶ Make sure you have a copy of the prime's contract.
- ▶ Make sure you have a schedule of values for your work.
- ▶ The prime contractor is obligated by Texas Law to pay its subcontractors/suppliers within 10 days of receiving payment from the County or any other government entity.

Advoiding Payment Disputes

- ▶ Make sure you have promptly invoiced the prime for your work.
- ▶ Prepare and keep supporting data, i.e., letters, dated invoices, emails, with supporting docs.
- ▶ Make sure you have contacted the prime about the status of payment.
 - Did you contact the prime by letter, email, or by in person delivery?
- ▶ Be sure to follow up any deadlines (due dates) from the prime about payment.
 - Did you define the "Payment Due By" date?
- ▶ Verify that the County (owner) has released payment to the prime.
 - Obtain a payment date or anticipated payment date.

What if the Prime Still Has Not Paid the Subcontractor?



- Contact the prime again **in writing**.
- If you do not receive a response, prepare your documentation.
- Contact the County (owner) for the name of the surety/bonding company.
- Obtain a copy of your contract with the prime.
- Prepare all invoices with detailed work and expenses.
- Prepare a log of phone calls, emails, and letters between you and the prime (with dates and time).
- Make copies of all your documentation!

Notify the Payment Bond/Surety of Claim

- ▶ Make sure you have filled out, signed, notarized all necessary documents.
- ▶ Send in your claim without delay!
- ▶ Mail notices (registered or certified mail) to:
 - the prime,
 - the bond/surety company and,
 - the County (owner)
- ▶ Timeline for responses can vary – it is **your responsibility** to follow up with the surety/bonding company!



Completion of Work (Release of Retainage)

- ▶ Monitor the Final Payment released by the County to the prime (notification through VTS).
- ▶ Contact the prime contractor and verify that retainage will be timely released to you.
- ▶ Send your final invoice with supporting documentation (if necessary) to the prime.
- ▶ Know the difference between “Conditional Release of Lien” and “Unconditional Release of Lien”
- ▶ File your claim if you do not receive payment in a timely manner with Conditional Release of Lien.



Tips for Subcontractors



- Make sure you are able to perform the work as your contract requires.
 - Do you have the resources, staff, materials, and moneys?
- Attend pre-con, kick-off, and status meetings.
- Make sure the contract with your prime clearly states all deliverables, due dates, schedules and expectations.
- Make sure your Certificate of Insurance is in order.
- Be bondable!
- Seek legal counsel as necessary.
- **REMEMBER:** Your contract is with the prime and not with Travis County. Legal remedies are available to you to receive the money you are due under your contract!

Texas Property Code § 53

Visit this link for a complete reading of the code:

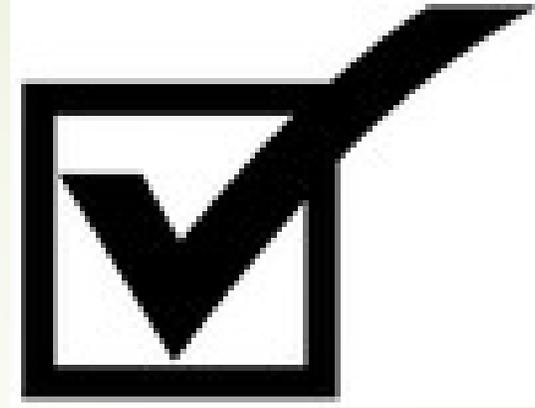
<http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.53.htm>

Look for Tex. Prop. Code § 53.281 for the forms for “Conditional Release of Lien” and “Unconditional Release of Lien”

If you do not get satisfaction from the surety/bonding company, you **may need to** take legal action against the prime and surety/bonding company to get your money.

Disclaimer: It is highly recommended that you consult legal counsel for specific help and advice regarding your situation. This presentation is for information purposes only.

Summary



- ▶ Document, Document, Document!
- ▶ **Enter into a written contract.**
- ▶ Invoice properly and promptly.
- ▶ Keep in contact with the prime.
- ▶ If the prime is not responding or delays your payment, prepare to file a claim.
- ▶ **Be aware of deadlines!** Do not forfeit your right to payment by missing deadlines **or poor record keeping.**
- ▶ Consult with legal representation, if necessary.
- ▶ Ask questions!

Disclaimer: This information does not constitute legal advice, nor is it intended to replace legal counsel.