

PUBLIC WORKS

RULES & REGULATIONS

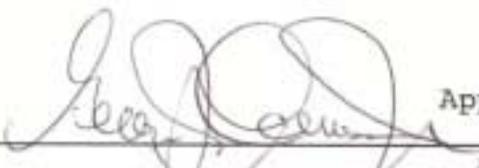
OF THE MANAGER OF THE DEPARTMENT OF PUBLIC WORKS, CITY & COUNTY OF DENVER

Adopted Pursuant to Article VII,
Chapter 20 of the Revised Municipal
Code, City & County of Denver

PERTAINING TO ASPECTS OF THE
ENFORCEMENT AND INTERPRETATION OF
ARTICLE VII, CHAPTER 20, OF THE DENVER
REVISED MUNICIPAL CODE:

PROMPT PAYMENT

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Introduction

These rules and regulations are promulgated pursuant to the Prompt ordinance of the City & County of Denver, Article VII, Chapter 20, Denver Revised Municipal Code (DRMC) as amended, (comprising sections §20-107 through §20-11S inclusive, enacted by Ordinance 724 of 1991 and amended by ordinance 980 of 1991).

These rules and regulations apply to all departments, agencies, boards, commissions, and authorities of the City & County of Denver, except as may be otherwise provided by law or by these rules and regulations.

These rules and regulations are to be read in conjunction with the rules and regulations promulgated by the Auditor of the City & County of Denver pursuant to the Prompt Payment ordinance.

Rule I. Definitions

Definitions (a) through (n), marked with an asterisk (*), are incorporated verbatim and repeated from the Prompt Payment Ordinance, §20-108.

As used in these rules and regulations, unless the context otherwise requires:

(a) Account payable* means a liability incurred by the City pursuant to a contract.

(1) Under contracts other than for construction,- reconstruction, or remodeling, such a liability shall arise upon the city's receipt of goods or services and the responsible officials' receipt of an invoice or other notice of liability requesting payment, together with all supporting documentation for the liability (including a statement of prevailing wage submission where applicable), other evidence showing contractor compliance with the terms and conditions of the contract, and where applicable, upon the receipt by the Prevailing wage Division of the Auditor's Office of satisfactory evidence of compliance with the City's prevailing wage ordinance.

(2) Under construction, reconstruction, and remodeling contracts, such a liability shall arise upon the City's receipt of a complete and responsive contractor payment request.

(b) Auditor* means the Auditor of the City or his designee.

(c) Complete and responsive contractor payment request* in a construction, reconstruction, and remodeling contract shall mean a pay request:

(1) that complies with all applicable requirements of the General or Special Conditions and other terms or conditions of the contract;

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- (2) that complies with any other applicable requirements of City Charter, ordinances, regulations, Executive orders, or fiscal rules (including but not limited to provision of a statement of prevailing wage submission where applicable), or any other applicable state or federal law;
 - (3) for which required prevailing wage information has been received by the Prevailing Wage Division of the Auditor's office; and
 - (4) that contains an estimate of the work performed which is the subject of the payment request, which has been certified and approved by the City's design professional, in-house official responsible for design, or other consultant, responsible for approving estimates of work.
- (d) Contract* means a formally executed written contract, purchase order, other lawfully incurred contractual purchase obligation, or lease to which the City is a party and incurs financial obligations to the other party or parties, excluding employment contracts entered into with individual employees, excluding settlement agreements entered into with individual employees or third parties arising out of employment disputes, Workers, Compensation claims, or claims or litigation against the City and/or its employees cognizable in any court, arbitration, or administrative proceeding, and excluding that certain Master Lease Purchase Agreement dated April 15, 1986, as amended, any future amendments thereto, and any substantially similar Master Lease Purchase Agreement or amendments that may be subsequently executed.
- (e) Contractor* means a contractor, consultant, vendor, or lessor under a City contract.
- (f) Day* means calendar day, unless otherwise defined.
- (g) Design professional* means an architect or engineer retained by the City to perform design services for the project(s) which is the subject of the contract.
- (h) In-house official responsible for design* means a City official who has responsibilities for approval of work estimates in a contractor payment. request similar to the approval responsibilities of a retained design professional.
- (i) Payment* means either:
- (1) The Auditor's placing a warrant into the U.S. Mail, postage prepaid or, at the Auditor's sole discretion,
 - (2) The Auditor's holding a warrant in his offices ready for pickup, if requested by the contractor in lieu of mailing.

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(j) Payment period commencement date* signifies the commencement of the prompt payment period and means:

(1) For contracts other than for construction, reconstruction, or remodeling, the latest of the following:

(i) the date on which the responsible official actually receives the invoice stating the account payable;

(ii) the date on which the City actually receives the goods or services;

(iii) where applicable, the date on which the Prevailing Wage Division of the Auditor's Office receives current prevailing wage information, including that applicable to the account payable, submitted to it by the Contractor for such contract;

(iv) where applicable, an extended testing, setup, assembly and/or acceptance period has been successfully completed by the contractor.

(2) For contracts for construction, reconstruction or remodeling, the date on which the responsible official actually receives a complete and responsive contractor payment request.

(k) Prompt payment* means issuance of a warrant by the Auditor in payment of an account payable within fifteen (15) days after the Auditor's receipt from the responsible official of an approved invoice or complete and responsive pay request, and within thirty (30) days after the payment period commencement date, except as otherwise provided in this Article, or as otherwise provided in the contract.

(l) Prompt payment period* means the period of time allotted under this Article for payment of an account payable.

(m) Responsible official* means the City official who has authority in a City department or agency to approve invoices or payment requests for a contract or contracts, let by a City department or agency.

(n) Subcontractor* means subcontractors, subconsultants, and suppliers of all tiers.

(o) Affected contract means a specific type of City contract to which the Prompt Payment ordinance applies.

There are four types of affected contracts described here, all of which are contained within the general definition of contract in (d) above:

(1) all regularly-executed written contracts executed on or after January 1, 1992, except as may be otherwise provided by law or within these rules and regulations. These contracts are typically initiated with a Form ADM-EKS 42 and are assigned a contract encumbrance (CE) number by the Auditor's Office. Regularly-executed written contracts executed prior to January 1, 1992, are not affected contracts.

(2) all standard purchase order contracts issued by the Department of General Services on or after January 1, 1992, except as may be otherwise provided by law or within these rules and regulations. These contracts are typically initiated by means of a purchase order issued by the Purchasing Division of the Department of General Services, and are assigned a purchase

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encumbrance (PE) number by the Purchasing Division of the Department of General Services. Purchase order contracts executed prior to January 1, 1992, are not affected contracts.

(3) all purchases under annual bids issued or authorized by the Department of General Services, for which the clock date, or payment period commencement date, occurs on or after January 1, 1992. These purchase contracts are typically initiated by agencies through communication with direct vendors based upon authorization by the Purchasing Division of the Department of General Services for the use of bids that have been let by the Purchasing Division on an annual or other periodic basis to meet the requirements of the agency. These purchase contracts may also include authorization by the Purchasing Division to use bids let by the State of Colorado, the U.S. General Services Administration, or other governmental jurisdictions.

(4) all purchases made on a one-time, non-recurring (OTNR) basis, authorized by the Department of General Services, for which the clock date, or payment period commencement date, occurs on or after January 1, 1992. These purchase contracts are typically initiated by agencies through direct communication with vendors based upon authorization by the Purchasing Division of the Department of General Services for such purchases up to a maximum dollar amount. (At the time of promulgation of these rules and regulations, that amount is not to exceed \$200.)

(p) Agency accounts payable plan or agency operating guidelines means any plan or set of guidelines that an agency may prepare for internal use to ease and accommodate the efficient operation of its accounts payable process.

Such plans or guidelines may include, but not be limited to, lists of agency locations to which vendors and contractors are to submit goods or services purchased by the City, invoices, contractor payment requests, and other information necessary for the proper functioning of the accounts payable process.

Such plans or guidelines may also include, but not be limited to, lists of the roles or titles of agency employees or agency officials to whom vendors and contractors are to submit goods or services purchased by the City, invoices, contractor payment requests, and other information necessary for the proper functioning of the accounts payable process.

Such plans or guidelines may also include, but not be limited to, lists of the relevant roles, titles, or names-of the agency employees listed for the purposes of the Auditor. (See also the Auditor's rules and regulations.)

(q) Clock date means the payment period commencement date.

(r) Date received or verified date received means the date, as indicated by a date stamp, signed date notation, or other documented date notation, of the occurrence of any event necessary for an account payable liability to be incurred, as described in (a) above.

Date received is also the date on which any event necessary as part of initiating the clock date occurs.

Date received is a vital step in the accounts payable process.

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- (s) Fund limitations means situations where the legal structure or terms of a funding source to a City project or contract limits or prohibits the payment of interest or penalties from the monies provided by that funding source for failure to pay promptly.
- (t) Vendor means a contractor, consultant, vendor, or lessor under a city contract.

Rule II. **Construction Contracts**

- (a) Introduction. This rule applies to contracts for construction, reconstruction, and remodeling, where payment procedures are defined in DRMC §20-109. These procedures are reflected in Flow Cart #1.

- (b) Ordinance summary. For contracts for construction, reconstruction, and remodeling, contractors shall submit complete and responsive contractor payment requests that comply with the four required elements defined to comprise that document [see DRMC §20-108(c) or Rule I (c)]

The complete and responsive contractor payment request is submitted to the design professional [DRMC §20-108(g) or Rule I(g)], if one has been retained; or, if not, to the in-house official responsible for design [DRMC §20-108(h) or Rule I(h)].

The design professional or the in-house official responsible for design (as the case may be) is permitted five (5) working days to approve or disapprove the contractor payment request and to submit it to the responsible official [DRMC §20-109(f)].

If the design professional or the in-house official responsible for design determines that a contractor payment request is not complete or responsive, the responsible official is permitted two (2) working days to inform the contractor [DRMC §20-109(f)].

The payment period commencement date (clock date) occurs when the responsible official receives the complete and responsive contractor payment request from the design professional or the in-house official responsible for design.

On the same day as the date received, the responsible official then shall notify the Auditor that a complete and responsive contractor payment request has been received [DRMC §20-109(b)].

The responsible official and the Auditor then shall review the payment request in parallel.

The Auditor is permitted ten (10) calendar days from the clock date to review and approve prevailing wage information relevant to the payment request and to inform the responsible official [DRMC §20-109(c)].

If the Auditor rejects or is unable to approve the prevailing wage information submitted by the contractor, the Auditor is permitted ten (10) calendar days from the clock date to inform the contractor in writing or by documented telephone call or facsimile transmission, and shall notify the responsible official immediately [DRMC §20-109(d)].

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Similarly, if the responsible official determines that a submitted payment request is not complete and/or responsive, or believes that there are grounds to deny payment (other than non-compliance with prevailing wage), the responsible official shall notify the contractor in writing or by documented telephone call or facsimile transmission within ten (10) calendar days of the clock date [DRMC §20-109(f)].

The responsible official is permitted twenty (20) calendar days from the clock date to approve the complete and responsive contractor payment request and to transmit a voucher with the approved payment request to the Auditor for payment [DRMC §20-109(e)]

The Auditor is then permitted an additional ten (10) calendar days from the receipt of the voucher for the payment request to tender payment [DRMC §20-109(e)].

(c) Pay application submission. The designated project manager or resident engineer for each construction contract will determine the time and location for submission to the City of contractor payment requests.

Full compliance with DRMC §20-109 is required.

Partial claim releases from subcontractors, or alternative proof of payment of subcontractors, in form acceptable to the Manager of Public Works and the Director of the Mayor's Office of Contract Compliance, shall be submitted with each contractor payment request beginning with the contractor's second payment request [DRMC §20-109(k)].

Each contractor payment request shall include a statement signed by the contractor that all appropriate certified payrolls have been submitted to the Prevailing Wage Division of the Auditor's Office for review in accordance with DRMC §20-76 through §20-79 [see DRMC §20-108(a)(1) & (c)(2)].

(d) Claims and disputes. Claims and disputes on construction, reconstruction, and remodeling contracts will be reviewed and resolved in accordance with the contract conditions and other applicable ordinance provisions.

(e) Final payment. Final payment will be determined in accordance with the contract conditions and other applicable ordinance provisions

The necessary advertising period will be considered a pause in the prompt payment period, as whether the final contractor payment request is complete and responsive cannot be determined until the advertising period has lapsed.

(f) Full application to City construction projects. These rules and regulations apply to all construction, reconstruction, or remodeling projects and contracts performed by any department, agency, board, commission, or authority of the City & County of Denver, whether contracted by the Department of Public Works, by the Department of General Services, or as may be delegated and assigned by the Mayor of the City & County of Denver to another agency, except as may be otherwise provided by law or within these rules and regulations.

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Rule III. **Non-Construction Contracts Subject to Prevailing Wage**

(a) **Introduction.** This rule applies to non-construction contracts for purchase of services where prevailing wage applies as a provision of the contract, as defined by DRMC §20-76 through §20-79.

These payment procedures are defined primarily in DRMC §20-110, and are reflected in Flow Chart #2.

This rule applies to any affected contract within the scope of DRMC §20-76 et seq., where the total amount of the contract, including both materials and labor, equals two thousand dollars (\$2,000) or more [DRMC §20-76 et seq.].

This rule applies to contracts within the scope of DRMC §20-76 et seq., for the following types of services when such contracts are not construction, reconstruction, or remodeling contracts:

- * drayage, including hauling or moving of any type of material, equipment, furniture, or other hauling;
- * repairs or improvements;
- * maintenance, caretaker, and landscaping services;
- * doorkeeper services;
- * cleaning, janitorial, and window washing services;
- * porter services; and
- * security services.

(b) **Ordinance summary.** For non-construction contracts for purchase of services where prevailing wage applies as a provision of the contract, vendors shall submit invoices or progress payment requests in accordance with the terms of the contract.

The payment period commencement date (clock date) occurs on the latest of four dates (DRMC §20-108(j)):

- * when the responsible official actually receives from the vendor the completed service or the portion of the service relevant to the period for which payment is requested;
- * when the responsible official actually receives from the vendor the invoice or payment request for the period relevant to the completed services;
- * when the Prevailing Wage Division of the Auditor's Office receives the vendor's prevailing wage payroll submittals;
- * when, where applicable, any extended testing, setup, assembly, and/or acceptance period has been successfully completed by the contractor.

On the same day that the clock date occurs, the responsible official then shall notify the Auditor that the clock date has occurred and the prompt payment period has begun [DRMC §20-110(a)(1)].

The responsible official and the Auditor then shall review the invoice or payment request in parallel. The Auditor is permitted ten (10) calendar days from the clock date to review and approve prevailing wage information relevant to the invoice or payment request and to inform the responsible official [DRMC §20-110(a)(2)].

If the Auditor rejects or is unable to approve the prevailing wage information submitted by the contractor, the Auditor is permitted ten (10) calendar days from the clock date to inform the contractor in writing or by documented telephone call or facsimile transmission, and shall notify the responsible official immediately [DRMC §20-110(a)(3)].

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Similarly, if the responsible official determines that there are grounds to deny payment (other than non-compliance with prevailing wage), the responsible official shall notify the vendor in writing or by documented telephone call or facsimile transmission within ten (10) calendar days of the clock date (see the detailed enumerated grounds for such denial in DRMC §20-110(a)(6)).

The responsible official is permitted twenty (20) calendar days from the clock date to approve the invoice or payment request and to transmit a voucher with the approved payment request to the Auditor for payment [DRMC §20-110(a) (4)].

The Auditor is then permitted an additional fifteen (15) calendar days from the receipt of the voucher for the invoice or payment request to tender payment [DRMC §20-110(a)(4)].

(c) Communication with Prevailing Wage Division. For each agency that enters into a non-construction contract where prevailing wage applies as a provision of the contract, it is the responsibility of the responsible official to inform the Prevailing Wage Division of the Auditor's Office of the execution of the contract.

These rules and regulations are to be read in conjunction with the rules and regulations promulgated by the Auditor of the City & County of Denver pursuant to the Prompt Payment ordinance.

(d) Full application to city projects. These rules and regulations apply to all non-construction contracts where prevailing wage applies as a provision of the contract, performed by any department, agency, board, commission, or authority of the City & County of Denver, except as may be otherwise provided by law or within these rules and regulations.

Rule IV. Standard Purchase Contracts

(a) Introduction. This rule applies to contracts not included under Rule II or Rule III: non-construction contracts where prevailing wage is not included as a provision of the contract.

These are standard purchase contracts for goods and services.

These payment procedures are defined primarily in DRMC §20-110, and are reflected in Flow Charts #3, #4, and #5, as noted below.

(b) Ordinance summary. For standard purchase contracts for goods and services, vendors shall submit invoices in accordance with the terms of the contract.

The payment period commencement date (clock date) occurs on the latest of three dates [DRMC §20-108(j)]:

- * when the responsible official actually receives from the vendor the goods or the service for which payment is requested;

- * when the responsible official actually receives from the vendor the invoice for the goods or the service;

- * when, where applicable, any extended testing, setup, assembly, and/or acceptance period has been successfully completed by the vendor.

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The responsible official is permitted a total of thirty (30) calendar days from the clock date to review and approve the invoice or payment request and to transmit a voucher for the approved payment request to the Auditor for payment (DRMC §20-110(a)(4)).

However, this prompt payment period includes the responsibility for determination within ten (10) calendar days as to whether there are grounds to deny payment. If the responsible official determines that there are grounds to deny payment on the purchase contract, the responsible official shall notify the vendor in writing or by documented telephone call or facsimile transmission within ten (10) calendar days of the clock date (DRMC §20-110(a)(6)).

Following submission of the voucher for the invoice to the Auditor for payment within the twenty (20) day period, the Auditor is then permitted an additional ten (10) calendar days from receipt of the voucher to tender payment [DRMC §20-110(a)(4)].

(c) Special provisions for foodstuffs. The ordinance provides for an abbreviated prompt payment period for foodstuffs [DRMC §20-110(b)].

These procedures are reflected in Flow Charts #4 and #5.

(c)(1) Perishable foodstuffs. The prompt payment period for perishable foodstuffs totals ten (10) working days [DRMC §20-110(b)(1)].

This period is divided between the agency and the Auditor's office.

The agency is permitted seven (7) working days from the clock date for acceptance of the foodstuffs and approval of the invoice, or for rejection and notification of the contractor.

If the foodstuffs are accepted and the invoice approved, the agency shall transmit the voucher to the Auditor's Office within the same seven (7) working days period.

The Auditor's Office is permitted three (3) working days from receipt of the voucher to make payment.

Official functions that include the use of catering services or other provision of perishable foodstuffs are included under this section of the ordinance.

These procedures are reflected in Flow Chart #4.

(c)(2) Non-perishable foodstuffs. The prompt payment period for nonperishable foodstuffs totals fifteen (15) working days (DRMC §20-110(b)(2)).

This period is divided between the agency and the Auditor's office.

The agency is permitted twelve (12) working days from the clock date for acceptance of the foodstuffs and approval of the invoice, or for rejection and notification of the contractor.

If the foodstuffs are accepted and the invoice approved, the agency shall transmit the voucher to the Auditor's office within the same twelve (12) working days period.

The Auditor's office is permitted three (3) working days from receipt of the voucher to make payment.

These procedures are reflected in Flow Chart #5.

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(d) Partial payment. The ordinance mandates partial payment when authorized in the contract [DRMC §20-110(a)(5)].

As a standard practice, when partial delivery of goods or services provides a usable result or outcome to the agency, and is accurately reflected in the invoice, partial payment shall be made.

Where partial delivery of usable goods or services is not accurately reflected in the invoice, agencies are encouraged to seek a corrected invoice from the vendor.

(e) Credit memos. Where the return of goods or services, or agency overpayment, or other transactions have resulted in the agency receiving a credit memo from the vendor, it is often standard practice to apply the credit memo to future invoices from the same vendor .

In such situations, more than one invoice may be required to equal the total value of the credit memo.

In these cases, unless other actions are taken, the clock date would begin normally on such an invoice (unless otherwise provided in the contract), despite the fact that the agency is intentionally delaying payment on the invoice because it is smaller than the value of the credit memo.

This could lead to the inadvertent imposition of penalty or interest payments when the total value of invoices from the vendor reaches or exceeds the total value of the credit memo, and a payment voucher is submitted by the agency to the Auditor's office.

However, DRMC §20-114(c) provides that the City "shall have [no] obligation to pay interest when.... (5) The terms of a contract... specify other times and methods of payment... "

Therefore, in a credit memo situation, where the vendor expressly accepts this procedure of accumulating invoices as a standard practice for a particular contract, then the clock date shall occur and the prompt payment period shall begin with the receipt from the vendor of the last invoice necessary to reach or exceed the total value of the credit memo.

The clock date shall not occur with any invoice received subsequent to the receipt of a credit memo with respect to such a contract until the total value of all invoices received from that vendor reach or exceed the value of the credit memo.

Such a situation must be confirmed and documented by the responsible official in writing to the vendor (in the case of a written contract) or by documented telephone call to the vendor (in the case of an oral contract) and accepted by the vendor.

Agencies shall document credit memo situations in submitting vouchers to the Auditor's office and may cite DRMC §20-114(c)(5) as authority for postponement of the clock date.

(f) Discounts. Discounts authorized by contract shall be taken only by the Auditor's Office, and shall automatically be subtracted from the voucher warrant paid to the vendor.

Agencies are encouraged to seek discount opportunities in contract negotiations, and should indicate the availability of a discount on the voucher when appropriate.

Unless explicitly prohibited by the contract, the discount date calculation shall occur based on the clock date.

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(g) Agency warrant hold requests. subject to procedures that may be established by the Auditor, agencies may request that warrants be held by the Auditor's Office for pick-up by the agency or for delivery to the agency via interoffice mail (see DRMC §20-108(i)).

Typically, this is done to permit delivery by the agency to the vendor or to permit pick-up of the warrant by the vendor at the agency.

However, since the purpose of this procedure is to avoid the mailing of the warrant to the vendor in the U.S. Mail and to speed the receipt of the warrant by the vendor, agencies shall document delivery to or pick-up by the vendor so as to ensure that there is no violation of the prompt payment period.

Rule V. **Errors and Disputes**

(a) Introduction. This rule applies to issues that arise between or among agencies in determining the resolution of payment problems, and to issues that arise between the City and a contractor or vendor. These procedures are defined in DRMC §20-111 & §20-112.

(b) Ordinance summary. Because of the inevitability of errors and disputes in the payment process, procedures to resolve them are necessary.

In general, the responsible official shall notify the vendor within ten (10) calendar days of the clock date that there is an invoice or a shipment of goods or provision of services that is in error or in dispute, except as may be otherwise provided in the ordinance or these rules and regulations.

In many cases, this will require the return of the invoice or the goods in question to the vendor; however, it will often be possible to correct an error or resolve a dispute more quickly and less formally, without return of the purchase or payment request in question.

Payment of interest is postponed until the dispute is resolved.

If the City prevails in the dispute and has not otherwise exceeded the prompt payment period, no penalty or interest is owed for the number of days during which the dispute occurred.

However, if the vendor prevails in the dispute, the number of days occupied by the dispute will be added to the total number of days that the City used in making payment, and if the prompt payment period is exceeded because of this, then penalty and/or interest shall be paid.

Disputes between contractors and agencies shall be resolved according to the dispute resolution mechanisms in place for the particular contracting agency.

(c) Documentation. The responsible official shall document issues and timing in relation to disputes, including a record of elapsed days, based upon the clock date [see DRMC §20-111(a)].

Agencies may establish procedures within agency accounts payable plans or operating guidelines for identifying, monitoring, and documenting disputes.

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(d) Construction contract disputes. With the exception of disputes that relate to proper contractor payment of prevailing wages, disputes that involve construction contracts shall be resolved in accordance with this rule.

Disputes between the City and a contractor that relate to construction contracts controlled by the Department of Public Works shall be resolved in accordance with the contract documents and DRMC §56-106 (DRMC §20-111(c)).

Disputes between the City and a contractor that relate to construction contracts initiated or controlled by the Department of General Services shall be resolved in accordance with the contract documents, or, by mutual agreement, through informal or formal dispute resolution mechanisms that may be established by the Manager of General Services (DRMC §20-111(c)).

Disputes between the City and a contractor that relate to construction contracts performed by other agencies upon delegation or assignment by the Mayor shall be resolved in accordance with the contract documents or with the dispute resolution mechanisms in place for the particular contracting agency.

(e) Prevailing wage disputes. Disputes between the City and a contractor that relate to prevailing wage payroll issues in construction contracts or in non-construction contracts that include prevailing wage provisions shall be resolved in accordance with DRMC §20-76 et seq. (DRMC §20-109(d) & §20-110(a)(3)).

In addition, the Auditor's rules and regulations for prompt payment in relationship to prevailing wage shall be read in conjunction with this rule.

(f) Correction of purchasing errors. correction of errors and omissions in purchasing and purchase contracting procedures is provided through the Purchasing Division of the Department of General Services, under the authority of Charter §A12 and DRMC §20-64.

When errors or omissions in purchasing procedures require referral of a payment voucher, an invoice, or other purchasing document to the Purchasing Division for review, correction, and/or approval by the Deputy Manager of General Services, the Deputy Manager shall be permitted seven (7) calendar days from the voucher or document date received to resolve the issue and make payment to the vendor possible, forwarding the document or voucher to the agency or the Auditor, as appropriate, for payment.

This seven (7) calendar day period shall be allocated to the total time permitted to the agency initiating and responsible for the purchasing error or omission.

If the Deputy Manager of General Services disputes the issue and is therefore unable to resolve it, the Deputy Manager shall return the voucher or document to the agency within the allotted seven (7) day period, with documentation of time elapsed attached, with instructions or recommendations.

If the agency disputes the instructions or recommendations of the Deputy Manager, the agency may appeal the substance of the question to the Manager of General Services, with the advice of the City Attorney as may be required.

The office of Budget & Management shall determine any applicable division of penalty and interest charges based upon the findings of the Manager.

If the Deputy Manager exceeds seven (7) calendar days in resolving the issue without disputing it and returning it to the agency, the additional time

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elapsed shall be charged to the Purchasing Division as a penalty or interest charge if the twenty (20) day agency clock or the thirty (30) day total clock are exceeded.

(g) Dual-agency disputes. When more than one agency is involved in the purchase contract and payment process and a delay beyond the prompt payment period for a contract payment results in penalty or interest charges to such agency (including, as applicable, the Auditor's office), the charges shall be assessed by the Auditor's office to the agencies involved in payment process (including, as applicable, the Auditor's office), according to their relative and proportional responsibility for the delay, insofar as it can be determined

by the Auditor's Office [DRMC §20-112(e).]

If any agency disputes proportional penalty or interest charges, the agency may appeal to the Office of Budget & Management, which shall determine the proper proportion (see also the Auditor's rules and regulations).

(h) Clock pause/restart versus clock stop/reset. certain dispute or problem situations may have a different effect on the prompt payment period.

In general and under most dispute circumstances, the clock is simply paused and then is restarted when the problem is resolved, so that the number of days elapsed prior to the pause continues to be counted against the total prompt payment period, and, in effect, the number of days elapsed during the pause is added to the clock date.

[For example, if the clock date for a standard purchase transaction occurred on April 1, the normal agency prompt payment period would expire in 30 days, on April 30. If a problem were identified on April 5 that resulted in a pause until the problem was corrected on April 15, this would be a 10-day pause. The agency 30-day prompt payment period would be extended to May 10; that would be the equivalent of moving the clock date to April 10.)

Under other circumstances, the clock date or initial date received is voided.

That is, the clock is stopped and is reset to zero, so that the number of days elapsed prior to the clock-stop is not counted against the prompt payment period and a new clock date must be established when the dispute or problem is resolved.

Such a situation may occur because, legally, the prompt payment period should not have begun in the first place, and the clock-stop is simply a formal recognition of this.

Examples of clock pause and restart procedures:

- * Prevailing wage disputes (DRMC §20-109(d) & §20-110(a)(3)).

- * Telephone correction of invoices, shipments of goods, provision of services, and other situations where the error can be corrected without returning the information or purchase to the vendor or contractor.

Examples of clock stop and reset procedures:

- * Improper delivery of goods and services or invoices to an incorrect location.

- * Such severe invoice or delivery errors that the rejection and return of the purchase or the invoice to the vendor for replacement is required (since the invoice or delivery did not meet the minimum ordinance requirements for a clock date).

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Documented telephone calls, facsimile transmissions, or other record keeping detailing elapsed time are required to invoke either clock pause/restart or stop/reset procedures [DRMC §20-111(a)].

Agencies are encouraged to use clock pause and restart procedures whenever possible, and to avoid clock stop and reset unless necessary.

If an invoice is never received by the agency - if, for example, an invoice is lost in the mail - the clock date cannot occur and the responsibility is the vendor's to replace the invoice and trigger the clock date.

However, agencies normally monitor the accounts payable process to identify situations where invoices have not been received in a timely fashion, which will help to alleviate or eliminate such situations.

See also DRMC §20-114(c) for certain circumstances under which the clock date does not occur, there is no prompt payment period, and the City does not become liable for interest payments.

Rule VI. **Penalty and Interest Payments**

(a) **Internal penalty.** The internal penalty payments to the General Fund assessed against agencies that exceed the number of days permitted for their respective phases of the prompt payment period shall be calculated at the rate of twelve percent (12%) per year [DRMC §20-112(e)].

The twelve percent (12%) rate shall be simple interest and calculated at a daily rate by dividing by 365 days per year.

This calculation shall be performed by the Auditor's Office according to the procedures established in the Auditor's rules and regulations.

The Office of Budget & Management shall establish a revenue account to receive penalty payments.

For non-General Fund agencies, penalties will be transferred in cash from the agency's fund to the General Fund subfund, unless the agency fund is prohibited from making penalty or interest payments because of fund limitations.

For General Fund agencies, no cash transfer will occur, but any penalty amount will be charged to the appropriate agency budget with a corresponding revenue credit to the General Fund subfund.

(b) **Materiality.** If the penalty or interest charge calculated by the Auditor's Office on an individual invoice or payment request is less than one dollar (\$1.00), there shall be no charge to the agency in violation, no penalty paid to the General Fund, and/or no interest paid to the vendor or contractor [DRMC §20-112(c)].

However, violations of Prompt Payment of less than one dollar (\$1.00) shall be included on reports made by the Auditor to the Mayor and the City Council, by agency and by fund/organization code (see the Auditor's rules and regulations)].

(c) **Reporting.** Penalty and interest expense and revenue account codes will be established by the Office of Budget & Management in coordination with the Auditor's office to facilitate monitoring and reporting of the amounts of penalty and interest charges and violations by agency and fund.

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The office of Budget & Management shall assist agencies in determining the best procedures to reduce and eliminate Prompt Payment violations (see DRMC §20-113(b)).

Rule VII. Miscellaneous Provisions

(a) 1993 reduction of payment period. The ordinance provides that the total prompt payment period will be reduced from forty-five (45) days to thirty (30) days, effective January 1, 1993 (DRMC §20-113(c)).

Other adjustments to the payment practices and schedules described herein will therefore be necessary, and will be determined during 1992.

(b) Alternative payment practices and schedules. At the sole discretion of the City, the City and the vendor may contract for other and different payment practices and schedules.

In general, the City wishes to comply with standard industry payment practices and schedules, but variations from the Prompt Payment ordinance shall be explicitly included in the contract entered into between the City and the vendor [see DRMC §20-110(b)(3)].

(c) Extended testing. Where the specific substance of a purchase requires an extended period of testing to verify proper receipt of goods or services, or a combination of partial purchases to ensure the proper functioning of the entire purchase, or other specialized procedure to provide the City with complete receipt of goods or services, the prompt payment period shall commence and the clock date shall occur when the date received is the conclusion of the testing period or other necessary purchase completion.

Such specialized procedures, changing the clock date from the normal procedure defined herein, shall be reflected or defined in the contract.

(d) Submission of fund limitations documentation. Agencies that receive funding from sources which may prohibit payment of penalty or interest shall document such prohibition via reference to and copies of the relevant contract documents [see DRMC §20-114(c)(2)].

This documentation shall be submitted to the City Attorney for review and determination, and for determination whether another fund may properly make payment of penalty and interest in lieu of the prohibited fund.

When the City Attorney makes a determination that a fund is prohibited from payment of penalty or interest and/or that another fund may properly make payments that would otherwise accrue to the prohibited fund, the information shall be transmitted to the Auditor's Office so that the Auditor may exclude prohibited funds from penalty and interest payments and allocate the payments to other funds where proper.

Upon appropriate review, in the best interests of the City & County of Denver, penalty and interest payments may be reallocated to funds other than the source of a prompt payment violation.

(e) Delegation by the responsible official. The responsible official for the agency may delegate portions of the accounts payable responsibilities to

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other City officials or employees as appropriate, as a part of standard City practices and procedures.

In general, it is common for an employee working in the accounts payable process to be delegated the authority to accept, reject, alter, or dispute a shipment or other receipt of goods or services, although that employee may not otherwise be the responsible official as defined in the Prompt Payment ordinance.

All accounts payable activities within a contracting agency count against the agency's permitted time in the prompt payment period.

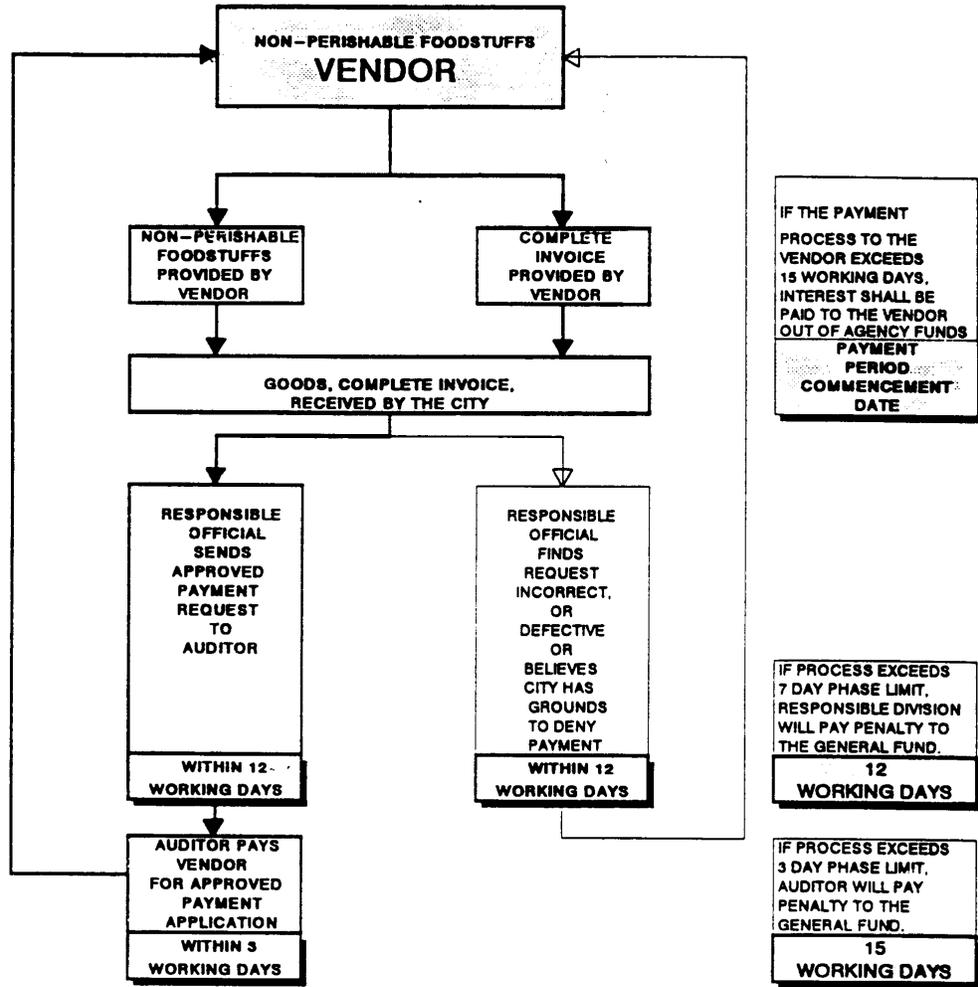
(f) Listing the responsible official. Contracts normally provide information to vendors concerning the proper location for submission of invoices (see DRMC §20-114(7) for exclusion of interest payment if invoices are not submitted properly).

Upon request, unless otherwise provided by contract, agencies shall provide vendors with information concerning, as appropriate, the time(s), location(s), and responsible official for submission to the agency of goods and services or invoices.

Such information may be a part of or an attachment to agency accounts payable plans or operating guidelines, or may be separate.

**PROMPT PAYMENT – CITY & COUNTY OF DENVER
(D.R.M.C. SECTION 20–107 ET SEQ.)**

PAYMENTS FOR NON-PERISHABLE FOODSTUFFS

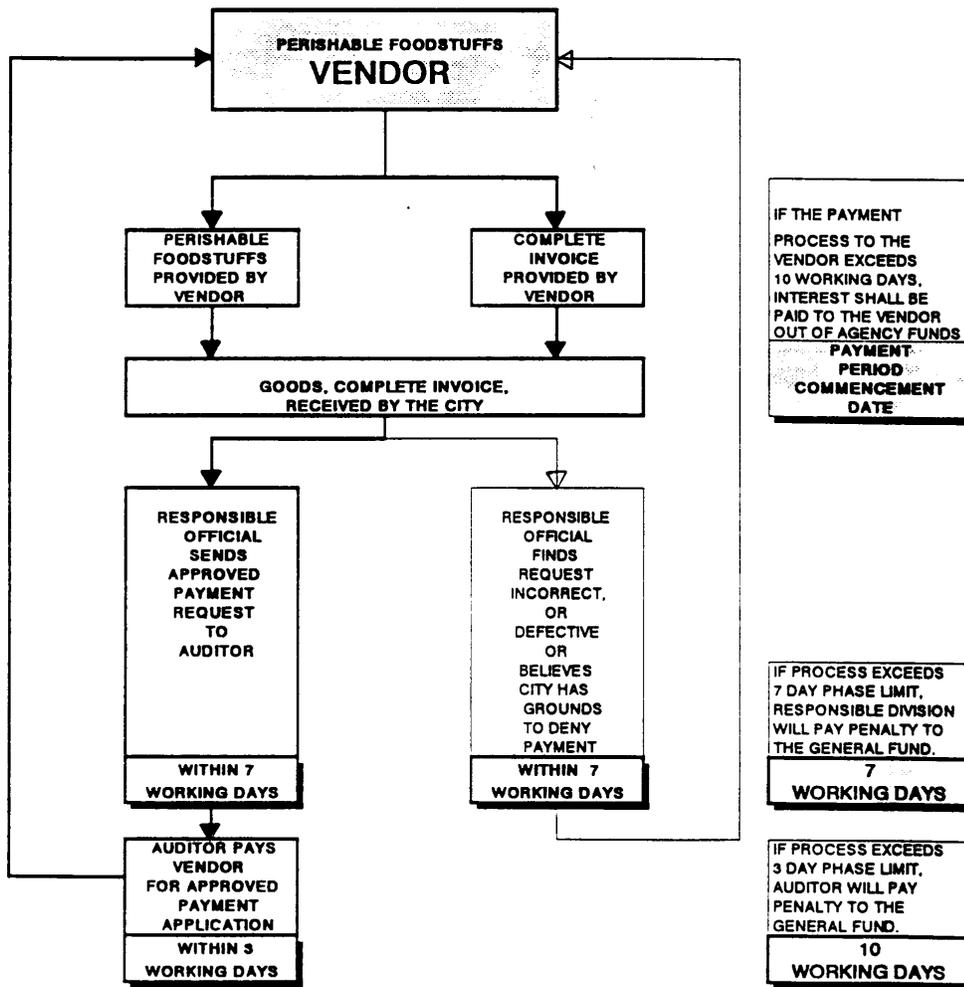


NOTE: VENDOR MUST MAKE PAYMENTS TO SUBCONTRACTORS ON ALL UNDISPUTED AMOUNTS WITHIN 7 DAYS OF RECEIPT OF PAYMENT BY THE CITY OR PAY INTEREST AT THE RATE OF 1% PER MONTH.

FLOW CHART #5

**PROMPT PAYMENT – CITY & COUNTY OF DENVER
(D.R.M.C. SECTION 20–107 ET SEQ.)**

**PAYMENTS FOR PERISHABLE FOODSTUFFS
(MEAT, FISH, POULTRY, ETC.)**

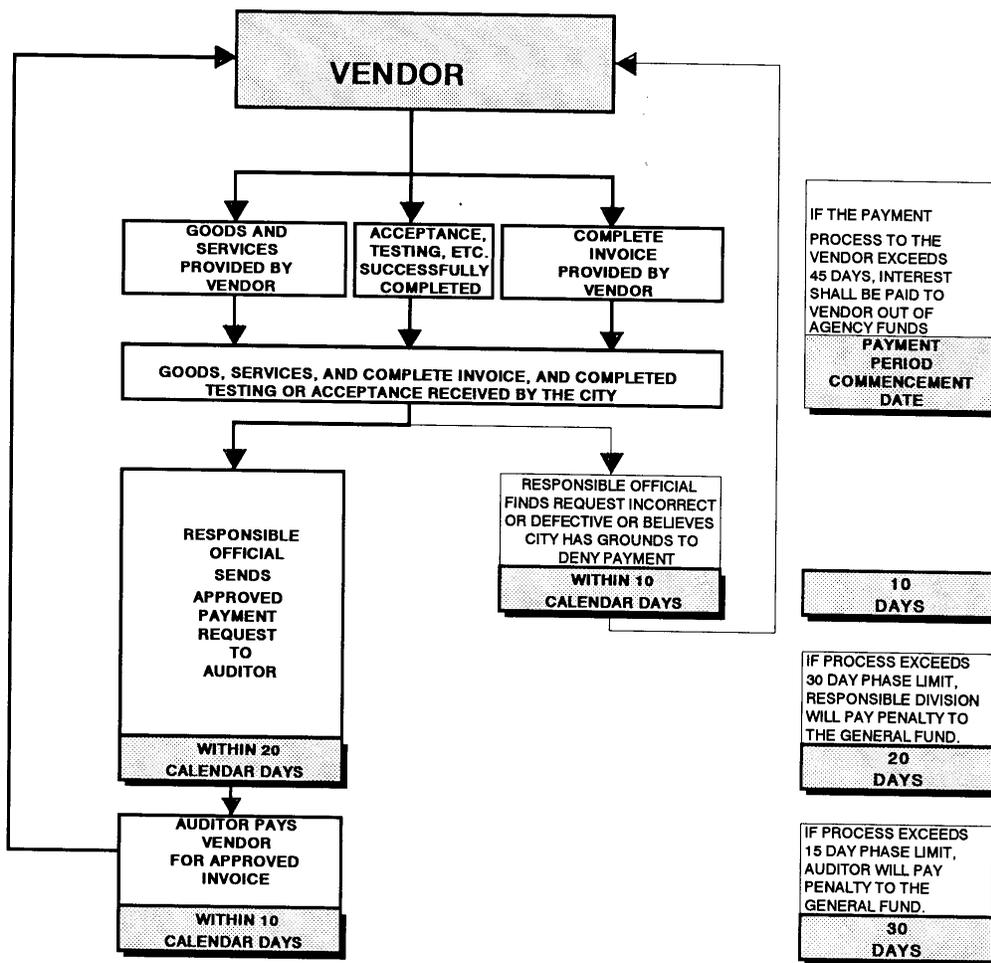


NOTE: VENDOR MUST MAKE PAYMENTS TO SUBCONTRACTORS ON ALL UNDISPUTED AMOUNTS WITHIN 7 DAYS OF RECEIPT OF PAYMENT BY THE CITY OR PAY INTEREST AT THE RATE OF 1% PER MONTH.

FLOW CHART #4

**PROMPT PAYMENT – CITY & COUNTY OF DENVER
(D.R.M.C. SECTION 20–107 ET SEQ.)**

**PAYMENTS FOR
STANDARD PURCHASE CONTRACTS**

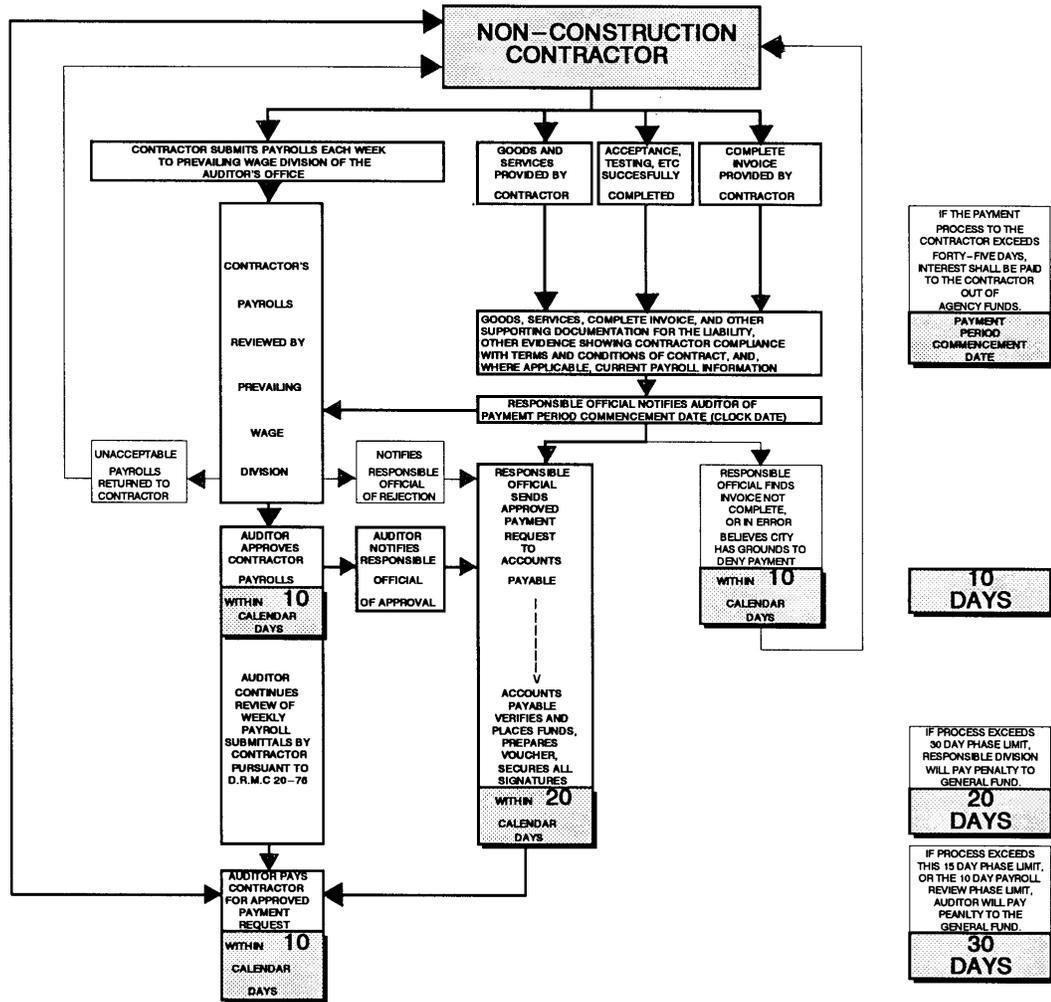


NOTE: VENDOR MUST MAKE PAYMENTS TO SUBCONTRACTORS ON ALL UNDISPUTED AMOUNTS WITHIN 7 DAYS OF RECEIPT OF PAYMENT BY THE CITY OR PAY INTEREST AT THE RATE OF 1% PER MONTH.

FLOW CHART #3

PROMPT PAYMENT – CITY & COUNTY OF DENVER (D.R.M.C. SECTION 20-107 ET SEQ.)

PAYMENTS FOR NON-CONSTRUCTION CONTRACTORS SUBJECT TO PREVAILING WAGES



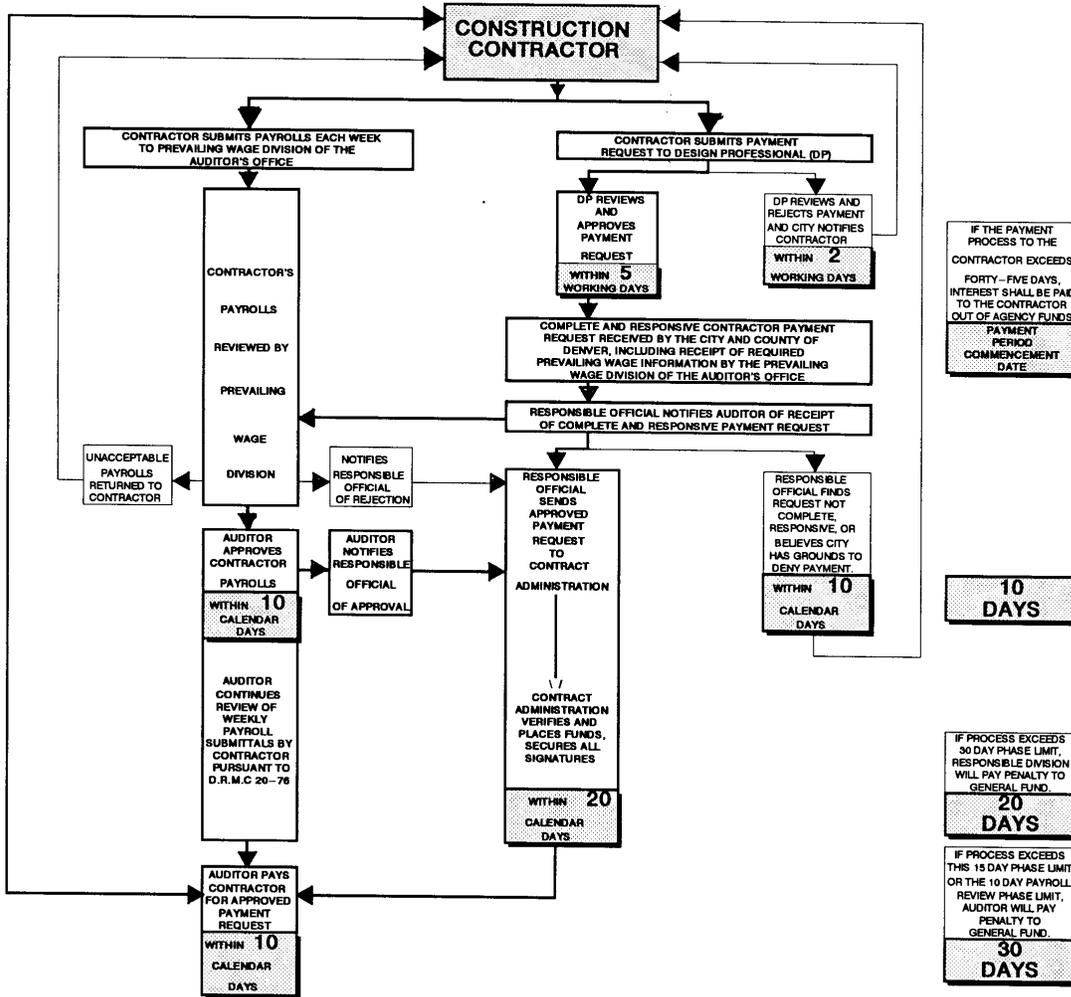
NOTE:

CONTRACTOR MUST MAKE PAYMENTS TO SUBCONTRACTORS ON ALL UNDISPUTED AMOUNTS WITHIN 7 DAYS OF RECEIPT OF PAYMENT BY THE CITY OR PAY INTEREST AT THE RATE OF 1% PER MONTH SHOULD DISPUTES OCCUR, THE CLOCK WILL STOP UPON NOTICE TO THE CONTRACTOR, AND WILL BEGIN AGAIN WHEN THE CITY RECEIVES THE CORRECTED INFORMATION OR THE DISPUTE IS OTHERWISE RESOLVED.

FLOW CHART #2

PROMPT PAYMENT – CITY & COUNTY OF DENVER (D.R.M.C. SECTION 20-107 ET SEQ.)

PAYMENTS FOR CONSTRUCTION CONTRACTORS



NOTE:
 CONTRACTOR MUST MAKE PAYMENTS TO SUBCONTRACTORS ON ALL UNDISPUTED AMOUNTS WITHIN 7 DAYS OF RECEIPT OF PAYMENT BY THE CITY OR PAY INTEREST AT THE RATE OF 1% PER MONTH. SHOULD DISPUTES OCCUR, THE CLOCK WILL STOP UPON NOTICE TO THE CONTRACTOR, AND WILL BEGIN AGAIN WHEN THE CITY RECEIVES THE CORRECTED INFORMATION OR THE DISPUTE IS OTHERWISE RESOLVED.

FLOW CHART #1