

Prompt payment FAQ

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Q: What is the objective of the federal prompt payment legislation?

A: The *Federal Prompt Payment for Construction Work Act* is (no italics) intended to improve the execution of construction projects for any federal property or federal immovable by addressing non-payment issues faced by contractors and subcontractors who are performing the construction work for those projects.

Q: When is the act applicable?

A: The act applies to any service provider and contractor or subcontractor that is performing construction work on lands owned by the federal government.

Q: What does the act essentially mean?

A: If you are engaged in a construction contract with the federal government, the *Federal Prompt Payment for Construction Work Act* will entitle you to timely payment on undisputed invoices without delay. It also provides a timely process for parties to resolve payment disputes.

Q: What are the payment timelines?

A: The *Federal Prompt Payment for Construction Work Act* contemplates (no italics) monthly progress payments unless otherwise stated in its contracts. The trigger for payment is the delivery of a “proper invoice” as defined by the legislation. The federal government owner must pay the general contractor within 28 calendar days, and the contractor must pay its subcontractor within seven calendar days of the general contractor receiving payment (35 days from when the proper invoice was given to the owner by the contractor). The subcontractor must then pay its suppliers 7 days from receiving payment (from when the proper invoice was given to the owner by the contractor) and so on down the payment chain.

Q: When is a payment deemed approved?

A: A payment application is deemed approved if there is no written notice of dispute within 21 calendar days of the proper invoice being received from a contractor. If there is a disagreement on the payment, a notice of dispute must be provided with the reason and amount of payment in dispute. Only the amount under dispute can be withheld from the payment.

Q: When does notice of non-payment need to be issued?

A: If there is a dispute over all or some of the amount invoiced, the federal government owner must submit a notice of non-payment within 21 calendar days from receiving the proper invoice. If the contractor has a payment dispute with a subcontractor, the contractor must submit a notice of non-payment to the subcontractor no later than 28 calendar days from proper invoice being received. Where a dispute relays between two subcontractors, the subcontractor must submit their notice of non-payment within 35 calendar days from proper invoice being submitted. Any notice of non-payment must include reasons for non-payment and may include certain set offs under the act.

Q: What happens if there is a partial payment?

A: If the contractor only receives a partial payment, the contractor must pay its subcontractors whose work is not covered by the notice of non-payment and may retain any amount owed to the contractor. Any remaining payment must be paid for work partially covered by the notice of non-payment, including the work of the contractor and its subcontractors.

Q: What are the options for dispute resolution?

A: Any party to a construction contract with a federal owner may refer a dispute to adjudication by providing a notice identifying the matter in dispute and the relief sought, along with the name of the proposed adjudicator to conduct the adjudication. If an adjudicator cannot be agreed on, either party can request that the Adjudicator Authority appoint the adjudicator.

Q: What are the timelines for the adjudication process?

A: If a contractor or subcontractor has not been paid the full amount owed, they can seek to have the dispute referred to an adjudicator by providing the payee with a notice of adjudication no later than the 21 days after they receive a certificate of completion or after the last proper invoice submitted for the construction project. This begins the dispute resolution method of adjudication. Payment must be made no later than 10 days after the adjudicator's decision has been made, or within any other time limits set out in the determination.

Q: Can work be suspended for non-payment?

A: A right to suspend work arises if a payee is not paid a progress payment or has not received payment within ten days of an adjudicator's decision on the dispute. The suspension provisions also contain requirements for the payment of interest and remobilization costs.

Q: What are the terms of interest?

A: A payer is required to pay interest on any amount due, at the rate either as determined by regulation or the rate set out in the contract, whichever is higher.

Q: When does the new legislation come into effect?

A: At this time, an official date for the act to come into effect has not been released. Timing will be determined by the Governor in Council and is dependent on when the regulations that govern the act are established.

Q: What is the transition phase for introducing the new legislation?

A: The act will not apply to any contract entered by a contractor or subcontractor before the act comes into force. For the first year after the act comes into force, any subcontract will follow the prime contract, i.e. if the prime contract was signed before the act came into force, the act will not apply to any subcontracts signed during the first year. Any subcontracts entered into after the first year will fall under the act regardless of whether the prime contract does or not.