



# Prompt Payment Overview

## Prompt Payment

Once a “proper invoice” has been received, a company has 28-days to pay all amounts.

- The Payor has 14 days to issue a dispute notice to the Payee.
- The Payor has 28 days to pay all amounts in the "proper invoice" that have not been properly disputed.
- Regulations will allow contracts to set receipt date of proper invoice.
- Interest rates set to accrue on any unpaid amount included in the invoice from the time it is due.
- Interest is to be set at whichever is higher, contract or *Interest Judgement Act*.
- Parties cannot opt out of payment timelines, those provision remain in the Act.
- Parties have 14 days to dispute invoices through adjudication.

Details on proper invoices may be expanded upon but currently include:

- the contractor's or subcontractor's name and business address;
- the date of the proper invoice and the period during which the work was done or materials were furnished;
- information identifying the authority, whether in a written or verbal contract or otherwise, under which the work was done or materials were furnished;
- a description of the work done or materials furnished;
- the amount requested for payment and the corresponding payment terms broken down for the work done or materials furnished;
- the name, title and contact information of the person to whom the payment is to be sent;
- a statement indicating that the invoice provided is intended to constitute a proper invoice;
- any other information that may be prescribed.

## Nominating Authority

Service Alberta is looking for a fair procurement pre-qualification process for Nominating Authorities (NA) which outlines specific criteria and uses master agreements.

- NA must issue and make publicly available on its website an annual report for the fiscal year, containing aggregated information on adjudication in Alberta.
- NA to establish and maintain a code of conduct for their adjudications with minimum standards.
- NA will establish training and certification requirements and appoint and qualify adjudicators based on appropriate experience.
- Service Alberta will annually review and approve NA fees, but not set fees.
- Service Alberta will begin an RFP process next month to consider a NA and has indicated there is interest in having multiple NAs.

## Adjudicators

Service Alberta is looking for a balanced roster of adjudicators with the adequate training and experience.

- Adjudicators must fulfill their NA training and certification requirements and pay all NA fees to certify.
- Adjudicators must not be convicted of an offence or be bankrupt.
- Adjudicators must have 10 years of relevant construction industry experience, thereby aligning adjudicator credentials with disputes.
- Adjudication eligibility criteria will specifically include non-lienable contract dispute.
- Regulate the consolidation process that allows both parties to agree to consolidation. If parties do not agree to consolidate, the contractor may initiate consolidation.
- Parties can mutually agree and request to extend adjudication timelines within set limit of 30 days.
- Allow adjudicators to assign the total fee to either party of the disputes if they provide frivolous or vexatious information.
- Decisions by the adjudicator are confidential.

## Holdbacks

- Contractors must set out the ability to define the phased release of holdbacks (default is annual release).
- A \$10 million minimum holdback is proposed for phased release of holdbacks on projects that have a minimum 18-month duration.

## Prompt Payment

- Service Alberta is maintaining the current 31-day proper invoice cycle, but the regulations will allow contracts to set receipt date of proper invoice.
- Interest rates set to accrue on any unpaid amount included in the invoice from the time it is due.
- Interest is to be set at whichever is higher, contract or *Interest Judgement Act*.
- Parties cannot opt out of payment timelines, those provision remain in the Act.
- Parties have 14 days to dispute invoices through adjudication.

## Other Issues

- Limit the amount of information required in a Statement of Account to the following:
  - If invoice has been paid;
  - Percentage of invoice paid; and
  - Date of payment.
- Certificates of substantial completion can be delivered by paper, electronically, or per contract.
- Refine the definition of “concrete supply” to only pertain to “ready mix”.
- Allow a grace period of one year to grandfather existing contracts.

## Next Steps

- BILD Alberta is actively engaging in additional regulatory engagement workshops with Service Alberta and bringing forth members concerns.
- Proclamation of Prompt Payment is expected in October 2021 and BILD Alberta will proactively educate members on the upcoming changes once more details are available.