

Here's the Drill: Five Important Tips for Contractors to Comply with the Prompt Payment Rules under the Ontario *Construction Act*

May 8, 2023

By Jeff Scorgie

The Ontario *Construction Act* (the "Act") introduced the prompt payment rules in October 2019. These rules apply to most construction contracts in Ontario, including contracts for both public and private projects. One of the goals of the prompt payment rules is to ensure payments are made in a timelier manner to contractors and subcontractors. Failure to comply with the rules can result in serious consequences including failing to have the rules properly engaged (and thus failing to reap the benefit of the rules) and creating exposure to downstream payment claims from subcontractors, including through adjudication.

Here are five tips to help contractors ensure they are complying with the prompt payment rules.

1. Ensure your Invoices are "Proper Invoices"

Make sure your invoices comply with the "proper invoice" requirements set out in section 6.1 of the *Act*, which include the contractor's name and address, a description of the services or materials supplied, the payment terms, and more. In addition to these statutory requirements, your contract may have additional invoice requirements that will need to be complied with (see my previous article on that [here](#)). Create a checklist at the beginning of every project that includes a list of both the statutory and contractual proper invoice requirements to ensure nothing is missed. If the invoice you sent does not qualify as a "proper invoice", the owner's obligation to pay under the *Act* does not get engaged.

2. Send Invoices to the Owner

While your contract may require your invoices be sent to a consultant or payment certifier, it is important to also send a copy directly to the owner. The owner's payment obligations under the rules are not engaged until it receives the proper invoice.

3. Confirm Invoice Delivery Requirements

Confirm the delivery requirements for proper invoices under your contract. Delivery requirements in your contract may include sending invoices on a specific day, during specific times of day, and to a particular email address or invoicing portal. Also confirm whether there are any invoicing blackout periods in your contract (such as during the December holiday season) and plan ahead accordingly.

4. Send Notices of Non-Payment to Subcontractors

Make sure you send notices of non-payment to your subcontractors in the appropriate circumstances and make sure you use the

correct notice of non-payment form (there are two). It is important to be familiar with the forms and to send them by the deadlines established by the rules. Failure to do so can result in a contractor being forced to make payment to a subcontractor that it would have otherwise wished to dispute or contest.

5. Confirm Applicability of the Rules

Finally, it is important to confirm that the prompt payment rules actually apply to your contract. While they apply to most contracts, there are some exceptions such as on federal projects. You should also confirm you properly understand what role you play (e.g. that you are in fact a “contractor” under the *Act*), as this is not always as intuitive as it may seem and will depend on the project’s contractual pyramid.

In conclusion, following the prompt payment rules under the *Act* is important for contractors to both take advantage of the benefits provided by the rules and to avoid exposure that can be created from non-compliance.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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