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ARTICLE

Federal Government Introduces Prompt Payment Legislation for Construction Projects on Federal Land

The federal government introduced the new legislative framework in the House of Commons on April 8, 2019, as part of its omnibus budget bill (Division 26 of Part 4 of Bill C-97).

The proposed prompt payment legislation will directly influence commercial arrangements in the construction industry. It addresses: the frequency and formal requirements for invoicing construction work; payment deadlines between parties to the construction contract; notice requirements where a party declines to provide payment pursuant to an invoice; and an adjudication model for disputes arising from non-payment.

Current Status of the Act

The bill is currently at the committee stage. The Standing Senate Committee on Banking, Trade and Commerce is also studying the prompt payment portions of the bill in advance of it coming before the Senate.

Key Features of the Act

The act applies only to projects located on federal land.

The act applies to the Federal Crown, or to any service provider entering into a contract with the Federal Crown, and to any contractor or subcontractor that is to perform construction work for the purposes of a construction project located in Canada in respect of any federal real property (or federal immovable in Québec).

On its face, the act broadly encompasses all projects located on federal lands, regardless of whether the project is federally funded. However, it does not apply to projects undertaken by the Federal Crown or by federally regulated undertakings on land owned by others.

Where a province has implemented provincial prompt payment and adjudication legislation, the act permits the Federal Crown to designate that province, making the federal legislation inapplicable.

Prompt Payment

The prompt payment scheme provides that payment deadlines on all contracts in the construction chain are triggered by the prime contractor's delivery of a "proper invoice": 28 days for the Crown (or service provider) to pay the contractor; 35 days for the contractor to pay subcontractors; 42 days for subcontractors to pay sub-subcontractors, and so on.

Currently, contract payments made by the Crown on construction-related contracts are published on the [Public Services and Procurement Canada website](#). Subcontractors can refer to the contract payments table to determine if and when payments have been made to the prime contractor.

Where a party intends to refuse to pay all or part of an invoice, there is a formal notice requirement including a description of the work and the reasons for non-payment. The deadlines to decline payment of an invoice are also triggered by the prime contractor's delivery of a proper invoice: 21 days for the Crown (or service provider) to provide the contractor with a formal notice of non-payment; 28 days for the contractor to provide the subcontractors with notice; 35 days for subcontractors to provide sub-subcontractors with notice, and so on (in increments of seven days).

Adjudication

In addition to providing a federal statutory prompt payment scheme, the act also provides a dispute resolution mechanism. Where payment is not provided to a contractor or subcontractor within the time limits provided in the act, that party is entitled to seek a determination from an adjudicator. The adjudicator's determination is binding on the parties, unless the parties come to a written agreement or the determination is set aside (by a court or arbitral award).

The party seeking payment has 21 days from the later of (a) the date the certificate of completion is received by the contractor or (b) the expiry of the time limit for payment in the act, to provide notice of adjudication to the other party.

The adjudicator must be selected by the parties to the dispute. If the parties cannot agree, they may request that an adjudicator be appointed for them pursuant to the act.

Areas not Addressed

The proposed act does not prescribe project value thresholds for its application. It does not establish a federal builders' lien scheme and does not require surety bonds or any other form of payment security.

Expected Timelines

If passed, the bill is unlikely to come into force for some time as regulations have not yet been proposed and the act, especially the adjudication portions, will likely be heavily dependent on regulations. Once in force, it will apply only to contracts entered into after the in-force date, and subcontracts entered into following the one-year anniversary after the in-force date.

It is unclear how the act would apply in circumstances where the construction chain is comprised of subcontracts entered into before and after the one-year transition period.

In contrast, Ontario's new provincial prompt payment scheme simply provides that it does not apply to any contract entered into before the legislation came into force, regardless of when any subcontracts under the contract were entered into.

View more information on the current version of [Bill C-97](#) and the proposed *Federal Prompt Payment for Construction Work Act*.

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