

Prompt Payment “Cheat Sheet” for the Contractor

Before the Work Begins

- consider whether the Contract should alter the default requirement that Proper Invoices be given monthly and clarify how the Proper Invoice is to be given. Also, consider making the Contract align with the *Act's* prompt payment requirements;
- consider allowing access to contractor records or the interim submission of documents where appropriate, to allow for point in time assessment before a Proper Invoice is given and to help the owner approve a proper invoice within the 14 days required.

Giving a Proper Invoice

- ensure it includes the statutory and contractual information and documents required;
- ensure that the “authority” for any amounts claimed are set out, referencing the original contract or PO for original scope, cash allowances, unit rates or T&M work and the how changes were approved (ex. change order, change directive, site instruction);
- consider whether or not you want to include for any subcontractor claimed unapproved changes as doing so may invite a denial (Notice of Non-Payment) and adjudication;
- be ready to discuss and review to see if issues can be addressed before the 14 days expires. A revised invoice, if agreed upon, must be dated the same as the original and does not reset the clock;
- understand that you may refuse to pay those beneath you for amounts included in your Proper Invoice only if you give those persons a Notice of Non-Payment within **7 days** of your getting a Notice of Non-Payment from the Owner or **7 days** from the date the Owner's payment to you was due. If you give a Notice of Non-Payment because the Owner did not pay you, give the appropriate notice form and then, also, bring the Owner to adjudication within **21 days**. If you give the Notice for any other reason, give the (other) appropriate Notice form (no adjudication with the Owner will be required).

Upon Receipt of a Notice of Non-Payment

- consider if it has been given within 14 days of your giving the Proper Invoice. If it was not, consider taking the Owner to Adjudication for full payment on that basis;
- decide whether you want to pay the subtrade/suppliers beneath you in full, notwithstanding the non-payment. Otherwise, give a Notice of Non-Payment as above.

If No Receipt of a Notice of Non-Payment and No Payment

- pay anyone beneath you for amounts included in the Proper Invoice within **7 days** of the date the Owner's payment was due (35 days from the day the Proper Invoice was given), unless you have given them a Notice of Non-Payment as above.

If You Receive Full or Partial Payment

- pay those beneath you (for amounts included in your proper invoice) within **7 days of the payment** unless you have given them a Notice of Non-Payment (as above);
- upon partial payment, pay those you are willing to pay below on the following basis: if an Owner's Notice of Non-Payment allows you to identify subtrade(s) responsible for the Notice, apply the Non-Payment to them and pay the others. If not, pay those beneath you on a *pro-rata* basis;
- consider bringing the Owner to adjudication for any unpaid amounts.