

Prompt Payment “Cheat Sheet” for the Subcontractors

- find out whether the Contract alters the default requirement that Proper Invoices are to be given to the Owner monthly. There is no statutory obligation for anyone to tell you, but make the inquiries anyway;
- remember that it is the Contractor’s giving of a Proper Invoice to the Owner that starts the clock running on Prompt Payment and that Prompt Payment will only apply to amounts included by the Contractor in its Proper Invoice to the Owner;
- ensure you get your invoice to the Contractor or Subcontractor above you, inclusive with whatever backup and information is required, in time for the value of your work to be included in the Proper Invoice to the Owner. Check your subcontract and make inquiries to ensure you provide what you need to provide, when you need to provide it;
- reference the “authority” for any amounts claimed, referencing the original subcontract or PO for original scope, cash allowances, unit rates or T&M work and the basis approval for any changes (ex. change order, change directive, site instruction);
- consider whether or not you want to include for any of your subcontractors claimed unapproved changes as doing so may invite a denial (Notice of Non-Payment) from above and an adjudication;
- understand that you may refuse to pay those beneath you for amounts the Contractor has included for in its Proper Invoice to the Owner only if you give those persons a Notice of Non-Payment within **7 days** of your getting a Notice of Non-Payment from the person above you or **7 days** from the date the payment from the person above you was due. If you give a Notice of Non-Payment because the person above you did not pay you, give the appropriate notice form and then, also, bring the person above you to adjudication within **21 days, unless the basis for the non-payment is that the Owner did not pay the Contractor**. 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 on time. If it was not, consider taking the Contractor 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 payment to you was due, unless you have given them a Notice of Non-Payment.

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 Notice of Non-Payment received from above allows you to identify which of your subtrade(s) is allegedly 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 person above you to adjudication for any unpaid amounts.