

MINISTRY OF TRANSPORTATION

PROMPT PAYMENT ADMINISTRATION MANUAL

Contract Management Office
Contract Management and Operations Branch
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1. Background

In December 2017, the Ontario government passed the *Construction Lien Amendment Act* that amended the *Construction Lien Act* to become the *Construction Act*.

The first phase amended the rules for construction bonds, construction liens, and holdbacks and became effective on all construction contracts advertised on or after July 1, 2018.

The second phase of the *Construction Act* introduced amendments related to the new prompt payment and adjudication regimes for construction contracts advertised on or after October 1, 2019.

In November 2024 and November 2025, the *Construction Act* was amended again with amendments relating to proper invoices and prompt payment.

2. Purpose of the Manual

The purpose of this manual is to provide direction to ministry staff and Contract Administrators for the administration of progress payments for capital construction Contracts and the capital improvement portion of maintenance contracts that are subject to the prompt payment provisions of the *Construction Act*.

This manual should be read in conjunction with the *Construction Act* (as amended) and the MTO General Conditions of Contract (including any Special Provisions that amend the General Conditions).

This manual is not intended to provide Payment Preparation Services (PPS) instructions regarding payment processes.

3. What is Prompt Payment and What Is Its Purpose?

[refer to *Construction Act*, Part I.1 and MTO General Conditions of Contract (GC)]

Part I.1 (Prompt Payment) of the *Construction Act* introduces a strict payment system to make sure that Contractors, Subcontractors and workers are paid on time and provides a mechanism to refer payment disputes to adjudication.

Under the Prompt Payment requirements, the ministry is required to pay the prime Contractor within 28 calendar days after receiving a Proper Invoice. In turn, the prime Contractor then has 7 calendar days to pay Subcontractors after receiving payment from MTO and Subcontractors then have 7 calendar days to pay other Subcontractors after receiving their payment.

4. Proper Invoice Requirements

[refer to *Construction Act*, Part I.1 Subsection 6.1 and GC]

The *Construction Act* defines a “Proper Invoice” as:

“a written bill or other request for payment for services or materials in respect of an improvement under a contract, if it contains the following information and, subject to subsection 6.3 (2), meets any other requirement that the contract specifies:

- 1. The Contractor’s name and address.*
- 2. The date of the invoice and the period, milestone or other contractual payment entitlement to which the invoice relates.*
- 3. Information identifying the contract or other authorization under which the services or materials were supplied, such as a contract number, contract line item number, or purchase order number.*
- 4. A description, including quantity where appropriate, of the services or materials that were supplied.*
- 5. The amount payable for the services or materials that were supplied, and the payment terms.*
- 6. The name, title, mailing address and telephone number of the person to whom payment is to be sent or, if payment is to be sent to an office or department, its name, mailing address and telephone number.*
 - 6.1 Any other information that is necessary for the proper functioning of the Owner’s accounts payable system that the Owner reasonably requests.*
- 7. Any other information that may be prescribed.*

An invoice that does not meet the requirements referred to in the definition of “proper invoice” is deemed to be a proper invoice for the purposes of this Part unless, no later than seven days after receiving the invoice, the Owner notifies the Contractor in writing of the deficiency and of what is required to address it.”

Subsection 7 of the definition for Proper Invoice permits the Owner to specify additional requirements for a Proper Invoice within the Contract Documents.

The ministry has made a business decision to require that an Invoice contain the following additional information to constitute a Proper Invoice: tender item numbers, description, unit of measurement, original tender quantity, agreed upon changes to the tender quantity, total quantity completed to date, quantity completed previous invoice, quantity completed this period, unit price, dollars for the current period, and total dollars to date.

The invoice must detail subtotals for tender items, approved Change Orders, and payment adjustments as defined elsewhere in the Contract Documents.

In addition, to constitute a Proper Invoice the invoice shall also contain quantity of work completed sheets detailing: tender item numbers, sub-item numbers, unit of measurement, location description, original tender quantity, agreed upon changes to the quantity, total quantity completed to date, quantity completed previous invoice, quantity completed current period and supporting reconciliation documentation.

The tender item information appearing on the Proper Invoice and quantity of work completed sheets must conform exactly with those as shown in the bid tender document.

If an invoice submitted by the Contractor does not meet the requirements of a Proper Invoice, the Contract Administrator shall, return the invoice and document to the Contractor, within the timelines stipulated in the Construction Act:

- The invoice submitted does not meet the requirements of a Proper Invoice
- Outline the deficiency(ies) and,
- What is required to address it.

A corrected invoice, meeting the requirements of a Proper Invoice, must be submitted for the Contractor to receive payment.

For Contracts administered in the ministry's Contract Management System (CMS), the system will automatically generate an invoice that is formatted to meet the requirements of a Proper Invoice.

The *Construction Act* permits a Proper Invoice to be revised by the Contractor after it has been given to the Owner provided:

1. The Owner agrees in advance to the revision;
2. The date of the Proper Invoice is not changed; and,
3. The Proper Invoice continues to meet the requirements referred to in the definition of a Proper Invoice.

5. Reconciliation of Work Quantities

[refer to GC 7.01.06.02]

To facilitate the reconciliation by the Contract Administrator of quantities of Work completed, the ministry now requires the Contractor to submit quantities of Work completed broken down by tender item to the Contract Administrator on a weekly basis.

This will be done automatically for Contracts administered in CMS provided that the Contractor enters the required information into the system but will need to be provided separately by the Contractor for Contracts administered outside of CMS.

This process allows for the Contractor and the Contract Administrator to reconcile, discuss and resolve any inaccuracies in work quantities prior to the submission of the monthly invoice.

6. Payment of a Proper Invoice

[Refer to *Construction Act*, Part I.1 Subsection 6.4]

The *Construction Act* requires that, subject to the Owner giving a notice of non-payment, an Owner shall pay a Proper Invoice no later than 28 days after receiving the Proper Invoice.

After reviewing the submitted invoice and determining that it is a Proper Invoice, it is important that the Contract Administrator approve the invoice for payment in a timely manner. Similarly, it is important that all ministry personnel involved in recommending, approving, and processing the invoice do so in a timely manner to ensure that the 28 day period is not exceeded.

7. Notice of Non-Payment

[refer to *Construction Act*, Part I.1 Subsection 6.4]

In circumstances where the Owner is in receipt of a Proper Invoice, but the Owner refuses to pay all or a portion of the amount payable under the Proper Invoice within the prescribed 28 day period, the *Construction Act* requires the Owner to issue a Notice of Non-Payment in the prescribed form and manner specifying the amount of the Proper Invoice that is not being paid and detailing all of the reasons for non-payment. The Notice of Non-Payment must be given to the Contractor within 14 days of receiving the Proper Invoice from the Contractor.

As such, the ministry will issue a written Notice of Non-Payment to the Contractor when the invoice submitted is a Proper Invoice, but the ministry refuses to pay all or a portion of the amount payable. Examples of instances in which a Notice of Non-Payment could be issued include set-offs and inaccurate quantity and/or valuation of work completed, and payment adjustments.

The ministry shall prepare and deliver a Notice of Non-Payment to the Contractor within 14 days of receiving the Proper Invoice. This notice must specify the amount of the Proper Invoice that is not being paid and detail all the reasons for non-payment. All undisputed amounts must be paid to the Contractor within 28 days of receiving the Proper Invoice.

A Notice of Non-Payment shall be issued on owner standard form PH-CC-888. The Contract Management Office, Qualification Control Unit will issue the Notice of Non-Payment when a lien set-off is retained from the Contractor's payment. The Contract Administrator shall issue the Notice of Non-Payment in all other circumstances.

If the Notice of Non-Payment is not delivered to the Contractor within 14 days of receipt of a Proper Invoice, the ministry must pay the full amount of the Proper Invoice during that payment cycle but may raise the dispute in a Notice of Non-Payment on subsequent payment cycles (effectively setting off against later payment obligations).

For Contracts administered in CMS, the system automatically generates the invoice based on the quantities reconciled between the Contract Administrator and the Contractor. While this will reduce the instances of issuance of Notices of Non-Payment

on these Contracts, a Notice of Non-Payment will still be required when the ministry refuses to pay all or a portion of the invoice (e.g. set-offs).

It is important to note that the *Construction Act* includes disputes that are the subject of a Notice of Non-Payment as a dispute that can be referred to adjudication. Therefore, it is important that a Notice of Non-Payment accurately details the amounts that are not being paid and the reasons why.

8. Payment of an Adjudicated Amount

[refer to *Construction Act*, Part II.1]

The *Construction Act* requires that a party that is required under the determination of an adjudicator to pay an amount to another person shall pay the amount no later than 15 days after the determination has been communicated to the parties to the adjudication.

Interest on the adjudicated amount will accumulate interest as described in section 9. *Interest on Late Payments.*

If the ministry fails to pay the amount due within 15 days after a non-payment dispute has been adjudicated and the decision communicated to the ministry, the contractor can suspend further work under the Contract until the party pays:

- The amount required to be paid under the adjudicator's determination;
- Any interest accrued; and,
- Any reasonable costs incurred by the Contractor as a result of the suspension of work.

A Contractor who suspends work due to late payment of an amount required to be paid under an adjudicator's determination is also entitled to payment of any reasonable costs incurred as a result of the work resuming following the payment of the above amounts.

9. Interest on Late Payments

[refer to *Construction Act*, Part I.1 Subsection 6.9 and GC]

Under the *Construction Act*, statutory interest will accrue on amounts not paid when it is due to be paid, when the ministry:

- fails to pay either the undisputed portion of a Proper Invoice within 28 days of receipt; or
- fails to pay an amount required to be paid under an adjudicator's determination within 15 days of the decision being communicated to the ministry.

The *Construction Act* states that interest will accrue at the prejudgement interest rate determined under subsection 127(2) of the *Courts of Justice Act* unless the Contract specifies a different interest rate for this purpose, in which case the greater of the two rates will be applicable. The ministry has made a business decision not to specify a different interest rate for this purpose.

Prejudgement interest rates determined under the *Courts of Justice Act* are available from the Ministry of the Attorney General website (<https://www.attorneygeneral.jus.gov.on.ca/english/courts/interestrates.php>).

10. Summary

The manual has captured the significant changes to prompt payment requirements and processes resulting from implementation of the *Construction Act* including:

- the requirements of a Proper Invoice;
- submission and reconciliation of quantities for work completed;
- payment of a Proper Invoice;
- issuance of a Notice of Non-Payment;
- payment of an adjudicated amount; and,
- statutory accumulation of interest on late payments.