

Know Your Payment Rights – Federal and Local Prompt Payment Statutes

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Prompt payment statutes require timely payments to contractors on construction projects. Understanding prompt pay laws and their application is highly beneficial to contractors.

Washington, DC,

Maryland, and Virginia all have prompt pay statutes that provide protections to contractors.

Washington, DC

Washington, DC's Prompt Pay Act applies to first and second tier subcontractors on private construction projects. It does not apply to work done for DC agencies. The Act requires contractors and first-tier subcontractors to pay their subcontractors for undisputed amounts within seven days after receiving payment for that work. Penalties include interest of 1.5% per month on any undisputed amount not timely paid, and a subcontractor can sue for its attorney's fees for recovering unpaid amounts.

Maryland

Maryland has separate statutes for private and non-federal public jobs that apply to all tiers of subcontractors and suppliers. The private statute applies to many types of construction but does not apply to single-family residences or home improvement contracts.

Maryland's private statute provides that any amount owed on a contract for which there is no good faith dispute, including any retainage withheld, must be timely paid. For subcontractor payments, if no provision in the subcontract addresses the time of payment, the contractor must pay all undisputed amounts within seven days after receipt of payment. This applies to all tiers of subcontractors and suppliers. Remedies include, among other things, attorneys' fees and interests.

Maryland's other prompt pay statute applies to non-federal public contracts. Per the statute, the subcontractor must be paid any undisputed amounts within ten days of receipt of progress payments or final. If not paid, the subcontractor can trigger a process by which the government will withhold further payments to the offending contractor/subcontractor or assess penalties.

Virginia

Virginia affords the least protection to subcontractors. It has no statute that applies to private jobs. For public jobs, Virginia requires contractors to include a payment clause in subcontracts providing that within seven days after receiving payment the contractor must pay the subcontractor or notify the agency owner and subcontractor in writing of the contractor's intention to withhold payment. The

subcontract also must provide interest of 1% per month for unpaid amounts that have not been withheld in accordance with the statute. This clause also must be included in subcontractors' subcontracts as well (i.e., Sub-subcontracts). The statute does not allow for recovery of attorney fees for non-payment, only the interest.

Federal

The federal Prompt Pay Act requires the government to pay within a certain time after receipt of a payment application. Unpaid amounts are subject to interest and, under certain conditions, statutory penalties. The federal statute also contains flow-down protection for subcontractors and suppliers at all tiers. Prime contractors must make payment to their subcontractors and vendors within seven days of receipt of payment from the government. Subcontractors and suppliers also must incorporate the prompt payment provisions into their contracts with lower-tier subcontractors and suppliers.

An additional feature is that, when applying for payment, the contractor must certify that it has paid all the subcontractors and suppliers the amounts previously paid to the contractor. Failure by the contractor to pay subcontractors the full amounts invoiced for their respective scope of work can subject the contractor to fraud claims by the government.

Conclusion

Subcontractors should be aware of all of their rights when it comes to prompt pay statutes. These rights vary depending on the state where the project takes place and whether the job is private, state, or federal. Additionally, prompt payment rights are seldom fully described in contract documents. Experienced counsel should be engaged early in the process to ensure that the subcontractor does not waive important rights it may have to prompt payment.

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