

CIRCULAR

To: All Municipalities, Local Service Districts, Inuit Community Governments, Consultants, Heavy Civil Association of Newfoundland and Labrador, Construction Association – NL, PMA, MNL, MHAs

Re: Contract Payments Reminders

Date: August 28, 2023

It has come to my attention, that there have been some significant delays in issuing payments to Contractors and Consultants.

Please reference below the contractual obligations for Consultants and Contractors:

1. Once a Contractor has issued an invoice for payment, the Owner has 10 calendar days to respond with any markups adjusting the invoice total. After this time, it is assumed that the invoice is in order and will be paid.
2. Contractors are required to receive payment 21 calendar days after acceptance of invoice.
3. Contractors are required to receive Mechanics Lien Holdback 30 calendar days after the date of the Substantial Performance certificate.
4. Contractors are required to receive final payment 30 calendar days after the date of the Total Performance Certificate.
5. Consultants are required to receive payment 60 calendar days after receipt of properly documented invoice.

Failure to pay in a timely manner may result in the Contractor or Consultant charging interest on the outstanding balance.

1. Contractors can charge Bank of Canada Prime rate +1% after 60 calendar days of non-payment after acceptance of invoice.
2. Interest is an ineligible project cost, and is 100% the responsibility of the Owner.

To avoid delay and costly interest charges we ask that:

1. Consultants upload the Contractors invoice in MSIS within 14 calendar days of receipt.
2. Owners pay the invoices immediately once approved by MI if able, if you need to wait for release of funds from MI, then payment should be made within 5 business days of receipt of funding from MI.
3. If possible, Owners provide their project manager (Clerk, CAO, Works director, etc.) delegated authority to pay project invoices that are within project budget and without issues. This will decrease the delay associate with the requirement of a council meeting.

It is the owner's responsibility to secure project funds. In doing so please ensure the following:

1. If using financing for the project:
 - a. Loan for recipient share is secured and approved prior to project starting.
 - b. Loan to cover HST/GST rebate is approved prior to project starting.

2. If using Canada Community Building Fund (CCBF), formerly Gas Tax Fund:
 - a. Approval has been obtained, and funds secured in the project account.
 - b. CCBF funds are not used for other purposes.
 - c. CCBF may be used only to the maximum of federal program stacking rules.
3. Bank Accounts:
 - a. Project bank account is opened, only funds for the project may be deposited or withdrawn from this account.
 - b. Bank account for Mechanics Lien Holdback retention is opened.
4. Funds released by MI for the project shall not be used for other purposes.

Mechanics Lien Holdback is:

1. 10% of the contractor's payment that is held until Substantial Performance date. This money is earned by the contractor in the evaluation of invoices, but held for use in the event of a lien on the project. This is the contractor's money.
2. Not used for contractor deficiencies or incomplete work.
3. Legislatively required to be released in the 30 calendar day timeframe from Substantial Performance.

Retention of payment to address deficiencies:

1. As the project progresses, it is imperative that the payments made to the contractor are for work completed to the satisfaction of the contract documents.
2. When work that is completed, but is deficient (not to spec, incomplete or missing elements), the Town may withhold payment for such work. The contract allows for 2 times the value of the work. (This is NOT part of the Mechanics Lien Holdback)
3. Invoices including work that is not complete shall be reduced to a value representative of the work complete.
4. Work that may have seasonally effected work (paving 2nd lift, commissioning of HVAC, etc.) shall hold payment of funds sufficient to complete the work.

As the failure to pay in a timely manner has great impacts on companies, workers, local economy, etc., MI would like to note, that:

1. Failure of the consultant to perform their duties in the timeframes identified may result in limited opportunities for future engagement.

Should you need any assistance, please reach out to the regional office

Inayat Rehman, P. Eng.
 Eastern Regional Office
 Phone: (709) 729-5337
 Email: InayatRehman@gov.nl.ca

Wilfred Maloney, P. Eng.
 Central Regional Office
 Phone: (709) 256-1055
 Email: WilfMaloney@gov.nl.ca

Chris Power, P. Eng.
 Western Regional Office
 Phone: (709) 637-2491
 Email: ChrisPower@gov.nl.ca

Ehsan Khan, P. Eng.
 Labrador Regional Office
 Phone: (709) 896-2942
 Email: EhsanKhan@gov.nl.ca

Sincerely,

Kim Kieley, P. Eng., FEC
 Director – Municipal Infrastructure