

Current Status of Prompt Payment Law in Minnesota.

Curtis D. Smith
Moss & Barnett, P.A.

Prompt Pay Legislation

- State Agencies
 - Minn. Stat. §16A.124 requires State Agencies to pay undisputed invoices within 30 days.
 - Must invoice State for interest if payment overdue.
 - Minn. Stat. 16A.1245 requires contracts to include a provision requiring prime contractor to pay subcontractor within 10 days of receipt of payment from State for undisputed services provided by subcontractor.

State Agencies (con't.)

- Prime contractor must pay interest at 1½% per month on overdue payments.
- Subcontractor who prevails in a civil suit to collect interest penalty from prime contractor must be awarded attorneys' fees.

University of Minnesota

- Minn. Stat. §137.36 has same subcontractor payment requirements for University of Minnesota contracts as for State Agencies.
- Minn. Stat. §16A.124, subd. 5a, allows, but does not require, the University to include State prompt pay requirements in its prime contracts.

Department of Transportation

- Minn. Stat. §161.322 requires MNDOT to pay interest if final estimate for the work is not made within 90 days after the contractor has completed the work,
- The contractor shall be entitled to receive interest at the rate equal to the Monthly Index of Long Term United States Bond Yields for the month prior to the month in which this obligation is incurred from the date of the expiration of that 90-day period upon all amounts finally determined to be due the contractor which were not paid prior to the expiration of that period, to be paid in the same manner as, and at the time of, the final payment under the contract.
- The 90-day requirement, and the interest provisions provided for herein, shall not apply if delay is caused by the contractor; nor shall the 90-day requirement apply to contracts over two million dollars if the contract provides specifically for a different period of time in which to make such final estimate.

Local Government

- Minn. Stat. §471.425 sets varying time periods for local governments to pay contractors.
 - Applies to counties, cities, school districts
 - *must pay according to the terms of the contract or, if no contract terms apply, as follows, unless the municipality in good faith disputes the obligation:*
 - (a) *For municipalities who have regularly scheduled meetings at least once a month within 35 days of the date of receipt.*
 - (b) *For municipalities who do not regularly meet at least once a month within 45 days after receipt of the goods or services or the invoice for the goods or services, whichever is later.*

Private Work

- Minn. Stat. §337.10, subd. 3, requires contracts to include a provision requiring prime contractor to pay subcontractor within 10 days of receipt of payment from owner for undisputed services provided by subcontractor.
 - Prime contractor must pay interest at 1½% per month on overdue payments.
 - Subcontractor who prevails in a civil suit to collect interest penalty from prime contractor must be awarded attorneys' fees.

Private Work (con't.)

- Significant exception – does not apply to residential construction or attached single-family dwellings, if those dwellings are used for residential purposes and have fewer than 13 units per structure.

PROGRESS PAYMENTS

- Public Contracts
 - Minn. Stat. §15.72 requires monthly progress payments based on estimates of work completed.
- Private Contracts
 - Minn. Stat. §337.10, subd. 4(a), requires monthly progress payments based on estimate of work completed, unless contract provides otherwise.
 - Same exception as for Prompt Payment.

PROGRESS PAYMENTS

- Rights on failure to receive timely payment.
 - Generally, failure to timely make a progress payment IS NOT a reason to terminate or stop work.
 - Contract should address remedies for slow payment, including right to stop work or terminate.

RETAINAGE

- Public Contracts
 - Minn. Stat. §15.72, subd. 2 limits retainage to 5%.
 - Agency may reduce or eliminate retainage if work progressing satisfactorily.
 - Minn. Stat. §15.73 gives contractor option to deposit bonds or securities of U.S. (i.e., Treasury bills or bonds) in lieu of cash retainage.

RETAINAGE

- Private Contracts
 - Minn. Stat. §337.10, subd. 4(b) limits retainage to 5%, unless contract states otherwise.
 - Per application of Minn. Stat. §337.10, subd. 3 (prompt payment), GC may not withhold more retainage from sub that Owner withholds from GC
 - Same exceptions for residential as prompt payment provisions.