



# Prompt Payment Update

March 2021

## Overview

Service Alberta conducted their final stakeholder engagement session on the development of regulations for prompt payment on March 8, 2021. The engagement session summarized the feedback received from various stakeholders and provided the government's proposed direction and next steps. BILD Alberta reiterated the members concerns that have risen over the past year and a half and continued to advocate for a balanced approach.

The following outlines the final stages of Service Alberta's proposal but is subject to change prior to the regulation's proclamation date.

## Nominating Authority

Service Alberta is looking for a fair procurement pre-qualification process for Nominating Authorities (NA) which outlines specific criteria and uses master agreements.

- NA must issue and make publicly available on its website an annual report for the fiscal year, containing aggregated information on adjudication in Alberta.
- NA to establish and maintain a code of conduct for their adjudications with minimum standards.
- NA will establish training and certification requirements and appoint and qualify adjudicators based on appropriate experience.
- Service Alberta will annually review and approve NA fees, but not set fees.
- Service Alberta will begin an RFP process next month to consider a NA and has indicated there is interest in having multiple NAs.

## Adjudicators

Service Alberta is looking for a balanced roster of adjudicators with the adequate training and experience.

- Adjudicators must fulfill their NA training and certification requirements and pay all NA fees to certify.
- Adjudicators must not be convicted of an offence or be bankrupt.
- Adjudicators must have 10 years of relevant construction industry experience, thereby aligning adjudicator credentials with disputes.
- Adjudication eligibility criteria will specifically include non-lienable contract dispute.
- Regulate the consolidation process that allows both parties to agree to consolidation. If parties do not agree to consolidate, the contractor may initiate consolidation.
- Parties can mutually agree and request to extend adjudication timelines within set limit of 30 days.
- Allow adjudicators to assign the total fee to either party of the disputes if they provide frivolous or vexatious information.
- Decisions by the adjudicator are confidential.

## Holdbacks

- Contractors must set out the ability to define the phased release of holdbacks (default is annual release).
- A \$10 million minimum holdback is proposed for phased release of holdbacks on projects that have a minimum 18-month duration.

## Prompt Payment

- Service Alberta is maintaining the current 31-day proper invoice cycle, but the regulations will allow contracts to set receipt date of proper invoice.
- Interest rates set to accrue on any unpaid amount included in the invoice from the time it is due.
- Interest is to be set at whichever is higher, contract or *Interest Judgement Act*.
- Parties cannot opt out of payment timelines, those provision remain in the Act.
- Parties have 14 days to dispute invoices through adjudication.

## Other Issues

- Limit the amount of information required in a Statement of Account to the following:
  - If invoice has been paid;
  - Percentage of invoice paid; and
  - Date of payment.
- Certificates of substantial completion can be delivered by paper, electronically, or per contract.
- Refine the definition of “concrete supply” to only pertain to “ready mix”.
- Allow a grace period of one year to grandfather existing contracts.

## Next Steps

- Service Alberta indicated their preference is to bring the new rules into force in July 2021.
  - BILD Alberta is advocating to ensure there is sufficient time to select a NA and establish a roster of adjudicators that are adequately educated and trained.
- BILD Alberta continues to advocate on the following items:
  - Adjust the Prompt Payment period from 28 days to 35 days.
  - Matters of construction quality required third-party evidence must be sent to the courts for a decision.