

Here's the Drill: A Reminder for Contractors: Are Your Invoices Actually "Proper"?

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By Jeff Scorgie

It has been a few years since the prompt payment rules in Ontario's *Construction Act* were introduced to the province's construction industry.

One feature that is fundamental to the prompt payment process is the contractor's submission of a "proper invoice" to the owner. If the contractor's invoice fails to meet the requirements for a "proper invoice" under the *Construction Act*, the owner's obligation to pay an invoice in 28 days will not be triggered and the contractor (and downstream subcontractors) will be denied much of the benefit of the prompt payment regime.

In order to constitute a "proper invoice", the contractor's invoice must meet the invoicing requirements specified in its contract with the owner and contain the following information:

1. The contractor's name and address.
2. The date of the proper invoice and the period during which the services or materials were supplied.
3. Information identifying the authority, whether in the contract or otherwise, under which the services or materials were supplied.
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, telephone number and mailing address of the person to whom payment is to be sent.
7. Any other information that may be prescribed [in the Act].

While these pieces of information seem fairly straightforward, many contractors' invoices commonly omit one or more of them.

For example, contractors' invoices often fail to identify the "authority" under which their work was performed. This will often be the contract between the owner and contractor (and perhaps a change order issued under the contract as well). Contractors should make sure their invoices properly identify their contract by including information such as the contract date, contract title and contract number (if any).

Additionally, contractors' invoices commonly omit the contact information of the person that payment is to be sent to.

Invoices also sometimes fail to state the actual period during which the work was performed and may instead simply list the date the invoice is being submitted on.

Lastly, the "proper invoice" must meet any other requirements specified in the contract. When bidding on or negotiating a contract, contractors should review the invoice clauses carefully to see what other requirements have been specified. There may be specific

delivery instructions (e.g. a requirement for invoices to be uploaded to the owner's online invoice portal) or requirements for additional documents to be included with the invoice (such as a CCDC 9A statutory declaration, evidence of WSIB compliance, an updated construction schedule, etc.).

Contractors should consider revisiting their standard invoice templates to ensure they comply with the above requirements and are supplemented on a project-by-project basis to comply with any additional requirements specified in that project's contract.

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