

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

October 28, 2022

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.

Here's the Drill is a regularly issued newsletter that discusses updates and developments affecting the Canadian construction and infrastructure industry as well as strategic considerations for all those involved in construction projects. To receive the email newsletter, [click here](#) and subscribe to our "Construction" list.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

For more information or inquiries:



Jeff Scorgie

Toronto
416.619.6288

Email:
jscorgie@weirfoulds.com

Jeff Scorgie is a Partner in the Construction Practice Group at WeirFoulds. His practice focuses on drafting and negotiating contracts and advising on other "front end" aspects of construction projects.

WeirFoulds^{LLP}

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035