

Development Authority of the North Country Governance Policies

Subject: Prompt Payment Policy

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PROMPT PAYMENT POLICY

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Prompt Payment Policy

SECTION 1.0 PURPOSE

It shall be the policy of the Development Authority of the North Country to process contract payments efficiently and expeditiously so as to assure payment in a timely manner to firms and organizations which do business with the Authority and to avoid, to the greatest extent practicable, the payment of interest in cases where prompt payment does not occur as provided herein. It is the purpose of the Prompt Payment Policy of the Development Authority of the North Country to set forth the standards for the payment of invoices within specific periods of time and to prescribe interest penalties in situations where payments do not conform to these standards, as provided by section 2880 of the Public Authorities Law.

The Prompt Payment Policy may be amended from time to time as needed to comply with the Public Authorities Law.

SECTION 2.0 DEFINITIONS OF TERMS

The following terms shall, for purposes of this Policy, have the following meanings unless the context shall clearly indicate otherwise:

1. "Authority" means the Development Authority of the North Country.
2. "Contractor" is a person, partnership, private corporation, limited liability company, or association: a) selling materials, equipment, or supplies or leasing property, or equipment to the Authority; (b) constructing, reconstructing, rehabilitating or repairing facilities or other improvements for or on behalf of the Authority; or (c) rendering or providing services to the Authority pursuant to a contract.
3. "Designated Payment Office" means the office designated by the Authority to which a proper invoice is to be submitted by a Contractor.
4. "Prompt Payment" means payment of a debt due and owing by the Authority before interest accrues thereon pursuant to this Prompt Payment Policy.
5. "Proper Invoice" means a written request for a contract payment that is submitted by a Contractor setting forth the description, price and quantity of goods, property, or services delivered or rendered, in such form and supported by such other substantiating documentation as the Authority may reasonably require.
6. "Receipt of an Invoice" means (i) the date on which a Proper Invoice is actually received in the Designated Payment Office, or (ii) the date on which the Authority, or other entity on whose behalf the Authority is acting, received the purchased goods, property, or services covered by the Proper Invoice, whichever is later.
7. "Set-off" means the reduction by the Authority of a payment due to a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to the Authority.

SECTION 3.0 SCOPE

This Prompt Payment Policy shall be applicable to all contract payments. A contract payment is a payment to a Contractor pursuant to a written contract, or an amendment thereto, signed by an Authorized Officer of the Authority and of the Contractor, a fully executed change order or an executed purchase order.

SECTION 4.0 PROMPT PAYMENT PROCEDURES

4.1 Each Contractor requesting payment shall submit a Proper Invoice and adequate documentation to support the work, services or goods provided to the Designated Payment Office. Proper invoices submitted will be paid no later than 30 days, excluding legal holidays, after receipt of such Proper Invoice.

If a Proper Invoice is not paid within 30 days of receipt (excluding legal holidays), such payment will be subject to interest at the overpayment rate set by the Commissioner of Taxation and Finance pursuant to subsection (e) of section 1096 of the Tax Law.

4.2 In accordance with subparagraph (v) of paragraph (A) of subdivision 3 of Section 2880 of the Public Authorities Law, when the following facts and circumstances exist, the Authority may, to the extent necessary, extend the payment date of a Proper Invoice to 45 days after receipt. The facts and circumstances may include, but shall not be limited to:

1. a contract for which a prior overpayment has been made;
2. a contract which is subject to a mechanics' lien;
3. a contract which is subject to a notice of prevailing wage withholding;
4. when the Authority has been notified that an entity contracting with the Authority or the principals thereof are the subject of criminal investigation or indictment relating to the business activities of the entity;
5. those instances when the Authority has reason to believe that the entity contracting with the Authority has provided a false statement or material misstatement in connection with the contract.
6. when the Authority must rely on tests by a third party reported directly to the Authority as a prerequisite for payment.

4.3 The date by which a contract payment may be made without the payment of interest may be extended when any of the following facts or conditions exists:

1. in accordance with specific statutory or contractual provision, payment must be preceded by an inspection period, the receipt of a signed receiving report in the case of the purchase of goods for an entity other than the Authority itself, or by an audit to determine the resources applied or used by a Contractor in fulfilling the terms of the contract;
2. the necessary state government appropriation required to authorize payment has yet to be enacted;
3. a Proper Invoice must be examined by the federal government or other governmental entities prior to payment;

- 4.4** Notification of Defects - The Authority shall have 15 calendar days after receipt of an invoice by the Designated Payment Office to notify the Contractor of (a) defects in the delivered goods, property, or services, (b) defects in the invoice, or (c) suspected improprieties of any kind; and the existence of such defects or improprieties shall prevent the commencement of the time period specified in section 4 of this Policy. When the Authority fails to notify a Contractor of such defects or suspected improprieties within 15 calendar days of receiving the invoice, the number of days allowed for payment of the corrected proper invoice will be reduced by the number of days between the fifteenth day and the day that notification was transmitted to the Contractor. If the Authority, in such situations, fails to provide reasonable grounds for its contention that a defect or impropriety exists, the date by which contract payment must be made in order for the Authority not to become liable for interest payments shall be calculated from the date of receipt of an invoice.

SECTION 5.0 INTEREST ELIGIBILITY AND COMPUTATION

In order for the Authority not to be liable for the payment of interest, contract payment must be made within the periods described in section 4 after the receipt of a Proper Invoice for the amount of the contract payment due. Any time taken to satisfy or rectify any of the facts or conditions described in section 4 shall extend the date by which contract payment must be made in order for the Authority not to become liable for interest payments by an equal period of time.

SECTION 6.0 REPORT ON IMPLEMENTATION OF PROMPT PAYMENT POLICY

Within ninety (90) days after the end of its fiscal year, the Authority shall prepare a report on the scope and implementation of its Prompt Payment Policy. Such report shall be filed annually utilizing the Public Authorities Reporting Information System (PARIS).

SECTION 7.0 MISCELLANEOUS PROVISIONS

Inapplicability - The provisions of this Policy shall not apply to payments due and owing by the Authority:

1. under the eminent domain procedure law;
2. as interest allowed on judgments rendered by a court pursuant to any provision of law other than Section 2880 of the Public Authorities Law;
3. to the federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government including, but not limited to, counties, cities, towns, villages, school districts, special districts, or any of their related instrumentalists; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;
4. in a situation where the Authority exercises a Set-off against all or part of the payment due the Contractor; or,
5. for reasonable cause, determines not to release or reduce retainage upon completion or substantial completion of a construction contract.