

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To establish new private contractor and subcontractor prompt payment laws, to establish time requirements for owners to pay contractors when the contract does not provide for specific dates and times of payment, to establish time requirements for owners to pay contractors when the contract does provide for specific dates and times of payment, to impose an interest penalty and assess reasonable attorney fees on an owner for failure to make prompt payments to a contractor, to establish time requirements for contractors to pay subcontractors, and to impose an interest penalty and assess reasonable attorney fees on a contractor for failure to make prompt payments to a subcontractor.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Private Contractor and Subcontractor Prompt Payment Act of 2013”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Contract” means:

(A) A construction contract that is an agreement of any kind of nature, express or implied, to provide labor or materials, or both, for demolition, building, renovation, alteration, or maintenance of buildings, roadways, and structures; or

(B) A food service contract that is an agreement of any kind of nature, express or implied, for doing work or furnishing materials, or both.

(2) “Contractor” means a person, entity, or business that has a contract with an owner.

(3) “Subcontractor” means:

(A) A person, entity, or business that has a contract with a contractor;

(B) A person, entity, or business that has a contract with a subcontractor;

or

(C) A person, entity, or business that performs work on a construction site for a contractor or another subcontractor or that fabricates materials off-site, from plans and specifications unique to the project, for installation on the construction site.

(4) “Owner” means an owner of the property or a tenant; provided, that the tenant enters into contract with a contractor. The term “owner” does not include a District agency as

that term is defined in section 2(3) of the District of Columbia Quick Payment Act of 1984, effective March 15, 1985 (D.C. Law 5-164; D.C. Official Code § 2-221.01(3)).

(5) “Undisputed amount” means an amount owed on a contract or a subcontract for which there is no good-faith dispute, including any retainage withheld.

Sec. 3. Prompt payments to contractors.

(a) If a construction contract between an owner and contractor does not provide for specific dates and times of payment, the owner shall pay to the contractor undisputed amounts owed under the terms of the written contract within the earlier of:

(1) 15 days after the day on which the occupancy permit is granted;

(2) 15 days after the day on which the owner or the owner’s agent takes possession; or

(3) 15 days after an owner receives a contractor’s payment request.

(b) If a food service contract between an owner and contractor does not provide for specific dates and times of payment, the owner shall pay to the contractor undisputed amounts owed under the terms of the written contract within the earlier of:

(1) 15 days after the day on which the owner or the owner’s agent takes possession; or

(2) 15 days after an owner receives a contractor’s payment request.

(c) If a contract provides for specific dates or times of payment, the owner shall pay to the contractor undisputed amounts owed within 7 days after the date or time specified in the contract.

Sec. 4. Failure to make prompt payments to a contractor.

If an owner fails to make prompt payments to a contractor as required by section 3, the owner shall:

(1) Pay interest of 1.5% per month or any part of a month to the contractor on any undisputed amount not paid on time to the contractor; and

(2) If a contractor prevails in a civil action to collect interest penalties from an owner, the contractor shall be awarded its costs and disbursements, including reasonable attorney’s fees, incurred in bringing the action.

Sec. 5. Prompt payments to subcontractors.

(a) If a contract is between a contractor and subcontractor, or between a first-tier subcontractor and a second-tier subcontractor, the contractor or subcontractor shall pay undisputed amounts owed to its subcontractor within 7 days after receipt by the contractor or subcontractor of each payment received for its subcontractors’ work or materials.

(b) Notwithstanding subsection (a) of this section, conditions of payment to the subcontractor on receipt by the contractor of payment from the owner may not abrogate or waive the right of the subcontractor to:

- (1) Claim a mechanics' lien; or
- (2) Sue on a contractor's bond.

(c) Any provision of a contract made in violation of subsection (b) of this section is void as against the public policy of the District.

Sec. 6. Failure to make prompt payments to a subcontractor.

If a contractor fails to make prompt payments to a subcontractor as required by section 5, or a first-tier subcontractor fails to make prompt payments to a second-tier subcontractor, the contractor or subcontractor shall:

- (1) Pay interest of 1.5% per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor; and
- (2) If the subcontractor prevails in a civil action to collect interest penalties from a contractor or first-tier subcontractor, the subcontractor shall be awarded its costs and disbursements, including reasonable attorney's fees, incurred in bringing the action.

Sec. 7. Applicability.

This act shall apply to all contracts entered into on or after October 1, 2013.

Sec. 8. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 9. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia