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PROMPT PAYMENTS TO CONTRACTORS AND SUBCONTRACTORS—IT’S NOT JUST A GOOD IDEA, IT’S THE LAW

Imagine your company is working on a construction project and your portion of the job is about half finished, but the company you contracted with is about four months behind on payments. This isn't the first time they've fallen behind, but it's a lucrative contract for your company (when you're paid) and you would like to finish out your work. Additionally, it is a high profile project and you would like to use it as an example of what your company can do, but these late payments are creating all kinds of cash flow problems for you. Do you keep working and hope payment comes sooner rather than later, or do you pull your crew from the site? If you pull your crew, are you inviting litigation for walking off the job?

The Texas Prompt Payment to Contractors and Subcontractors Act (Chapter 28 of the Texas Property Code) provides some guidance for this scenario. It states that if an owner receives a written payment request from a contractor for an amount that is allowed under a contract for work or specially fabricated materials, the owner must make payment within 35 days of receiving the request. Unpaid amounts accrue interest at 1½ % per month.

Even more notable about the statute is that it gives contractors the ability to stop working. If an owner fails to pay the contractor an undisputed amount within 35 days, the contractor may suspend its contractually required performance. This can be done ten days after the contractor gives the owner (and possibly the owner's lender) written notice that (1) payment has not been received, and (2) the contractor intends to suspend performance for nonpayment.

At this point, you're doing a mental calculation of the costs of pulling your crew off the job site and then sending them back and wondering if it is worth the expense. You're in luck—the statute provides that a contractor who suspends performance under this provision is not required to supply further labor, services, or materials until it is paid the amounts due (over which performance was suspended), plus costs for demobilization and remobilization.

Obviously, there are many factors to consider before pulling off a job for nonpayment, including the relationship between the parties, potential for future projects, and the amount at stake. However, having the force of the Texas Payment to Contractors and Subcontractors Act behind you will at least provide a little piece of mind.

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