

WAYS TO REDUCE THE RISK OF REIMBURSEMENT DELAYS

Reimbursement delays - everyone is familiar with them. Sometimes the owner is late in paying, and sometimes the general contractor who's late. Each situation is different, and no set of rules applies to everything.

In some situations, like Louisiana, statutes set forth the maximum amount of time to pay subcontractors. For example, in Louisiana, LA-R.S. 9:4814 (found [here](#)) sets forth that in private projects "No contractor, subcontractor, or agent of a contractor or subcontractor, who has received money on account of a contract for the construction, erection, or repair of a building, structure, or other improvement, including contracts and mortgages for interim financing, shall knowingly fail to apply the money received as necessary to settle claims to sellers of movables or laborers due for the construction or under the contract."

So, that means that general contractors must at least pay subs when the owner pays the general for that portion of the work performed by the sub, right?

Yeah. Kind of. Not really.

In theory, yes - contractors are required to pay subs when they are paid for the subs' work. But following the money trail is often like attempting to track a specific raindrop in a pool. Nevertheless, for the most part generals do a pretty good job of paying their subs. They want to stay in business, too, and relationships with subcontractors are a big part of that.

Because of the current prevalence of clauses or statutes stipulating that general contractors pay their subs when they are paid, subs are faced with uncertainty of when and how much they will be paid. And we don't need to tell you about how difficult it is to run a business when you don't have that information - particularly when you know when and how much you have to pay your suppliers and employees!

So what can be done about that?

At least three things:

- 1) As much as possible, deal with companies who have a good reputation for payment. When not possible, or when the company you bid for doesn't have a good reputation for payment, alter your bids accordingly to accurately reflect the risk you take by doing business with them. Banks do it all the time - for good reason.

- 2) Contractually modify the payment schedule. There is nothing (at least statutorily) that forbids obligating generals to pay subs upon invoice. If you do include a clause like this, then be certain to explicitly state (in writing) that this clause overrules and supercedes all other like or contrary clauses. We say that because "pay when paid" clauses are often numerous and all over the place in contracts.

3) Construction invoice factoring may be a final solution. Now, this isn't a solution for everyone, and certainly isn't a good idea in every case. After all, why pay money to a third party when you're fairly certain the general is going to honor his commitment to pay you? Something like construction invoice factoring is a good idea when you must do business with companies who don't have a good payment reputation, when they won't adjust their bids proposals, and when they won't agree to contractual revisions. In those specific circumstances, construction invoice factoring may be a good way to "hedge" your bottom line. We've never used construction invoice factoring, and don't know who to recommend. You're on your own if this is something you'd like to pursue. But we like the idea for use in specific situations.

For Louisiana specific advice, or a risk reduction procedure tailored to your benefit, contact us at www.myconstructlaw.com, alan@myconstructlaw.com, or at 877.370.7373. Our attorneys are licensed in Louisiana.