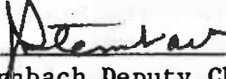


MODIFIED BY EB 84-023 EFFECTIVE 7/11/84, EB 84-026 EFFECTIVE 9/6/84 & EB 85-039 EFFECTIVE 2/14/86	<h1>ENGINEERING BULLETIN</h1> <p>NEW YORK STATE DEPARTMENT OF TRANSPORTATION</p>	
SUPERSEDED BY EB 96-027 EFFECTIVE 6/18/96	SUBJECT: PROMPT PAYMENT LEGISLATION CONSTRUCTION CONTRACTOR AND CONSULTANT PAYMENTS Subject Code 7.30	
Distribution: <input checked="" type="checkbox"/> Main Office <input checked="" type="checkbox"/> Regions <input type="checkbox"/> Special		Code: <u>EB 84-20</u>
APPROVED:  Jack Sternbach, Deputy Chief Engineer, Construction Division		Date: <u>6/26/84</u> Supersedes:

This Engineering Bulletin Expires _____

- I. Under the recently enacted Prompt Payment Legislation, State payments to contractors and vendors are subject to interest penalties when not made within specified time periods. Summarized below are the key provisions of the new Legislation as they affect highway contract estimate payments.
- A. The required payment date for a final payment on a highway construction contract is 90 calendar days after contract acceptance.
 - B. The required payment date for all other payments is 45 calendar days after "receipt of an invoice". On a construction contract where the Department prepares the payment estimate, the PERIOD ENDING DATE corresponds to the "receipt of an invoice".
 - C. Late payments are subject to an interest penalty computed at "... the rate set by the State Tax Commissioner for corporate taxes ..." (currently about 12%), and "... paid from the same appropriation as that from which the related proper invoice is paid; ...".
 - D. The allowable 45 or 90 day payment period does not begin until a "proper invoice" has been received and all conditions of payment have been satisfied. In addition to the contractor-furnished submissions and documentation required under the contract specifications and Federal and State Laws, such conditions may also include an inspection period or audit.
 - E. The State has 15 days following "receipt of an invoice" in which to notify the contractor of any deficiencies in his submission. As noted in "D", the allowable payment period does not begin until the deficiencies are corrected; however, if notification to the contractor was made after the 15 days provided, the allowable payment period is reduced by the number of additional days taken.
 - F. The interest provisions of the Legislation apply to eligible payment invoices received on or after July 1, 1984. In general, any construction contract or consultant inspection estimate payment funded with NYS or Federal-Aid dollars is eligible. Payments funded by Counties, Municipalities, Utility Companies, etc. are not covered by the legislation.

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II. The procedures and forms modifications implemented to track the processing of payment vouchers and determine interest due are described in the Comptroller's Accounting Bulletin Nos. A-85 dated 1/5/84, A-91 dated 4/16/84 (see attached excerpts), and DOT Bulletin B-4-38. All payment vouchers will contain two new entries. The first is a Yes or No indication as to whether the payment is covered under the legislation. The second entry is the date on which the required payment period commences, called the Merchandise/Invoice Received (MIR) Date. This is the date on which all conditions of payment have been satisfied, adjusted by any penalty days assessed against the State for not meeting the 15 day notification requirement described in "E" above. An example illustrating this adjustment is contained on the bottom of page 3 of attached Comptroller's Bulletin A-91.

III. The Merchandise/Invoice Received (MIR) dates for construction contract and consultant inspection payment estimates will be determined in the Region and entered on the appropriate payment document in accordance with the following guidelines.

Progress Estimate Payments

The MIR date is the period ending date of the estimate, provided all required contractor-furnished documentation (material certifications, payrolls, etc.) is on hand. If not, the MIR date shall be the date on which the last required document is received.

As an exception to the above, when an estimate is prepared after the date of contract completion, the MIR date shall be the date the EIC signs the CONR30.

The EIC must enter the MIR date, determined in accordance with the above rules, in the top right-hand corner of the CONR22 identified with caption "MIR DATE". When the estimate is processed by the Contract Payment Unit in the Main Office, the MIR date will be entered on the Contract Payment Request (Form AC 1319).

Final Payment Estimate

The MIR date is the date of final contract acceptance, provided all submissions and documentation required to be furnished by the contractor are in hand. If not, the MIR date shall be the date on which the last required submission is received. Examples of required submissions which may be applicable to a particular contract are: presentation of any outstanding claims and disputes, extra work cost accounts, final labor affidavits, material certifications, certified payrolls, approved original reproducibles, and FHWA final wage certificate (HC-144) and record of materials supplies and labor (PR-47). Note also that 7 days is considered a reasonable time for the contractor to review, sign and return the Final Agreement (Construction Supervision Manual §109-11B); therefore, any days taken in excess of the 7 days allowed should be added to the MIR date.

When the Region transmits the Final Agreement package to the Main Office, the MIR date must appear in the upper right-hand corner of the CONR22, identified with the caption "MIR DATE". The MIR date, adjusted to reflect any Main Office

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processing delays attributable to the contractor, will be entered on the Contract Payment Request (Form AC 1319) by the Contract Payment Unit when the Final Agreement is forwarded to the Comptroller's Office.

Consultant Progress Estimate Payments

The MIR date is the date on which a correct and fully documented Progress Payment Request (Form AP-3e Contractor's Application for Payment) is submitted by the consultant.

The person responsible for reviewing the estimate in the Region (EIC, Project Manager or other) must enter the MIR date in the top right-hand corner of all copies of the AP-3e identified with the caption "MIR DATE". When the estimate is processed by the Contract Payment Unit in the Main Office, the MIR date will be entered on the Contract Payment Request (Form AC 1319).

When the consultant has completed all work under the agreement, he submits a proposed final billing on Form Ap-3e. Since final payment cannot be made until an audit is performed, the Region processes the proposed final as a progress estimate and sends an extra copy to the Contracts Bureau with a request for an audit. The MIR date, determined as described above, is entered on all copies of the AP-3e including the copy sent to the Contracts Bureau.

Consultant Final Payment

The MIR date is the date on which the final billing, which is based upon the required certified audit, is submitted by the consultant. Note that the processing of the proposed final billing, which is submitted prior to the audit, is discussed under Consultant Progress Estimate Payments.

The person responsible for reviewing the final billing in the Region (EIC, Project Manager or other as appropriate) must enter the MIR date in the top right-hand corner of all copies of the AP-3e identified with the caption "MIR DATE". Adjustments to the MIR date relating to the performance of the audit will be made in the Main Office.

- IV. Complete documentation must be maintained in the project records to support all MIR date determinations. In general, the guidelines in §109-11 of the Construction Supervision Manual for documenting the processing of the Final Agreement can be applied to all payment estimates. All notifications of deficiencies should be made within 15 days following "receipt of an invoice" as provided in the legislation. Due to the amount and variety of contractor-furnished documents required for a final contract payment, the following procedure should be followed:
- A. At least 30 days prior to the anticipated date of contract acceptance, the Region should notify the contractor in writing as to the particular submissions and documentation required in order to prepare and process the final agreement.

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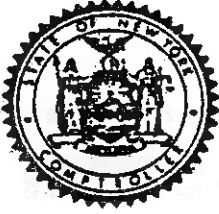
- B. Immediately following contract acceptance, the contractor should be advised in writing of any submissions which are still outstanding and/or deficiencies in documents already received.
- V. The Comptroller's system for tracking the processing of payment vouchers went on-line on May 9, 1984. All vouchers, including those not eligible for interest under the legislation, are being tracked; therefore, all construction contract and consultant payment estimates must contain an MIR date entered on the payment documents as described above. Final Agreements for construction contracts accepted before July 1, 1984 must contain both an MIR date and the number of days delay chargeable to the contractor determined in accordance with §109-11 of the Construction Engineer's Manual. For contracts accepted after July 1, 1984, only the MIR date will be required.

Attachment



Office of the State Comptroller
ACCOUNTING BULLETIN

Subject	Date	Bulletin No.
PROMPT PAYMENT LEGISLATION - COMPREHENSIVE BULLETIN	4/16/84	A-91
<p>INTRODUCTION New York State will soon enact a Prompt Payment Bill which:</p> <ul style="list-style-type: none">- For invoices received on or after 7/1/84, requires interest charges on payments for goods and services when payments are not made within 45 calendar days after the receipt of a proper invoice from the vendor.- Requires pro-rating of interest charges between agencies and OSC based on excessive processing time for each. Agencies are allowed 33 days, OSC 12 days.- For invoices received on or after 7/1/88, requires interest charges when payments are not made within 30 calendar days (22 for agencies, 8 for OSC), excluding legal holidays.- Contains specific provisions which allow agencies and OSC more than 45 days, if necessary, to ensure both the quality of goods and services received and the propriety of the payment. <p>The provisions of the bill have been agreed to by leadership in the Legislature and the Governor's Office. No changes that would affect the contents of this bulletin are anticipated.</p> <p>In order to implement this legislation, as of <u>5/9/84</u> agencies will be required to indicate 'Interest Eligibility' and 'Merchandise/Invoice Received (MIR) Date' on each payment processed thru the Central Accounting System. (MIR Date is generally the date on which both the goods/services and a proper invoice have been received.) For invoices received on or after 7/1/84, interest will be due when eligible payments are not made within 45 days after MIR Date.</p> <p>Read this bulletin carefully to prevent vouchers submitted on or after 5/9 from rejecting and to ensure that they contain correct interest-related information.</p> <p>The following sections explain:</p> <ul style="list-style-type: none">A. How to determine Interest Eligibility of paymentsB. How to determine Merchandise/Invoice Received DateC. Forms preparation requirementsD. Requirements for voucher entry/correction by agenciesE. Other InformationF. Conversion schedule.		



Office of the State Comptroller
ACCOUNTING BULLETIN

Subject	Date	Bulletin No.
PROMPT PAYMENT LEGISLATION - COMPREHENSIVE BULLETIN	4/16/84	A-91
A. How to Determine Interest Eligibility	<p>Payments are eligible or ineligible for interest as indicated in the examples on Exhibit A and described in the following guidelines:</p> <p><u>ELIGIBLE</u> payments include those:</p> <ol style="list-style-type: none">1. From joint custody funds <u>only</u> (those in the joint custody of the State Comptroller and the Commissioner of Taxation and Finance).2. To any person, partnership, corporation, public utility or association which sells goods or services or leases equipment or property to the State. <p>NOTE: Because public utilities are eligible for interest under the Prompt Payment legislation, invoices received from public utilities on or after 7/1/84 <u>will not be subject to late payment penalties provided for in PSC regulations.</u></p> <p><u>INELIGIBLE</u> payments include those:</p> <ol style="list-style-type: none">1. From sole-custody funds (those outside the State Treasury such as petty cash, agency commissary, patients or inmates funds).2. To Federal, State, and Local governmental entities, and government-related entities (e.g. authorities, Correctional Industries, Centralized Services, school districts, municipal hospitals).3. To State employees performing services in their public employment capacity (e.g. public employee travel and overtime meal allowances).4. To contractors of third-party payment agreements (e.g. the MMIS fiscal agent).5. For purchases of property under the eminent domain law.6. Payments withheld in total or part, due to a lien, attachment or other legal process. <p>Exhibit A lists more examples of eligible and ineligible payments.</p>	



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P. How to Determine MIR Date Merchandise/Invoice Received (MIR) Date is generally the date on which the agency receives goods/services or a proper invoice, whichever is later.

NOTE: A proper invoice is one which (1) provides accurate prices, quantities and descriptions of goods/services delivered and (2) is in a form and contains supporting documentation as the agency and OSC may reasonably require.

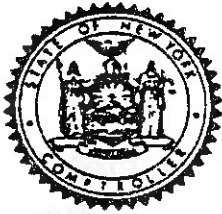
If payment is not made within 45 days of MIR Date, interest will be due. However, MIR Date must be adjusted under the conditions described in the following table to ensure the quality of the goods and services received and the propriety of the payment.

ADJUSTMENTS TO MIR DATE

IF...	THEN THE MIR DATE IS...
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- | | |
|--|--|
| <p>1. The vendor delivers an invoice somewhere other than the payment office <u>designated</u> by the agency,</p> <p>2. The goods/services delivered are defective, or the invoice is defective, or there are suspected improprieties of any kind,</p> | <p>1. The date the designated office receives the invoice.
NOTE: Agencies must designate payment offices on the purchase order or contract when the billing address differs from the shipping address.</p> <p>2. Increased by the number of days it takes to correct the defect or impropriety.
NOTE: Agencies are responsible for notifying vendors of such defects/improprieties within 15 calendar days of receiving the invoice. If vendors are not notified in 15 days, the 'increased MIR Date' is then reduced by the number of calendar days taken to notify the vendor in excess of 15.</p> |
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FOR EXAMPLE: if a defective invoice is received on 4/1, the vendor is notified on 4/3 (within 15 days), and the defect is corrected on 4/5, then the MIR Date is 4/5. However, if a defective invoice is received on 4/1, the vendor is notified on 4/21 (5 days late), and the defect is corrected on 4/23, then the MIR Date is 4/18 (4/23-5 days).



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<u>ADJUSTMENTS TO MIR DATE</u>		
IF... THEN THE MIR DATE IS...		
3. An inspection period or audit is specifically required by statute or contract provision,	3. Increased up to the number of calendar days allowed for the inspection or audit.	
4. An invoice must be examined by the Federal Government prior to payment,	4. Increased by the number of calendar days required for the examination.	
5. The applicable appropriation has yet to be enacted (passed and signed),	5. Increased by the number of calendar days between receipt of the invoice and enactment of the legislation.	
6. Legislation or a contract provides that payment will be paid on a predetermined date without having to submit an invoice,	6. The predetermined date <u>less</u> 45 calendar days.	
7. OSC determines that there is reasonable cause to believe that payment may not properly be due, in whole or in part,	7. Increased by the number of calendar days taken to resolve the matter. (OSC will make these adjustments to MIR Date.)	
8. The payment is not eligible for interest and is not initiated by an invoice,	8. The date that best represents the beginning of the payment cycle so the system can monitor payment processing time.	
FOR EXAMPLE: Crime Victim's Compensation awards are based on an award decision by the Crime Victim's Board. The date of the award decision may best represent the start of the payment cycle and can be entered as the MIR Date.		