



Ensure Timely and Prompt Payment to Electrical Contractors

Issue Background:

The Miller Act of 1935 authorizes subcontractors who furnished labor or materials used in carrying out federal construction projects valued in excess of \$150,000 to bring a civil action against prime contractors' payment bonds to obtain payments due. Congress enacted the Miller Act to compensate for the difficulties that subcontractors would otherwise have in obtaining payment from federal construction contractors. Under the federal Prompt Payment Act, a Federal agency is generally required to make payments within 30 days from when the agency receives proper documentation. In turn, the Act also requires federal agencies to include in their contracts a clause obligating the prime contractor to pay the subcontractor for "satisfactory" performance within seven days of receiving payment from the government. The federal policy should ensure that the government and prime contractors promptly and efficiently pay electrical contractors when they contract to provide goods and services to the government.

Key Points:

- *Prime Contractors Have A Duty To Pay Subcontractors, and Subcontractors Have A Duty To Pay Lower-Tier Subcontractors.* The flow of money from owner to contractor, and in turn to the subcontractors and specialty contractors is critical. In fact, many companies go out of business due to the slim profit margins prevalent in the federal market, limited cash flow, and tight credit markets.
- *Acceleration of Payment Should Be Required by Prime Contractors to Subcontractors and Specialty Contractors.* Federal agencies should, to the full extent permitted by law, accelerate payments to all prime contractors, and in turn, require them to provide prompt payments to subcontractors.
- *Electrical Contractors Have No Legal Recourse to Address Late Payments Other than Litigation.* The federal government cannot be interpleaded as a party to any disputes between contractors and subcontractors over late payments or interest, and contractors' obligations to pay subcontractors also cannot be passed on to the federal government in any way, including by contract modifications or cost-reimbursement claims. Accordingly, electrical contractors should be prepared to take steps, including legal recourse, to protect their interests and the interests of their businesses.

NECA Position:

Federal agencies must ensure they pay prime contractors in a timely manner. In turn, they must be assured prime contractors have paid their subcontractors promptly and in full compliance with federal law.