

Ensure Small Business Federal Contractors Get Paid for Change Orders in a Timely Manner

Background:

- A recent study by ELECTRI International entitled, "*Addressing Inequitable Payment Practices*," identified multiple findings that affect electrical contractors and the construction industry as a whole. Overall the study confirmed what construction industry stakeholders are all experiencing: payment cycles are slowing down for all industry participants. The impact of this is mostly felt by subcontractors, including electrical subcontractors, who ironically provide the bulk of the short-term capital, yet believe that they have the least amount of leverage to change current practices.

Key Points:

- *Payment Practices are Changing.* Recent trends indicate that payment practices in the industry are negatively affecting business growth, construction prices, and in some cases, have resulted in bankruptcy.
- *Owners are Pushing out Contractual Payment Timeframes.* Typically, between 60 and 90 days, some respondents cited payment terms up to 120 and even 180 days.
- *Contract Terms are Getting Worse for Subcontractors.* Among other reasons, the growing inclusion of "pay if paid" clauses in contracts has forced many subcontractors to take on the role of the banker by providing a disproportionate amount of capital.
- *Retention Release Delays are Increasing.* Due to ambiguous contract terminology, complex close-out procedures, and the withholding of retention throughout multi-phase projects, retention release delays have grown to "unacceptable levels."
- *Payment Incentives and Penalties are Lacking.* This study found "little evidence that any contract terms incentivized owners and general contractors to pay subcontractors promptly." Instead, many subcontractors report being offered the opportunity to be paid quickly in return for a discount.
- *Existing Prompt Payment Laws Generally Do Very Little to Protect Subcontractors.* Overall, subcontractors believe that there are insufficient incentives to motivate general contractors to get them paid promptly. Current law is either nonexistent or when it is present does not have the teeth to encourage compliance.
- *Current Payment Practices Create Risk for the Entire Construction Industry.* The lack of an adequately structured payment process has had a clear ripple effect. Because subcontractors are not able to anticipate payment, they have begun to bid less work, forcing general contractors to bid at higher prices thereby deterring the contracting officers. This unintended result has begun to undermine our industry as a whole.

NECA Asks:

- Co-sponsor the *Small Business Payment for Performance Act* (H.R. 2594) sponsored by Rep. Brian Fitzpatrick (R-PA).

Sponsors:

Five total sponsors (2 Democrats, 3 Republicans)

* *Denotes Original Sponsor of the Legislation*

Rep. Knight, Stephen (R-CA-25)*

Rep. Murphy, Stephanie N. (D-FL-7)*

Rep. Clarke, Yvette (D-NY-9)

Rep. Gonzalez-Colon, Jennifer (R-PR-At Large)

- Federal, state, and local entities all have some form of prompt payment requirements for public works construction projects. While many state governments have taken the steps toward having those laws apply to private work, there is still much work to be done in states that have not addressed prompt payment concerns in the private market.
- State and local governments must do more to address enforcement of prompt payment to subcontractors and suppliers.
- Action must be taken to provide clarity for payment to subcontractors for change order work. Whether this takes the form of concrete definable language in unified contracts or recognizable penalties for delayed payments, the construction industry as a whole will benefit.