

2023-09-07

**Section 00 73 80
Payment Conditions**

Use this Section to specify Payment Conditions for building construction and renovation contracts when Section 00 72 00 - General Conditions of Contract is used.

Normally use this Section when estimated contract cost is \$100,000.00 or greater.

This Master Specification Section contains:

1. This Cover Sheet
2. Specification Section Text:
 1. Related Requirements
 2. Basis of Payment
 3. Statutory Declaration Form
 4. Progress Payments
 5. Holdback
 6. Withholdings
 7. Partial Payment of Holdback
 8. Progressive Payment of Holdback
 9. Final Payment
 10. Federal Goods and Services Tax
 11. Title to and Acceptance of Work
3. Attachments:
 - .1 Infrastructure form number: 00 73 80B-A eForm – Statutory Declaration of Payment Distribution. Refer to Article 3.1 for link.

This Section is not intended to be edited. It should be used as is, in its entirety. Any required modifications must be made by means of Supplementary Conditions. If Supplementary Conditions are deemed necessary, discuss with Infrastructure, Procurement Section.

2023-09-07

**Section 00 73 80
Payment Conditions**

Changes made in this Section Update (2023-09-07)

1. Article 3.1: Updated link to 00 73 80B-A eForm.

1. RELATED REQUIREMENTS

- | | | |
|----|---|-------------------|
| .1 | General Conditions of Contract | Section 00 72 00. |
| .2 | Workers' Compensation Board submittals: | Section 01 33 00. |
| .3 | Contract Price breakdown: | Section 01 33 00. |
| .4 | Cash flow forecast: | Section 01 33 00. |

2. BASIS OF PAYMENT

- .1 When payment is on the basis of a Stipulated Price Arrangement, amounts claimed by Contractor for progress payments shall be consistent with the approved Contract Price breakdown.
- .2 When payment is on the basis of a Unit Price Arrangement, amounts claimed by Contractor for progress payments shall be based on the Contract Unit Prices.

3. STATUTORY DECLARATION FORM

- .1 Use Infrastructure Form number **00 73 80B-A eForm – Statutory Declaration of Payment Distribution** when submitting applications for payment, which is available at: <https://www.alberta.ca/contractor-forms-owned-infrastructure#jumplinks-0>.

4. PROGRESS PAYMENTS

- .1 Contractor shall submit monthly application for payment to the Province.
- .2 Application for payment shall be dated the last day of the payment period agreed to with the Province and the amount claimed shall be for the value, at that date and for that payment period, of:
- .1 work performed, including labour provided and material supplied and set in place, and
 - .2 material stored at the Place of the Work, but not incorporated into the Work.
- .3 Contractor shall submit with application for payment:
- .1 data broken down into general requirements and trade scopes on a line-by-line basis as per the approved contract price breakdown as required under Section 01 33 00 to permit the Province to evaluate amount claimed,
 - .2 completed statutory declaration form with second and subsequent applications for payment, and
 - .3 any additional information requested by the Province.

- .4 The Province will review application for payment and may make adjustments to amount claimed.
 - .1 The Province will notify the Contractor of all adjustments to the application for payment on a line by line basis within 13 calendar days.
 - .2 If adjustments to the application for payment have been made, the Contractor shall adjust the application for payment with the noted adjustments and submit the updated application directly to the Province within 3 calendar days of notification of adjustments.
 - .3 The Contractor shall adjust future application for payments based on the noted adjustments.
- .5 The Province will make payments on application for payment , as adjusted if applicable, on or before 30 calendar days after the initial receipt of the application for payment and as per Article 4.3 to the satisfaction of the Province.
- .6 Should either party fail to make payment as they become due under the terms of the Contract or in an award by arbitration, interest on such unpaid amounts shall become due and payable until payment at two percent (2%) per annum above the prime rate. The interest rate shall be the prime rate of interest quoted by the Canadian Imperial Bank of Commerce (CIBC).

5. **HOLDBACK**

- .1 The Province will hold back 10% from each progress payment referred to in Article 4.
- .2 Contractor may submit to the Province written application for payment of holdback monies after the date of Interim Acceptance of the Work.
- .3 Further to the application of payment, after a period of 45 days from the date of Interim Acceptance of the Work, the Contractor shall obtain and submit the following:
 - .1 Letter of clearance from Workers' Compensation Board,
 - .2 completed statutory declaration form, and
 - .3 any additional information requested by the Province
- .4 Amount of holdback monies payable after the Province has issued a Letter of Interim Acceptance of the Work shall be subject to any deductions and any withholdings permitted by this Contract.
- .5 The Province will release the Contractor's holdback within 14 calendar days of the above conditions being met.

6. WITHHOLDINGS AND DEDUCTIONS

- .1 The Province may withhold all or part of any amount payable to Contractor in order to protect the Province or third parties from loss due to Contractor's:
 - .1 failure to make payments properly to Subcontractors or for labour, materials or equipment,
 - .2 failure to ensure that Subcontractors make payments properly to Sub-subcontractors or for labour, materials or equipment,
 - .3 inability to complete the Work within the Contract Time,
 - .4 inability to complete the Work for the unpaid balance of the Contract Price, or
 - .5 persistent failure to perform the Work in accordance with the Contract Documents.
- .2 Notwithstanding any clause in this Contract, pursuant to the *Public Works Act* (Alberta) the Province may withhold funds from any amount for which the Contractor submits an invoice or a request for payment in an amount:
 - .1 sufficient to pay a claim made pursuant to the *Public Works Act* (Alberta);
 - .2 as determined by the Province, acting reasonably; or
 - .3 sufficient to pay more than one of the above.
- .3 Notwithstanding any article in this Contract, the Province may withhold funds from any amount for which the Contractor submits an application for payment in an amount:
 - .1 for which the Consultant adjusts an application for payment for work the Consultant deems, on a line-by-line basis, has not been sufficiently completed for the amount claimed;
 - .2 equal to that which is the subject of the Dispute Resolution Process pursuant to this Contract;
 - .3 up to twice the Province's estimate of the cost to the Province of remedying Work not performed in accordance with this Contract including non-conforming Work that may have been accepted under a previous payment;
 - .4 up to twice the Province's estimate of the cost to the Province of remedying any uncorrected defects described in the Letter of Interim Acceptance of the Work;
 - .5 of such sums as permitted by law; or
 - .6 of such sums as may be required to satisfy:
 - .1 any unpaid and overdue account that is enforceable against the Province,
 - .2 any penalty, fee, order, award, or judgment which may be enforced by the Court of King's Bench of Alberta,
 - .3 other third party claims related to the Work,
 - .4 costs incurred by the Province to satisfy any of the matters noted in this Contract plus costs on a solicitor and own client basis.

.4 Notwithstanding any section of this Contract, the Province may deduct from all payments to the Contractor such amounts as are required by the *Income Tax Act (Canada)*.

.5 more than one of the above noted matters.

7. PARTIAL PAYMENT OF HOLDBACK

.1 When partial utilization of the Work by the Province, as described in Section 01 11 00 – Summary of Work, is required and partial payment of holdback is a condition of such partial utilization, the holdback, withholding, and conditions in Articles 5, 6 and 11 shall apply to the part of the Work to be utilized.

8. PROGRESSIVE PAYMENT OF HOLDBACK

.1 Progressive payment of holdback is applicable to Contractor's portion of the Work or a Subcontractor's work, but excludes the Contractor's general requirements.

.2 Although the *Prompt Pay and Construction Lien Act (Alberta)* may not apply, when the Contractor or a Subcontractor is of the opinion that their portion of the Work or the work of that Subcontractor is substantially performed as described in the *Prompt Pay and Construction Lien Act (Alberta)* for Contractor's or Subcontractor's part of the Work, the Contractor or that Subcontractor shall deliver to the Province, with a copy to the Consultant and the Subcontractor or the Contractor as the case may be:

.1 a certificate of substantial performance of the Contractor's or Subcontractor's portion of the Work, complete with the issue date, for verification by the Province, and

.2 a comprehensive list of items to be completed or corrected, or provided; failure to include an item on the list does not alter the Contractor's and the Subcontractor's responsibility to complete the work of that subcontract.

.3 Within 3 days of issuing of the certificate of substantial performance of the Contractor's or a Subcontractor's portion of the Work, the Contractor or Subcontractor shall post a signed copy of the certificate in a conspicuous place on the job site.

.4 The Province will review that portion of the Work and will promptly, and in any event, no later than 20 calendar days after receipt of the certificate of substantial performance of that portion of the Work, and of the list of items to be completed or corrected:

.1 verify the validity of the certificate of substantial performance of the portion of the Work and advise the Subcontractor, the Contractor and the Province, in writing, or

.2 advise the Subcontractor, the Contractor and the Province, in writing, that the portion of the Work is not substantially performed and give reasons why.

.5 After the Province verifies the validity of the certificate of substantial performance:

- .1 on expiry of a period of 45 calendar days from the date of issue of the certificate of substantial performance of the portion of the Work, and
 - .2 any *Public Works Act* (Alberta) claims, or other third party claims related to the Work and received by the Province, being resolved or addressed and a course of action being agreed to between the Province and the Contractor,
- the Contractor shall, with the Contractor's next regular application for payment, submit:
- .1 an application for payment of the Contractor's or Subcontractor's portion of the holdback amount using Infrastructure's Holdback Release form which is available at <https://www.alberta.ca/contractor-forms-owned-infrastructure#jumplinks-0>, and
 - .2 an AI/MS Form of 'Statutory Declaration' completed by the Subcontractor,
 - .3 Worker's Compensation Board Clearance Letter,
 - .4 Contractor Letter of Declaration, and
 - .5 Proof of posting certificate of substantial performance.
- .6 Notwithstanding the provisions of the preceding paragraphs, and notwithstanding the wording of such certificates, the Contractor shall ensure that such subcontract work or Products are protected pending the issuance of a final certificate for payment and be responsible for the correction of defects or work not performed regardless of whether or not such was apparent when such certificates were issued.
- .7 In accordance with Section 00 72 00, Article 6.3 – Warranty, substantial performance of a Subcontractor's work or subsequent payment of its holdback does not relieve the Subcontractor of its warranty obligations for a period of one (1) year from the date of Interim Acceptance of the Work, or such other periods as may be specified for parts of the Work.

9. FINAL PAYMENT

- .1 The unpaid balance of the Contract Price will be payable by the Province to the Contractor provided:
 - .1 the Province has issued a Letter of Final Acceptance of the Work,
 - .2 any disputes have been resolved or addressed,
 - .3 third party claims received by the Province have been resolved, or addressed and a course of action agreed to between the Province and Contractor, and
 - .4 final adjustment of accounts has been rendered and agreed to between the Province and Contractor.
- .2 Contractor shall submit written application for final payment, including:
 - .1 Letter of clearance from Workers' Compensation Board,
 - .2 completed statutory declaration form, and

.3 statement of final adjustment of accounts.

.3 Notwithstanding requirements of Article 8.1, the Province and Contractor may agree to defer payment for those portions of the Work which cannot be completed due to circumstances beyond Contractor's control.

10. FEDERAL GOODS AND SERVICES TAX

.1 Each application for payment shall exclude any amount for federal Goods and Services Tax.

.2 The Province represents and warrants that, as the purchaser of the Services provided under this Contract, no amount payable under this Contract is subject to the Goods and Services Tax (GST) or Harmonized Sales Tax (HST) under Part IX of the *Excise Tax Act* (Canada) as amended. The Government of Alberta's GST Registration Number is 1240 72513 RT0001.

11. TITLE TO AND ACCEPTANCE OF WORK

.1 Contractor warrants that title to work and materials covered by any application for payment will pass to the Province, at the time of payment, free and clear of all claims, interests and encumbrances.

.2 Contractor further warrants that materials, stored at the Place of the Work and for which payment has been received, shall not be removed from the Place of the Work and shall be kept secure and protected.

.3 Payments made by the Province shall not be construed as an acceptance that the Work, Products, or any part thereof is complete, is satisfactory or is in accordance with the Contract Documents.

END OF SECTION