

Contract Modernization

Withholdings and Set-Off

Alberta Infrastructure has listened to its industry partners. Our new, modernized Consulting Services contracts have added clarity and are better aligned with industry standard.

Disclaimer: This document is for information and context only. It is not legal advice and must not be used as a substitute for reviewing the applicable contract, legislation, or seeking professional legal counsel. Where interpretation is required, the executed contract and governing law prevail.

What we heard

Industry partners sought greater transparency and predictability in the administration of payment remedies, including when amounts could be withheld and how related issues would be resolved.

Industry partners wanted greater transparency regarding:

- When amounts could be withheld from payments.
- How withholding amounts would be determined.
- Whether consultants would have an opportunity to address concerns before funds were withheld.
- The circumstances in which the Province could recover amounts through set-off.

What changed

The modernized Consulting Services Agreement introduces a clearer and more structured framework for Withholdings and Set-off.

Key updates include:

- Clearly defining the specific circumstances in which the Province may withhold payment, including non-performance, unresolved design errors or omissions, certain third-party claims, unpaid subconsultants, and other amounts owing under the Agreement.
- Requiring all Withholdings to be calculated in Good Faith and linked to a reasonable estimate of the potential loss, cost, or exposure faced by the Province.
- Requiring the Province to offer a discussion with the Consultant before applying a Withholding or Set-off exceeding \$10,000, helping both parties work toward resolution before more significant payment actions occur.
- Requiring the Province to provide notice explaining both the reason for the Withholding and how the amount was calculated.
- Clarifying that Withholdings will be released once the underlying issue has been resolved, acting reasonably and in Good Faith.
- Limiting Set-off to amounts that have either been finally determined to be payable to the Province or arise from specific statutory claims paid by the Province.

Why we made the change

Predictable payment processes are important for consultants managing professional services contracts.

The updated provisions are intended to balance two important objectives:

- Providing the Province with appropriate tools to protect public funds when legitimate concerns arise regarding performance, payment obligations, or potential claims.
- Providing Consultants with greater transparency, fairness, and opportunities to resolve issues before significant financial remedies are applied.

By clearly defining when Withholdings and Set-off may occur, requiring Good Faith decision-making, and establishing notification and discussion requirements, the modernized contract creates a more predictable and transparent process for both parties. This approach supports accountability while encouraging early problem-solving and maintaining productive working relationships throughout project delivery.