

Contract Modernization

Holdback, Withholding, and Set-off

Alberta Infrastructure has listened to its industry partners. Our new, modernized 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

Holdback, Withholding, and Set-off provisions within Alberta Infrastructure contracts required clarification. Concerns were raised by Industry regarding these provisions' impacts on the contractor and project cashflow.

Clarifications

Under the new modernized construction contracts, there are provisions for holdbacks and instances where the Province can withhold payments until certain conditions are met. This is a financial safeguard to ensure that all work is completed to the standards outlined in the contract, before full payment is issued.

Holdback is a fixed percentage of the value of each progress payment the Province holds back from each payment, separate from other Withholdings, Deductions or Set-Offs. It is not a statutory lien holdback.

Withholdings are created in order to protect the Province from liability, costs or expenses in relation to certain risks outlined in the contract including, without limitation, deficiencies, defects, non-performance, and incomplete warranty work. The amounts permitted to be withheld varies depending on the reason for the withholding and are set out in the contract. As the underlying issue that caused the Withholdings is corrected, the respective Withholdings may be released. If the contractor fails to correct the issue, the Withholdings may be converted into Set offs and the funds may be used to correct the underlying issue using a different contractor, if applicable. Withholdings may also apply for third party claims including for any Public Work Act claims filed against the project; such Withholdings are released once the claims are withdrawn or settled.

Set-off is a contractual right allowing Alberta Infrastructure to offset amounts the contractor owes to the Province or Alberta Infrastructure's costs incurred remedying defects and defaults. Funds may be Set-off against any Payments due to the contractor or other Holdbacks and Withholdings maintained under the contract. Funds owed may also be Set-off against funds owing to the contractor under other provincial contracts and projects. The ability to set-off against other contracts the contractor has with the Province is legislated in Section 99 *Financial Administration Act* (FAA).

Intent

Alberta Infrastructure intends to administer contractual Holdbacks, Withholdings, and Set-off provisions in a fair, transparent, and principled manner, using these mechanisms only as appropriate under the contract.

Our primary objective is to work with our partners in Industry to build the infrastructure that Albertans need. When issues arise, we will work with contractors to address concerns early and constructively to collaboratively resolve them in Good Faith. Holdbacks, Withholdings and Set-offs may be applied when necessary to protect the Province's interests but only as permitted by the Agreement and acting in Good Faith. This approach supports effective contract management while maintaining positive, solution-focused relationships with our partners.