

RESOLUTION NO. 2566

A RESOLUTION OF THE NEW YORK STATE ENVIRONMENTAL
FACILITIES CORPORATION ADOPTING AMENDED AND
RESTATED PROMPT PAYMENT GUIDELINES OF THE
CORPORATION

WHEREAS, pursuant to Section 2880 of the Public Authorities Law, the Corporation is required to promulgate, and is empowered to amend, rules and regulations detailing its prompt payment policy; and

WHEREAS, the Corporation adopted Prompt Payment Guidelines to serve as its prompt payment policy; and

WHEREAS, the Corporation desires to restate and update its Prompt Payment Guidelines to be consistent with current law and Corporation procedures.

NOW, THEREFORE, BE IT RESOLVED BY THE DIRECTORS OF THE NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION, AS FOLLOWS:

Section 1. The Prompt Payment Guidelines of the Corporation, a copy of which is annexed hereto, are hereby approved and adopted, as amended.

Section 2. This Resolution shall take effect immediately upon its adoption.

SIGNED BY: _____ /S/

ANNETTE M. HARRIS
SECRETARY TO THE CORPORATION

**New York State Environmental Facilities Corporation
Prompt Payment Guidelines**

June 7, 2018

I. Introduction

In accordance with Section 2880 of the Public Authorities Law, these guidelines have been adopted by the New York State Environmental Facilities Corporation, a public benefit corporation, in order to ensure that invoices are paid in a timely manner. These guidelines set forth standards for the payment of invoices within a specified period of time and for interest penalties to be paid by the Corporation when payments are not made accordingly.

II. Definitions

The following terms are defined herein as follows.

- A. **“Contract”** means an enforceable agreement entered into by a Contractor and the Corporation, including but not limited to the following types or categories: (1) written contracts and purchase orders for goods; (2) written contracts and purchase orders for services, including but not limited to public utility services; and (3) written lease agreements.
- B. **“Contractor”** means any person, partnership, firm, private corporation, or association, including public utilities and not-for-profit organizations:
- (1) selling materials, equipment, or supplies or leasing property or equipment to the Corporation;
 - (2) constructing, reconstructing, rehabilitating or repairing buildings for or on behalf of the Corporation; or
 - (3) rendering or providing services pursuant to a Contract.
- C. **“Corporation”** means the New York State Environmental Facilities Corporation.
- D. **“Designated Payment Office”** means the office designated by the Corporation to which a Proper Invoice is to be submitted by a Contractor. The Corporation’s designated payment office is located at: New York State Environmental Facilities Corporation, Accounting Unit, 625 Broadway, Albany, New York 12207-2997.
- E. **“Payment Date”** means the date on which a check for payment pursuant to a Contract is dated or an electronic payment pursuant to a Contract is submitted.
- F. **“Prompt Payment”** means payment of a debt due and owing by the Corporation before interest accrues pursuant to these Prompt Payment Guidelines.

- G. **“Prompt Payment Guidelines”** means this document, adopted by the Corporation pursuant to Public Authorities Law § 2880(2) which requires the Corporation to promulgate rules and regulations detailing its Prompt Payment policy.
- H. **“Proper Invoice”** means a written request for a Contract payment that is submitted by a Contractor setting forth the description, price and quantity of goods, property, or services delivered or rendered, in such form and supported by such other substantiating documentation as the Corporation may reasonably require.
- I. **“Receipt”** means (1) the date on which an invoice or Proper Invoice is actually received at the Corporation’s Designated Payment Office, or (2) the date on which the Corporation receives the purchased goods, property, or services covered by the invoice or Proper Invoice, whichever is later.
- J. **“Required Payment Date”** means the date by which a Contract payment must be made in order for the Corporation not to become liable for interest payments, pursuant to these Prompt Payment Guidelines.
- K. **“Set-off”** means the reduction by the Corporation of payment due to a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to the Corporation.
- L. **“Small Business”** means a business whose primary place of business is in the State, has a significant business presence in the State, is independently owned and operated, not dominant in its field, and employs no more than two hundred employees at the time of payment. The small business shall, upon request, provide the Corporation with sufficient documentation to reflect and confirm its status as a small business.
- M. **“State”** means New York State.

III. Applicability

These Prompt Payment Guidelines apply to all Contracts and shall be incorporated into and made a part of such Contracts.

IV. Prompt Payment Procedure

To request payment under a Contract, Contractor must submit a Proper Invoice to the Designated Payment Office. The Corporation shall make payment to Contractor for the amount of the Contract payment due, within thirty calendar days, excluding legal holidays, of Receipt of a Proper Invoice to its Designated Payment Office.

Except as otherwise set forth in Section VI, if the Corporation fails to make payment within the thirty calendar day timeframe set forth in this Section IV, the Corporation shall be liable to the Contractor for interest, calculated pursuant to Section V.

The Corporation will make every effort to make payment to Contractors who are Small Businesses within fifteen calendar days, excluding legal holidays, of Receipt of a Proper Invoice to the

Corporation's Designated Payment Office; however, failure to do so will not result in an interest penalty.

V. Interest Payment

- A. Interest shall be computed at the rate equal to the overpayment rate, set by the Commissioner of Taxation and Finance pursuant to Tax Law § 1096(e)(1), in effect on the date the interest is paid.
- B. Interest payments on amounts due to a Contractor pursuant to these Prompt Payment Guidelines shall be paid to the Contractor for the period beginning on the day after the Required Payment Date and ending on the Payment Date, and shall be paid within seven calendar days after the Payment Date.
- C. The Corporation's obligation to make an interest payment to a Contractor pursuant to these Prompt Payment Guidelines shall not extend beyond the date of a notice of intention to file a claim, the date of a notice of claim, or the date a legal action is commenced for the payment of such interest, whichever occurs first.
- D. The Corporation shall not be liable for payment of interest when such interest as computed herein is less than ten dollars.
- E. The following sources of funds are available to the Corporation to pay an interest penalty:
 - 1. "Agency Fund" includes revenues earned by the Corporation for the services it provides to municipalities, private sector clients, and governmental entities unrelated to the State Revolving Funds;
 - 2. "Clean Water State Revolving Fund (CWSRF)" includes revenues earned by the Corporation in connection with the operation and general administration of the CWSRF; and
 - 3. "Drinking Water State Revolving Fund (DWSRF)" includes revenues earned by the Corporation in connection with the operation and general administration of the DWSRF.
- F. In the event that an interest payment is made by a Contractor in the course of transacting business with any entity other than the Corporation, such interest shall not be an obligation of the Corporation and the Corporation shall not reimburse the Contractor for such interest.

VI. Exceptions to Prompt Payment Procedure

A. Payment at Predetermined Intervals

When a Contract provides that a Contractor will be paid at predetermined intervals without having to submit an invoice for each such scheduled payment, for the purposes of determining eligibility for payment of interest and subject to the exceptions identified in Section VI(C), the date by which Contract payment must be made in order for the Corporation not to become liable for interest payments shall be the payment due date specified in accordance with the Contract.

B. Ineligible Payments

The Prompt Payment Guidelines do not apply to payments due and owing by the Corporation:

1. under the Eminent Domain Procedure Law;
2. as interest allowed on judgments rendered by a court pursuant to any provision of law other than Public Authorities Law § 2880;
3. to the federal government; to any State agency or its related instrumentalities; to any duly constituted unit of local government including but not limited to, counties, cities, towns, villages, school districts, special districts, or any of their related instrumentalities; to any public authority or public benefit corporation; or to employees of the Corporation when acting in, or incidental to, their public employment capacity;
4. in situations where the Corporation exercises a legally authorized Set-off against all or part of the payment due the Contractor; or
5. where failure to make such payment is the result of a lien, attachment or other legal process against the money due the Contractor.

C. Extension of Time to Pay Invoice

Any time taken to satisfy or rectify any of the following facts or conditions shall extend the date by which the Contract payment must be made.

1. Invoice Defects
 - a. When there are (1) defects in the delivered goods, property, or services, (2) defects in the invoice, or (3) suspected improprieties of any kind, if the Corporation notifies Contractor of same within fifteen calendar days after Receipt of an invoice, the thirty calendar days, excluding legal holidays, that the Corporation has to make Contract payment will not begin to run until the Contractor corrects the defects or improprieties.
 - b. If the Corporation fails to notify a Contractor of such defects or suspected improprieties within fifteen calendar days of Receipt of an invoice, the date by which Contract payment must be made shall be reduced by the number of days in excess of fifteen that the Corporation took after Receipt of an invoice to notify the Contractor of the defects or suspected improprieties.
2. Inspection or Audit
 - a. When, in accordance with specific statutory or contractual provisions, payment must be preceded by an inspection period or by an audit to determine the resources applied or used by a Contractor in fulfilling the terms of the Contract, the date by which Contract payment must be made

shall be extended by the lesser of (1) the number of days provided for the inspection or audit, or (2) the number of days actually utilized for the inspection or audit.

- b. Whenever in the course of an inspection or audit, the Corporation determines that there is a defect in the delivered goods, property or services, or defects in the invoice, or suspected improprieties of any kind, the Corporation shall notify the Contractor of the defects or suspected improprieties no later than the expiration of the inspection or audit period.
- c. If the Corporation notifies the Contractor of such defects or suspected improprieties prior to the expiration of the inspection or audit period, the date by which payment must be made shall be extended by the number of days the Contractor takes to resolve or correct the defects or improprieties. If the Corporation fails to notify the Contractor of such defects or suspected improprieties prior to the expiration of the inspection or audit period, the date by which payment shall be made shall be determined in accordance with the preceding sentence and reduced by the number of days after the expiration of the inspection or audit period which the Corporation took to notify the Contractor of the defect or suspected improprieties.

3. Lack of Funds

If the funds required to authorize Contract payment have not been appropriated by the State or budgeted by the Corporation, the date by which Contract payment must be made shall be extended by the number of days for the necessary State government appropriation or Corporation budgeted funds to be enacted or made available.

4. Governmental Review of Invoice

When a Proper Invoice must be examined by a governmental entity other than the Corporation prior to payment, the date by which Contract payment must be made shall be extended by the number of days taken for the governmental entity's examination.

VII. Annual Report

- A. The Corporation shall annually prepare a report on the scope and implementation of these Prompt Payment Guidelines which shall include, but not be limited to:
 - 1. A listing of the types or categories of Contracts which the Corporation entered into during the twelve month period covered by the report, together with a brief indication of whether each such type or category of Contract was subject to the Prompt Payment Guidelines and, if not, why not;
 - 2. The number and amounts of interest payments made for Contracts arranged according to each such type or category;

3. The number of interest chargeable days and the total number of days taken to process each late Contract payment; and
 4. A summary of the principal reasons that such late payments occurred.
- B. Within ninety days after the completion of its fiscal year, the Corporation shall file copies of the report with the State Comptroller, the State Director of the Budget, the Chair of the Senate Finance Committee, and the Chair of the Assembly Ways and Means Committee.