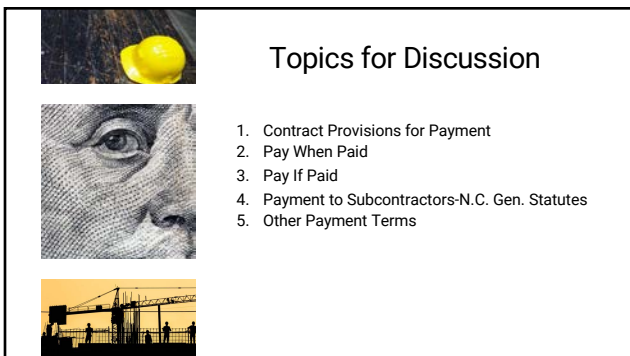




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Contract Provisions for Payment

- Question, what state law applies to your contract?
 - N.C. Gen. Stat. § 22B-2
 - N.C. Gen. Stat. § 22B-3
 - A State other than North Carolina?
- Did you agree to be bound by the contract terms of the general contractor and subcontractor?
 - Flow down provisions are valid in NC
 - Courts have consistently enforced these provisions

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Contract Provisions for Payment- Flow Down Provision

"The Contract Documents consist of this Agreement, and any Exhibits attached, the Agreement between the Owner and Contractor, the Conditions of the Contract between the Owner and the Contractor, Drawings, Specifications all Addenda issued prior to execution of this Agreement between the Owner and Contractor, and all Modifications issued subsequent thereto. The Contract Documents are part of this Agreement."

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Flow Down Provision Implications

Subcontractor will be bound by the Prime Contract with regard to the following, among others:

- Arbitration requirement
- Claims/disputes processes
- Delays
- Notice

*All of this impacts your ability to get paid
 *Always request a copy of the Prime Contract

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Pay When Paid

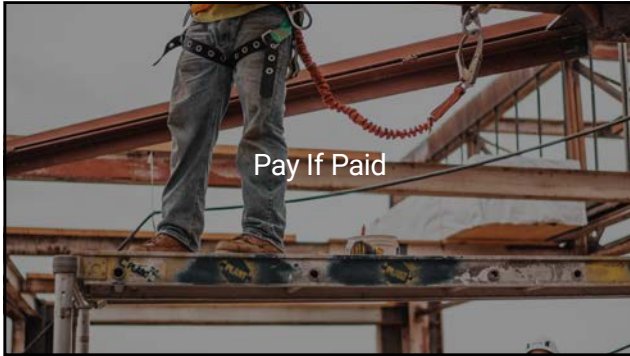
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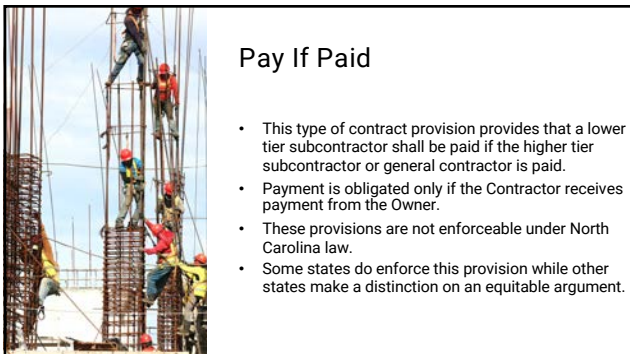
Pay When Paid

- These are contract provisions that provide that the contractor is obligated to pay its subcontractors after receipt of payment from the Owner.
- If the Owner is delayed in paying the contractor, the contractor is not obligated to pay the subcontractor.
- Unenforceable in North Carolina, even if in writing.

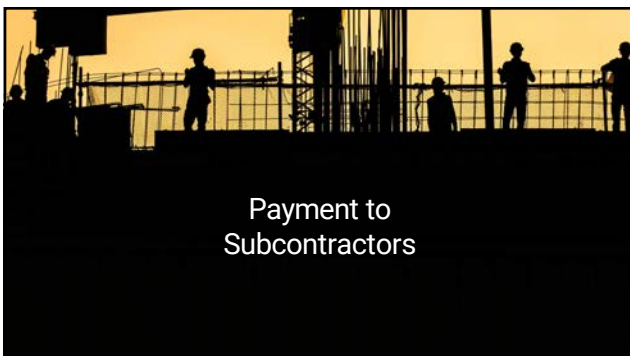
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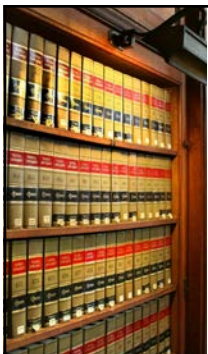
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Payment to Subcontractors

- What State law applies?
- What does the contract language provide regarding the state law?

13

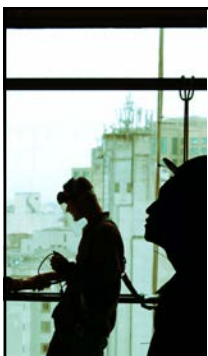


Payment to Subcontractors

NCGS 22C-2

- Performance by a subcontractor in accordance with the contract provisions entitles the subcontractor to payment.
- Payment by the Owner to a Contractor is not a condition precedent for payment to a subcontractor.
- Any agreement to the contrary is unenforceable.

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Payment to Subcontractors

NCGS 22C-3

- "When a subcontractor has performed in accordance with the provisions of his contract, the contractor shall pay to his subcontractor and each subcontractor shall pay to his subcontractor, within 7 days of receipt by the contractor or subcontractor of each periodic or final payment, the full amount received for such subcontractor's work and materials based on work completed or services provided under the subcontract."

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Payment to Subcontractors

NCGS 22C-5

- If not paid within 7 days per 22C-3, the unpaid balance accrues interest at 1% per month after 7 days

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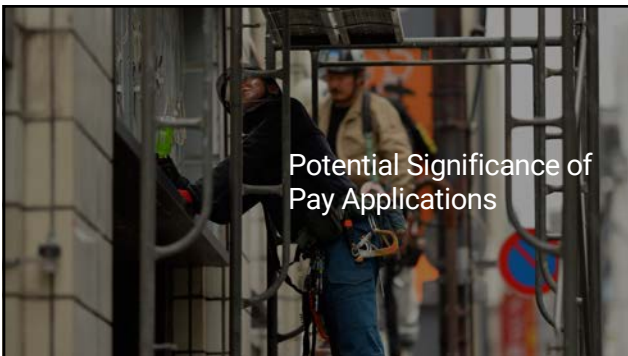


Payment to Subcontractors – Public Projects

NCGS 143.134.1(b)

- Payment is due from the prime contractor to the subcontractor within 7 days of the prime's receipt of payment
- Interest accrues at 1% per month after 7 days
- The maximum amount of retainage is 5%

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Potential Significance of Pay Applications


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Potential Significance of Pay Applications

- Generally is a pass through of costs for materials and labor from a lower tier subcontractors to the general contractor and then to the Owner.
- The general contractor uses the lower tier subs pay applications for payment from the owner.

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Potential Significance of Pay Applications

AIA G702 Example

"The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates of Payment were issued and payments received from the Owner, and the current payment shown herein is now due."

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Questions?

If you have any questions or comments, please let us know.

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