
Payment Due

Except as provided below, a payment by the ESC under a contract executed on or after September 1, 1987, is overdue on the 31st day after the later of:

1. The date the ESC received the goods under the contract;
2. The date the performance of the service under the contract is completed; or
3. The date on which the ESC receives an invoice for the goods or services.

Exception

A payment under a contract executed on or after September 1, 1993, owed by an ESC whose board meets only once a month or less frequently is overdue on the 46th day after the later event described above. The renewal, amendment, or extension of a contract executed on or before September 1, 1993, is considered to be the execution of a new contract.

Gov't Code 2251.021

Interest

A payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of one percent and the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Interest on an overdue payment stops accruing on the date the ESC or vendor mails or electronically transmits the payment.

The unpaid balance of a partial payment made within the prescribed period accrues interest, unless the balance is in dispute.

Gov't Code 2251.025,.029

The ESC shall:

1. Compute interest imposed on the ESC.
2. Pay the interest at the time payment is made on the principal.
3. Submit the interest payment with the net amount due for the goods or service.

The ESC may not:

1. Require a vendor to petition, bill, or wait an additional day to receive the interest due.

2. Require a vendor or subcontractor to agree to waive the vendor's or subcontractor's right to interest as a condition of the contract.

Gov't Code 2251.027

Early Payment Discount

The ESC should take advantage of an offer for an early payment discount. An ESC may not take an early payment discount unless the ESC makes a full payment within the discount period. If the ESC takes an early payment discount later, the unpaid balance accrues interest beginning on the date the discount offer expires.

Gov't Code 2251.030

Exceptions

These provisions do not apply to payments made by the ESC, vendor, or subcontractor if:

1. There is a bona fide dispute between the ESC and a vendor, contractor, subcontractor, or supplier about the goods delivered or the services performed that causes the payment to be late;
2. There is a bona fide dispute between a vendor and a subcontractor or between a subcontractor and its supplier about the goods delivered or the services performed that causes the payment to be late;
3. The terms of a federal contract, grant, regulation, or statute prevent the ESC from making a timely payment with federal funds; or
4. The invoice is not mailed to the person to whom it is addressed in strict accordance with any instructions on the purchase order relating to the payment.

Gov't Code 2251.002

Disputed Payment

The ESC shall notify a vendor of an error in an invoice submitted for payment by the vendor not later than the 21st day after the date the ESC receives the invoice. If a dispute is resolved in favor of the vendor, the vendor shall receive interest on the unpaid balance beginning on the date that the payment for the invoice is overdue. If a dispute is resolved in favor of the ESC, the vendor shall submit a corrected invoice that shall be paid within 30 days of receipt. The unpaid balance accrues interest if it is not paid by the appropriate date. *Gov't Code 2251.042*

Vendor Remedy for Nonpayment

A vendor may suspend performance required under a contract with the ESC if the ESC does not pay the vendor an undisputed amount within the time limits provided above and the vendor gives the ESC

written notice informing the ESC that payment has not been received and stating the intent of the vendor to suspend performance for nonpayment.

The vendor may not suspend performance before the tenth day after the date the vendor gives this notice.

A vendor who suspends performance is not:

1. Required to supply further labor, services, or materials until the vendor is paid the amount provided for under Government Code Chapter 2251, plus costs for demobilization and remobilization; or
2. Responsible for damages resulting from suspending work if the governmental entity with which the vendor has the contract has not notified the vendor in writing before performance is suspended that payment has been made or that a bona fide dispute for payment exists.

A notification under Government Code 2251.051(c)(2) that a bona fide dispute for payment exists must include a list of the specific reasons for nonpayment. If a reason specified is that labor, services, or materials provided by the vendor or the vendor's subcontractor are not provided in compliance with the contract, the vendor is entitled to a reasonable opportunity to cure the noncompliance of the listed items; or offer a reasonable amount to compensate for listed items for which noncompliance cannot be promptly cured.

Gov't Code 2251.051