NECA Government Affairs

Reform the Administration of Change Orders on Federal Construction Projects

A 2024 study by ELECTRI International, “Managing to Ensure Fair Outcomes for Electrical Contractors for Out-of-Sequence Work & Schedule Compression,” surveyed more than 150 electrical contracting professionals and identified critical findings that affect electrical contractors and the greater construction industry. Overall, the study confirmed what construction industry stakeholders are all experiencing: Payment cycles are slowing down for all industry participants. Subcontractors feel the most impact, including electrical subcontractors, who ironically provide the bulk of the short-term capital yet believe they have the least leverage to change current practices.

KEY POINTS

Payment practices are changing. Recent trends indicate that payment practices in the industry negatively affect business growth and construction prices, resulting in bankruptcy in some cases.

Owners are pushing out contractual payment timeframes. While payment terms typically range between 60 and 90 days, some contractors now face payment terms extending to 120 and even 180 days. Industry data shows that 82% of contractors now face payment delays over 30 days, with average payment times reaching 74 days, making construction the slowest-paying industry in the U.S.

Contract terms are getting worse for subcontractors. Among other reasons, the growing inclusion of “pay if paid” clauses in contracts have forced many subcontractors to take on the role of the banker by providing a disproportionate amount of capital. The 2024 ELECTRI study identified that delayed work by other trades is the #1 cause of both out-of-sequence work and schedule compression, yet subcontractors bear the financial burden of these delays caused by others.

Payment incentives and penalties are lacking. There is little evidence that any contract terms incentivize owners and general contractors to pay subcontractors promptly. Instead, many subcontractors report being offered the opportunity to be paid quickly in return for a discount.

Existing prompt payment laws generally do very little to protect subcontractors. Overall, subcontractors believe incentives are insufficient to motivate general contractors to pay them promptly. Current law is either nonexistent or does not have the teeth to encourage compliance when present. While the Federal Prompt Payment Act requires government to pay prime contractors within 14 days and primes to pay subcontractors within 7 days of receiving payment, enforcement remains weak and the Act does not create a private right of action for subcontractors to sue prime contractors.

Current payment practices create risk for the construction industry. The lack of an adequately structured payment process has had a ripple effect. Because subcontractors cannot anticipate payment, they have begun to bid on less work, forcing general contractors to increase prices, thereby deterring project owners and contracting officers. In 2024, 97% of general contractors increased bid prices to account for payment delays and financing costs, with payment delays driving up costs by 14% of total construction spending. Nearly all general contractors are now tapping into personal retirement accounts and credit cards just to pay their teams while waiting for payment.

NECA ASKS

The Federal government must do more to address the enforcement of prompt payment to subcontractors and suppliers and should support legislation that would:

- **Require prompt partial payment to contractors for change orders, with mandatory flow-down provisions ensuring subcontractors receive timely payment for completed work and additional material costs.**
- **Establish maximum payment timeframes (30-45 days) for federal construction projects to prevent the extension of payment terms to 120-180 days.**
- **Create meaningful penalties for late payment that incentivize compliance rather than offering discounts for early payment.**