

# Getting Paid in the Construction Industry

## Tips for small business subcontractors



Small  
Business  
Commissioner

### Protect your business

The construction industry is one of our State's biggest sectors and subbies are critical to the industry's success. Like in any sector, issues can arise including not being paid on time (or at all), running out of cash, and contract issues. This fact sheet provides some tips to help you get paid and protect your business.

### Have a written contract before you start work

This should include a dispute resolution clause that outlines a clear process for any disagreement, termination or late payment. It should also provide clear payment terms and conditions. Obtain legal advice so you understand your obligations and are protected. Check the contract price to ensure the project is profitable.

### Do your due diligence

When doing major work for another business, look up their Australian Business Number (ABN) details to make sure they're legitimate and still in operation, and confirm the information they've given you is true via the ASIC registers. Be aware of signs that could indicate a head contractor is in financial difficulty. Also check there is no history of 'phoenixing'.

- Lookup ABN at: [abr.business.gov.au](http://abr.business.gov.au)
- ASIC register: [asic.gov.au/online-services/search-asic-s-registers/](http://asic.gov.au/online-services/search-asic-s-registers/)

### Secure your interests

Consider asking for a personal guarantee or registering a security on the Personal Property Securities Register (PPSR) when negotiating the contract.

- PPSR: [www.ppsr.gov.au](http://www.ppsr.gov.au)

### Progress payments

Ensure you get paid by knowing and enforcing your rights to receive 'progress payments' for work delivered under the NSW Building and Construction Industry Security of Payment Act (SOPA).

- SOPA: [www.fairtrading.nsw.gov.au/trades-and-businesses/construction-and-trade-essentials/security-of-payment](http://www.fairtrading.nsw.gov.au/trades-and-businesses/construction-and-trade-essentials/security-of-payment)

### Manage revisions and changes

Ensure that all requests for variations to the contract, including for changes to works, price or delivery date, are made to you in writing, and agreed by both parties.

### Keep good records

Keep your financial records in order and up to date, including hiring a book-keeper or accountant and using financial software.

### Manage your invoices well

Ensure you issue invoices with all the necessary information as soon as you are able to in accordance with the contract terms. If there are no specific times in the contract, issue an invoice at the end of each month.

# What to do if something goes wrong

## If you don't get paid on time

It is always best to act quickly to minimise the risk to your business.

The NSW Small Business Commission has guidance, including information on the Security of Payment Act (SOPA) which is designed to legally protect subcontractors: [www.smallbusiness.nsw.gov.au/get-help/building-and-construction-industry/advice-building-and-construction-subcontractors](http://www.smallbusiness.nsw.gov.au/get-help/building-and-construction-industry/advice-building-and-construction-subcontractors)

As soon as a payment becomes overdue, try to find out why payment is delayed. Ensure that you have properly made a payment claim and consider applying for adjudication. NSW Fair Trading has information on your rights and how to make a claim under SOPA: [www.fairtrading.nsw.gov.au/trades-and-businesses/construction-and-trade-essentials/security-of-payment](http://www.fairtrading.nsw.gov.au/trades-and-businesses/construction-and-trade-essentials/security-of-payment)

If you are sub-contracting on a government project, you'll be paid by whoever contracted you. If you haven't been paid on time, report it immediately to the government agency responsible for the primary contract.

## If you have a payment issue that cannot be immediately resolved, consider the following options:

- Assess your rights under SOPA and consider applying for third party adjudication.
- Consider making a payment withholding request to the principal contractor (this can only be done if you've made an adjudication application).
- If there is a dispute about your work or matters unrelated to payment, then consider using the NSW Small Business Commission's mediation service.
- Seek legal advice and consider going to court.



## Video tips for subcontractors

Take a look at the Commission's short video guides on getting paid and other tips for subcontractors in the construction industry in NSW at

[www.smallbusiness.nsw.gov.au/construction-industry-videos](http://www.smallbusiness.nsw.gov.au/construction-industry-videos)

### Additional contacts and information

NSW Fair Trading can be contacted for advice on **13 32 20**

Contact the Small Business Commission for free strategic advice on disputes on **1300 795 534**

Visit [www.nsw.gov.au/mental-health-at-work](http://www.nsw.gov.au/mental-health-at-work) for mental health support.