

# Financial Protection for Subcontractors

## Financial Protection for Subcontractors, what is it?

Financial Protection for Subcontractors is a provision of the Government of Yukon [Contracting and Procurement Regulations](#). When a subcontractor<sup>i</sup> provides goods or services to a Government of Yukon Public Works<sup>ii</sup> construction project and is not paid by the general contractor<sup>iii</sup>, Financial Protection for Subcontractors can help subcontractors receive that payment.

Government of Yukon will retain the amount of the subcontractor claim(s), from money remaining to be paid to the contractor for work completed under the terms of their contract with Government of Yukon. The amount retained by Government of Yukon for subcontractor claims cannot exceed the value of payments still owed to the contractor, regardless of the total value of all subcontractor claims.

## Financial Protection for Subcontractors, who is involved?

- A contractor contracting directly with Government of Yukon for a public work.
- A subcontractor contracting with the contractor for components of the work under the public works contract.
- The Government of Yukon department of Highways and Public Works Procurement Support Centre.
- The Government of Yukon department contracting with the contractor for delivery of the public work (contracting department).
- The Government of Yukon department of Justice.

## Eligibility:

- Any subcontractor who has not been paid by the contractor an amount **due** under the subcontractor's agreement with the Contractor for labour, material, equipment or services rendered is eligible to file a claim with the Procurement Support Centre.
- Subcontractors of subcontractors (sub-subs) are not eligible to file a claim, nor can any claims be filed on contracts that are not Public Works as defined.
- To be eligible, claims must be filed within **120 days** after the subcontractor performed the labour or services or provided the material or equipment under the terms of their agreement with the contractor.

- Only the work done, or the material or equipment supplied within the **120 days** prior to the filing of the claim are eligible.
- Only payments which are **past due** as per a written agreement between the subcontractor and the contractor, or in the absence of such a written agreement, 30 days after submitting the invoice(s) to the contractor, are eligible.

### **Timelines**

- Claims must be filed within **120 days** after the subcontractor performed the labour or services or provided the material or equipment under the terms of their agreement with the contractor.
- The contractor has **30 days** from the date of notification to settle the claim with the subcontractor.
- If no settlement is reached, after 30 days, Procurement Support Centre will transfer any money retained for the claim to the Department of Justice, who will retain the funds for an additional **90 days**.

### **Filing a claim**

#### **The Subcontractor needs to:**

- Submit to the Procurement Support Centre, a written statement indicating the intention to file a subcontractor claim for unpaid, overdue invoices for work performed, or materials supplied. The written statement should include:
  - The name and contact information of the subcontractor filing the claim.
  - The name of the contractor, project and contract number the claim pertains to.
  - The amount owing to the subcontractor.
- Attach to the written statement:
  - A copy of the sub-contract agreement between the subcontractor and contractor.
  - Copies of all overdue invoices which are being claimed as un-paid, showing the invoice date(s), payment terms and dates the work was performed or the supplies delivered.
- Repeat this process for any additional payments which become past due on the same subcontract.

## Processing a claim, who does what?

### The Procurement Support Centre:

- Receives the claim, reviews all documents and determines if the claim – or portions thereof - meet all the eligibility requirements.
- If no part of the claim is eligible, rejects the claim, notifies the subcontractor and advises the subcontractor as appropriate.
- Confirms with the contracting Government of Yukon department that there is money remaining to be paid on the contract. If all money payable to the contractor has been paid out, notifies the subcontractor that no claim is possible and advises the subcontractor as appropriate.
- If the claim – or portions thereof - is eligible, notifies the contractor:
  - That an eligible subcontractor claim has been received.
  - Who the subcontractor is and the details and amount of the claim.
  - That the contractor has 30 days to settle the claim.
- Informs the contracting department:
  - that an eligible subcontractor claim has been received and the details thereof.
  - asks the Project Manager to confirm that the subcontractor filing the claim is in fact a subcontractor on the project.
  - if the subcontractor is confirmed as such, requests that the department retain from the contractor's next payment(s) the subcontractor amounts claimed.
  - promptly notifies the contracting department of any changes to the claim, eg. settlement of the claim or any payments made by the contractor.
- Repeats this process for any additional past due payment claims added by the subcontractor for the same contractor and project.

### Contracting department:

- Will, when notified by the Procurement Support Centre retain eligible subcontractor claim funds from any upcoming payments due to the contractor.
- Will, when notified by the Procurement Support Centre disburse the retained claim funds in accordance with the terms of any claim settlements – full or partial - or to the Department of Justice, as the case may be.

### The subcontractor will:

- Promptly cooperate with Procurement Support Centre requests for any additional information or documents.
- Maintain open communication with Procurement Support Centre and the contractor.
- Notify the Procurement Support Centre promptly of any changes or updates to the claim eg. withdrawal of the claim, receipt of partial or full payment.
- Inform the Procurement Support Centre promptly if additional past due invoices are to be added to the claim.

### **Settlement of the claim – who does what?**

The contractor and subcontractor have **30 days** after the contractor is notified of the claim to settle the claim. The claim may be settled in its entirety or partially.

\*Note: the process outlined below also applies to any partial payments made by the contractor toward the subcontractor claim. Any partial payments will reduce the amount of the claim.

#### **Contractor:**

- Promptly informs the Procurement Support Centre when the subcontractor claim is fully or partially settled and provides details of the settlement.

#### **Subcontractor:**

- Promptly informs the Procurement Support Centre when the contractor has made full or partial payment and provides a written acknowledgement that all or part of their claim has been satisfied.

#### **Procurement Support Centre:**

- Obtains written confirmation from the contractor and subcontractor that the subcontractor claim has been satisfied, or partial payments made.
- Notifies the contracting department advising them of satisfactory settlement of the claim, or partial payments made and requests that any corresponding amount of retained claims money be released to the contractor as required.

### **No settlement of the claim after 30 days – who does what?**

The contractor and subcontractor have **30 days** after the contractor is notified of the claim to settle the claim. The claim may be settled in its entirety or partially. If the claim or parts thereof

are not settled, any retained claim funds are transferred to the Department of Justice (the “transfer time”) for safekeeping and eventual disposition as follows:

Procurement Support Centre:

- One week prior to the expiry of the initial **30 day** settlement period, Procurement Support Centre will notify the contractor, subcontractor and contracting department advising them that upon the 30 day mark, claim funds retained will be transferred to the Department of Justice.
- On or about day 30, Procurement Support Centre will arrange transfer of any remaining claim funds to the Department of Justice and notify both the contractor and subcontractor that the claim funds have been transferred to the Department of Justice.

At this point the Department of Justice takes possession of the retained funds, and the Procurement Support Centre and the contracting department cease to have any involvement or responsibility for the subcontractor claim.

**“Transfer Time” to the Department of Justice – who does what?**

The Department of Justice will hold any retained subcontractor claim funds for up to **90 days**. During these 90 days, the following events may transpire:

- Once the funds are transferred to the Department of Justice, the contractor and subcontractor must, during this **90 day** period:
  - Settle the claim and agree on payment.
  - Agree to have another party, such as the lawyer for either party receive and hold the claim funds in trust pending resolution of the claim.
  - Initiate a court action to decide the disposition of the retained claim funds.

Contractor and subcontractor:

- Must, within the 90 day period, notify the Department of Justice in writing if a settlement with the subcontractor has been reached.
- Must within the 90 day period notify the Department of Justice in writing if the retained claim funds are to be paid to another party eg. either party’s lawyer in trust, or another party agreed to by the contractor and subcontractor.
- Must within the 90 day period notify the Department of Justice in writing if either party has initiated a court action.

If a court action is initiated within the 90 day period, the Department of Justice will pay any retained claim funds into court.

**At the end of the 90 day period, if the Department of Justice is NOT notified in writing of the occurrence any of the above actions, then any retained claim funds are paid to the contractor.**

At this point, the Yukon government is discharged of any obligations relating to the subcontractor claim.

**FAQ:**

**Q:** Where can I get more information?

**A:** More information can be found in the Yukon government Contracting and Procurement Regulation.

**Q:** What if there are no funds left in the contract for payment to the contractor?

**A:** If the work is covered by a labour and material payment bond, the Procurement Support Centre will provide the name and contact information of the bonding company to the subcontractor.

**Q:** What if there are multiple subcontractor claims on the same contractor and contract?

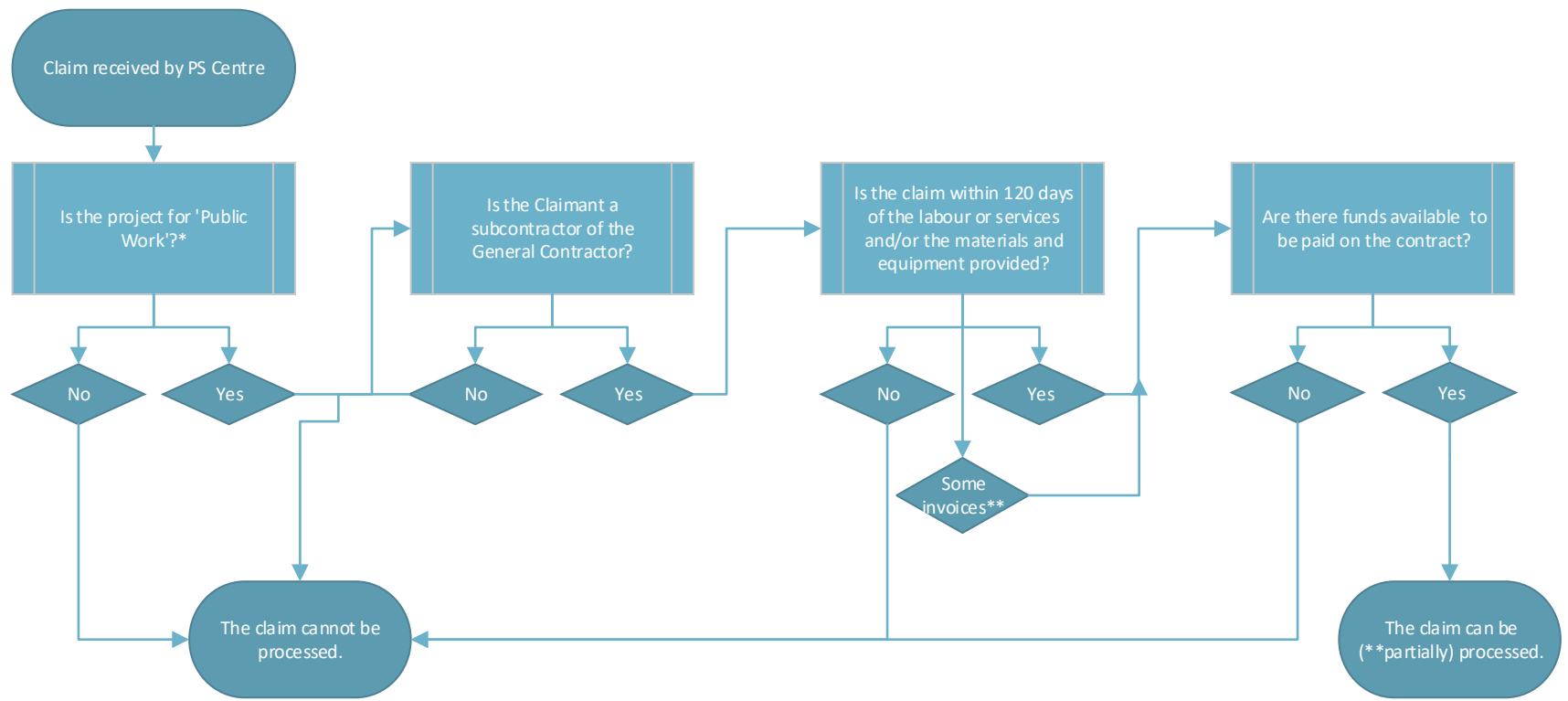
**A:** The Procurement Support Centre will accept all claims if there are any funds available on the contract. Claims will be processed until available funds are exhausted.

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<sup>i</sup> Subcontractor means a Person who, under agreement with a Contractor, provides goods, or performs services or work on a Public Work for which the Contractor was engaged under a Contract.

<sup>ii</sup> Public Work means a project involving the expenditure of public money for building construction, heavy construction or road, sewer or water main construction as specifically defined in the request for the project.

<sup>iii</sup> Contractor means a Person who makes a contract with the government.



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