

Section 2.40

Late Payments (Prompt Payment Act)

Reference the CPA [eXpendit State Purchase Policies, Miscellaneous Expenditures, Payments and Fees, Prompt Payment Law](#)

Payment Deadline

A state agency's payment under a contract executed on or after September 1, 1987 is overdue by the **31st** day after the later of the following:

- the date the agency receives the goods and/or services in accordance with the contract;
- the date the agency receives a correct invoice for the goods and/or service.

A state agency is liable for any interest that accrues on an overdue [payment](#) under the [prompt payment law](#). The interest must be paid at the same time the principal is paid. Interest starts accruing on the date the payment becomes overdue.

The [interest rate](#) the state pays on a late payment to a vendor under the state's prompt payment law is calculated on an annual basis. The interest calculation is one percentage point higher than the prime rate published in The Wall Street Journal on the first business day of July.

The Comptroller's office may:

- Require a state agency to submit any information necessary to determine compliance with the prompt payment law, or
- Require an agency to change its accounting systems or procedures in accordance with the law.

Source: Texas Government Code Sections 2251.025–2251.026

Disputes Between State Agencies and Contractors

A state agency that considers an invoice from a contractor to be incorrect must notify the contractor not later than the 21st day after the date the agency receives the invoice.

If a dispute between a state agency and a contractor is resolved in the contractor's favor, the agency is liable to the contractor for interest on all invoices for which the vendor has not received payment. This interest must be calculated from the original due date of the payment, as if no dispute ever existed.

If a dispute between a state agency and a vendor is resolved in the agency's favor, the vendor that submitted the original invoice must submit a corrected invoice to the agency. Interest starts accruing if the corrected invoice is not paid by the appropriate date.

Source: Texas Government Code Section 2251.042

Calculation of Interest:

[Prompt Payment Interest Calculator](#)

[Prompt Payment Due Date and Interest Calculator](#)

This is an example of how to calculate interest under the prompt payment law. In this example, the following assumptions apply:

- A state agency signs a contract with a vendor on Sept. 10, to purchase goods from the vendor.
- The goods are received on Sept. 24.
- The agency receives the vendor's invoice on Oct. 6.
- The [distribution date](#) for the payment is Dec. 9.
- The amount of the agency's payment is \$500.00.
- The Comptroller's office is responsible for issuing a warrant or initiating an electronic funds transfer to pay the principal amount owed by the agency.
 1. Determine the due date for the payment. Start counting the 30 days beginning on the day after the agency receives the invoice. In this example, the due date is Nov. 5.
 2. Next, determine how many days the payment is late. Start counting on the day after the due date and stop counting on the payment's distribution date. In this example, the payment is late by 34 days.
 3. Now use the following formula to determine the amount of interest due:

$$(\# \text{ of days late} / 365) \times (\text{applicable prompt payment interest rate}) \times (\text{amount of payment}) = (\text{interest due}).$$

Exemptions

The requirements described in this section do *not* apply to a payment made by a state agency if:

- The terms of a federal contract, grant, regulation or statute prevent the agency from making a timely payment with federal funds; or
- The invoice is not mailed to the agency in strict compliance with the instructions, if any, on the purchase order relating to the payment.

No interest accrues or may be paid on a payment if:

- The payment is made from the institutional funds of an [institution of higher education](#), and
- the total amount of interest that otherwise would have accrued is equal to or less than \$5.

Source:

Texas Government Code Sections 2251.002(a)(3)–(4), 2251.026(j). 1 Texas Administrative Code Section 114.7 (2003) (rule of the comptroller); 16 Texas Administrative Code Section 25.480(c) (2003) (rule of the Public Utility Commission of Texas about interest payable to certain retail electric providers); 40 Texas Administrative Code Section 19.2604(h) (2003) (rule of the Texas Department of Human Services saying that the department, under certain circumstances, owes no interest on payments not made by the deadline provided in the prompt payment law). Opinion of the Texas Attorney General No. GA 302 (2005) (a governmental entity may not consent to a provision in a contract with a private [person](#) that the laws of another state apply instead of the Texas prompt payment law). Opinion of the Texas Attorney General No. GA-429 (2006) (an implied contract subject to the Texas prompt payment law exists between a public school district and a municipally owned utility).

Waiver

A person may not waive any right or remedy described in this section if the right or remedy is granted by Chapter 2251, Government Code. A purported waiver of any right or remedy granted by that chapter is void.

Source: Texas Government Code Section 2251.004.