

By the Committees on Governmental Oversight and Accountability;
and Community Affairs; and Senator DiCeglie

585-03248-23

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1 A bill to be entitled
2 An act relating to public construction; amending s.
3 218.735, F.S.; requiring that certain contracts
4 provide the estimated cost to complete each item on a
5 specified list; requiring that such contracts specify
6 the process for determining the cost to complete each
7 item on the list; revising the extension by contract
8 of a specified timeframe to develop and review a
9 specified list; requiring a local governmental entity
10 to pay a contractor the remaining contract balance
11 within a specified timeframe; authorizing the
12 contractor to submit a payment request for the amount
13 withheld by the local governmental entity under
14 specified conditions; authorizing a contractor to
15 submit a payment request to the local governmental
16 entity for the remaining balance of the contract,
17 under specified conditions; requiring a local
18 governmental entity to pay the contractor within a
19 specified timeframe; requiring the local governmental
20 entity to pay the remaining balance of the contract
21 under specified conditions; revising the conditions
22 that require a local governmental entity to pay or
23 release amounts subject to certain disputes or claims;
24 amending s. 218.76, F.S.; revising the timeframe
25 within which proceedings must commence to resolve
26 disputes between vendors and local governmental
27 entities; revising the timeframe for such proceedings
28 to conclude; amending s. 255.073, F.S.; requiring that
29 undisputed portions of payment requests be paid within

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30 a specified timeframe; amending s. 255.074, F.S.;

31 revising the timeframe for a public entity to submit a

32 payment request to the Chief Financial Officer;

33 amending s. 255.077, F.S.; requiring that certain

34 contracts provide the estimated cost to complete each

35 item on a specified list; requiring that such

36 contracts specify the process for determining the cost

37 to complete the items on the list; revising the

38 extension authorized by contract to develop the

39 specified list; requiring the public entity to pay the

40 contractor the remaining balance of the contract

41 within a specified timeframe; requiring a public

42 entity to pay all remaining retainage if the public

43 entity has not developed a specified list; amending s.

44 255.078, F.S.; revising the conditions that require a

45 public entity to pay or release amounts subject to

46 certain disputes or claims; amending s. 255.0992,

47 F.S.; revising the definition of the term "public

48 works project"; providing an effective date.

49

50 Be It Enacted by the Legislature of the State of Florida:

51

52 Section 1. Subsection (7) and paragraph (c) of subsection

53 (8) of section 218.735, Florida Statutes, are amended to read:

54 218.735 Timely payment for purchases of construction

55 services.—

56 (7) Each contract for construction services between a local

57 governmental entity and a contractor must provide for the

58 development of a single list of items and the estimated cost to

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59 complete each item on the list required to render complete,
60 satisfactory, and acceptable the construction services purchased
61 by the local governmental entity.

62 (a) The contract must specify the process for developing
63 the list and for determining the cost to complete each item on
64 the list, and should include,~~including~~ the responsibilities of
65 the local governmental entity and the contractor in developing
66 and reviewing the list and a reasonable time for developing the
67 list:

68 1. For construction projects having an estimated cost of
69 less than \$10 million, within 30 calendar days after reaching
70 substantial completion of the construction services purchased as
71 defined in the contract, or, if not defined in the contract,
72 upon reaching beneficial occupancy or use; or

73 2. For construction projects having an estimated cost of
74 \$10 million or more, within 30 calendar days, or, if extended by
75 contract, up to 45 ~~60~~ calendar days after reaching substantial
76 completion of the construction services purchased as defined in
77 the contract, or, if not defined in the contract, upon reaching
78 beneficial occupancy or use.

79
80 The contract must also specify a date for the delivery of the
81 list of items, not to exceed 5 days after the list of items has
82 been developed and reviewed in accordance with the time periods
83 set forth in subparagraphs 1. and 2.

84 (b) If the contract between the local governmental entity
85 and the contractor relates to the purchase of construction
86 services on more than one building or structure, or involves a
87 multiphased project, the contract must provide for the

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88 development of a list of items required to render complete,
89 satisfactory, and acceptable all the construction services
90 purchased pursuant to the contract for each building, structure,
91 or phase of the project within the time limitations provided in
92 paragraph (a).

93 (c) The final contract completion date must be at least 30
94 days after the delivery of the list of items. If the list is not
95 provided to the contractor by the agreed upon date for delivery
96 of the list, the contract time for completion must be extended
97 by the number of days the local governmental entity exceeded the
98 delivery date. Damages may not be assessed against a contractor
99 for failing to complete a project within the time required by
100 the contract, unless the contractor failed to complete the
101 project within the contract period as extended under this
102 paragraph.

103 (d) The failure to include any corrective work or pending
104 items not yet completed on the list does not alter the
105 responsibility of the contractor to complete all the
106 construction services purchased pursuant to the contract.

107 (e) Within 20 business days after the list is created, the
108 local governmental entity must pay the contractor the remaining
109 contract balance that includes all retainage previously withheld
110 by the local governmental entity less an amount equal to 150
111 percent of the estimated cost to complete the items on the list.

112 (f) Upon completion of all items on the list, the
113 contractor may submit a payment request for the amount ~~all~~
114 ~~remaining retainage~~ withheld by the local governmental entity
115 pursuant to paragraph (e) ~~this section~~. If a good faith dispute
116 exists as to whether one or more items identified on the list

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117 have been completed pursuant to the contract, the local
118 governmental entity may continue to withhold up to 150 percent
119 of the total costs to complete such items.

120 (g)~~(f)~~ All items that require correction under the contract
121 which and that are identified after the preparation and delivery
122 of the list remain the obligation of the contractor as defined
123 by the contract.

124 (h)~~(g)~~ Warranty items or items not included in the list of
125 items required under paragraph (a) may not affect the final
126 payment of retainage as provided in paragraph (e) ~~this section~~
127 or as provided in the contract between the contractor and its
128 subcontractors and suppliers.

129 (i)~~(h)~~ Retainage may not be held by a local governmental
130 entity or a contractor to secure payment of insurance premiums
131 under a consolidated insurance program or series of insurance
132 policies issued to a local governmental entity or a contractor
133 for a project or group of projects, and the final payment of
134 retainage as provided in this section may not be delayed pending
135 a final audit by the local governmental entity's or contractor's
136 insurance provider.

137 (j)~~(i)~~ If a local governmental entity fails to comply with
138 its responsibilities to develop the list required under
139 paragraph (a) or paragraph (b) within the time limitations
140 provided in paragraph (a), the contractor may submit a payment
141 request to the local governmental entity for the all remaining
142 balance of the contract, including all remaining retainage
143 withheld by the local governmental entity. The local
144 governmental entity must pay the contractor ~~pursuant to this~~
145 ~~section; and payment of any remaining undisputed contract~~

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146 amount, ~~less any amount withheld pursuant to the contract for~~
147 ~~incomplete or uncorrected work, must be paid~~ within 20 business
148 days after receipt of a proper invoice or payment request. If
149 the local governmental entity has provided written notice to the
150 contractor specifying the failure of the contractor to meet
151 contract requirements in the development of the list of items to
152 be completed, the local governmental entity must pay the
153 contractor the remaining balance of the contract, less an amount
154 equal to 150 percent of the estimated cost to complete the items
155 that the local governmental entity intended to include on the
156 list ~~need not pay or process any payment request for retainage~~
157 ~~if the contractor has, in whole or in part, failed to cooperate~~
158 ~~with the local governmental entity in the development of the~~
159 ~~list or to perform its contractual responsibilities, if any,~~
160 ~~with regard to the development of the list or if paragraph~~
161 ~~(8)(c) applies.~~

162 (8)

163 (c) This section does not require the local governmental
164 entity to pay or release any amounts that are the subject of a
165 good faith dispute made in writing pursuant to the contract or
166 ~~the subject of a claim brought pursuant to s. 255.05, or~~
167 ~~otherwise the subject of a claim or demand by the local~~
168 ~~governmental entity or contractor.~~

169 Section 2. Paragraph (a) of subsection (2) of section
170 218.76, Florida Statutes, is amended to read:

171 218.76 Improper payment request or invoice; resolution of
172 disputes.—

173 (2) (a) If a dispute arises between a vendor and a local
174 governmental entity concerning payment of a payment request or

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175 an invoice, the dispute must ~~shall~~ be finally determined by the
176 local governmental entity pursuant to a dispute resolution
177 procedure established by the local governmental entity. Such
178 procedure must provide that proceedings to resolve the dispute
179 commence ~~are commenced~~ within 30 ~~45~~ days after the date the
180 payment request or proper invoice was received by the local
181 governmental entity and conclude ~~concluded~~ by final decision of
182 the local governmental entity within 45 ~~60~~ days after the date
183 the payment request or proper invoice was received by the local
184 governmental entity. Such procedures are not subject to chapter
185 120 and do not constitute an administrative proceeding that
186 prohibits a court from deciding de novo any action arising out
187 of the dispute. If the dispute is resolved in favor of the local
188 governmental entity, interest charges begin to accrue 15 days
189 after the local governmental entity's final decision. If the
190 dispute is resolved in favor of the vendor, interest begins to
191 accrue as of the original date the payment became due.

192 Section 3. Subsection (2) of section 255.073, Florida
193 Statutes, is amended to read:

194 255.073 Timely payment for purchases of construction
195 services.—

196 (2) If a public entity disputes a portion of a payment
197 request, the undisputed portion must be ~~timely~~ paid by the date
198 required under the contract or by 20 business days after receipt
199 of the request, whichever is earlier.

200 Section 4. Subsection (3) of section 255.074, Florida
201 Statutes, is amended to read:

202 255.074 Procedures for calculation of payment due dates.—

203 (3) A public entity must submit a payment request to the

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204 Chief Financial Officer for payment no later ~~more~~ than 14 ~~20~~
205 days after receipt of the payment request.

206 Section 5. Present subsections (4) through (8) of section
207 255.077, Florida Statutes, are redesignated as subsections (5)
208 through (9), respectively, a new subsection (4) is added to that
209 section, and subsection (1) and present subsection (8) of that
210 section are amended, to read:

211 255.077 Project closeout and payment of retainage.—

212 (1) Each contract for construction services between a
213 public entity and a contractor must provide for the development
214 of a list of items and the estimated cost to complete each item
215 on the list required to render complete, satisfactory, and
216 acceptable the construction services purchased by the public
217 entity. The contract must specify the process for the
218 development of the list and for determining the cost to complete
219 each item on the list, and should include the, including
220 responsibilities of the public entity and the contractor in
221 developing and reviewing the list and a reasonable time for
222 developing the list, as follows:

223 (a) For construction projects having an estimated cost of
224 less than \$10 million, within 30 calendar days after reaching
225 substantial completion of the construction services purchased as
226 defined in the contract, or, if not defined in the contract,
227 upon reaching beneficial occupancy or use; or

228 (b) For construction projects having an estimated cost of
229 \$10 million or more, within 30 calendar days, unless otherwise
230 extended by contract not to exceed 45 ~~60~~ calendar days, after
231 reaching substantial completion of the construction services
232 purchased as defined in the contract, or, if not defined in the

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233 contract, upon reaching beneficial occupancy or use.

234 (4) Within 20 business days after developing the list, and
235 after receipt of a proper invoice or payment request, the public
236 entity must pay the contractor the remaining balance of the
237 contract, including any remaining retainage withheld by the
238 public entity pursuant to s. 255.078, less an amount equal to
239 150 percent of the estimated cost to complete the items on the
240 list.

241 (9)(8) If a public entity fails to comply with its
242 responsibilities to develop the list required under subsection
243 (1) or subsection (2), as defined in the contract, within the
244 time limitations provided in subsection (1), the contractor may
245 submit a payment request for all remaining retainage withheld by
246 the public entity pursuant to s. 255.078 and the public entity
247 must pay the contractor all remaining retainage previously
248 withheld within 20 days after receipt of the payment request.
249 The public entity is not required to ~~need not~~ pay or process any
250 payment request for retainage if the contractor has, ~~in whole or~~
251 ~~in part,~~ failed to cooperate with the public entity in the
252 development of the list or failed to perform its contractual
253 responsibilities, if any, with regard to the development of the
254 list or if s. 255.078(3) applies.

255 Section 6. Subsection (3) of section 255.078, Florida
256 Statutes, is amended to read:

257 255.078 Public construction retainage.—

258 (3) This section and s. 255.077 do not require the public
259 entity to pay or release any amounts that are the subject of a
260 good faith dispute made in writing pursuant to the contract or
261 the subject of a claim brought pursuant to s. 255.05~~7~~~~or~~

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262 ~~otherwise the subject of a claim or demand by the public entity~~
263 ~~or contractor.~~

264 Section 7. Paragraph (b) of subsection (1) of section
265 255.0992, Florida Statutes, is amended to read:

266 255.0992 Public works projects; prohibited governmental
267 actions.—

268 (1) As used in this section, the term:

269 (b) "Public works project" means an activity ~~exceeding \$1~~
270 ~~million in value~~ that is paid for with any state-appropriated
271 funds and that ~~which~~ consists of the construction, maintenance,
272 repair, renovation, remodeling, or improvement of a building,
273 road, street, sewer, storm drain, water system, site
274 development, irrigation system, reclamation project, gas or
275 electrical distribution system, gas or electrical substation, or
276 other facility, project, or portion thereof ~~that is~~ owned in
277 whole or in part by any political subdivision.

278 Section 8. This act shall take effect July 1, 2023.