

## CHAPTER 2010-111

### Council Substitute for House Bill No. 1157

An act relating to the Local Government Prompt Payment Act; amending s. 218.72, F.S.; revising definitions; amending s. 218.735, F.S.; revising provisions relating to the timely payment for purchases of construction services; requiring that a dispute be resolved according to procedures in the contract; prohibiting the assessment of damages against a contractor if the list of items remaining to complete is not timely provided to the contractor; amending s. 218.76, F.S.; revising provisions relating to the resolution of disputes concerning an improper payment request or invoice; providing that a local governmental entity waives its objection in a payment dispute if it fails to commence the dispute resolution procedure within the time required; providing an effective date.

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

Section 1. Section 218.72, Florida Statutes, is amended to read:

218.72 Definitions.—As used in this part, the term:

(1)(9) “Agent” means the project architect, project engineer, or ~~any~~ other agency or person acting on behalf of the local governmental entity. The agent who is required to review invoices or payment requests must be identified in accordance with s. 218.735(1).

(2)(7) “Construction services” means all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or ~~any~~ other improvements to real property.

(3)(10) “Contractor” or “provider of construction services” means the ~~any~~ person who contracts directly with a local governmental entity to provide construction services.

(4)(3) “County” means a political subdivision of the state established pursuant to s. 1, Art. VIII of the State Constitution.

(5)(2) “Local governmental entity” means a county or municipal government, school board, school district, authority, special taxing district, other political subdivision, or any office, board, bureau, commission, department, branch, division, or institution thereof.

(6)(4) “Municipality” means a municipality created pursuant to general or special law and metropolitan and consolidated governments as provided in s. 6(e) and (f), Art. VIII of the State Constitution.

(7)(8) “Payment request” means a request for payment for construction services which conforms with all statutory requirements and ~~with~~ all requirements specified by the local governmental entity to which the

payment request is submitted. Such requirements must be included in the contract for the project for which payment is requested.

~~(8)~~(4) “Proper invoice” means an invoice ~~that which~~ conforms with all statutory requirements and with all requirements that have been specified by the local governmental entity to which the invoice is submitted. Such requirements must be included in the contract for the project for which the invoice is submitted.

~~(9)~~(5) “Purchase” means the purchase of goods, services, or construction services; the purchase or lease of personal property; or the lease of real property by a local governmental entity.

~~(10)~~(6) “Vendor” means any person who sells goods or services, sells or leases personal property, or leases real property directly to a local governmental entity. The term includes any person who provides waste hauling services to residents or businesses located within the boundaries of a local government pursuant to a contract or local ordinance.

Section 2. Subsections (1) through (7) of section 218.735, Florida Statutes, are amended to read:

218.735 Timely payment for purchases of construction services.—

(1) The due date for payment for the purchase of construction services by a local governmental entity is determined as follows:

(a) If an agent must approve the payment request or invoice ~~before prior~~ to the payment request or invoice ~~is being~~ submitted to the local governmental entity, payment is due 25 business days after the date on which the payment request or invoice is stamped as received as provided in s. 218.74(1). The contractor may send the local government an overdue notice. If the payment request or invoice is not rejected within 4 business days after delivery of the overdue notice, the payment request or invoice shall be deemed accepted, except for any portion of the payment request or invoice that is fraudulent or misleading.

(b) If an agent need not approve the payment request or invoice ~~which is~~ submitted by the contractor, payment is due 20 business days after the date on which the payment request or invoice is stamped as received as provided in s. 218.74(1).

A local governmental entity shall identify the agent or employee of the local governmental entity, or the facility or office, to which the contractor may submit its payment request or invoice. This requirement shall be included in the contract between the local governmental entity and contractor, or shall be provided by the local governmental entity through a separate written notice, as required under the contract, no later than 10 days after the contract award or notice to proceed. A contractor’s submission of a payment request or invoice to the identified agent, employee, facility, or office of the local governmental entity shall be stamped as received as provided in s.

218.74(1) and shall commence the time periods for payment or rejection of a payment request or invoice as provided in this subsection and subsection (2).

(2) If a payment request or invoice does not meet the contract requirements, the local governmental entity must ~~may~~ reject the payment request or invoice within 20 business days after the date on which the payment request or invoice is stamped as received as provided in s. 218.74(1). The rejection must be written and must specify the deficiency ~~in the payment request or invoice~~ and the action necessary to make the payment request or invoice proper.

(3) If a payment request or an invoice is rejected under subsection (2) and the contractor submits a ~~corrected~~ payment request or invoice that which corrects the deficiency ~~specified in writing by the local governmental entity,~~ the corrected payment request or invoice must be paid or rejected on the later of:

(a) Ten business days after the date the corrected payment request or invoice is stamped as received as provided in s. 218.74(1); or

(b) If the local governmental entity governing body is required by ordinance, charter, or other law to approve or reject the corrected payment request or invoice, the first business day after the next regularly scheduled meeting of the local governmental entity governing body held after the corrected payment request or invoice is stamped as received as provided in s. 218.74(1).

(4) If a dispute between the local governmental entity and the contractor cannot be resolved by the procedure in subsection (3), the dispute must be resolved in accordance with the dispute resolution procedure prescribed in the construction contract or in any applicable ordinance, which shall be referenced in the contract. In the absence of a prescribed procedure, the dispute must be resolved by the procedure specified in s. 218.76(2).

(5) If a local governmental entity disputes a portion of a payment request or an invoice, the undisputed portion shall be paid timely, in accordance with subsection (1).

(6) ~~If When~~ a contractor receives payment from a local governmental entity for labor, services, or materials furnished by subcontractors and suppliers hired by the contractor, the contractor must ~~shall~~ remit payment due to those subcontractors and suppliers within 10 days after the contractor's receipt of payment. ~~If When~~ a subcontractor receives payment from a contractor for labor, services, or materials furnished by subcontractors and suppliers hired by the subcontractor, the subcontractor must ~~shall~~ remit payment due to those subcontractors and suppliers within 7 days after the subcontractor's receipt of payment. This subsection does not ~~Nothing herein shall~~ prohibit a contractor or subcontractor from disputing, pursuant to the terms of the relevant contract, all or any portion of a payment alleged to be due to another party if the contractor or subcontractor notifies the party

whose payment is disputed, in writing, of the amount in dispute and the actions required to cure the dispute. The contractor or subcontractor must pay all undisputed amounts due within the time limits imposed by this section.

(7)(a) Each contract for construction services between a local governmental entity and a contractor must provide for the development of a single list of items required to render complete, satisfactory, and acceptable the construction services purchased by the local governmental entity.

(a) The contract must specify the process for ~~developing~~ the development of the list, including the responsibilities of the local governmental entity and the contractor in developing and reviewing the list and a reasonable time for developing the list, ~~as follows~~:

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

2. For construction projects having an estimated cost of \$10 million or more, within 30 calendar days, or, if unless otherwise extended by contract, up to not to exceed 60 calendar days, after reaching substantial completion of the construction services purchased as defined in the contract, or, if not defined in the contract, upon reaching beneficial occupancy or use.

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

(b) If the contract between the local governmental entity and the contractor relates to the purchase of construction services on more than one building or structure, or involves a multiphased project, the contract must provide for the development of a list of items required to render complete, satisfactory, and acceptable all the construction services purchased pursuant to the contract for each building, structure, or phase of the project within the time limitations provided in paragraph (a).

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

~~(d)(e)~~ The failure to include any corrective work or pending items not yet completed on the list developed pursuant to this subsection does not alter the

responsibility of the contractor to complete all the construction services purchased pursuant to the contract.

~~(e)(d)~~ Upon completion of all items on the list, the contractor may submit a payment request for all remaining retainage withheld by the local governmental entity pursuant to this section. If a good faith dispute exists as to whether one or more items identified on the list have been completed pursuant to the contract, the local governmental entity may continue to withhold up to an amount not to exceed 150 percent of the total costs to complete such items.

~~(f)(e)~~ All items that require correction under the contract and that are identified after the preparation and delivery of the list remain the obligation of the contractor as defined by the contract.

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

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

~~(i)(h)~~ If a local governmental entity fails to comply with its responsibilities to develop the list required under paragraph (a) or paragraph (b), ~~as defined in the contract,~~ within the time limitations provided in paragraph (a), the contractor may submit a payment request for all remaining retainage withheld by the local governmental entity pursuant to this section and payment of any remaining undisputed contract amount, less any amount withheld pursuant to the contract for incomplete or uncorrected work, must be paid within 20 business days after receipt of a proper invoice or payment request. If the local governmental entity has provided written notice to the contractor specifying the failure of the contractor to meet contract requirements in the development of the list of items to be completed, the local governmental entity need not pay or process any payment request for retainage if the contractor has, in whole or in part, failed to cooperate with the local governmental entity in the development of the list or failed to perform its contractual responsibilities, if any, with regard to the development of the list or if paragraph (8)(f) applies.

Section 3. Section 218.76, Florida Statutes, is amended to read:

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

(1) ~~If In any case in which~~ an improper payment request or invoice is submitted by a vendor, the local governmental entity shall, within 10 days after the improper payment request or invoice is received ~~by it~~, notify the vendor, in writing, that the payment request or invoice is improper and indicate what corrective action on the part of the vendor is needed to make the payment request or invoice proper.

(2)(a) ~~If In the event a dispute arises occurs~~ between a vendor and a local governmental entity concerning payment of a payment request or an invoice, ~~the dispute such disagreement~~ shall be finally determined by the local governmental entity ~~pursuant to as provided in this section~~. ~~Each local governmental entity shall establish a dispute resolution procedure established to be followed by the local governmental entity in cases of such disputes~~. Such procedure ~~must shall~~ provide that proceedings to resolve the dispute ~~are shall be commenced within not later than~~ 45 days after the date ~~on which~~ the payment request or proper invoice was received by the local governmental entity and ~~shall be concluded by final decision of the local governmental entity within not later than~~ 60 days after the date ~~on which~~ the payment request or proper invoice was received by the local governmental entity. Such procedures ~~are shall not be subject to chapter 120, and do such procedures shall not constitute an administrative proceeding that which~~ prohibits a court from deciding de novo any action arising out of the dispute. If the dispute is resolved in favor of the local governmental entity, ~~then~~ interest charges shall begin to accrue 15 days after the local governmental entity's final decision. If the dispute is resolved in favor of the vendor, ~~then~~ interest begins shall begin to accrue as of the original date the payment became due.

(b) If the local governmental entity does not commence the dispute resolution procedure within the time required, a contractor may give written notice to the local governmental entity of the failure to timely commence its dispute resolution procedure. If the local governmental entity fails to commence the dispute resolution procedure within 4 business days after such notice, any amounts resolved in the contractor's favor shall bear mandatory interest, as set forth in s. 218.735(9), from the date the payment request or invoice containing the disputed amounts was submitted to the local governmental entity. If the dispute resolution procedure is not commenced within 4 business days after the notice, the objection to the payment request or invoice shall be deemed waived. The waiver of an objection pursuant to this paragraph does not relieve a contractor of its contractual obligations.

(3) In an action to recover amounts due under ~~this part ss. 218.70-218.80~~, the court shall award court costs and reasonable attorney's fees, including fees incurred through any appeal, to the prevailing party, ~~if the court finds that the nonprevailing party withheld any portion of the payment that is the subject of the action without any reasonable basis in law or fact to dispute the prevailing party's claim to those amounts.~~

Section 4. This act shall take effect October 1, 2010.

Approved by the Governor May 26, 2010.

Filed in Office Secretary of State May 26, 2010.