

## CHAPTER 2023-134

### Committee Substitute for Committee Substitute for Senate Bill No. 346

An act relating to public construction; amending s. 218.735, F.S.; requiring that certain contracts provide the estimated cost to complete each item on a specified list; requiring that such contracts specify the process for determining the cost to complete each item on the list; revising the extension by contract of a specified timeframe to develop and review a specified list; requiring a local governmental entity to pay a contractor the remaining contract balance within a specified timeframe; authorizing the contractor to submit a payment request for the amount withheld by the local governmental entity under specified conditions; authorizing a contractor to submit a payment request to the local governmental entity for the remaining balance of the contract, under specified conditions; requiring a local governmental entity to pay the contractor within a specified timeframe; requiring the local governmental entity to pay the remaining balance of the contract under specified conditions; revising the conditions that require a local governmental entity to pay or release amounts subject to certain disputes or claims; amending s. 218.76, F.S.; revising the timeframe within which proceedings must commence to resolve disputes between vendors and local governmental entities; revising the timeframe for such proceedings to conclude; amending s. 255.073, F.S.; requiring that undisputed portions of payment requests be paid within a specified timeframe; amending s. 255.074, F.S.; revising the timeframe for a public entity to submit a payment request to the Chief Financial Officer; amending s. 255.077, F.S.; requiring that certain contracts provide the estimated cost to complete each item on a specified list; requiring that such contracts specify the process for determining the cost to complete the items on the list; revising the extension authorized by contract to develop the specified list; requiring the public entity to pay the contractor the remaining balance of the contract within a specified timeframe; requiring a public entity to pay all remaining retainage if the public entity has not developed a specified list; amending s. 255.078, F.S.; revising the conditions that require a public entity to pay or release amounts subject to certain disputes or claims; amending s. 255.0992, F.S.; revising the definition of the term “public works project”; providing an effective date.

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

Section 1. Subsection (7) and paragraph (c) of subsection (8) of section 218.735, Florida Statutes, are amended to read:

218.735 Timely payment for purchases of construction services.—

(7) Each contract for construction services between a local governmental entity and a contractor must provide for the development of a single list of

items and the estimated cost to complete each item on the list 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 list and for determining the cost to complete each item on the list, and should include, ~~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:

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 extended by contract, up to 45 ~~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) The failure to include any corrective work or pending items not yet completed on the list does not alter the responsibility of the contractor to complete all the construction services purchased pursuant to the contract.

(e) Within 20 business days after the list is created, the local governmental entity must pay the contractor the remaining contract balance that includes all retainage previously withheld by the local governmental entity

less an amount equal to 150 percent of the estimated cost to complete the items on the list.

(f) Upon completion of all items on the list, the contractor may submit a payment request for the amount ~~all remaining retainage~~ withheld by the local governmental entity pursuant to paragraph (e) 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 150 percent of the total costs to complete such items.

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

(h)(g) 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 paragraph (e) this section or as provided in the contract between the contractor and its subcontractors and suppliers.

(i)(h) 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.

(j)(i) If a local governmental entity fails to comply with its responsibilities to develop the list required under paragraph (a) or paragraph (b) within the time limitations provided in paragraph (a), the contractor may submit a payment request to the local governmental entity for the all remaining balance of the contract, including all remaining retainage withheld by the local governmental entity. The local governmental entity must pay the contractor 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 must pay the contractor the remaining balance of the contract, less an amount equal to 150 percent of the estimated cost to complete the items that the local governmental entity intended to include on the list ~~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 to perform its contractual responsibilities, if any, with regard to the development of the list or if paragraph (8)(c) applies.~~

(8)

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

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

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

(2)(a) If a dispute arises between a vendor and a local governmental entity concerning payment of a payment request or an invoice, the dispute must shall be finally determined by the local governmental entity pursuant to a dispute resolution procedure established by the local governmental entity. Such procedure must provide that proceedings to resolve the dispute commence ~~are commenced~~ within 30 ~~45~~ days after the date the payment request or proper invoice was received by the local governmental entity and conclude ~~concluded~~ by final decision of the local governmental entity within 45 ~~60~~ days after the date the payment request or proper invoice was received by the local governmental entity. Such procedures are not subject to chapter 120 and do not constitute an administrative proceeding that 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, interest charges begin to accrue 15 days after the local governmental entity’s final decision. If the dispute is resolved in favor of the vendor, interest begins to accrue as of the original date the payment became due.

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

255.073 Timely payment for purchases of construction services.—

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

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

255.074 Procedures for calculation of payment due dates.—

(3) A public entity must submit a payment request to the Chief Financial Officer for payment no later ~~more~~ than 14 ~~20~~ days after receipt of the payment request.

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

## 255.077 Project closeout and payment of retainage.—

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

(a) 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

(b) For construction projects having an estimated cost of \$10 million or more, within 30 calendar days, unless otherwise extended by contract not to exceed 45 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.

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

(9)(8) If a public entity fails to comply with its responsibilities to develop the list required under subsection (1) or subsection (2), as defined in the contract, within the time limitations provided in subsection (1), the contractor may submit a payment request for all remaining retainage withheld by the public entity pursuant to s. 255.078 and the public entity must pay the contractor all remaining retainage previously withheld within 20 days after receipt of the payment request. The public entity is not required to need not pay or process any payment request for retainage if the contractor has, ~~in whole or in part,~~ failed to cooperate with the public 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 s. 255.078(3) applies.

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

## 255.078 Public construction retainage.—

(3) This section and s. 255.077 do not require the public entity to pay or release any amounts that are the subject of a good faith dispute made in

writing pursuant to the contract or, the subject of a claim brought pursuant to s. 255.05, ~~or otherwise the subject of a claim or demand by the public entity or contractor.~~

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

255.0992 Public works projects; prohibited governmental actions.—

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

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

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

Approved by the Governor May 25, 2023.

Filed in Office Secretary of State May 25, 2023.