



404562

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2010	.	
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The Committee on Community Affairs (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete lines 27 - 224

and insert:

entity to which the invoice is submitted.

(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.

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



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13 Constitution.

14 ~~(6)~~~~(4)~~ "Municipality" means a municipality created pursuant
15 to general or special law and metropolitan and consolidated
16 governments as provided in s. 6(e) and (f), Art. VIII of the
17 State Constitution.

18 ~~(9)~~~~(5)~~ "Purchase" means the purchase of goods, services, or
19 construction services; the purchase or lease of personal
20 property; or the lease of real property by a local governmental
21 entity.

22 ~~(10)~~~~(6)~~ "Vendor" means any person who sells goods or
23 services, sells or leases personal property, or leases real
24 property directly to a local governmental entity. The term
25 includes any person who provides waste hauling services to
26 residents or businesses located within the boundaries of a local
27 government pursuant to a contract or local ordinance.

28 ~~(2)~~~~(7)~~ "Construction services" means all labor, services,
29 and materials provided in connection with the construction,
30 alteration, repair, demolition, reconstruction, or ~~any~~ other
31 improvements to real property.

32 ~~(7)~~~~(8)~~ "Payment request" means a request for payment for
33 construction services which conforms with all statutory
34 requirements and ~~with~~ all requirements specified by the local
35 governmental entity to which the payment request is submitted.
36 Such requirements must be included in the invitation to bid or
37 request for proposal for the project for which payment is
38 requested.

39 ~~(1)~~~~(9)~~ "Agent" means the project architect, project
40 engineer, or ~~any~~ other agency or person acting on behalf of the
41 local governmental entity. The agent who is required to review



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42 invoices or payment requests must be identified in the
43 invitation to bid or request for proposal for the project for
44 which payment requests or invoices are submitted.

45 (3)~~(10)~~ "Contractor" or "provider of construction services"
46 means the ~~any~~ person who contracts directly with a local
47 governmental entity to provide construction services.

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

50 218.735 Timely payment for purchases of construction
51 services.—

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

55 (a) If an agent must approve the payment request or invoice
56 before ~~prior to~~ the payment request or invoice is being
57 submitted to the local governmental entity, payment is due 25
58 business days after the date on which the payment request or
59 invoice is stamped as received as provided in s. 218.74(1). If
60 the payment request or invoice is not rejected before the due
61 date, it shall be deemed accepted.

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

66
67 A local governmental entity shall identify the agent or employee
68 of the local governmental entity, or the facility or office, to
69 which the contractor may submit its payment request or invoice.
70 This information shall be included in the contract between the



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71 local governmental entity and contractor, or shall be provided
72 by the local governmental entity through a separate written
73 notice, as required under the contract, within 10 days after the
74 contract award. A contractor's submission of a payment request
75 or invoice to the identified agent, employee, facility, or
76 office of the local governmental entity shall be stamped as
77 received as provided in s. 218.74(1). Upon the submission of the
78 payment request or invoice, the time periods commence for
79 payment or rejection of a payment request or invoice as provided
80 in subsection (1) or subsection (2).

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

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

95 (a) Ten business days after the date the corrected payment
96 request or invoice is stamped as received as provided in s.
97 218.74(1); or

98 (b) If the local governmental entity ~~governing body~~ is
99 required by ordinance, charter, or other law to approve or



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100 reject the corrected payment request or invoice, the first
101 business day after the next regularly scheduled meeting of the
102 local governmental entity ~~governing body~~ held after the
103 corrected payment request or invoice is stamped as received as
104 provided in s. 218.74(1).

105 (4) If a dispute between the local governmental entity and
106 the contractor cannot be resolved by the procedure in subsection
107 (3), the dispute must be resolved in accordance with the dispute
108 resolution procedure prescribed in the construction contract or
109 in any applicable ordinance. Such ordinance shall be referenced
110 in the contract. In the absence of a prescribed procedure, the
111 dispute must be resolved by the procedure specified in s.
112 218.76(2).

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

116 (6) If ~~When~~ a contractor receives payment from a local
117 governmental entity for labor, services, or materials furnished
118 by subcontractors and suppliers hired by the contractor, the
119 contractor must ~~shall~~ remit payment due to those subcontractors
120 and suppliers within 10 days after the contractor's receipt of
121 payment. If ~~When~~ a subcontractor receives payment from a
122 contractor for labor, services, or materials furnished by
123 subcontractors and suppliers hired by the subcontractor, the
124 subcontractor must ~~shall~~ remit payment due to those
125 subcontractors and suppliers within 7 days after the
126 subcontractor's receipt of payment. This subsection does not
127 ~~Nothing herein shall~~ prohibit a contractor or subcontractor from
128 disputing, pursuant to the terms of the relevant contract, all



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129 or any portion of a payment alleged to be due to another party
130 if the contractor or subcontractor notifies the party whose
131 payment is disputed, in writing, of the amount in dispute and
132 the actions required to cure the dispute. The contractor or
133 subcontractor must pay all undisputed amounts due within the
134 time limits imposed by this section.

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

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

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

150 2. For construction projects having an estimated cost of
151 \$10 million or more, within 30 calendar days, or, if unless
152 ~~otherwise~~ extended by contract, up to not to exceed 60 calendar
153 days, after reaching substantial completion of the construction
154 services purchased as defined in the contract, or, if not
155 defined in the contract, upon reaching beneficial occupancy or
156 use.

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158 The contract must also specify a date for the delivery of the
159 list of items, not to exceed 10 days after the list of items has
160 been developed and reviewed within the time periods set forth in
161 subparagraph 1. or subparagraph 2.

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

171 (c) The final contract completion date must be at least 30
172 days after the delivery of the list of items. If the list is not
173 provided to the contractor by the agreed to date for the
174 delivery of the list, the contract time for completion shall be
175 extended by the number of days the local governmental entity
176 exceeded the delivery date. Damages may not be assessed against
177 a contractor for failing to complete a project within the time
178 required by the contract, unless the contractor failed to
179 complete the project within the contract period as extended
180 pursuant to this paragraph.

181 (d)-(e) The failure to include any corrective work or
182 pending items not yet completed on the list developed pursuant
183 ~~to this subsection~~ does not alter the responsibility of the
184 contractor to complete all the construction services purchased
185 pursuant to the contract.

186 (e)-(d) Upon completion of all items on the list, the



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187 contractor may submit a payment request for all remaining
188 retainage withheld by the local governmental entity pursuant to
189 this section. If a good faith dispute exists as to whether one
190 or more items identified on the list have been completed
191 pursuant to the contract, the local governmental entity may
192 continue to withhold up to an amount not to exceed 150 percent
193 of the total costs to complete such items.

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

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

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

211 (i)~~(h)~~ If a local governmental entity fails to comply with
212 its responsibilities to develop the list required under
213 paragraph (a) or paragraph (b), ~~as defined in the contract,~~
214 within the time limitations provided in paragraph (a), the
215 contractor may submit a payment request for all remaining



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216 retainage withheld by the local governmental entity pursuant to
217 this section. The payment of any remaining undisputed contract
218 amount, less any amount withheld pursuant to the contract for
219 incomplete or uncorrected work, must be paid within 20 business
220 days after receipt of a proper invoice or payment request. If
221 the local governmental entity need not pay or process any
222 payment request for retainage if the contractor has, in whole or
223 in part, failed to cooperate with the local governmental entity
224 in the development of the list or failed to perform its
225 contractual responsibilities, if any, with regard to the
226 development of the list or if paragraph (8)(f) applies.

227
228 ===== T I T L E A M E N D M E N T =====

229 And the title is amended as follows:

230 Delete lines 6 - 11

231 and insert:

232 construction services; requiring a local governmental
233 entity to identify in a construction contract the
234 agent or employee or facility or office to which a
235 contractor may submit its payment request or invoice;
236 requiring that an ordinance providing dispute
237 resolution procedures applicable to a construction
238 contract be referenced in the contract; requiring
239 construction contracts to specify a date for the
240 delivery of a list of items required to render
241 complete, satisfactory, and acceptable the
242 construction services purchased by a local
243 governmental entity; providing for the extension of
244 the contract if the list of items remaining to



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complete is not timely provided to the contractor;
amending s. 218.76, F.S.; revising