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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2023	.	
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	.	
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The Committee on Community Affairs (DiCeglie) recommended the following:

Senate Amendment (with title amendment)

Delete lines 48 - 272

and insert:

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



11 development of a single list of items required to render
12 complete, satisfactory, and acceptable the construction services
13 purchased by the local governmental entity, which must include a
14 dollar valuation, as reasonably determined by the contractor as
15 a portion of the contract value, of the estimated cost to
16 complete each item on the list.

17 (a) The contract must specify the process for developing
18 the list, including the responsibilities of the local
19 governmental entity and the contractor in developing and
20 reviewing the list and a reasonable time for developing the
21 list:

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

27 2. For construction projects having an estimated cost of
28 \$10 million or more, within 30 calendar days, ~~or, if extended by~~
29 ~~contract, up to 60 calendar days~~ after reaching substantial
30 completion of the construction services purchased as defined in
31 the contract, or, if not defined in the contract, upon reaching
32 beneficial occupancy or use.

33
34 The contract must also specify a date for the delivery of the
35 list of items, not to exceed 5 days after the list of items has
36 been developed and reviewed in accordance with the time periods
37 set forth in subparagraphs 1. and 2.

38 (b) If the contract between the local governmental entity
39 and the contractor relates to the purchase of construction



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40 services on more than one building or structure, or involves a
41 multiphased project, the contract must provide for the
42 development of a list of items required to render complete,
43 satisfactory, and acceptable all the construction services
44 purchased pursuant to the contract for each building, structure,
45 or phase of the project within the time limitations provided in
46 paragraph (a).

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

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

61 (e) Within 20 days after the date the list is created, the
62 local governmental entity must pay the contractor the remaining
63 contract balance that includes all retainage previously withheld
64 by the local governmental entity. The remaining contract balance
65 does not include the estimated costs to complete the items
66 included on the list.

67 (f) Upon completion of all items on the list, the
68 contractor may submit a payment request for all remaining



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69 contract sums ~~retainage~~ withheld by the local governmental
70 entity pursuant to this section. If a good faith dispute exists
71 as to whether one or more items identified on the list have been
72 completed pursuant to the contract, the local governmental
73 entity may continue to withhold up to 150 percent of the total
74 costs to complete such items.

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

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

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

92 (j) ~~(i)~~ If a local governmental entity fails to comply with
93 its responsibilities to develop the list required under
94 paragraph (a) or paragraph (b) within the time limitations
95 provided in paragraph (a), the contractor may submit a payment
96 request for all remaining unpaid contract sums, including
97 retainage withheld by the local governmental entity, and the



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98 local governmental entity must pay the contractor all remaining
99 contract sums pursuant to this section; and payment of any
100 remaining undisputed contract amount, less any amount withheld
101 pursuant to the contract for incomplete or uncorrected work,
102 ~~must be paid~~ within 20 business days after receipt of a proper
103 invoice or payment request. If the local governmental entity has
104 provided written notice to the contractor specifying the failure
105 of the contractor to meet contract requirements in the
106 development of the list of items to be completed, the local
107 governmental entity must pay the contractor the remaining
108 contract balance that includes retainage previously withheld by
109 the local governmental entity. The remaining contract balance
110 does not include 150 percent of the estimated costs to complete
111 the items that the local governmental entity has included on its
112 version of the list ~~need not pay or process any payment request~~
113 ~~for retainage if the contractor has, in whole or in part, failed~~
114 ~~to cooperate with the local governmental entity in the~~
115 ~~development of the list or to perform its contractual~~
116 ~~responsibilities, if any, with regard to the development of the~~
117 ~~list or if paragraph (8)(c) applies.~~

118 (8)

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

124 Section 2. Paragraph (a) of subsection (2) of section
125 218.76, Florida Statutes, is amended to read:

126 218.76 Improper payment request or invoice; resolution of



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127 disputes.-

128 (2) (a) If a dispute arises between a vendor and a local
129 governmental entity concerning payment of a payment request or
130 an invoice, the dispute must ~~shall~~ be finally determined by the
131 local governmental entity pursuant to a dispute resolution
132 procedure established by the local governmental entity. Such
133 procedure must provide that proceedings to resolve the dispute
134 commence ~~are commenced~~ within 30 ~~45~~ days after the date the
135 payment request or proper invoice was received by the local
136 governmental entity and conclude ~~concluded~~ by final decision of
137 the local governmental entity within 45 ~~60~~ days after the date
138 the payment request or proper invoice was received by the local
139 governmental entity. Such procedures are not subject to chapter
140 120 and do not constitute an administrative proceeding that
141 prohibits a court from deciding de novo any action arising out
142 of the dispute. If the dispute is resolved in favor of the local
143 governmental entity, interest charges begin to accrue 15 days
144 after the local governmental entity's final decision. If the
145 dispute is resolved in favor of the vendor, interest begins to
146 accrue as of the original date the payment became due.

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

149 255.073 Timely payment for purchases of construction
150 services.-

151 (2) If a public entity disputes a portion of a payment
152 request, the undisputed portion must be ~~timely~~ paid within the
153 time required under the contract or within 20 days, whichever is
154 earlier.

155 Section 4. Subsection (3) of section 255.074, Florida



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156 Statutes, is amended to read:

157 255.074 Procedures for calculation of payment due dates.—

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

161 Section 5. Present subsections (4) through (8) of section
162 255.077, Florida Statutes, are redesignated as subsections (5)
163 through (9), respectively, a new subsection (4) is added to that
164 section, and subsection (1) and present subsection (8) of that
165 section are amended, to read:

166 255.077 Project closeout and payment of retainage.—

167 (1) Each contract for construction services between a
168 public entity and a contractor must provide for the development
169 of a list of items required to render complete, satisfactory,
170 and acceptable the construction services purchased by the public
171 entity. The list must include a dollar valuation, as reasonably
172 determined by the contractor as a portion of the contract value,
173 of the estimated cost to complete the items included on the
174 list. The contract must specify the process for the development
175 of the list, including responsibilities of the public entity and
176 the contractor in developing and reviewing the list and a
177 reasonable time for developing the list, as follows:

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

183 (b) For construction projects having an estimated cost of
184 \$10 million or more, within 30 calendar days, unless otherwise



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185 extended by contract not to exceed 60 calendar days, after
186 reaching substantial completion of the construction services
187 purchased as defined in the contract, or, if not defined in the
188 contract, upon reaching beneficial occupancy or use.

189 (4) Within 20 days after the date the list is created, the
190 public entity must pay the contractor the remaining contract
191 balance that includes all retainage previously withheld by the
192 public entity. The remaining contract balance does not include
193 the costs to complete the items included on the list.

194 (9)(8) If a public entity fails to comply with its
195 responsibilities to develop the list required under subsection
196 (1) or subsection (2), as defined in the contract, within the
197 time limitations provided in subsection (1), the contractor may
198 submit a payment request for all remaining retainage withheld by
199 the public entity pursuant to s. 255.078 and the public entity
200 must pay the contractor all remaining retainage previously
201 withheld within 20 days after receipt of the payment request.

202 The public entity is not required to need not pay or process any
203 payment request for retainage if the contractor has, in whole or
204 in part, failed to cooperate with the public entity in the
205 development of the list or failed to perform its contractual
206 responsibilities, if any, with regard to the development of the
207 list or if s. 255.078(3) applies.

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

210 255.078 Public construction retainage.—

211 (3) This section and s. 255.077 do not require the public
212 entity to pay or release any amounts that are the subject of a
213 good faith dispute or the subject of a claim brought pursuant



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214 to s. 255.05, ~~or otherwise the subject of a claim or demand by~~
215 ~~the public entity or contractor.~~

216 Section 7. Paragraph (b) of subsection (1) of section
217 255.0992, Florida Statutes, is amended to read:

218 255.0992 Public works projects; prohibited governmental
219 actions.—

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

221 (b) "Public works project" means an activity exceeding
222 \$350,000 ~~\$1 million~~ in value that is paid for with any local or
223 state-

224

225 ===== T I T L E A M E N D M E N T =====

226 And the title is amended as follows:

227 Delete lines 3 - 35

228 and insert:

229 218.735, F.S.; requiring that a certain list include a
230 dollar valuation, as reasonably determined by the
231 contractor as a portion of the contract value, of the
232 estimated cost to complete each item on the list;
233 deleting a provision authorizing an extension by
234 contract for construction projects of less than \$10
235 million; requiring a local governmental entity to pay
236 a contractor the remaining contract balance within a
237 specified timeframe; revising the conditions that
238 would require a local governmental entity to pay
239 unpaid contract sums to a contractor if a specified
240 list is not developed; requiring a local governmental
241 entity to pay the remaining contract balance if the
242 local governmental entity provided a certain written



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243 notice to the contractor; revising the conditions that
244 require a local governmental entity to pay or release
245 amounts subject to certain disputes or claims;
246 amending s. 218.76, F.S.; revising the timeframe
247 within which proceedings must commence to resolve
248 disputes between vendors and local governmental
249 entities; revising the timeframe for such proceedings
250 to conclude; amending s. 255.073, F.S.; requiring that
251 undisputed portions of payment requests be paid within
252 a specified timeframe; amending s. 255.074, F.S.;
253 revising the timeframe for a public entity to submit a
254 payment request to the Chief Financial Officer;
255 amending s. 255.077, F.S.; requiring that a certain
256 list include a dollar valuation, as determined by the
257 contractor as a portion of the contract value, to
258 complete each item on the list; requiring the public