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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/18/2023	.	
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The Committee on Rules (DiCeglie) recommended the following:

Senate Amendment (with title amendment)

Delete lines 75 - 277
and insert:
contract, up to 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



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12 been developed and reviewed in accordance with the time periods
13 set forth in subparagraphs 1. and 2.

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

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

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

37 (e) Within 20 business days after the list is created, the
38 local governmental entity must pay the contractor the remaining
39 contract balance that includes all retainage previously withheld
40 by the local governmental entity less an amount equal to 150



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41 percent of the estimated cost to complete the items on the list.

42 (f) Upon completion of all items on the list, the
43 contractor may submit a payment request for the amount ~~all~~
44 ~~remaining retainage~~ withheld by the local governmental entity
45 pursuant to paragraph (e) this section. If a good faith dispute
46 exists as to whether one or more items identified on the list
47 have been completed pursuant to the contract, the local
48 governmental entity may continue to withhold up to 150 percent
49 of the total costs to complete such items.

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

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

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

67 (j) ~~(i)~~ If a local governmental entity fails to comply with
68 its responsibilities to develop the list required under
69 paragraph (a) or paragraph (b) within the time limitations



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70 provided in paragraph (a), the contractor may submit a payment
71 request to the local governmental entity for the all remaining
72 balance of the contract, including all remaining retainage
73 withheld by the local governmental entity. The local
74 governmental entity must pay the contractor pursuant to this
75 section; and payment of any remaining undisputed contract
76 amount, less any amount withheld pursuant to the contract for
77 incomplete or uncorrected work, must be paid within 20 business
78 days after receipt of a proper invoice or payment request. If
79 the local governmental entity has provided written notice to the
80 contractor specifying the failure of the contractor to meet
81 contract requirements in the development of the list of items to
82 be completed, the local governmental entity must pay the
83 contractor the remaining balance of the contract, less an amount
84 equal to 150 percent of the estimated cost to complete the items
85 that the local governmental entity intended to include on the
86 list need not pay or process any payment request for retainage
87 if the contractor has, in whole or in part, failed to cooperate
88 with the local governmental entity in the development of the
89 list or to perform its contractual responsibilities, if any,
90 with regard to the development of the list or if paragraph
91 (8)(c) applies.

92 (8)

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



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99 Section 2. Paragraph (a) of subsection (2) of section
100 218.76, Florida Statutes, is amended to read:

101 218.76 Improper payment request or invoice; resolution of
102 disputes.—

103 (2) (a) If a dispute arises between a vendor and a local
104 governmental entity concerning payment of a payment request or
105 an invoice, the dispute must ~~shall~~ be finally determined by the
106 local governmental entity pursuant to a dispute resolution
107 procedure established by the local governmental entity. Such
108 procedure must provide that proceedings to resolve the dispute
109 commence ~~are commenced~~ within 30 ~~45~~ days after the date the
110 payment request or proper invoice was received by the local
111 governmental entity and conclude ~~concluded~~ by final decision of
112 the local governmental entity within 45 ~~60~~ days after the date
113 the payment request or proper invoice was received by the local
114 governmental entity. Such procedures are not subject to chapter
115 120 and do not constitute an administrative proceeding that
116 prohibits a court from deciding de novo any action arising out
117 of the dispute. If the dispute is resolved in favor of the local
118 governmental entity, interest charges begin to accrue 15 days
119 after the local governmental entity's final decision. If the
120 dispute is resolved in favor of the vendor, interest begins to
121 accrue as of the original date the payment became due.

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

124 255.073 Timely payment for purchases of construction
125 services.—

126 (2) If a public entity disputes a portion of a payment
127 request, the undisputed portion must be ~~timely~~ paid by the date



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128 required under the contract or by 20 business days after receipt
129 of the request, whichever is earlier.

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

132 255.074 Procedures for calculation of payment due dates.—

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

136 Section 5. Present subsections (4) through (8) of section
137 255.077, Florida Statutes, are redesignated as subsections (5)
138 through (9), respectively, a new subsection (4) is added to that
139 section, and subsection (1) and present subsection (8) of that
140 section are amended, to read:

141 255.077 Project closeout and payment of retainage.—

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

153 (a) For construction projects having an estimated cost of
154 less than \$10 million, within 30 calendar days after reaching
155 substantial completion of the construction services purchased as
156 defined in the contract, or, if not defined in the contract,



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157 upon reaching beneficial occupancy or use; or

158 (b) For construction projects having an estimated cost of
159 \$10 million or more, within 30 calendar days, unless otherwise
160 extended by contract not to exceed 60 calendar days, after
161 reaching substantial completion of the construction services
162 purchased as defined in the contract, or, if not defined in the
163 contract, upon reaching beneficial occupancy or use.

164 (4) Within 20 business days after developing the list, and
165 after receipt of a proper invoice or payment request, the public
166 entity must pay the contractor the remaining balance of the
167 contract, including any remaining retainage withheld by the
168 public entity pursuant to s. 255.078, less an amount equal to
169 150 percent of the estimated cost to complete the items on the
170 list.

171 (9)~~(8)~~ If a public entity fails to comply with its
172 responsibilities to develop the list required under subsection
173 (1) or subsection (2), as defined in the contract, within the
174 time limitations provided in subsection (1), the contractor may
175 submit a payment request for all remaining retainage withheld by
176 the public entity pursuant to s. 255.078, and the public entity
177 must pay the contractor all remaining retainage previously
178 withheld within 20 days after receipt of the payment request.

179 The public entity is not required to ~~need not~~ pay or process any
180 payment request for retainage if the contractor has, ~~in whole or~~
181 ~~in part,~~ failed to cooperate with the public entity in the
182 development of the list or failed to perform its contractual
183 responsibilities, if any, with regard to the development of the
184 list or if s. 255.078(3) applies.

185 Section 6. Subsection (3) of section 255.078, Florida



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186 Statutes, is amended to read:

187 255.078 Public construction retainage.—

188 (3) This section and s. 255.077 do not require the public
189 entity to pay or release any amounts that are the subject of a
190 good faith dispute made in writing pursuant to the contract or
191 the subject of a claim brought pursuant to s. 255.05, ~~or~~
192 ~~otherwise the subject of a claim or demand by the public entity~~
193 ~~or contractor.~~

194 Section 7. Section 255.0992, Florida Statutes, is amended
195 to read:

196 255.0992 Public works projects; prohibited governmental
197 actions.—

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

199 (a) "Political subdivision" means a separate agency or unit
200 of local government created or established by law or ordinance
201 and the officers thereof. The term includes, but is not limited
202 to, a county; a city, town, or other municipality; or a
203 department, commission, authority, school district, taxing
204 district, water management district, board, public corporation,
205 institution of higher education, or other public agency or body
206 thereof authorized to expend public funds for construction,
207 maintenance, repair, or improvement of public works.

208 (b) "Public works project" means ~~an activity exceeding \$1~~
209 ~~million in value that is paid for with any state-appropriated~~
210 ~~funds and which consists of~~ the construction, maintenance,
211 repair, renovation, remodeling, or improvement of a building,
212 road, street, sewer, storm drain, water system, site
213 development, irrigation system, reclamation project, gas or
214 electrical distribution system, gas or electrical substation, or



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215 other facility, project, or portion thereof that is owned in
216 whole or in part by any political subdivision.

217 (2) Except as required by federal or state law, on a public
218 works project paid for with any state-appropriated funds, the
219 state or any political subdivision that contracts for a public
220 works project may not take the following actions:

221 (a) Prevent a certified, licensed, or registered
222 contractor, subcontractor, or material supplier or carrier, from
223 participating in the bidding process based on the geographic
224 location of the company headquarters or offices of the
225 contractor, subcontractor, or material supplier or carrier
226 submitting a bid on a public works project or the residences of
227 employees of such contractor, subcontractor, or material
228 supplier or carrier.

229 (b) Require that a contractor, subcontractor, or material
230 supplier or carrier engaged in a public works project:

231 1. ~~Pay employees a predetermined amount of wages or~~
232 ~~prescribe any wage rate;~~

233 2. ~~Provide employees a specified type, amount, or rate of~~
234 ~~employee benefits;~~

235 3. ~~Control, limit, or expand staffing; or~~

236 2.4. Recruit, train, or hire employees from a designated,
237 restricted, or single source.

238 (c) Prohibit any contractor, subcontractor, or material
239 supplier or carrier able to perform such work that is qualified,
240 licensed, or certified as required by state or local law to
241 perform such work from receiving information about public works
242 opportunities or from submitting a bid on the public works
243 project. This paragraph does not apply to vendors listed under



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244 ss. 287.133 and 287.134.

245 (3) Except as required by federal or state law, on a public
246 works project paid for with local or state-appropriated funds,
247 the state or any political subdivision thereof that contracts
248 for a public works project may not:

249 (a) Require that a contractor, subcontractor, or material
250 supplier or carrier pay its employees a predetermined amount of
251 wages;

252 (b) Prescribe any wage rate for employees; or

253 (c) Provide employees a specified type, amount, or rate of
254 employee benefits.

255 (4) A political subdivision may not require works of art in
256 public places at a rate exceeding those established in s.
257 255.043 on any construction project other than for the original
258 construction of a government building with public access.

259 (5) This section does not apply to the following:

260 (a) Contracts executed under chapter 337.

261 (b) A use authorized by s. 212.055(1) which is approved by
262 a majority vote of the electorate of the county or by a charter
263 amendment approved by a majority vote of the electorate of the
264 county.

265

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

267 And the title is amended as follows:

268 Delete lines 7 - 48

269 and insert:

270 item on the list; requiring a local governmental
271 entity to pay a contractor the remaining contract
272 balance within a specified timeframe; authorizing the



273 contractor to submit a payment request for the amount
274 withheld by the local governmental entity under
275 specified conditions; authorizing a contractor to
276 submit a payment request to the local governmental
277 entity for the remaining balance of the contract,
278 under specified conditions; requiring a local
279 governmental entity to pay the contractor within a
280 specified timeframe; requiring the local governmental
281 entity to pay the remaining balance of the contract
282 under specified conditions; revising the conditions
283 that require a local governmental entity to pay or
284 release amounts subject to certain disputes or claims;
285 amending s. 218.76, F.S.; revising the timeframe
286 within which proceedings must commence to resolve
287 disputes between vendors and local governmental
288 entities; revising the timeframe for such proceedings
289 to conclude; amending s. 255.073, F.S.; requiring that
290 undisputed portions of payment requests be paid within
291 a specified timeframe; amending s. 255.074, F.S.;
292 revising the timeframe for a public entity to submit a
293 payment request to the Chief Financial Officer;
294 amending s. 255.077, F.S.; requiring that certain
295 contracts provide the estimated cost to complete each
296 item on a specified list; requiring that such
297 contracts specify the process for determining the cost
298 to complete the items on the list; requiring the
299 public entity to pay the contractor the remaining
300 balance of the contract within a specified timeframe;
301 requiring a public entity to pay all remaining



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302 retainage if the public entity has not developed a
303 specified list; amending s. 255.078, F.S.; revising
304 the conditions that require a public entity to pay or
305 release amounts subject to certain disputes or claims;
306 amending s. 255.0992, F.S.; revising the definition of
307 the term "public works project"; revising the actions
308 the state or any political subdivision is prohibited
309 from taking when it contracts for a public works
310 project; prohibiting a political subdivision from
311 requiring works of art that exceed specified rates for
312 certain projects; providing an effective date.