

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: State Affairs Committee
 2 Representative Griffitts offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause 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 development of a single list of items that contains the estimated cost to complete each item 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

Amendment No.

17 | the list and determining the estimated cost to complete each
18 | item, including the responsibilities of the local governmental
19 | entity and the contractor in developing and reviewing the list
20 | and a reasonable time for developing the list:

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

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

32 |
33 | The contract must also specify a date for the delivery of the
34 | list of items, not to exceed 5 days after the list of items has
35 | been developed and reviewed in accordance with the time periods
36 | set forth in subparagraphs 1. and 2.

37 | (b) If the contract between the local governmental entity
38 | and the contractor relates to the purchase of construction
39 | services on more than one building or structure, or involves a
40 | multiphased project, the contract must provide for the
41 | development of a list of items required to render complete,

180549 - h0383-strike.docx

Published On: 4/18/2023 8:34:27 PM

Amendment No.

42 satisfactory, and acceptable all the construction services
43 purchased pursuant to the contract for each building, structure,
44 or phase of the project within the time limitations provided in
45 paragraph (a).

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

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

60 (e) Within 20 business days after the list is developed,
61 the local governmental entity shall pay the contractor the
62 remaining balance of the contract, including any remaining
63 retainage withheld by the local governmental entity, less an
64 amount equal to 150 percent of the estimated cost to complete
65 the items on the list.

66 (f)-(e) Upon completion of all items on the list, the

180549 - h0383-strike.docx

Published On: 4/18/2023 8:34:27 PM

Amendment No.

67 contractor may submit a payment request for the amount all
68 ~~remaining retainage~~ withheld by the local governmental entity
69 pursuant to paragraph (e) ~~this section~~. If a good faith dispute
70 exists as to whether one or more items identified on the list
71 have been completed pursuant to the contract, the local
72 governmental entity may continue to withhold up to 150 percent
73 of the total costs to complete such items.

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

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

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

91 (j)~~(i)~~ If a local governmental entity fails to comply with

180549 - h0383-strike.docx

Published On: 4/18/2023 8:34:27 PM

Amendment No.

92 its responsibilities to develop the list required under
93 paragraph (a) or paragraph (b) within the time limitations
94 provided in paragraph (a), the contractor may submit a payment
95 request to the local governmental entity for the remaining
96 balance of the contract, including all remaining retainage
97 withheld by the local governmental entity. The local
98 governmental entity shall pay the contractor pursuant to this
99 section; and payment of any remaining undisputed contract
100 amount, less any amount withheld pursuant to the contract for
101 incomplete or uncorrected work, must be paid within 20 business
102 days after receipt of a proper invoice or payment request. If
103 the local governmental entity has provided written notice to the
104 contractor specifying the failure of the contractor to meet
105 contract requirements in the development of the list of items to
106 be completed, the local governmental entity shall pay the
107 contractor the remaining balance of the contract, less an amount
108 equal to 150 percent of the estimated cost to complete the items
109 that the local governmental entity intended to include on the
110 list need not pay or process any payment request for retainage
111 if the contractor has, in whole or in part, failed to cooperate
112 with the local governmental entity in the development of the
113 list or to perform its contractual responsibilities, if any,
114 with regard to the development of the list or if paragraph
115 (8)(c) applies.

116 (8)

180549 - h0383-strike.docx

Published On: 4/18/2023 8:34:27 PM

Amendment No.

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

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

125 218.76 Improper payment request or invoice; resolution of
126 disputes.—

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

180549 - h0383-strike.docx

Published On: 4/18/2023 8:34:27 PM

Amendment No.

142 interest charges begin to accrue 15 days after the local
143 governmental entity's final decision. If the dispute is resolved
144 in favor of the vendor, interest begins to accrue as of the
145 original date the payment became due.

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

148 255.073 Timely payment for purchases of construction
149 services.—

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

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

156 255.074 Procedures for calculation of payment due dates.—

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

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

165 255.077 Project closeout and payment of retainage.—

166 (1) Each contract for construction services between a

Amendment No.

167 public entity and a contractor must provide for the development
168 of a single list of items that contains the estimated cost to
169 complete each item required to render complete, satisfactory,
170 and acceptable the construction services purchased by the public
171 entity. The contract must specify the process for developing the
172 development of the list and determining the estimated cost to
173 complete each item, including responsibilities of the public
174 entity and the contractor in developing and reviewing the list
175 and a reasonable time for developing the list, as follows:

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

181 (b) For construction projects having an estimated cost of
182 \$10 million or more, within 30 calendar days, unless otherwise
183 extended by contract not to exceed 60 calendar days, after
184 reaching substantial completion of the construction services
185 purchased as defined in the contract, or, if not defined in the
186 contract, upon reaching beneficial occupancy or use.

187 (4) Within 20 business days after the list is developed,
188 and after receipt of a proper invoice or payment request, the
189 public entity shall pay the contractor the remaining balance of
190 the contract, including any remaining retainage withheld by the
191 public entity pursuant to s. 255.078, less an amount equal to

180549 - h0383-strike.docx

Published On: 4/18/2023 8:34:27 PM

Amendment No.

192 150 percent of the estimated cost to complete the items on the
193 list.

194 ~~(5)-(4)~~ Upon completion of all items on the list, the
195 contractor may submit a payment request for the amount ~~all~~
196 ~~remaining retainage~~ withheld by the public entity pursuant to
197 subsection (4) s. 255.078. If a good faith dispute exists as to
198 whether one or more items identified on the list have been
199 completed pursuant to the contract, the public entity may
200 continue to withhold an amount not to exceed 150 percent of the
201 total costs to complete such items.

202 ~~(9)-(8)~~ If a public entity fails to comply with its
203 responsibilities to develop the list required under subsection
204 (1) or subsection (2), as defined in the contract, within the
205 time limitations provided in subsection (1), the contractor may
206 submit to the public entity a payment request for all remaining
207 retainage withheld by the public entity pursuant to s. 255.078.
208 The public entity shall pay the contractor within 20 business
209 days after receiving the payment request. However, the public
210 entity need not pay or process any payment request for retainage
211 if the contractor has, ~~in whole or in part,~~ failed to cooperate
212 with the public entity in the development of the list or failed
213 to perform its contractual responsibilities, if any, with regard
214 to the development of the list or if s. 255.078(3) applies.

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

180549 - h0383-strike.docx

Published On: 4/18/2023 8:34:27 PM

Amendment No.

217 255.078 Public construction retainage.—

218 (3) This section and s. 255.077 do not require the public
219 entity to pay or release any amounts that are the subject of a
220 good faith dispute made in writing pursuant to the contract or
221 the subject of a claim brought pursuant to s. 255.05, ~~or~~
222 ~~otherwise the subject of a claim or demand by the public entity~~
223 ~~or contractor.~~

224 Section 7. Subsection (3) of section 255.0992, Florida
225 Statutes, is renumbered as subsection (4), subsections (1) and
226 present subsection (3) are amended, and a new subsection (3) is
227 added to that section, to read:

228 255.0992 Public works projects; prohibited governmental
229 actions.—

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

231 (a) "Political subdivision" means a separate agency or
232 unit of local government created or established by law or
233 ordinance and the officers thereof. The term includes, but is
234 not limited to, a county; a city, town, or other municipality;
235 or a department, commission, authority, school district, taxing
236 district, water management district, board, public corporation,
237 institution of higher education, or other public agency or body
238 thereof authorized to expend public funds for construction,
239 maintenance, repair, or improvement of public works.

240 (b) "Public works project" means an activity ~~exceeding \$1~~
241 ~~million in value~~ that is paid for with any state-appropriated

Amendment No.

242 funds and which consists of the construction, maintenance,
243 repair, renovation, remodeling, or improvement of a building,
244 road, street, sewer, storm drain, water system, site
245 development, irrigation system, reclamation project, gas or
246 electrical distribution system, gas or electrical substation, or
247 other facility, project, or portion thereof ~~that is~~ owned in
248 whole or in part by any political subdivision.

249 (3) A political subdivision may not require any entity to
250 dedicate funds to or make expenditures for art in public places
251 in an amount that exceeds the amount required for the
252 acquisition of works of art under s. 255.043 except for the
253 original construction of a government building that provides
254 public access.

255 (4)~~(3)~~ This section does not apply to the following:

256 (a) Contracts executed under chapter 337.

257 (b) A use authorized by s. 212.055(1) which is approved by
258 a majority vote of the electorate of the county or by a charter
259 amendment approved by a majority vote of the electorate of the
260 county.

261 (c) An independent special district as defined in s.
262 189.012(3).

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

264
265 -----

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

Amendment No.

267 Remove everything before the enacting clause and insert:
268 A bill to be entitled
269 An act relating to public construction; amending s.
270 218.735, F.S.; revising provisions relating to
271 payments for purchases of construction services by
272 local governmental entities; amending s. 218.76, F.S.;
273 revising the time periods within which certain
274 proceedings must be commenced and concluded; amending
275 s. 255.073, F.S.; providing dates by which the
276 undisputed portion of certain payment requests must be
277 paid; amending s. 255.074, F.S.; revising the date by
278 which a public entity must submit certain payment
279 requests to the Chief Financial Officer; amending s.
280 255.077, F.S.; revising provisions relating to
281 payments for purchases of construction services by
282 public entities; amending s. 255.078, F.S.; revising
283 applicability; amending s. 255.0992, F.S.; revising
284 the definition of the term "public works project";
285 revising the circumstances in which the state or a
286 political subdivision is prohibited from taking
287 certain actions; prohibiting a political subdivision
288 from requiring an entity to dedicate funds to or make
289 expenditures for art in public places in excess of a
290 certain amount except in certain circumstances;
291 providing an effective date.

180549 - h0383-strike.docx

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