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Inspector General
Accredited

Prompt Payment for Public Construction Contracts

On May 25, 2023, the Governor signed Senate Bill 346: Public Construction into law (Chapter-2023-134, Laws of Florida), which became effective July 1, 2023. The Bill amends statutory provisions related to the Local Government Prompt Payment Act and public works contracts.

What's new effective July 1, 2023

Each contract for construction services between a local governmental entity¹ and a contractor must provide for the development of a single list of items required to render complete, satisfactory, and acceptable the construction services purchased by the governmental entity (also called a "punch list").

Effective July 1, 2023:

- The contract for construction services must specify the process for developing the punch list and determining the cost of completing the items on the list, and should include the responsibilities of the local governmental entity and the contractor in developing and reviewing the list.²
- Within 20 business days after the punch 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.³
- Upon completion of all items on the list, the contractor may submit a payment request for the amount withheld by the local governmental entity. If a good faith dispute exists as to whether one or more items identified on the list have been



¹ "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. §218.72(5), F.S.

² §218.735(7)(a), F.S.

³ §218.735(7)(e), F.S.

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completed, the local governmental entity may continue to withhold up to 150 percent of the total costs to complete such items.⁴

- If a local governmental entity fails to comply with its responsibilities to develop the punch list, the contractor may submit a payment request to the local governmental entity for the remaining balance of the contract, including all remaining retainage. The local governmental entity must pay the contractor within 20 business days after receipt of a proper invoice or payment request.⁵
- The time frame to commence the dispute resolution process established by the local governmental entity concerning a payment request or invoice is reduced from 45 days to 30 days after the receipt of the payment request or invoice. The time frame to conclude the dispute resolution process by final decision of the local governmental entity is reduced from 60 days to 45 days after the date of receipt of the payment request or invoice.⁶
- The definition of “public works project” in section 255.0992, Florida Statutes, is amended to define the term as any activity that is paid for with any state-appropriate funds and that 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 facility, project, or portion thereof owned in whole or in part by any political subdivision.⁷ As a result of the amended definition, the county and municipalities may not exclude contractors from bidding based on their geographic location, impose wage and employment conditions, or require contractors to recruit, train, or hire employees from a designed source for activities meeting the definition of “public works project”, except as required by state or federal law.

Suggestions

Local governmental agencies should review SB 346 and seek guidance from their legal counsel regarding any needed policy revisions to ensure compliance with the law. Additionally, local governments should train personnel, managers, and/or administrators on the requirements of Florida law for Local Government Prompt Payment for Public Construction Contracts and public works projects.



⁴ §218.735(7)(f), F.S.

⁵ §218.735(7)(j), F.S.

⁶ § 218.76 (2)(a) Florida Statutes

⁷ “Political subdivision” means a separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher education, or other public agency or body thereof authorized to expend public funds for construction, maintenance, repair, or improvement of public works. §255.0992(1)(a), F.S.