

The 2009 Florida Statutes

255.077 Project closeout and payment of retainage.--

(1) Each contract for construction services between a public entity and a contractor must provide for the development of a list of items required to render complete, satisfactory, and acceptable the construction services purchased by the public entity. The contract must specify the process for the development of the list, including responsibilities of the public entity and the contractor in developing and reviewing the list and a reasonable time for developing the list, as follows:

(a) For construction projects having an estimated cost of less than \$10 million, within 30 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; or

(b) For construction projects having an estimated cost of \$10 million or more, within 30 calendar days, unless otherwise extended by contract not to exceed 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.

(2) If the contract between the public entity and the contractor relates to the purchase of construction services on more than one building or structure, or involves a multiphased project, the contract must provide for the development of a list of items required to render complete, satisfactory, and acceptable all the construction services purchased pursuant to the contract for each building, structure, or phase of the project within the time limitations provided in subsection (1).

(3) The failure to include any corrective work or pending items not yet completed on the list developed pursuant to subsection (1) or subsection (2) does not alter the responsibility of the contractor to complete all the construction services purchased pursuant to the contract.

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

(5) All items that require correction under the contract and that are identified after the preparation and delivery of the list remain the obligation of the contractor as defined by the contract.

(6) Warranty items may not affect the final payment of retainage as provided in this section or as provided in the contract between the contractor and its subcontractors and suppliers.

(7) Retainage may not be held by a public entity or a contractor to secure payment of insurance premiums under a consolidated insurance program or series of insurance policies issued to a public entity or a contractor for a project or group of projects, and the final payment of retainage as provided in this section may not be delayed pending a final audit by the public entity's or contractor's insurance provider.

(8) If a public entity fails to comply with its responsibilities to develop the list required under subsection (1) or subsection (2), as defined in the contract, within the time limitations provided in

subsection (1), the contractor may submit a payment request for all remaining retainage withheld by the public entity pursuant to s. 255.078. The public entity need not pay or process any payment request for retainage if the contractor has, in whole or in part, failed to cooperate with the public entity in the development of the list or failed to perform its contractual responsibilities, if any, with regard to the development of the list or if s. 255.078(6) applies.

History.--s. 11, ch. 2005-230.