

# The 2009 Florida Statutes

## CHAPTER 255 – PUBLIC CONSTRUCTION PROJECTS

### 255.078 Public construction retainage.--

- (1) With regard to any contract for construction services, a public entity may withhold from each progress payment made to the contractor an amount not exceeding 10 percent of the payment as retainage until 50-percent completion of such services.
- (2) After 50-percent completion of the construction services purchased pursuant to the contract, the public entity must reduce to 5 percent the amount of retainage withheld from each subsequent progress payment made to the contractor. For purposes of this section, the term "50-percent completion" has the meaning set forth in the contract between the public entity and the contractor or, if not defined in the contract, the point at which the public entity has expended 50 percent of the total cost of the construction services purchased as identified in the contract together with all costs associated with existing change orders and other additions or modifications to the construction services provided for in the contract.
- (3) After 50-percent completion of the construction services purchased pursuant to the contract, the contractor may elect to withhold retainage from payments to its subcontractors at a rate higher than 5 percent. The specific amount to be withheld must be determined on a case-by-case basis and must be based on the contractor's assessment of the subcontractor's past performance, the likelihood that such performance will continue, and the contractor's ability to rely on other safeguards. The contractor shall notify the subcontractor, in writing, of its determination to withhold more than 5 percent of the progress payment and the reasons for making that determination, and the contractor may not request the release of such retained funds from the public entity.
- (4) After 50-percent completion of the construction services purchased pursuant to the contract, the contractor may present to the public entity a payment request for up to one-half of the retainage held by the public entity. The public entity shall promptly make payment to the contractor, unless the public entity has grounds, pursuant to subsection (6), for withholding the payment of retainage. If the public entity makes payment of retainage to the contractor under this subsection which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the contractor shall timely remit payment of such retainage to those subcontractors and suppliers.
- (5) Neither this section nor s. 255.077 prohibits a public entity from withholding retainage at a rate less than 10 percent of each progress payment, from incrementally reducing the rate of retainage pursuant to a schedule provided for in the contract, or from releasing at any point all or a portion of any retainage withheld by the public entity which is attributable to the labor, services, or materials supplied by the contractor or by one or more subcontractors or suppliers. If a public entity makes any payment of retainage to the contractor which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the contractor shall timely remit payment of such retainage to those subcontractors and suppliers.
- (6) Neither this section nor s. 255.077 requires the public entity to pay or release any amounts that are the subject of a good faith dispute, the subject of a claim brought pursuant to s. 255.05, or otherwise the subject of a claim or demand by the public entity or contractor.

(7) The same time limits for payment of a payment request apply regardless of whether the payment request is for, or includes, retainage.

(8) Subsections (1)-(4) do not apply to construction services purchased by a public entity which are paid for, in whole or in part, with federal funds and are subject to federal grantor laws and regulations or requirements that are contrary to any provision of the Florida Prompt Payment Act.

(9) This section does not apply to any construction services purchased by a public entity if the total cost of the construction services purchased as identified in the contract is \$200,000 or less.

**History**---s. 12, ch. 2005-230.