



MTECC Procedure 8.40.10

Approved: _____

Interim Executive Director

Payment Processing Procedure

Purpose:

The purpose of this procedure is to define the processes related to Agency payment processing.

Authority:

FS 215.422 Payments, warrants, and invoices; processing time limits; dispute resolution; agency or judicial branch compliance.

Scope:

This procedure is for use of MTECC representatives to determine compliance with all criteria related to the processing of payment request from MTECC.

Authority:

- Chapter 218, Florida Statutes, PART VII LOCAL GOVERNMENT PROMPT PAYMENT ACT
- Section 255.071, Florida Statutes – Payment of subcontractors, sub-subcontractors, materialmen, and suppliers on construction contracts for public projects.
- Section 255.073, Florida Statutes – Timely payment for purchases of construction services. (Note this includes Sections 255.072 to 255.078, Florida Statutes, in the entirety related to payments of construction services)

Procedure:

The MTECC Executive Director shall ensure that through Agency staff or contracted support staff that the following legal requirements to the processing of MTECC Agency Payments are followed. The MTECC Executive Director and Legal Counsel shall review the Florida Statutes each year for any material changes and update this procedure based on the changes in law.

Prompt Payment – This first section of laws pertains to the prompt payment of payments by local governments for all items. Please pay special attention to Section 218.77, relating to the use of Federal funds in contracting and payments. The provisions of this section must be included in any project contract that relies on reimbursements from future payment.



MTECC Procedure 8.40.10

218.70 Popular name.—This part may be cited as the “Local Government Prompt Payment Act.”

218.71 Purpose and policy.—

(1) The purpose of this part is:

(a) To provide for prompt payments by local governmental entities and their institutions and agencies.

(b) To provide for interest payments on late payments made by local governmental entities and their institutions and agencies.

(c) To provide for a dispute resolution process for payment of obligations.

(2) It is the policy of this state that payment for all purchases by local governmental entities be made in a timely manner.

History.—s. 4, ch. 89-297.

218.72 Definitions.—As used in this part, the term:

(1) “Agent” means the project architect, project engineer, or other agency or person acting on behalf of the local governmental entity. The agent who is required to review invoices or payment requests must be identified in accordance with s. 218.735(1).

(2) “Construction services” means all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or other improvements to real property.

(3) “Contractor” or “provider of construction services” means the person who contracts directly with a local governmental entity to provide construction services.

(4) “County” means a political subdivision of the state established pursuant to s. 1, Art. VIII of the State Constitution.

(5) “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.

(6) “Municipality” means a municipality created pursuant to general or special law and metropolitan and consolidated governments as provided in s. 6(e) and (f), Art. VIII of the State Constitution.

(7) “Payment request” means a request for payment for construction services which conforms with all statutory requirements and all requirements specified by the local governmental entity to which the payment request is submitted. Such requirements must be included in the contract for the project for which payment is requested.



MTECC Procedure 8.40.10

(8) “Proper invoice” means an invoice that conforms with all statutory requirements and all requirements specified by the local governmental entity to which the invoice is submitted. Such requirements must be included in the contract for the project for which the invoice is submitted.

(9) “Purchase” means the purchase of goods, services, or construction services; the purchase or lease of personal property; or the lease of real property by a local governmental entity.

(10) “Vendor” means any person who sells goods or services, sells or leases personal property, or leases real property directly to a local governmental entity. The term includes any person who provides waste hauling services to residents or businesses located within the boundaries of a local government pursuant to a contract or local ordinance.

History.—s. 4, ch. 89-297; s. 1, ch. 95-331; s. 1, ch. 2001-169; s. 2, ch. 2005-230; s. 1, ch. 2010-111.

218.73 Timely payment for nonconstruction services.—The time at which payment is due for a purchase other than construction services by a local governmental entity must be calculated from:

- (1) The date on which a proper invoice is received by the chief disbursement officer of the local governmental entity after approval by the governing body, if required; or
- (2) If a proper invoice is not received by the local governmental entity, the date:
 - (a) On which delivery of personal property is accepted by the local governmental entity;
 - (b) On which services are completed;
 - (c) On which the rental period begins; or
 - (d) On which the local governmental entity and vendor agree in a contract that provides dates relative to payment periods; whichever date is latest.

History.—s. 4, ch. 89-297; s. 2, ch. 95-331; s. 2, ch. 2001-169.

218.735 Timely payment for purchases of construction services.—

(1) The due date for payment for the purchase of construction services by a local governmental entity is determined as follows:

(a) If an agent must approve the payment request or invoice before the payment request or invoice is submitted to the local governmental entity, payment is due 25 business days after the date on which the payment request or invoice is stamped as received as provided in s. [218.74\(1\)](#). The contractor may send the local government an overdue notice. If the payment request or invoice is not rejected within 4 business days after delivery of the overdue notice, the payment request or invoice shall be deemed accepted, except for any portion of the payment request or invoice that is fraudulent or misleading.

(b) If an agent need not approve the payment request or invoice submitted by the contractor,



MTECC Procedure 8.40.10

payment is due 20 business days after the date on which the payment request or invoice is stamped as received as provided in s. 218.74(1).

A local governmental entity shall identify the agent or employee of the local governmental entity, or the facility or office, to which the contractor may submit its payment request or invoice. This requirement shall be included in the contract between the local governmental entity and contractor, or shall be provided by the local governmental entity through a separate written notice, as required under the contract, no later than 10 days after the contract award or notice to proceed. A contractor's submission of a payment request or invoice to the identified agent, employee, facility, or office of the local governmental entity shall be stamped as received as provided in s. 218.74(1) and shall commence the time periods for payment or rejection of a payment request or invoice as provided in this subsection and subsection (2).

(2) If a payment request or invoice does not meet the contract requirements, the local governmental entity must reject the payment request or invoice within 20 business days after the date on which the payment request or invoice is stamped as received as provided in s. 218.74(1). The rejection must be written and must specify the deficiency and the action necessary to make the payment request or invoice proper.

(3) If a payment request or an invoice is rejected under subsection (2) and the contractor submits a payment request or invoice that corrects the deficiency, the corrected payment request or invoice must be paid or rejected on the later of:

(a) Ten business days after the date the corrected payment request or invoice is stamped as received as provided in s. 218.74(1); or

(b) If the local governmental entity is required by ordinance, charter, or other law to approve or reject the corrected payment request or invoice, the first business day after the next regularly scheduled meeting of the local governmental entity held after the corrected payment request or invoice is stamped as received as provided in s. 218.74(1).

(4) If a dispute between the local governmental entity and the contractor cannot be resolved by the procedure in subsection (3), the dispute must be resolved in accordance with the dispute resolution procedure prescribed in the construction contract or in any applicable ordinance, which shall be referenced in the contract. In the absence of a prescribed procedure, the dispute must be resolved by the procedure specified in s. 218.76(2).

(5) If a local governmental entity disputes a portion of a payment request or an invoice, the undisputed portion shall be paid timely, in accordance with subsection (1).

(6) If a contractor receives payment from a local governmental entity for labor, services, or materials furnished by subcontractors and suppliers hired by the contractor, the contractor must



MTECC Procedure 8.40.10

remit payment due to those subcontractors and suppliers within 10 days after the contractor's receipt of payment. If a subcontractor receives payment from a contractor for labor, services, or materials furnished by subcontractors and suppliers hired by the subcontractor, the subcontractor must remit payment due to those subcontractors and suppliers within 7 days after the subcontractor's receipt of payment. This subsection does not prohibit a contractor or subcontractor from disputing, pursuant to the terms of the relevant contract, all or any portion of a payment alleged to be due to another party if the contractor or subcontractor notifies the party whose payment is disputed, in writing, of the amount in dispute and the actions required to cure the dispute. The contractor or subcontractor must pay all undisputed amounts due within the time limits imposed by this section.

(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 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 the list, including the responsibilities of the local governmental entity and the contractor in developing and reviewing the list and a reasonable time for developing the list:

1. 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

2. For construction projects having an estimated cost of \$10 million or more, within 30 calendar days, or, if extended by 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 been developed and reviewed in accordance with the time periods set forth in subparagraphs 1. and 2.

(b) If the contract between the local governmental 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 paragraph (a).

(c) The final contract completion date must be at least 30 days after the delivery of the list of



MTECC Procedure 8.40.10

items. If the list is not provided to the contractor by the agreed upon date for delivery of the list, the contract time for completion must be extended by the number of days the local governmental entity exceeded the delivery date. Damages may not be assessed against a contractor for failing to complete a project within the time required by the contract, unless the contractor failed to complete the project within the contract period as extended under this paragraph.

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

(e) Upon completion of all items on the list, the contractor may submit a payment request for all remaining retainage withheld by the local governmental entity pursuant to this section. 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 local governmental entity may continue to withhold up to 150 percent of the total costs to complete such items.

(f) 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.

(g) Warranty items or items not included in the list of items required under paragraph (a) 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.

(h) Retainage may not be held by a local governmental entity or a contractor to secure payment of insurance premiums under a consolidated insurance program or series of insurance policies issued to a local governmental 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 local governmental entity's or contractor's insurance provider.

(i) If a local governmental entity fails to comply with its responsibilities to develop the list required under paragraph (a) or paragraph (b) within the time limitations provided in paragraph (a), the contractor may submit a payment request for all remaining retainage withheld by the local governmental entity pursuant to this section; and payment of any remaining undisputed contract amount, less any amount withheld pursuant to the contract for incomplete or uncorrected work, must be paid within 20 business days after receipt of a proper invoice or payment request. If the local governmental entity has provided written notice to the contractor specifying the failure of the contractor to meet contract requirements in the development of the list of items to be completed, the local governmental 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 local governmental entity in the



MTECC Procedure 8.40.10

development of the list or to perform its contractual responsibilities, if any, with regard to the development of the list or if paragraph (8)(c) applies.

(8)(a) With regard to any contract for construction services, a local governmental entity may withhold from each progress payment made to the contractor an amount not exceeding 5 percent of the payment as retainage.

(b) This section does not prohibit a local governmental entity from withholding retainage at a rate less than 5 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 local governmental entity which is attributable to the labor, services, or materials supplied by the contractor or by one or more subcontractors or suppliers. If a local governmental 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 must timely remit payment of such retainage to those subcontractors and suppliers.

(c) This section does not require the local governmental 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 local governmental entity or contractor.

(d) The time limitations set forth in this section for payment of payment requests apply to any payment request for retainage made pursuant to this section.

(e) Paragraph (a) does not apply to construction services purchased by a local governmental 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 Local Government Prompt Payment Act.

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

¹(9) All payments due under this section and not made within the time periods specified by this section shall bear interest at the rate of 2 percent per month, or the rate specified by contract, whichever is greater.

History.—s. 3, ch. 95-331; s. 3, ch. 2001-169; s. 3, ch. 2005-230; s. 2, ch. 2010-111; s. 1, ch. 2020-173; s. 1, ch. 2021-124.

¹**Note.**—Section 10, ch. 2021-124, provides that “[t]his act applies to contracts executed on or after July 1, 2021.”



MTECC Procedure 8.40.10

218.74 Procedures for calculation of payment due dates.—

(1) Each local governmental entity shall establish procedures whereby each payment request or invoice received by the local governmental entity is marked as received on the date on which it is delivered to an agent or employee of the local governmental entity or of a facility or office of the local governmental entity.

(2) The payment due date for a local governmental entity for the purchase of goods or services other than construction services is 45 days after the date specified in s. 218.73. The payment due date for the purchase of construction services is specified in s. 218.735.

(3) If the terms under which a purchase is made allow for partial deliveries and a payment request or proper invoice is submitted for a partial delivery, the time for payment for the partial delivery must be calculated from the time of the partial delivery and the submission of the payment request or invoice in the same manner as provided in s. 218.73 or s. 218.735.

(4) All payments, other than payments for construction services, due from a local governmental entity and not made within the time specified by this section bear interest from 30 days after the due date at the rate of 1 percent per month on the unpaid balance. The vendor must invoice the local governmental entity for any interest accrued in order to receive the interest payment. Any overdue period of less than 1 month is considered as 1 month in computing interest. Unpaid interest is compounded monthly. For the purposes of this section, the term “1 month” means a period beginning on any day of one month and ending on the same day of the following month.

History.—s. 4, ch. 89-297; s. 4, ch. 95-331; s. 4, ch. 2001-169.

218.75 Mandatory interest.—No contract between a local governmental entity and a vendor or a provider of construction services shall prohibit the collection of late payment interest charges allowable under this part.

History.—s. 4, ch. 89-297; s. 5, ch. 2001-169.

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

(1) If an improper payment request or invoice is submitted by a vendor, the local governmental entity shall, within 10 days after the improper payment request or invoice is received, notify the vendor, in writing, that the payment request or invoice is improper and indicate what corrective action on the part of the vendor is needed to make the payment request or invoice proper.

(2)(a) If a dispute arises between a vendor and a local governmental entity concerning payment of a payment request or invoice, the dispute shall be finally determined by the local governmental entity pursuant to a dispute resolution procedure established by the local governmental entity. Such procedure must provide that proceedings to resolve the dispute are commenced within 45 days



MTECC Procedure 8.40.10

after the date the payment request or proper invoice was received by the local governmental entity and concluded by final decision of the local governmental entity within 60 days after the date the payment request or proper invoice was received by the local governmental entity. Such procedures are not subject to chapter 120 and do not constitute an administrative proceeding that prohibits a court from deciding de novo any action arising out of the dispute. If the dispute is resolved in favor of the local governmental entity, interest charges begin to accrue 15 days after the local governmental entity's final decision. If the dispute is resolved in favor of the vendor, interest begins to accrue as of the original date the payment became due.

¹(b) If the local governmental entity does not commence the dispute resolution procedure within the time required, a contractor may give written notice to the local governmental entity of the failure to timely commence its dispute resolution procedure. If the local governmental entity fails to commence the dispute resolution procedure within 4 business days after such notice, any amounts resolved in the contractor's favor shall bear mandatory interest, as set forth in s. 218.735(9), from the date the payment request or invoice containing the disputed amounts was submitted to the local governmental entity. If the dispute resolution procedure is not commenced within 4 business days after the notice, the objection to the payment request or invoice shall be deemed waived. The waiver of an objection pursuant to this paragraph does not relieve a contractor of its contractual obligations.

(3) In an action to recover amounts due under this part, the court shall award court costs and reasonable attorney's fees, including fees incurred through appeal, to the prevailing party.

History.—s. 4, ch. 89-297; s. 6, ch. 2001-169; s. 34, ch. 2002-1; s. 3, ch. 2010-111; s. 8, ch. 2021-124.

¹**Note.**—Section 10, ch. 2021-124, provides that “[t]his act applies to contracts executed on or after July 1, 2021.”

218.77 Payment by federal funds.—A local governmental entity which intends to pay for a purchase with federal funds shall not make such purchase without reasonable assurance that federal funds to cover the cost thereof will be received. Where payment or the time of payment is contingent on receipt of federal funds or federal approval, any contract and any solicitation to bid shall clearly state such contingency.

History.—s. 4, ch. 89-297.

218.78 Report of interest.—If the total amount of interest paid during the preceding fiscal year exceeds \$250, each local governmental entity shall, during December of each year, report to the board of county commissioners or the municipal governing body the number of interest payments made by it during the preceding fiscal year and the total amount of such payments made under this part.



MTECC Procedure 8.40.10

History.—s. 4, ch. 89-297; s. 5, ch. 95-331.

218.79 Repeal of conflicting laws.—All laws and parts of laws in conflict with this part are repealed.

History.—s. 4, ch. 89-297.

218.80 Public Bid Disclosure Act.—

(1) This section may be cited as the “Public Bid Disclosure Act.”

(2) It is the intent of the Legislature that a local governmental entity shall disclose all of the local governmental entity’s permits or fees, including, but not limited to, all license fees, permit fees, impact fees, or inspection fees, payable by the contractor to the unit of government that issued the bidding documents or other request for proposal, unless such permits or fees are disclosed in the bidding documents or other request for proposal for the project at the time the project was let for bid. It is further the intent of the Legislature to prohibit local governments from halting construction to collect any undisclosed permits or fees which were not disclosed or included in the bidding documents or other request for proposal for the project at the time the project was let for bid.

(3) Bidding documents or other request for proposal issued for bids by a local governmental entity, or any public contract entered into between a local governmental entity and a contractor shall disclose each permit or fee which the contractor will have to pay before or during construction, the dollar amount or the percentage method or the unit method of all permits or fees which may be required by the local government as a part of the contract, and a listing of all other governmental entities that may have additional permits or fees generated by the project. If the request for proposal does not require the response to include a final fixed price, the local governmental entity is not required to disclose any fees or assessments in the request for proposal. However, at least 10 days prior to requiring the contractor to submit a final fixed price for the project, the local governmental entity shall make the disclosures required in this section. Any of the local governmental entity’s permits or fees that are not disclosed in the bidding documents, other request for proposal, or a contract between a local government and a contractor shall not be assessed or collected after the contract is let. No local government shall halt construction under any public contract or delay completion of the contract in order to collect any permits or fees which were not provided for or specified in the bidding documents, other request for proposal, or the contract.

(4) This section does not require disclosure in the bidding documents of any permits or fees imposed as a result of a change order or a modification to the contract. The local government shall disclose all permits or fees imposed as a result of a change order or a modification to the contract prior to the date the contractor is required to submit a price for the change order or modification.



MTECC Procedure 8.40.10

History.—s. 1, ch. 93-76; s. 1, ch. 2020-154.
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Note that this section pertains to engineering and construction services and there may be overlap with the prior section. Where there is overlap the prior section should take precedence.

255.072 Definitions.—As used in ss. [255.073-255.078](#), the term:

- (1) “Agent” means project architect, project engineer, or any other agency or person acting on behalf of a public entity.
- (2) “Construction services” means all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property. The term “construction services” does not include contracts or work performed for the Department of Transportation.
- (3) “Contractor” means any person who contracts directly with a public entity to provide construction services.
- (4) “Payment request” means a request for payment for construction services which conforms with all statutory requirements and with all requirements specified by the public entity to which the payment request is submitted.
- (5) “Public entity” means the state, or any office, board, bureau, commission, department, branch, division, or institution thereof, but does not include a local governmental entity as defined in s. [218.72](#).
- (6) “Purchase” means the purchase of construction services.

255.073 Timely payment for purchases of construction services.—

- (1) Except as otherwise provided in ss. [255.072-255.078](#), s. [215.422](#) governs the timely payment for construction services by a public entity.
- (2) If a public entity disputes a portion of a payment request, the undisputed portion must be timely paid.
- (3) When a contractor receives payment from a public entity for labor, services, or materials furnished by subcontractors and suppliers hired by the contractor, the contractor shall remit payment due to those subcontractors and suppliers within 10 days after the contractor’s receipt of payment. When a subcontractor receives payment from a contractor for labor, services, or materials furnished by subcontractors and suppliers hired by the subcontractor, the subcontractor shall remit payment due to those subcontractors and suppliers within 7 days after the subcontractor’s receipt of payment. This subsection does not prohibit a contractor or subcontractor from disputing,



MTECC Procedure 8.40.10

pursuant to the terms of the relevant contract, all or any portion of a payment alleged to be due to another party if the contractor or subcontractor notifies the party whose payment is disputed, in writing, of the amount in dispute and the actions required to cure the dispute. The contractor or subcontractor must pay all undisputed amounts due within the time limits imposed by this subsection.

¹(4) All payments due for the purchase of construction services and not made within the applicable time limits shall bear interest at the rate of 2 percent per month.

History.—s. 7, ch. 2005-230; s. 3, ch. 2021-124.

¹**Note.**—Section 10, ch. 2021-124, provides that “[t]his act applies to contracts executed on or after July 1, 2021.”

255.074 Procedures for calculation of payment due dates.—

(1) Each public entity shall establish procedures whereby each payment request received by the public entity is marked as received on the date on which it is delivered to an agent or employee of the public entity or of a facility or office of the public entity.

(2) If the terms under which a purchase is made allow for partial deliveries and a payment request is submitted for a partial delivery, the time for payment for the partial delivery must be calculated from the time of the partial delivery and the submission of the payment request.

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

History.—s. 8, ch. 2005-230.

255.075 Mandatory interest.—A contract between a public entity and a contractor may not prohibit the collection of late payment interest charges authorized under s. 255.073(4).

History.—s. 9, ch. 2005-230; s. 9, ch. 2021-124.

¹**Note.**—Section 10, ch. 2021-124, provides that “[t]his act applies to contracts executed on or after July 1, 2021.”

255.076 Award of court costs and attorney’s fees.—In an action to recover amounts due for construction services purchased by a public entity, the court shall award court costs and reasonable attorney’s fees, including fees incurred through any appeal, to the prevailing party, if the court finds that the nonprevailing party withheld any portion of the payment that is the subject of the action without any reasonable basis in law or fact to dispute the prevailing party’s claim to those amounts.

History.—s. 10, ch. 2005-230.



MTECC Procedure 8.40.10

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



MTECC Procedure 8.40.10

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(3) applies.

History.—s. 11, ch. 2005-230; s. 3, ch. 2020-173.
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255.071 Payment of subcontractors, sub-subcontractors, materialmen, and suppliers on construction contracts for public projects.—

¹(1) Any person, firm, or corporation who receives a payment from the state or any county, city, or political subdivision of the state, or other public authority, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work shall pay, in accordance with the contract terms, the undisputed contract obligations for labor, services, or materials provided on account of such improvements. A person, firm, or corporation who knowingly and intentionally fails to make the payment required under this subsection commits a misapplication of construction funds, punishable as provided in s. 713.345.

(2) The failure to pay any undisputed obligations for such labor, services, or materials within 30 days after the date the labor, services, or materials were furnished and payment for such labor, services, or materials became due, or within the time limitations set forth in s. 255.073(3), whichever last occurs, shall entitle any person providing such labor, services, or materials to the procedures specified in subsection (3) and the remedies provided in subsection (4).

(3) Any person providing labor, services, or materials for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work improvements to real property may file a verified complaint alleging:

(a) The existence of a contract for providing such labor, services, or materials to improve real property.

(b) A description of the labor, services, or materials provided and alleging that the labor, services, or materials were provided in accordance with the contract.

(c) The amount of the contract price.



MTECC Procedure 8.40.10

- (d) The amount, if any, paid pursuant to the contract.
 - (e) The amount that remains unpaid pursuant to the contract and the amount thereof that is undisputed.
 - (f) That the undisputed amount has remained due and payable pursuant to the contract for more than 30 days after the date the labor or services were accepted or the materials were received.
 - (g) That the person against whom the complaint was filed has received payment on account of the labor, services, or materials described in the complaint and, as of the date the complaint was filed, has failed to make payment within the time limitations set forth in s. 255.073(3).
- (4) After service of the complaint, the court shall conduct an evidentiary hearing on the complaint, upon not less than 15 days' written notice. The person providing labor, services, or materials is entitled to the following remedies to the extent of the undisputed amount due for labor or services performed or materials supplied, and upon proof of each allegation in the complaint:
- (a) An accounting of the use of any such payment from the person who received such payment.
 - (b) A temporary injunction against the person who received the payment, subject to the bond requirements specified in the Florida Rules of Civil Procedure.
 - (c) Prejudgment attachment against the person who received the payment, in accordance with each of the requirements of chapter 76.
 - (d) Such other legal or equitable remedies as may be appropriate in accordance with the requirements of the law.
- (5) The remedies specified in subsection (4) must be granted without regard to any other remedy at law and without regard to whether or not irreparable damage has occurred or will occur.
- (6) The remedies specified in subsection (4) do not apply:
- (a) To the extent of a bona fide dispute regarding any portion of the contract price.
 - (b) In the event the plaintiff has committed a material breach of the contract which would relieve the defendant from the obligations under the contract.
- (7) The prevailing party in any proceeding under this section is entitled to recover costs, including a reasonable attorney's fee, at trial and on appeal.
- (8) The provisions of this section shall also apply to any contract between a subcontractor and a sub-subcontractor or supplier and any contract between a sub-subcontractor and supplier on any project for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work.

History.—s. 1, ch. 93-141; s. 5, ch. 2005-230; s. 2, ch. 2021-124.

¹**Note.**—Section 10, ch. 2021-124, provides that “[t]his act applies to contracts executed on or after July 1, 2021.”



MTECC Procedure 8.40.10

Forms and Checklists:

The MTECC Executive Director shall ensure that agency staff and contracted support develop appropriate forms and checklist to ensure these requirements are met and followed by all those that are involved in developing contracts, reviewing invoices and processing payments for MTEC projects, contracts and expenses.