

## PART VII

## FLORIDA PROMPT PAYMENT ACT

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**218.70 Short title.**--This part may be cited as the "Florida Prompt Payment Act."

History.--s. 4, ch. 89-297.

**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:

- (1) "Proper invoice" means an invoice which conforms with all statutory requirements and with all requirements that have been specified by the local governmental entity to which the invoice is submitted.
- (2) "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 or any project supported by county or municipal funds.

- (3) "County" means a political subdivision of the state established pursuant to s. 1, Art. VIII of the State Constitution.
- (4) "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.
- (5) "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.
- (6) "Vendor" means any person who sells goods or services, sells or leases personal property, or leases real property to a local governmental entity.
- (7) "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 that require a license under parts I and II of chapter 489.
- (8) "Payment request" means a request for payment for construction services which conforms with all statutory requirements and with all requirements specified by the local governmental entity to which the payment request is submitted.
- (9) "Agent" means project architect, project engineer, or any other agency or person acting on behalf of the local governmental entity.

History.--s. 4, ch. 89-297; s. 1, ch. 95-331; s. 1, ch. 2001-169.

**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 prior to the payment request or invoice being 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).

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

(2) The local governmental entity may 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 in the payment request or invoice 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 corrected payment request or invoice which corrects the deficiency specified in writing by the local governmental entity, 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 governing body 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 governing body 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. 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) When 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 shall remit payment due to those subcontractors and suppliers within 15 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 15 days after the subcontractor's receipt of payment. Nothing herein shall 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. In the event of such a dispute, the contractor or subcontractor may withhold the disputed portion of any such payment 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) All payments due under this section and not made within the time periods specified by this section shall bear interest at the rate of 1 percent per month, or the rate specified by contract, whichever is greater.

History.--s. 3, ch. 95-331; s. 3, ch. 2001-169.

#### **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) In any case in which 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 by it, notify the vendor 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) In the event a dispute occurs between a vendor and a local governmental entity concerning payment of a payment request or an invoice, such disagreement shall be finally determined by the local governmental entity as provided in this section. Each local governmental entity shall establish a dispute resolution procedure to be followed by the local governmental entity in cases of such disputes. Such procedure shall provide that proceedings to resolve the dispute shall be commenced not later than 45 days after the date on which the payment request<sup>1</sup> or proper invoice was received by the local governmental entity and shall be concluded by final decision of the local governmental entity not later than 60 days after the date on which the payment request or proper invoice was received by the local governmental entity. Such procedures shall not be subject to chapter 120, and such procedures shall not constitute an administrative proceeding which 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, then interest charges shall begin to accrue 15 days after the local governmental entity's final decision. If the dispute is resolved in favor of the vendor, then interest shall begin to accrue as of the original date the payment became due.

(3) In an action to recover amounts due under ss. 218.70-218.80, 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. 4, ch. 89-297; s. 6, ch. 2001-169.

<sup>1</sup>Note.--The word "or" was inserted by the editors.

**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.

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 and shall include 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. 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 which 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.

History.--s. 1, ch. 93-76.