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Prompt Payment Act

Background

On January 1st, 2017 the **One-Penny Sales Surtax** went into effect in Palm Beach County. This surtax will fund an estimated **1,625** new infrastructure projects totaling **\$1.35B** for the county and municipalities over the next **10 years**. With such a large influx of new business opportunities in our area, **it is important that we ensure timely payment of all undisputed amounts owed to vendors** in accordance with the Prompt Payment Act.



Information

Section 218.70 et seq., Florida Statutes, Local Government Prompt Payment Act, requires local governmental entities to:

- Provide prompt vendor payments;
- Provide interest on late payments; and,
- Provide a dispute resolution process for payment of obligations.

Construction Services

If an agent¹ must approve a construction payment request first, the payment is due 25 business days after the date the invoice is stamped as received.² If the payment request does not need an agent's approval, the payment is due 20 business days after the date the invoice is stamped as received.

¹ Agency must identify agent in the contract or within 10 days from the Notice to Proceed.

² Payment for purchases other than construction services are calculated from the date a proper invoice is received. If a proper invoice is not received, then the **receipt date** is the latest of the date of delivery and acceptance, the date services are completed, the date rental period begins, or the date as agreed to per contract. Payment is due 45 days after receipt date. Payments not made within the time specified earn interest from 30 days after the due date at the rate of 1% per month. The vendor must invoice for any interest accrued in order to receive the interest payment.

“Enhancing Public Trust in Government”

TIP: Direct Agents to review and/or process pay applications/invoices as the highest priority task assigned.

TIP: Educate all persons in the payment authorization process that construction payments should have a high processing priority due to the magnified impact of non-timely payments on subcontractors.³

For construction services, the local government is also required to reject improper invoices within 20 business days in writing and with the specific corrective action necessary. Upon receipt of the corrected invoice the payment is due within 10 business days.

Notwithstanding the above, Prompt Pay also requires that if a local governmental entity disputes a portion of a payment request or invoice, the undisputed portion shall be paid according to the 25/20 business day requirements listed above.

Prompt Pay also has a number of other provisions that a local government entity should be aware of.

- Contract must provide for development of a single list of items required to render complete, satisfactory and acceptable for the construction services purchased. Timelines for satisfaction vary based on value of project.
- While the practice of retainage is not required, if a retainage provision is included in a contract, it must comply with the requirements of the Statute.
- Interest on construction payments due in accordance with the time periods specified earn interest at 1% per month or per the contract, whichever is greater.
- *Section 218.76 (2)(a), Florida Statutes*, specifies that payment disputes shall be finally determined by the local governmental entity pursuant to a dispute resolution procedure established by the entity. Such procedure must provide the proceedings regarding the dispute commence within 45 days after the payment request date or proper invoice received, and the entity's final decision must be made within 60 days. These procedures are not subject to *Chapter 120, Florida Statutes (Administrative Procedures Act)*.

Recommendation

We recommend that local governments review their policies, and practices in light of this information and take appropriate actions.



³ Prompt Pay also extends from the prime contractor subcontractors requiring the prime to pay subcontractors and suppliers within 10 days after receipt of payment. Subcontractors must pay their subcontractors and suppliers within 7 days of payment.