CHAPTER 6.1

UNPAID BILLS PROCESSING

6.1.1 Purpose

To provide a uniform standard for withholding progress payments due to nonpayment of bills by Contractors on all contracts (construction or maintenance).

6.1.2 Authority

Section 20.23(3)(a) and 334.048(3), Florida Statutes (F.S.)

6.1.3 References

Sections 337.11(11)(a)-(c) and 255.05, F.S.

Rule 14-22, Florida Administrative Code (F.A.C.)

Section 9-5.6 of Standard Specifications for Road and Bridge Construction

6.1.4 Definitions

Refer to the Introduction section of this Manual

6.1.5 General

There are two distinct cases in this procedure. One is for subcontractors and suppliers for which the prime Contractor is required to certify previous progress payment(s). The second is for sub-subcontractors or material suppliers to subcontractors for which the prime Contractor is not required to certify previous payments. These second or lower tier subs/suppliers should seek the advice of legal counsel to protect their rights.

6.1.6 Certification Requirements

The prime Contractor shall certify that he/she has paid all subcontractors and suppliers their pro-rata share of previous progress payments. Any false certification submitted by
the Contractor is grounds for denial or revocation of Certification of Qualification or determination of Contractor Non-Responsibility per Rule Chapter 14-22, F.A.C.

Resident Level Responsibilities

No progress payment shall be made after the initial payment until the Contractor provides the certification (Certification Disbursement of Previous Periodic Payments to Subcontractors, Form No. 700-010-38). The certification applies to previous progress payments, less any agreed upon retainage between the Contractor and subcontractor.

The certification must be completed as per the instructions on the form or it will be deemed incomplete and non-responsive. If the Contractor’s submittal is deemed non-responsive, the matter should be sent to the Contractor describing any deficiencies as shown in the guidance documents and should be discussed with the Contractor. The progress estimate payment will not be made until a complete certification has been received.

An exception to the withholding of a progress estimate will be made if the Contractor:

(1) Provides detailed reasons for not making payment of the pro-rata share of progress payment and;

(2) Furnishes written notification of the same to the Department and affected subcontractor(s) and/or suppliers. Note: a copy of this documentation MUST be attached to the certification or it is incomplete.

6.1.7 Receipt of Unpaid Bill Notice from Subcontractor or Supplier

(A) Resident Level Responsibilities

Upon receipt of unpaid bill notice, the Resident Engineer will send a letter as shown in Guidance Documents (Letter 6-1-A) for this section, including a copy of the unpaid bill claim, to the prime Contractor, initiating an investigation into the claim. The Resident Engineer will send a copy of the letter and claim to the District Final Estimates Manager (DFEM). The Resident Engineer will investigate any good cause of nonpayment. If the Resident Engineer determines that good cause is demonstrated then progress payments will continue. A good cause is when the prime Contractor and the subcontractor/supplier have a legitimate dispute as to whether or not the money is due and the prime Contractor is only withholding the amount in dispute. The Resident Engineer is not to decide the dispute or determine who might win the dispute. The Resident Engineer must only determine whether a legitimate dispute exists. However, if the Resident Engineer
determines that good cause is not demonstrated then the next progress estimate will be withheld. During the investigation, progress payments will continue. The Resident Engineer shall coordinate the review with the DFEM and the Office of Construction throughout the duration of the investigation.

If a monthly certification is not received and good cause for the same is not demonstrated, the Resident Engineer will notify the District Construction Engineer who will then determine whether to withhold payment of the next progress estimate.

Should a notification of unpaid bills be received following Final Acceptance, the Resident Office will forward it to the DFEM.

(B) District Level Responsibilities

The District Final Estimate Manager (DFEM) will record any unpaid bill claim into the tracking system.

Should a notification of unpaid bills be received following Final Acceptance, the DFEM will follow instructions provided in the Final Estimates Review and Administration Manual, Topic No. 700-050-005 (Section 5.5.5).

6.1.8 Receipt of Unpaid Bill Notice from Second Tier Subcontractors/Suppliers

(A) Resident Level Responsibilities

The Resident Engineer will send second tier (or lower) subcontractors/suppliers a letter as shown in Guidance Documents (Letter 6-1-B) for this section, stating they do not fall within the class of claimants entitled to protection under Section 337.11, Florida Statutes, and they should consult with their attorney on how to further protect their rights. A copy of the letter will be sent to the DFEM.

(B) District Level Responsibilities

The DFEM will input the claim into the tracking system.
6.1.9 Notice to Contractor of Withholding

Resident Level Responsibilities

The Resident Engineer must notify the Contractor in writing (Letter 6-1-C) of the Resident Engineer’s intent to make a recommendation to withhold payment for the lack of certification or lack of demonstration of good cause. This written notification must include the specific reasons for withholding payment and specific actions required of the Contractor to gain release of payment. A copy of this notification must be sent to the District Final Estimates Office and District Construction Office along with backup correspondence.

6.1.10 Withholding of Payments

Resident Level Responsibilities

The Resident Engineer will prepare the documentation for the disputed progress estimate and forward it to the District Construction Engineer.

After progress estimates have been processed, the District Construction Engineer will hold the disputed progress estimate until he receives notice of Contractor compliance from the Resident Engineer. At that time, the progress estimate for payment will be released. The Resident Office will inform the DFEM of Contractor compliance, so that the issue may be resolved in the tracking system.

6.1.11 Processing for Falsification of Payment Certification

(A) Resident Level Responsibilities

If the Resident Engineer discovers that the Contractor does not have good cause for withholding payment to the subcontractor and/or suppliers and/or withholding sums more than the amount in dispute and in his opinion the prime Contractor has submitted a false certification of payment, the Resident Engineer must submit to the Director, Office of Construction a memorandum or email transmitting, on a monthly basis starting from the month a false certification may have occurred until the unpaid bill is resolved, all the appropriate documentation related to the non-payment, including copies of the unpaid bill notice and correspondence between the Department, the prime Contractor and the subcontractor/supplier, copies of monthly certifications, copies of sublet with the affected subcontractor/supplier and copies of monthly estimates highlighting payment to the prime Contractor for work performed by the subcontractor/supplier.
Guidance Letters

Unpaid Bill Guidance Letters can be found on the State Final Estimates SharePoint site (Internal Use Only) in editable format.

Guidance Letters:

Letter 6-1-A.......... Unpaid Bill to Suppliers and/or Subcontractors (1st Tier)
Letter 6-1-B.......... Unpaid Bill Notice from 2nd Tier Subcontractor/Supplier
Letter 6-1-C.......... Incomplete Certification of Previous Payment to Subs