

MEASUREMENT AND PAYMENT – SCOPE OF PAYMENTS.

(REV. ~~3-10-14~~~~12-31-14~~~~2-22-15~~~~9-22-15~~) ~~(1-15)~~~~(2-15)~~

SUBARTICLE 9-2.1 is expanded as follows:

Request payment for work completed and accepted by the Department by submitting an invoice. ~~The invoice shall be based on~~ ~~Base the invoice on~~ using the pay items and unit prices contained in the Contract. ~~and shall include~~ Include the Contract Number, the Financial Project Number, the Invoice Number, the Invoice Date and the period that the invoice represents. If required by the Engineer, *furnish* photos of the completed work at each location ~~shall be furnished~~ with the ~~Invoice~~ *invoice*. Submit the invoice no more often than once every 28 days to the Engineer in charge of the project. Upon receipt and approval, payment will be made less an amount retained or withheld ~~per provisions included~~ in the Contract.

SUBARTICLES 9-2.1.1 and 9-2.1.2 are deleted.

SUBARTICLE 9-3.2 is deleted.

SUBARTICLE 9-3.3.1 is deleted and the following substituted:

9-3.3.1 Error in Lump Sum Quantity: Where the Department designates the pay quantity for an item to be a lump sum and the plans show an estimated quantity, the Department will adjust the lump sum compensation only in the event that either the Contractor submits satisfactory evidence or the Department determines and furnishes satisfactory evidence that the lump sum quantity shown is in substantial error. The term “substantial error” is defined as the smaller of (a) or (b) below:

- (a) a difference between the original plan quantity and final quantity of more than 5%,
- (b) a change in quantity which causes a change in the amount payable of more than \$5,000.

SUBARTICLE 9-5.1 is deleted and the following substituted:

9-5.1 General: If the work extends over a period in excess of 45 calendar days, the Contractor may claim partial payment for work completed and accepted by the Department by submitting an invoice. The actual reimbursement to the contractor will be based on:

- 1. the percentage of the Lump Sum contract ~~amount~~ completed, or*
- 2. the pay items and the unit prices contained in the ~~eContract~~ ~~Document~~ completed, and accepted by the Engineer in charge .*

Contract amount is defined as the original ~~€~~contract amount adjusted by approved supplemental agreements.

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Retainage will be determined for each project on multiple project Contracts. The Department will not accept Securities, Certificates of Deposit or letters of credit as a replacement for retainage. Amounts withheld will not be released until payment of the final estimate.

An amount may be retained from a Contractor’s payment until final acceptance of materials or work at the end of a burn-in or establishment period. The amount retained will be determined in accordance with the following schedule:

| <i>Percentage Contract Amount Completed</i> | <i>Amount Retained</i> |
|---|--|
| <i>0 to 75</i> | <i>None</i> |
| <i>75 to 100</i> | <i>10 % of value of work completed exceeding 75% of Contract Amount.</i> |

~~The Engineer will make payments based upon invoices submitted by the Contractor in accordance with 9-2.1.9-5.1 General: If the work extends over a period in excess of 45 calendar days, the Contractor may claim partial payment for work completed and accepted by the Department by submitting an invoice. The actual reimbursement to the contractor will be based on the pay items and unit prices contained in the Contract; or, on the percentage of the Lump Sum contract amount completed, and accepted by the Engineer in charge.~~

~~Contract amount is defined as the original Contract amount adjusted by approved supplemental agreements.~~

~~Contract time is defined as the original Contract time adjusted by approved Contract time extensions.~~

~~Retainage will be determined for each job on multiple job Contracts. The Department will not accept Securities, Certificates of Deposit or letters of credit as a replacement for retainage. Amounts withheld will not be released until payment of the final estimate.~~

~~An amount may be retained from a Contractor’s payment until final acceptance of materials or work at the end of a burn-in or establishment period. The amount retained will be determined in accordance with the following schedule:~~

| Percentage Contract Amount Completed | Amount Retained |
|---|--|
| 0 to 75 | None |
| 75 to 100 | 10 % of value of work completed exceeding 75% of Contract Amount. |

~~The Engineer will make payments based upon invoices submitted by the Contractor in accordance with 9-2.1.~~

SUBARTICLE 9-5.5.2 is deleted.

ARTICLE 9-8 is deleted and the following substituted:

9-8 Acceptance and Final Payment.

If the Contractor fails to furnish all required Contract Documents as listed in (a1) through (e34) below within 90 days of the Contractor's submittal of a final invoice, the Department may suspend the Contractor from bidding under the provisions of Florida Administrative Code 14-22.

Submit a final invoice in accordance with 9-2.1 for work completed and accepted by the Department. The Department will pay the estimate, less any sums that the Department may have deducted or retained under the provisions of the Contract, provided the Contractor has met the requirements of (a1) through (e34) below.

a1. The Contractor has performed the work and properly maintained the project, as specified in the ~~contract~~ *Contract Documents*.

2. Consistent with Florida Statutes 337.19(2), any suits against the Department concerning this Contract shall be commenced by the Contractor within 820 calendar days from and after the date all work is completed and accepted by the Department which date shall be final acceptance. The Contractor's failure to commence suit against the Department within the 820-day period also constitutes acceptance of final payment. ~~The Contractor will commence any arbitration claim or suit within 820 calendar days from and after the time all work is completed and accepted by the Department, and that failure to file a formal claim within this period constitutes acceptance of final payment.~~

~~b23. The Contractor has furnished a sworn affidavit to the effect that the Contractor has paid all bills and no suits are pending (other than those exceptions listed, if any). ; and that the contractor will commence any such arbitration claim or suit within 820 calendar days from and after the time all work is completed and accepted by the Department, and that failure to file a formal claim within this period constitutes acceptance of final payment) in connection with work performed under the Contract and that the Contractor has not offered or made any gift or gratuity to, or made any financial transaction of any nature with, any employee of the Department in the performance of the Contract. Include with the listed tort liability exceptions, if any, evidence of adequate insurance coverage as required in 7-13.~~

e34. The surety on the ~~Contract~~ *contract* bond consents, by completion of their portion of the affidavit and surety release subsequent to the Contractor's completion of ~~his-its~~ portion, to final payment to the Contractor, and agrees that the making of such payment does not relieve the surety of any of its obligations under the bond.

ARTICLE 9-9 is expanded by the following: [f#2]

Section 215.422(5), Florida Statutes, requires the Department to include a statement of vendor (Contractor) rights. Contractors are hereby advised of the following:

Contractors providing goods and services to an agency should be aware of the following time frames: Upon receipt, an agency has five working days to inspect and approve the goods and services, unless the bid specifications, purchase order or Contract specifies otherwise. An agency has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved, by the Department of Transportation.

If a payment is not made within 40 days, a separate interest penalty at the rate established pursuant to Section 55.03(1), Florida Statutes will be due and payable; in addition to

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the invoice amount, to the Contractor. The interest penalty provision applies after a 35-day time period to health care providers, as defined by rule. Interest penalties of less than one dollar will not be enforced unless the Contractor requests payment. Invoices which have to be returned to a Contractor because of Contractor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Contractors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted by calling the Bureau of Accounting at (850) 413-5516.