



Florida Department of Transportation

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PROGRAM MANAGEMENT BULLETIN 21-05

DATE: May 19, 2021

TO: *District Directors of Transportation Operations, District Directors of Transportation Development, Program Management Engineers, District Specifications Engineers*

FROM: Stefanie D. Maxwell, P.E., Manager, Program Management Office

COPIES: Courtney Drummond, P.E., Will Watts, P.E., District Local Program Administrators, District Specifications Engineers, Nahir DeTizio (FHWA)

SUBJECT: Retainage and Local Agency Program Division 1 Specifications for use by our Local Partners

DocuSigned by:

Stefanie D. Maxwell

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Florida Statutes s. 255. 077 and 255.078 were updated to limit the amount of retainage a public entity (local agency) may withhold from a contractor effective October 1, 2020. This resulted in changes required to Article 9-5 of the Local Agency Program or "LAP" Division 1 Specifications.

BACKGROUND

The Florida Department of Transportation (Department) posts the following documents on the Specs on the Web site for use by our local partners on LAP contracts:

- 1) LAP Division 1 Specs for LAP Class A, B, & C projects
- 2) LAP Division 1 Specs for Class D projects

Historically, **FDOT Standard Specification 9-5** is identified on the **LAP Construction Checklist (FDOT Form No. 525-010-44)** for optional inclusion in local construction project bid packages under LAP Construction Checklist item #31 *Progress Payments/Estimates*. All versions of the LAP Division 1 Specifications documents listed above included **FDOT Standard Specification 9-5** for use when the local agencies do not have standard contract provisions for progress payments in their construction contracts, as required for Federal-aid funded construction contracts. **Subarticles 9-5.1 and 9-5.4 of FDOT Standard Specification** include retainage provisions that are compliant with *s. 337 F.S.* and applicable to Department lettings. However,

effective October 1, 2020 *s. 255 F.S.* modified retainage provisions for (local) public entities, making **Subarticles 9-5.1** and **9-5.4** noncompliant.

Therefore, a local agency may need to amend its construction contract(s) to comply with *s. 255 F.S.* when the conditions listed below exist:

- The construction contract was executed on or after October 1, 2020.
- The construction contract included the LAP Division 1 Specifications posted to Specs on the Web.
- The local agency incorporated the retainage provisions included in sections 9-5.1 and 9-5.4 of FDOT Standard Specification 9-5 in its construction contract.

Specs on the Web may be accessed from the LAP Specifications webpage found here:

<https://www.fdot.gov/programmanagement/implemented/lap/default.shtm>.

IMPLEMENTATION

On May 12, 2020, the Department removed the retainage provisions in the LAP Division 1 Specifications documents for all LAP project classifications posted to the Specs on Web site.

The Department cannot provide legal counsel on how local agencies comply with *s. 255.077* and *255.078 F.S.*. Our local partners must work with their legal counsel to confirm applicability of the Florida Statutes and undertake bid addendums or contract amendments as needed to comply with the Florida Statutes. The statutory change does not affect construction contracts executed prior to October 1, 2020, construction contracts executed on or after October 1, 2020 where retainage provisions were omitted, or where the retainage provisions included in the construction contract complied with *s. 255 F.S.*.

Local agencies delivering LAP construction projects should develop and include retainage provisions in LAP construction project bid packages that comply with *s. 255.077* and *255.078 F.S.* for lettings after October 1, 2020. Retainage provisions are not required but are recommended on LAP projects due the complexity of Federal-aid contract compliance requirements and the elevated risk of contractor non-compliance on Federal-aid construction contracts.

CONTACT

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