

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

Sections 337.11(11)(a)-(c) and 255.05, Florida Statutes

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

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

6.1.3 Definitions

Prime Contractor: One that enters into a contract with the Department.

Subcontractor: One that enters into a contract with the prime Contractor; one who furnishes labor, materials or equipment and work by equipment rental under rental agreement with the prime Contractor.

Second Tier Subcontractors - a.k.a., Subordinate Subcontractor; any person who enters into a subordinate contract with a subcontractor for the performance of any part of such subcontractor's contract.

Supplier: Any person who furnishes materials under contract to the prime Contractor for direct delivery, specially fabricated materials or off site improvement, and who performs no labor in the installation.

Second Tier Supplier: Any person who furnishes materials under subordinate contract to a subcontractor for direct delivery, specially fabricated materials or off site improvement, and who performs no labor in the installation.

6.1.4 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 more tier subs/suppliers may desire their legal counsel's advice to protect their rights.

6.1.5 Certification Requirements

The prime Contractor is to 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.** Retain the envelope that the prime Contractor submits with the Certification.

(A) Resident Level Responsibilities

No progress payment is to 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 then the matter should be discussed with prime Contractor and sent to the prime Contractor describing any deficiencies as shown in Guidance Documents for this section. The progress estimate will be held 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.

6.1.6 Receipt of Notice of Unpaid Bill 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 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 considers 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 considers that good cause is not demonstrated then the next progress estimate will be withheld. During the investigation, progress payments will continue. The Project Administrator / Resident Engineer shall coordinate their review with the DFEM and the State Construction Office 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.***

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

(A) Resident Level Responsibilities

The Resident Engineer will send second tier subcontractors/suppliers a letter as shown in Guidance Documents 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.

6.1.8 Notice to Contractor of Withholding

(A) Resident Level Responsibilities

The Resident Engineer must notify the Contractor of discovery by certified mail with return receipt requested 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.

6.1.9 Withholding of Payments

(A) Resident Level Responsibilities

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

After progress estimates have been computer processed, the District Construction Engineer will pull that specific estimate and hold it 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.

6.1.10 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 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 Document 6-1-A

SAMPLE LETTER #1

(Date)

(Prime Contractor)

Certified Mail # _____
Return Receipt Requested

SUBJECT: UNPAID BILLS TO SUPPLIERS AND/OR SUBCONTRACTORS
Financial Project ID: State Job No.: Federal Job Project ID: County/Section No.:
Contract No.:

Gentlemen:

Section 337.11(11)(a), Florida Statutes, requires that the Department shall not make any progress payments unless the Contractor submits a certification that they have paid their suppliers and subcontractors their pro rata shares of the payment out of previous progress payments from the Department. When the Department receives a complaint from a subcontractor or a supplier that they have not received payment, we are required to monitor such claims.

We have received a notice of non-payment from _____. I have attached their letter of _____, for your review. In order to clear the issue, you are required to address the claim of non-payment by your next monthly certification. Please prepare a detailed response explaining the disposition of this claim. Your submittal shall include copies of all pertinent information (i.e. canceled checks, agreements, etc.).

Your explanation will be thoroughly reviewed to assure compliance with Section 337.11(11)(a)-(c), Florida Statutes. Non-compliance of Florida Statutes is sufficient reason for stopping future progress payments. If you, the Prime Contractor, state that subcontractors or suppliers have received their pro rata share and they did not, you have filed a false document.

If you have falsely certified payment to subcontractors, you may be subject to the penalties described in the certification document.

In order to avoid withholding of your monthly estimate, please submit your response by (prior to next estimate cut-off date).

Sincerely,

Resident Engineer

initial/initial
Attachment

cc: _____, District Construction Engineer
_____, District Final Estimate Manager, w/ copy of claim
_____, Surety
_____, Claimant Sub/Supplier
_____, State Construction Engineer - Mail Station 31, w/ copy of claim
_____, District Compliance Officer (if DBE is involved)

Guidance Document 6-1-B

SAMPLE LETTER #2

(Date)

(Claimant)

**SUBJECT: UNPAID BILLS NOTICE FROM SECOND TIER
SUBCONTRACTORS/SUPPLIERS**

Financial Project ID:
State Job No.:
Federal Job Project ID:
County/Section No.:
Contract No.:

Gentlemen:

We have received your notice of nonpayment on the above referenced project.

You do not fall within the class of claimants entitled to protection under Section 337.11, Florida Statutes. Therefore, we cannot participate in the resolution of this matter.

Consult with your attorney on how to further protect your rights.

Sincerely,

Resident Engineer

initial/initial
Attachment

cc: _____, District Construction Engineer
_____, Prime Contractor
_____, Surety
_____, District Final Estimate Manager, w/ copy of claim
_____, State Construction Engineer - Mail Station 31, w/ copy of claim
_____, District Compliance Officer (if DBE is involved)

Guidance Document 6-1-C

SAMPLE LETTER #3

(Date)

(Prime Contractor)

Certified Mail # _____

SUBJECT: INCOMPLETE CERTIFICATION DISBURSEMENT OF PREVIOUS PERIODIC PAYMENT TO SUBCONTRACTORS

Financial Project ID:

State Job No.:

Federal Job Project ID:

County/Section No.:

Contract No.:

Gentlemen:

Per our conversation on ____, this letter confirms that we have received your Certification Disbursement of Previous Periodic Payment To Subcontractors and found it incomplete and/or the form instructions have not been followed. (List specific deficiencies with the submittal here). Subsequent to the receipt of a complete certification, progress payments may be processed in accordance with the contract.

Section 337.11(11)(a), Florida Statutes, requires that the Department not make any progress payments unless the Contractor submits a certification that they have paid their subcontractors and suppliers their pro rata shares of the payment out of previous progress payments from the Department.

Your certification will be thoroughly reviewed to assure compliance with Section 337.11(11)(a)-(c), Florida Statutes. Non-compliance of Florida Statutes is sufficient reason for stopping future progress payments. If you, the Prime Contractor, state that everyone has received their pro rata share and they did not, you have filed a false document.

If you have falsely certified payment to subcontractors, you may be subject to the penalties described in the certification document.

In order to avoid delays in the processing of your monthly estimate, please submit your response as soon as possible.

Sincerely,

Resident Engineer

initial/initial
Attachment

cc: _____, District Construction Engineer
_____, District Final Estimate Manager