

Summary of Changes to Florida Statutes 255.05 re: Payment and Performance Bonds

Effective 10 1 2012

Set forth below is a summary of the new requirements/changes under FS 255.05 applicable to Payment and Performance Bonds which are effective as of 10-1-2012.

1. **Certified Copy of Recorded Bond/FS 255.05(1)(b)**: Each Contractor **must** provide FIU with a certified copy of the bonds required under FS 255.05 **BEFORE** commencing work or recommending work. FIU, as a public entity, **shall not** make payment to the contractor until the contractor has complied with this paragraph. [This requirement **applies to contracts entered** into on or after 10-1-2012.]
2. **Payment Bond/255.05(1)(e)**: Effective starting on 10-1-2012, any provision in a payment bond which restricts the classes of persons protected by the bond, which restricts the venue of any proceeding relating to such bond, which limits or expands the effective duration of the bond, or which adds conditions precedent to the enforcement of a claim against the bond is unenforceable.
3. **Release/Waiver re: Project/Payments in Question 255.05(11)**: Once a contractor furnishes and records a payment and performance bond for public works projects in accordance with FS 255.05 **and** provides the public authority **with a written consent from the surety regarding the project or payment in question**, the public authority may not condition its payment to the contractor on the production of a release, waiver, or like documentation from a claimant demonstrating that the claimant does not have an outstanding claim against the contractor, the payment bond, or the public authority for payments due on labor, services, or materials furnished for the public project. The surety **may**, in a writing served on the public authority **revoke its consent** or direct that the public authority withhold a specified amount from a payment which shall be effective on receipt. [This subsection applies to contracts entered into on or after October 1, 2012.]
4. **Technical Requirements re: Bond Information** (Summary from Malka & Kravitz PA Article copy attached)

New requirements for first page of F.S. 255.05 bond:

Bond number (assigned by surety)

In addition to what was previously required the following will be required on the first page of the bond as of October 1, 2012:

name, principal business address, and phone number of the contractor, the surety, and owner of the property

Contract number assigned by public entity

A description of the project sufficient to identify it, such as a legal description or the street address of the property being improved, and a general description of the improvement.