

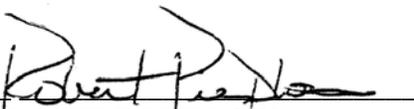


Construction Policy Bulletin

CPB 04-2 Retention Policy Modification

References: *Standard Specifications*, Section 9-1.06, "Partial Payments"
Construction Manual, Section 3-805, "Time of Completion"
Construction Manual, Section 3-907, "Partial Payments"
Construction Manual, Section 3-908, "Deductions"
Construction Manual, Section 3-909, "Retentions"
Construction Manual, Section 3-911, "Payment of a Progress Estimate after Contract Acceptance"
Construction Manual, Section 5-101, "Forms Used For Contract Administration"
Construction Manual, Section 5-103, "The Contract Administration System (CAS)"
Code of Federal Regulations, Title 49, Part 26.29
Public Contract Code, Section 10261
Streets and Highway Code, Section 820

Effective Date: July 26, 2004

Approved: 
ROBERT PIEPLOW
Chief, Division of Construction

Approval Date: July 23, 2004

Background

In accordance with recent changes made to the Code of Federal Regulations, Title 49, Part 26.29 (49 CFR 26.29), Caltrans will decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors on federal aid contracts.

The business practice mandated by 49 CFR 26.29 is inconsistent with current state law outlined in Section 10261, of the *Public Contract Code*, and implemented in Section 9-1.06, "Partial Payments," of the *Standard Specifications*. Section 820 of the *Streets and Highway Code* requires Caltrans to follow federal regulations that conflict with state law for federal aid contracts. Both ongoing and newly advertised contracts without federal aid will continue to follow state law requirements concerning retention until state law is amended to agree with the federal regulations.

Existing Procedure

Section 3-909, "Retentions," of the *Construction Manual*, and Section 9-1.06, "Partial Payments," of the *Standard Specifications* detail the retention processes and responsibilities for all personnel engaged in contract administration.

New Procedure

Caltrans declines withholding retention from prime contractors, and requires that prime contractors not withhold retention from subcontractors for federal aid contracts advertised after February 1, 2004. Include the special provision S5-045, "Exclusion of Retention," attached to this bulletin for federal aid contracts advertised after February 1, 2004 to eliminate retainage from contract progress payments and provide for conditional withholds if unsatisfactory progress occurs.

Caltrans determines satisfactory or unsatisfactory progress on federal aid contracts advertised after February 1, 2004 once 75 percent of the contract time has elapsed as outlined in the special provision S5-046, "Unsatisfactory Progress," attached to this bulletin. Satisfactory progress is achieved if the difference between the percent of time elapsed and the percent of work completed is 15 percent or less as calculated by the Contract Administration System (CAS). The CAS withholds 10 percent of the monthly estimate if the difference between the percent of time elapsed and the percent of work completed is greater than 15 percent. The CAS returns withholds with the following month's progress payment once the contractor reduces the difference between the percent of time elapsed and the percent of work completed to less than 15 percent.

Contact the construction field coordinator for assistance in determining appropriate administrative alternatives if it appears that project progress or the performance of the contractor is not satisfactory before 75 percent of the contract time has elapsed.

All contracts advertised before February 1, 2004 will continue to follow existing contractual requirements for retention. Contract change orders are not necessary for contracts advertised before February 1, 2004.

If you have questions or comments about this bulletin, please contact Tony Tavares, Chief, Office of Contract Administration, at (916) 651-6284 or by e-mail at Tony_Tavares@dot.ca.gov.

Attachments