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# Construction Policy Bulletin

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## CPB 09-17 State-Only Funded Contract Retention

References: *Public Contract Code* Section 7202  
*Code of Federal Regulations* Title 49 Part 26 Subpart B Section 26.29 (b) (1)  
*Amendments to the 2006 Standard Specifications* Section 9-1.07E(2), "Progress Withholds"  
(version 10-08-09)

Effective Date: January 1, 2009

Approved:   
MARK LEJA  
Chief  
Division of Construction

Approval Date: December 10, 2009

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### Background

Retention is a contractual withholding of money without cause. Withholds and deductions are contractual holdings of money for cause. Withholds are returned to the contractor after compliance with the authorizing contract provision. Deductions are not returned to the contractor.

Code of Federal Regulations, Title 49, Part 26, Subpart B, Section 26.29 (b) (1) and Public Contract Code 7202 prohibit retention on federally funded construction contracts. Passage of Senate Bill (SB) 593 has revised Public Contract Code section 7202 to also prohibit retention of funds on progress payments for state-only funded construction contracts after January 1, 2009.

### Existing Procedure

Public Contract Code 7202 prohibits retention of funds on progress payments for federally funded construction contracts. Withholding of funds for cause is permitted because of noncompliant (previously "unsatisfactory") progress of the work after 75 percent of the contract period elapses, in accordance with Section 9-1.07E(2), "Progress Withholds," of the *Amendments to the 2006 Standard Specifications* (version 10-08-09). Retention of funds on progress payments is made on state-only funded construction contracts. The Contract Administration System (CAS) automatically retains funds on these contracts.

### **New Procedure**

Retention of funds is prohibited on progress payments for state-only funded construction contracts approved after December 19, 2008. Construction contracts advertised after January 12, 2009, contain a special notice and standard special provision prohibiting retention. For construction contracts approved between these two milestones, retention was eliminated by contract change order on state-only funded contracts. CAS provides payment to contractors and is programmed to release retention at the time the project is entered into the system. Projects are usually keyed into CAS after contract award but before contract approval. For contracts with state-only funding approved after December 19, 2008, CAS has been reprogrammed to automatically release funds previously included in retention and will no longer retain funds in accordance with SB 593.

Contracts with state-only funding approved on or before December 19, 2008, are not considered subject to the requirements of SB 593. Districts must continue to administer retention on these until contract acceptance. The original CAS programming allows continued retention on these contracts.

No action on the Contract Transactions Input or other progress payment sheets will be necessary to make this change effective. No action is required by districts to release retention through CAS.

If you have questions please contact Perry Mayer, Division of Construction, at [Perry\\_Mayer@dot.ca.gov](mailto:Perry_Mayer@dot.ca.gov) or (916) 653-2032.