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JUN 25 2009

COMPTROLLER'S MEMORANDUM NO. 2009-15

TO: Department Heads

SUBJECT: Contract Retainage

This memorandum is being issued to clarify application of retainage by contractors and subcontractors. Section 103-32.1(c)(1), HRS, specifies that any retainage of amounts due a contractor cannot exceed 5% of the total amount due the contractor. In addition, after 50% of the contract is complete and progress is satisfactory, no additional sum may be withheld from any payments to the contractor.

Section 103-32.1(d)(3), HRS, allows the contractor to withhold from amounts due its subcontractors, only the same percentage of retainage as that of the contractor, and only if its subcontractors have provided valid performance and payment bonds or other bond or collateral acceptable to the contractor. Section 103-32.1(e), HRS, allows the contractor or subcontractor to negotiate with, and retain from its respective subcontractors, a different retainage percentage which cannot exceed 10%. All amounts retained shall be held by the procurement officer.

Therefore no additional amounts are to be retained by the State unless: (1) the contractor's progress is not satisfactory, in which case the State may continue to withhold up to 5% of the amount due the contract, after 50% of the contract is completed; or (2) there is a subcontract in which the contractor or subcontractor has negotiated a retainage in excess of the 5%, but no more than 10%.

If you have any questions, please call Wayne Horie, Accounting Division Chief, at 586-0600.

Russ K. Saito

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State Comptroller