

DOCUMENTS. IF THE CONTRACTOR FAILS TO INDICATE AN ELECTION OR REFUSES THE ELECTION, THE CONTRACTOR SHALL FORFEIT RIGHTS TO THE USE OF THE ESCROW ACCOUNT.

(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SECTION, AFTER-APPROVING-THE--ESCROW--AGREEMENT AND IF FEDERAL REGULATIONS PERMIT APPLICATION OF THIS REQUIREMENT TO FEDERALLY FUNDED PROJECTS WITHOUT JEOPARDY TO TIMELY RECOVERY OF FEDERAL FUNDS, THE DEPARTMENT OF TRANSPORTATION OR THE MARYLAND TRANSPORTATION AUTHORITY SHALL PAY TO THE ESCROW AGENT THE FUNDS RETAINED.

(2) FUNDS WITHHELD FOR LACK OF PROGRESS OR OTHER DEFICIENCIES CONTRACTOR VIOLATIONS ON THE PART OF THE CONTRACTOR MAY NOT BE PAID TO THE ESCROW AGENT.

(3) THE ESCROW AGENT, IN ACCORDANCE WITH THE STIPULATIONS CONTAINED IN THE ESCROW AGREEMENT MAY:

(I) INVEST THE FUNDS PAID INTO THE ACCOUNT; AND

(II) PAY EARNINGS ON THE INVESTMENTS TO THE CONTRACTOR TO THE EXTENT THE CONTRACTOR IS ENTITLED TO THE RETAINAGE UNDER SUBSECTION (D) (II) OF THIS SECTION.

(D) (1) RETAINED FUNDS MAY BE RELEASED ONLY AS DIRECTED BY THE DEPARTMENT OF TRANSPORTATION OR THE MARYLAND TRANSPORTATION AUTHORITY.

(2) AT THE TIME OF FINAL PAYMENT, THE DEPARTMENT OF TRANSPORTATION OR THE MARYLAND TRANSPORTATION AUTHORITY SHALL DIRECT THE ESCROW AGENT TO SETTLE THE ESCROW ACCOUNT BY PAYING FUNDS IN THE ESCROW ACCOUNT AS FOLLOWS:

(I) TO THE DEPARTMENT OF TRANSPORTATION OR THE MARYLAND TRANSPORTATION AUTHORITY FOR ANY CLAIM THE DEPARTMENT OR AUTHORITY MAY HAVE AGAINST THE CONTRACTOR UNDER THE CONTRACT; AND

(II) UNLESS WAIVED BY THE BOARD OF PUBLIC WORKS, TO THE COMPTROLLER FOR ANY CLAIM OVER \$50 AGAINST THE CONTRACTOR BY THE STATE, A UNIT, OR A STATE CONTROLLED GOVERNMENTAL ENTITY; AND

~~(III)~~ (III) TO THE CONTRACTOR.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed only prospectively and may not be applied or interpreted to have any effect upon or application to any transportation construction contract awarded prior to the effective date of this Act.