

(b) (1) Subject to the requirements of this section, a contractor under a procurement contract that a [transportation] unit awards for construction [or reconstruction] is entitled to have retainage under the procurement contract placed in an escrow account if the contractor:

(i) elects that procedure in the procurement contract in the space provided for that election; and

(ii) submits to the [transportation] unit an escrow agreement that meets the requirements of subsection (c) of this section.

(2) The procurement contract shall identify the escrow agent.

(c) The escrow agreement shall:

(1) be on a form that the [transportation] unit provides;

(2) include the complete address of both the escrow agent and the surety;

(3) authorize the [transportation] unit to pay retainage to the escrow agent; and

(4) be signed by:

(i) the contractor;

(ii) the surety for the contractor; and

(iii) the escrow agent.

(d) On compliance with the requirements of subsection (b) of this section, the [transportation] unit shall pay the retainage to the escrow agent unless:

(1) federal money is involved and application of this section would jeopardize timely recovery of that federal money; or

(2) retainage is withheld for:

(i) lack of progress on the part of the contractor; or

(ii) other violations by the contractor.

(e) In accordance with the escrow agreement, a contractor may require an escrow agent:

(1) to invest the retainage placed in the escrow account; and

(2) to the extent the contractor is entitled to retainage under subsection (f)(2)(ii) of this section, to pay the earnings on the investment to the contractor.

(f) (1) Retainage may be released to the contractor only as directed by the [transportation] unit.