

(2) PARAGRAPH (1) OF THIS SUBSECTION MAY NOT BE CONSTRUED TO PROHIBIT A SUBCONTRACTOR FROM WITHHOLDING ANY AMOUNT IN ADDITION TO RETAINAGE IF THE SUBCONTRACTOR DETERMINES THAT A LOWER TIER SUBCONTRACTOR'S PERFORMANCE UNDER THE SUBCONTRACT PROVIDES REASONABLE GROUNDS FOR WITHHOLDING THE ADDITIONAL AMOUNT.

~~(D) IF RETAINAGE HAS BEEN PLACED IN ESCROW UNDER § 17-111 OF THIS SUBTITLE, EACH PAYMENT OF RETAINAGE SHALL INCLUDE A PRO RATA PORTION OF INTEREST EARNED.~~

~~(E) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE APPLICATION OF THE REMAINING PROVISIONS OF THIS SUBTITLE.~~

~~17-111.~~

~~(A) THIS SECTION DOES NOT APPLY TO ANY PROCUREMENT CONTRACT FUNDED WITH TAX EXEMPT FINANCING.~~

~~(B) (1) SUBJECT TO THE REQUIREMENTS OF THIS SECTION, A CONTRACTOR UNDER A PROCUREMENT CONTRACT THAT A PUBLIC BODY AWARDS FOR CONSTRUCTION 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 PUBLIC BODY 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 PUBLIC BODY PROVIDES;~~

~~(2) INCLUDE THE COMPLETE ADDRESS OF BOTH THE ESCROW AGENT AND THE SURETY;~~

~~(3) AUTHORIZE THE PUBLIC BODY 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 PUBLIC BODY SHALL PAY THE RETAINAGE TO THE ESCROW AGENT UNLESS:~~