

Article - State Finance and Procurement

13-225.

(a) (1) In this section the following words have the meanings indicated.

(2) "Payment security" has the meaning stated in § 17-101 of this article.

(3) "Performance security" has the meaning stated in § 17-101 of this article.

(b) (1) If a contractor has furnished 100% payment security and 100% performance security in accordance with Title 17, Subtitle 1 of this article under a State procurement contract for construction, the percentage specified in the contract for retainage may not exceed 5% of the total amount.

(2) In addition to retainage, a primary procurement unit and the Maryland Transportation Authority may withhold from payments otherwise due a contractor any amount that the unit reasonably believes necessary to protect the State's interest.

(3) Retainage withheld by a primary procurement unit and the Maryland Transportation Authority may be deposited in an interest-bearing escrow account in accordance with § 15-108 of this article.

(c) (1) A contractor may not retain a percentage of payments due a subcontractor that exceeds the percentage of payments retained by the primary procurement unit or the Maryland Transportation Authority.

(2) Paragraph (1) of this subsection may not be construed to prohibit a contractor from withholding any amount in addition to retainage if the contractor determines that a subcontractor's performance under the subcontract provides reasonable grounds for withholding the additional amount.

(d) (1) A subcontractor may not retain a percentage of payments due a lower tier subcontractor that exceeds the percentage of payments retained from the subcontractor.

(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.

(e) If retainage has been placed in escrow under § 15-108 of this article, each payment of retainage shall include a pro rata portion of interest earned.

(f) This section may not be construed to limit the application of the provisions of Title 17, Subtitle 1 of this article.