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Technical Bulletins: EPA Regulations on Contractor Retainage Interest Change

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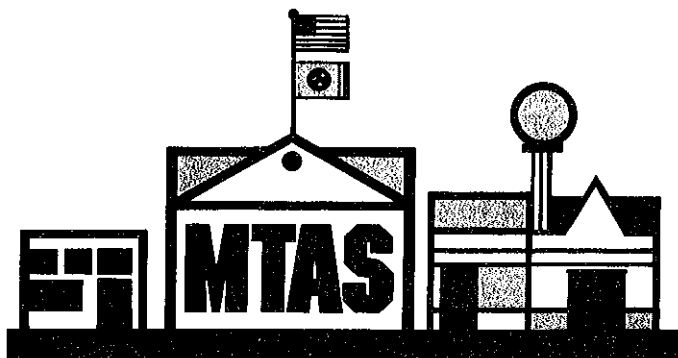
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TECHNICAL BULLETIN



MUNICIPAL TECHNICAL ADVISORY SERVICE
THE UNIVERSITY OF TENNESSEE
IN COOPERATION WITH THE TENNESSEE MUNICIPAL LEAGUE

July 1, 1986

EPA REGULATIONS ON CONTRACTOR RETAINAGE INTEREST CHANGE

by

Edward C. Archer, Utility Management Consultant

The Environmental Protection Agency (EPA) has announced a new ruling which makes it extremely important that bid documents contain a section stating that interest will be paid on retainage. This ruling applies to all grant recipients for EPA-funded construction projects. EPA is now disallowing reimbursement for interest paid to the Contractor on retainage unless it is specifically detailed in the bid documents prior to bid opening.

The City of Milan used the following statement in the general conditions of the bid documents:

ESCROW ACCOUNT FOR CONTRACTOR RETAINAGE

The establishment of escrow accounts for CONTRACTORS' funds held as retainage by the OWNER is allowed by law in the State of Tennessee (T.C.A. Section 66-11-144). If so requested by the CONTRACTOR, OWNER will establish such an account, with all earned interest to be paid to the CONTRACTOR at the time the final payment is made.

Cities with signed contracts which have not made provisions concerning interest for retainage should contact the Environmental Protection Agency for a ruling prior to their final audit. For projects already under construction, each situation will be handled as a separate case. Several variables will be taken into consideration, such as the date of the signed contract and the dollar amount of the contract, since the law becomes mandatory if the contract amount is over \$500,000.

The City of Jackson bid a project with specifications that did not mention interest for retainage. The contract was over \$500,000 and was signed after T.C.A Section 66-11-144 had become law. This law requires the municipality to establish an escrow account into which the retainage is deposited if the amount is over \$500,000. Therefore, the City by state law must pay interest on retainage upon receiving a request from the Contractor. EPA will allow interest to be paid on retainage, but requires interest earned on grant money to be paid to them. This, in effect, reduces the overall percentage of the loan received by the City.

Contact the MTAS Utility Management Consultant for your area if you have specific questions or need additional assistance.

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