

**New Jersey Department of Transportation
CORRECTIVE ACTION NOTICE**

QUALITY MANAGEMENT SERVICES

Manager: Brian Strizki

Telephone: (609) 530-6363

CAN No. CAN043

Approved: Brian Strizki

Date: 5/25/2001

Subject: Release of Retainage/Escrow to Consultants

Bureau(s) Affected: Division of Accounting & Auditing/Division of Procurement
Division of Project Management/Bureau of Contract Administration Services
All Offices which Administer Consultant Contracts/All Design Consultants

Description of Issue(s):

As part of Agreements between the NJDOT and consultants, the Department is required to reimburse consultants based upon services performed, less a retainage percentage. In lieu of this retainage requirement, consultants may elect to enter into an Escrow Agreement with the Department whereby the consultant deposits \$100,000 in cash or acceptable securities to a custodian bank also under contract with the Department. However, the Articles contained in the current Model Agreement include the following main provisions to safeguard the State from unsatisfactory work performed by consultants:

When consultants perform incomplete or unsatisfactory work, the State may:

- Utilize the Professional Liability Insurance provision (Errors & Omission Insurance) - This insurance remains in effect one year after the project's construction completion.
- Withhold payments for any of the consultant's other active agreements.
- Enforce Article 9 of the Model Agreement entitled "Recovery of Monies by the State".
- Utilize the existing Consultant Evaluation System. This system provides an objective and consistent method for measuring consultant performance and will be used as a basis for determining the procurement of future contracts with the State.

The provisions contained in these Articles sufficiently safeguard the State and hence, retainage and escrow accounts are no longer required from consultants.

Corrective Action Plan:

Effective immediately, the State is eliminating the requirement to withhold retainage from consultants, as well as the requirement for consultants to maintain escrow accounts. In order to implement this plan, the following is to be observed:

1. Retainage:

- The Bureau of Professional Services will revise the Model Agreements between the State and Consultants to eliminate the retainage and escrow requirements for future projects *prior* to the date of this Corrective Action Notice.
- Consultants will complete the blanket Agreement Modification (Attached) in **duplicate** which will eliminate the retainage requirements from all existing agreements. Consultants must list all their agreements with the NJDOT in this blanket Agreement Modification and submit it to the Bureau of Quality Management Services (BQMS) for execution.
- BQMS will ensure that all blanket Agreement Modifications are executed through the Assistant Commissioner, Capital Program Management. BQMS will also inform the appropriate Assistant Commissioner when the retainage requirements of their Agreements have been eliminated.
- Consultants are required to bill for their accumulated retainage balances upon execution of the blanket Agreement Modification.
- Project Managers and any other individuals responsible for reviewing and approving consultant invoices must ensure that consultants bill for any withheld accumulated retainage balances.

2. Escrow:

- The Division of Accounting & Auditing will terminate all escrow agreements and release existing escrow balances to all consultants with escrow accounts, and provide a written notice of termination of the escrow agreements to each of these consultants.

Until the new Model Agreements are in place and all blanket Agreement Modifications have been executed, this Corrective Action Notice will remain in effect. In the meantime, Consultants, BQMS, Project Managers and others who have consultant agreement responsibilities must ensure that the provisions of this Corrective Action Notice are carried out.

Implementation: *In accordance with the above requirements*