

CSBA Sample

Administrative Regulation

Payment For Goods And Services

AR 3314

Business and Noninstructional Operations

Note: The following administrative regulation is optional and may be revised to reflect district practice.

Payment for Construction Contracts

Note: Various provisions of the Public Contract Code govern how payments are made when public entities, including school districts, receive goods and services provided by contractors. Specifically, Public Contract Code 9203 requires the Governing Board to approve the process to be used when the district is to pay for any contract involving the creation, construction, alteration, repair, or improvement of any public structure, building, or facility which costs over \$5,000. In addition, Public Contract Code 7107 and, as added by SB 293 (Ch. 700, Statutes of 2011), Public Contract Code 7201 prescribe the rules that a district must follow to withhold contract payments.

Payment on any contract for the creation, construction, alteration, repair, or improvement of any district property or facility or other public works project shall be made in accordance with the estimates, process, and/or schedule approved by the Governing Board.

Note: Public Contract Code 9203 allows districts to make progress payments to contractors for actual work completed or value of materials delivered and to withhold a portion of the contract price until final completion of the project or delivery of the materials. Public Contract Code 9203 requires progress payments to not exceed 95 percent of the actual work completed or value of materials delivered or stored and the amount withheld to be not less than five percent of the contract price. However, as added by SB 293 (Ch. 700, Statutes of 2011), Public Contract Code 7201 provides that, for contracts entered into on or after January 1, 2012, the proceeds that can be lawfully withheld by districts for completed work cannot exceed five percent of the contract price, except when there has been a finding by the Board, at a regularly scheduled public hearing prior to accepting bids on the project, that the project is "substantially complex." Because the applicability of these provisions to specific situations is unclear, districts should consult with legal counsel as necessary.

Note: Pursuant to Public Contract Code 20104.50, a district must pay any undisputed, properly submitted progress payment request within 30 days of receiving it, to avoid having to pay interest as specified in Code of Civil Procedure 685.010.

As necessary, the Superintendent or designee may make progress payments as actual work is

completed or materials are delivered. When a payment request is properly submitted by a contractor, any undisputed portion of the payment request shall be paid within 30 days. If the Superintendent or designee determines any payment request to be improper, he/she shall return the payment request to the contractor with a written statement of reasons why the request is not proper. (Public Contract Code 9203, 20104.50)

(cf. 3312 - Contracts)

The district may withhold up to five percent of the proceeds due to the contractor until completion and acceptance of the project. (Public Contract Code 7201)

Note: Pursuant to Public Contract Code 7201, "substantially complex" projects are unique projects that are not regularly, customarily, or routinely performed by the district or licensed contractors. As necessary to determine whether a project is substantially complex, districts may need to consult with legal counsel and/or regulatory agencies such as the Division of State Architect.

The proceeds to be withheld by the district may exceed five percent when the Board has made a finding, prior to the bid and during a properly noticed and regularly scheduled public meeting, that the project is substantially complex and requires a higher retention amount than five percent. In such cases, the Board's finding shall include a description of the specific project and why it is a unique project that is not regularly, customarily, or routinely performed by the district or licensed contractors. The bid documents shall include details explaining the basis for the finding and the actual amount to be withheld. (Public Contract Code 7201)

(cf. 3311 - Bids)

(cf. 9320 - Meetings and Notices)

(cf. 9324 - Minutes and Recordings)

At any time after 50 percent of the work has been completed, the Board may release the withheld proceeds if it finds that satisfactory progress is being made. (Public Contract Code 9203)

Note: Public Contract Code 7107 authorizes districts to retain a percentage of final payment in the event of a dispute with a contractor, as specified below. However, because the determination as to whether a contract has been completed is complex, districts should consult legal counsel as appropriate.

Proceeds withheld by the district from payments to contractors for public works contracts shall be released within 60 days after the construction or improvement is completed. In the event of a dispute between the district and the contractor, the district may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. (Public Contract Code 7107)