

Chapter 82-32 WAC

INVESTMENT OF RETAINED PERCENTAGES ON STATE CONTRACTS FOR PUBLIC WORKS

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WAC

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WAC 82-32-010 Contractor's option regarding retained percentages. On all contracts for public improvements or work for which retained percentages are required to be reserved under the provisions of RCW 60.28.010, state agencies shall require the contractor to exercise his option in writing on whether or not moneys reserved from amounts due the contractor shall be retained by the public body, deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association, or placed in escrow by the public body. State agencies shall prescribe a procedure for informing the contractor of the options available and the method for exercising the option selected. Said option must be exercised prior to or at time of submission of invoices for the first progress payment to be made under the contract. No progress payment shall be made until the contractor has exercised his option in writing.

[Order 33, § 82-32-010, filed 7/19/76; Order 12, § 82-32-010, filed 10/28/70.]

WAC 82-32-020 Change of election under options. If, during the course of work under a contract for public improvements or work for which amounts are required to be reserved under RCW 60.28.010, the contract completion date is changed, and said change will work an undue hardship upon the contractor when compared to the increased costs to the state agency if a change in election is allowed, said agency may, in its discretion, allow the contractor to change his election under the available options.

[Order 33, § 82-32-020, filed 7/19/76; Order 12, § 82-32-020, filed 10/28/70.]

WAC 82-32-030 Selection of escrow agent. When an election is made to place amounts reserved under chapter 38, Laws of 1970 1st ex. sess. (RCW 60.28.010), in escrow, the contractor and the agency shall select a bank or trust company, agreeable to both, to act as an escrow agent.

[Order 12, § 82-32-030, filed 10/28/70.]

WAC 82-32-040 Escrow agreement. When an election is made to place amounts reserved under chapter 38, Laws of 1970 1st ex. sess. (RCW 60.28.010), in escrow, the state agency jointly with the contrac-

tor and the escrow agent shall execute an escrow agreement according to Form A-39, Budget and Accounting Manual, or some other form approved by the attorney general's office. A copy of the completed escrow agreement shall be provided to the escrow agent, the contractor and the state agency prior to the time the first progress payment is made.

[Order 12, § 82-32-040, filed 10/28/70.]

WAC 82-32-050 Escrow costs and fees. The escrow agreement executed pursuant to chapter 38, Laws of 1970 1st ex. sess. (RCW 60.28.010), in addition to other requirements, must provide for payment of all escrow costs and fees by the contractor.

[Order 12, § 82-32-050, filed 10/28/70.]

WAC 82-32-060 Escrow investments. The escrow agent holding funds pursuant to chapter 38, Laws of 1970 1st ex. sess. (RCW 60.28.010), shall invest such funds in bonds and securities selected by the contractor and approved by the state agency. In approving investments, the state agency shall consider the probable safety of the investments, and their liquidity. The agency may approve investments in the following bonds and securities:

- (1) Bills, certificates, notes or bonds of the United States;
 - (2) Other obligations of the United States or its agencies;
 - (3) Obligations of any corporation wholly owned by the government of the United States;
 - (4) Indebtedness of the Federal National Mortgage Association;
- and
- (5) Time deposits in commercial banks, mutual savings banks or savings and loan associations.

Other bonds or securities may be approved by the agency providing that it has the staff assistance and expertise which will permit it to exercise sound judgment in assessing the probable safety and liquidity of such investments. In no event shall the state agency approve of investments in stock of any company, association or corporation. In all cases, including those enumerated above, the investments selected must mature on or prior to the date set for completion of the contract, including extensions thereof or thirty days following the final acceptance of said improvement or work as completed.

[Order 12, § 82-32-060, filed 10/28/70.]

WAC 82-32-070 Selection of an interest bearing account. When an election is made to deposit amounts reserved under RCW 60.28.010, in an interest bearing account in a bank, mutual savings bank, or savings and loan association, the contractor and the agency shall select an institution agreeable to both. Any bank selected must be a qualified public depository under RCW 39.58.010. Deposits in mutual savings banks are subject to RCW 32.12.100 and deposits in savings and loan associations to RCW 33.52.010.

[Order 33, § 82-32-070, filed 7/19/76.]

WAC 82-32-080 Withdrawal of interest bearing account. Deposits made pursuant to WAC 82-32-070 shall be in the name of the agency and cannot be withdrawn without the agency's written authorization. The amounts deposited shall not be subject to withdrawal until after final acceptance of said improvement or work as completed, or until agreed to by both parties. In no case shall the agency allow withdrawal unless the conditions of RCW 60.28.020 are met.

[Order 33, § 82-32-080, filed 7/19/76.]

WAC 82-32-090 Distribution of interest. Interest earned on deposits made pursuant to WAC 82-32-070 shall be paid to the contractor as said interest becomes payable under the terms of the deposit. The agency shall notify the institution to withhold all further payments of interest in the event claims are filed against the contractor. After such notice all unpaid interest shall be subject to the conditions of RCW 60.08.020. The account shall be appropriately noted by the bank, savings bank or savings and loan association to enable that institution to report interest payments made to the contractor to the Internal Revenue Service in the proper format.

[Order 33, § 82-32-090, filed 7/19/76.]