

## MRSC Project Closure/Retainage Release Guidelines (Effective 07/26/09)

Contract Amount	Require in Contract (also See Note 1)		Needed for Project Closeout Files (Before Releasing Retainage) (Also See Note 9)			
	Performance and Payment Bonds	Retainage	Sales and/or Use Taxes	Prevailing Wages	Industrial Insurance	Employment Security Taxes
Over \$ 35,000	Yes	Yes	Notice of Completion (NOC) and DOR Release (See Note 4)	Intent and Affidavit (See Note 5)	NOC and Ind. Ins. Certification (See Note 6)	NOC and Certificate of Payment (See Note 8)
\$35,000 or less Limited PW Process	Can Waive (See Notes 2 & 7)	Can Waive (See Notes 2 & 7)	Not Required (See Note 4)	Intent and Affidavit (See Note 5 & 7)	Not Required	Not Required
\$35,000 or less	Can Waive (See Note 3)	50% Retainage (See Note 3)	Not Required	Intent and Affidavit (See Note 5)	Not Required	Not Required
\$ 2,500 or less	May Not Be Needed (10)	May Not Be Needed (10)	Not Required	Small Works Form (7)	Not Required	Not Required

Note 1: Contract documents must require that prevailing wages must be paid and must contain the prevailing wages applicable to the project, regardless of contract amount.

Note 2: RCW 39.04.155 (3) allows a local government to waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW. To use this limited public works process an authorized local government must solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster. A SWR process is required.

Note 3: RCW 39.08.010 states that on contracts of thirty-five thousand dollars or less (Chapter 210, 2007 Laws) - at the option of the contractor - the agency may, in lieu of a performance and payment bond, retain fifty percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from DOR and L&I and settlement of any liens filed under chapter 60.28 RCW, whichever is later.

Note 4: City files Notice of Completion of Project with DOR and will receive Certificate of Payment of Excise Taxes from DOR for the project. DOR may also demand payment for unpaid excise taxes on other projects per Chapter 423, 2009 Session Laws.

Note 5: Contractor files Intent to Pay Prevailing Wages and Affidavit of Wages Paid with L & I. The public agency will receive approved Intent and Affidavit forms from the Contractor. L & I sends the forms to the Contractor who in turn sends them to the public agency.

Note 6: L&I issues 'Letter of Release' from liability for industrial insurance premiums for the project (online?). L&I may also demand payment for unpaid premiums on other projects per Chapter 423, 2009 Session Laws.

Note 7: RCW 39.12.040 (2) allows the local government agency to process combined Intent and Affidavit short forms and forward them to L & I monthly. If the agency chooses not to use this process, see Notes 5 & 6. Chapter 210, 2007 Laws allows use of this form for contracts up to \$35,000 if RCW 39.04.155 (3) is followed.

Note 8: DOR forwards Notice of Completion to ESD. ESD issues Certificate of Payment of employment security contributions, penalties and interest. ESD may also demand payment for unpaid excise taxes on other projects per Chapter 423, 2009 Session Laws.

Note 9: RCW 60.28.011(3)(b) states that "Sixty days after completion of all contract work the public body must release and pay in full the amounts retained during the performance of the contract subject to the provisions of chapters 39.12 and 60.28 RCW." (But not chapter 50.24 RCW.). Therefore, an agency should release retained funds, less the amount of any claims by laborers, suppliers and subcontractors, at the end of sixty (60) days to avoid possible ramifications under the Prompt Pay Act (RCW 39.76). If Certificate from DOR and approved Affidavits from L&I per notes 4-6 are not available at that time, contact your agency attorney. An agency should also try to have the ESD Certificate in its files as well. See MRSC Contract Closeout Paperwork and Deadline Summary also.

Note 10. Unless an agency waives bonding and/or retainage (B/R) under the Notes 2 and 3 scenarios, both are theoretically required, even for very small projects. However, as a practical matter, payment for small projects is usually well after completion and – in effect – there is a 100% retainage for 2-4 weeks, so there is very little risk if an agency does not require B/R. Be sure, as much as practical, that suppliers have been paid and that and that an approved Affidavit of Wages Paid from the contractor is on file.