

Retainage

Iowa law mandates that no more than 5% of the total project cost can be retained by the owner. (Iowa Code Section 573.12) The same state law limits the retainage a contractor may withhold from a subcontractor to the same rate the owner imposes on the contractor.

During the 2006 Legislative Session, changes were made in Iowa law that allows for the early release of partial retainage. (See Iowa Code Section 26.13, which went into effect January 1, 2007.) The law establishes four “triggers” in which a project can be deemed “substantially complete” and eligible for the early release of partial retainage. Pursuant to the new law, a project is deemed substantially complete at the first date on which any of the following occurs:

1. The project has been substantially completed in general accordance with the terms and provisions of the contract.
2. The project is substantially complete so that the governmental entity can occupy or utilize the public improvement or designated portion of the public improvement for its intended purpose.
3. The public improvement has been designated substantially complete by the architect or engineer authorized to make such a certification, or the authorized contract representative.
4. The project is substantially complete when the governmental entity is occupying or utilizing the public improvement for its intended purpose.

Triggers 2 and 4 do not apply to highway, bridge or culvert work.

Prior to applying for the release of retained funds, the contractor shall notify all known subcontractors, subsubcontractors, and suppliers that a request for the early release of retained funds will be made to the public entity. (Please reference

Appendix D –

“Notice of Contractor’s Request for Early Release of Retained Funds”)

At the time of the request for release of partial retainage, the public entity has the right to retain an amount equal to two hundred percent of the value of labor or material yet to be provided and may be withheld until such labor and materials are provided.