

CORRECTIONS STANDARDS AUTHORITY

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December 8, 2010

To: AB 900 AND SB 81 CONDITIONALLY AWARDED COUNTIES –
COUNTY CONSTRUCTION ADMINISTRATORS
PROJECT FINANCIAL OFFICERS
PROJECT CONTACT PERSONS

Subject: Bulletin 10-LJCFP 05 (AB 900)/10-LYORF 02 (SB 81)
Invoicing to State for Contractor Retention Withheld by County

The Corrections Standards Authority (CSA) is providing this bulletin to counties participating in the AB 900 Local Jail Construction Financing Program and the SB 81 Local Youthful Offender Rehabilitative Facilities Program (Programs) to clarify CSA's policy on the State's reimbursement of payments made by a participating county to an escrow account as contractually mandated retention, specifically related to a county's contract with its construction contractor. The Public Contract Code allows for retention to be withheld by the county from a contractor's payment. In short, CSA will reimburse the county for payments made to a third party escrow account for this purpose, subject to certain terms.

Under the Programs, a participating county is reimbursed by CSA for eligible construction expenditures made by the county in accordance with the process detailed in the Corrections Standards Authority Construction Agreement (CSA Agreement). Article 9 of Exhibit A to the CSA Agreement stipulates that only liquidated expenditures are eligible for reimbursement. CSA has received inquiry as to whether an invoice paid to the contractor with a percentage paid into escrow is eligible for a full reimbursement from the State as a liquidated expenditure. As discussed below, CSA will treat payments made by a county into an escrow account held by a third-party escrow agent as a liquidated expenditure and reimburse the county for such payments subject to the terms defined in this bulletin. A county's invoice for such payments and acceptance of reimbursed amounts indicates the county's acceptance of these terms.

At the county's request, CSA will reimburse a participating county for payments made into an escrow account as retention for a construction contract provided the county abides by the following provisions:

1. The county shall maintain separate accounting records for the retention funds withheld clearly identifying all transactions and balances. The county further agrees to abide by all laws governing escrow accounts maintained for this purpose.

2. The county must provide CSA with a summary of the escrow account, to be submitted concurrently with each invoice. Upon request, the county shall also provide the State all other information reasonably related to the escrow account and its operation.
3. If funds from the escrow account are withheld from the contractor to satisfy claims the county has with the contractor, those funds shall be returned to the State except to the extent the county uses the funds to repair or remedy the damages that gave rise to the county's claim.

Please do not hesitate to contact either myself or your assigned CSA Field Representative should you have any questions.

Sincerely,



Robert J. Takeshta, Deputy Director
County Facilities Construction Division
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