



## **N.Y. State Finance Law 139**

### **139 Retained Percentages**

1. A clause shall be inserted in all specifications or contracts hereafter made or awarded by the State, or by any public department or official thereof for works to be executed except as provided in Section 38 of the Highway Law, Section 376 of the Education Law and Paragraph "g" of Subdivision 2 of Section 9 of the Health and Mental Hygiene Facilities Improvement Act in which the execution and delivery by the Contractor of a performance bond shall be required, providing that the State shall retain 5 percent of the amount of each progress payment up to the point when upon the certificate of the Commissioner of General Services, in charge of the execution of said contract for and on behalf of the State, public department or official thereof, that the contract has been satisfactorily completed in accordance with the plans and specifications relating thereto, to the extent of 50 percent in value thereof.
2. The clause specified in Subdivision 1 of this Section may be inserted in the specifications of any uncompleted public contract, of the kind referred to in such Subdivision, heretofore made or awarded by the State or by any public department or official thereof, with the written consent of the Commissioner of General Services and of the official of the public department by whom such contract was awarded and of the Contractor, provided the surety of sureties upon the performance and labor and material bonds given by the contractor upon any such contract shall consent in writing thereto and the retained percentage of monies earned under such contract shall, after the insertions of such clause, be payable in accordance with provisions set forth in said clause.
3. Under any contract heretofore or hereafter made or awarded by the State, or by any public department or official thereof, the Contractor may, from time-to-time, withdraw the whole or portions of the amount retained from payments to the Contractor pursuant to the terms of the contract upon depositing with the State Comptroller: (1) U.S. Treasury bonds, U.S. Treasury notes, U.S. Treasury Certificates of Indebtedness, U.S. Treasury bills or (2) bonds or notes of the State of New York, or (3) bonds of any political subdivision in the State of New York, or a market value not exceeding par, at the time of deposit, equal to the amount

withdrawn. The State Comptroller shall, from time-to-time, collect all interest or income on the obligations so deposited and shall pay the same, when and as collected, to the Contractor who deposited the obligation. If the deposit be in the form of coupon bonds, the coupons as they respectively come due shall be delivered to the Contractor. The Contractor shall not be entitled to interest or coupons or income on any of the deposited obligations, the proceeds of which shall be or shall have been used or applied by the State of any public department, or official thereof, pursuant to the terms of the contract. The provisions of this Section as amended, shall supersede the provisions of any Act inconsistent herewith.

4. Whenever a contract under the supervision of the Commissioner of General Services, for the construction, reconstruction alterations, improvement or repair of a public building or facilities thereof, shall in the judgment of the Commissioner of General Services be substantially completed and in his judgment the withholding of the retained percentage pursuant to the provisions of this Section, would be an injustice to the contractor, the Commissioner of General Services, may, provide the State architect certifies that the essential items in the contract have been completed in accord with there terms of the contract and the provisions of this Chapter, direct the State architect to include in the final account the uncompleted items and pay therefore the prices stipulated in the detailed estimate, or the unit price bid in a unit price contract, as the case may be, upon the contractor depositing with the Commissioner of General Services, securities equal to at least double the value of such uncompleted work. Such a deposit may be used by the Commissioner of General Services to complete the Contractor if he satisfactorily completes the uncompleted portion within a specified number of working days after he has been directed to proceed with the work.