

THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
INTERNAL CONTROL AND ACCOUNTABILITY DIRECTIVES

DIRECTIVE 9 - GENERAL PROCEDURES FOR THE ADMINISTRATION OF CASH AND SECURITIES HELD AS COLLATERAL FOR PERFORMANCE ON CONTRACTS, FRANCHISES, REVOCABLE CONSENTS AND CONCESSIONS AND OTHER AGREEMENTS

INTRODUCTION

This Directive sets forth uniform procedures for the administration of cash and securities that The City of New York (The City) holds as collateral for performance on contracts, franchises, revocable consents and concession and other agreements.

Contractors are given the right, under section 106 of the General Municipal Law, to withdraw the whole or any portion of amounts withheld as retainage upon depositing with the Comptroller certain authorized securities with a par and market value equal to, or greater than, the amount of retainage withdrawn. The City also extends this right to franchisees for security deposits.

The Comptroller, as the Chief Fiscal Officer of The City, is the custodian of all deposited cash and securities and is responsible for the administration of all collateral deposits. This Directive sets forth procedures for the deposit, substitution and release of securities as well as procedures for situations such as a loss in market value of deposited securities, the collection of interest on deposited securities, and the reinstatement of previously withdrawn retainage or deposits.

This Directive is issued pursuant to the Comptroller's authority, as established in Chapter 5, Section 93(a) of the New York City Charter (Charter), to advise and make recommendations in regard to the operations, fiscal policies and financial transactions of the City and, Chapter 5, Section 93(o) of the Charter, which empowers the Comptroller to recover the cost of custodial safekeeping.

1.0 GENERAL INFORMATION

1.1 Organization

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- 3.0 Procedures for Depositing Securities In Lieu of Cash Retainage or Franchise Cash Deposits
- 4.0 Substitution of Matured Securities on Deposit
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- A - Agency's Request for New Bond Substitution Account/ Account Update
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1.2 Comptroller Authority

This Directive is issued pursuant to the Comptroller's authority to advise and make recommendations in regard to the operations, fiscal policies and financial transactions of the City where it is deemed advisable in the public interest, as established in Chapter 5, Section 93(a) of the Charter. The Comptroller's authority to recover the cost of custodial safekeeping is empowered in Chapter 5, Section 93(o) of the Charter.

1.3 Effective Date

This Directive is effective immediately. The Directive supersedes the previous version, issued May 12, 2006

1.4 Assistance

Requests for additional copies and questions or comments concerning this Directive should be addressed to: The Office of the Comptroller, Attention: Directives Unit, Bureau of Accountancy, Municipal Building, One Centre Street, Room 200 South, New York, NY 10007, (212) 669-3675, Email directives@comptroller.nyc.gov.

1.5 Internet Availability

An Inventory of existing Comptroller's Internal Control and Accountability Directives, most with download capability as well as all forms mentioned within this directive, are available on the Comptroller's Website at <http://www.comptroller.nyc.gov>.

1.6 Contract Retainage

Contract Retainage, as defined in Section 106 of the General Municipal Law, is the portion of a payment that is withheld from a contractor pursuant to the retained percentage provisions of a contract or by agreement. Typically, a stipulated percentage is withheld from each contractor's invoice until the total of the amounts deducted is equal to the total retainage to be withheld under the terms of the contract or agreement. Some portions of the Contract Retainage may be released to the contractor at various stages of the contract depending on the provisions of the contract or agreement.

1.7 Franchise Security Deposit

A *Franchise Security Deposit* is the collateral a franchisee deposits in accordance with the terms of a franchise, revocable consent or concession agreement, as defined in Chapter 14 of the Charter.

1.8 Depositor

For purposes of this Directive, the term Depositor is used to refer to either a contractor (vendor/payee) or franchisee that has Cash Retainage or a Franchise Cash Deposit held by the City of New York or has deposited securities in lieu of the Cash Retainage or Franchise Cash Deposit.

1.9 Contracting Agency

For purposes of this Directive, a Contracting Agency is an entity that has entered into a contract, franchise, revocable consent, concession or other agreement with retainage or security deposit provisions.

1.10 Custodial Agent

The procedures set forth in this Directive require Depositors to submit securities and supporting documentation to the City's Custodial Agent. The Custodial Agent is Citibank NA 399 Park Ave, Level B Vault New York, NY 10022. Changes in the Custodial Agent or the location for delivery of documents will be updated in future revisions.

2.0 ANNUAL MAINTENANCE FEES

Section 93(o) of the Charter requires that each Depositor bear, and pay to The City, a proportionate share of the cost of the custodial safekeeping of securities that have been deposited with the Comptroller. Accordingly, Depositors are charged an annual maintenance fee. Currently, the annual account maintenance fee is \$375. The adequacy is reviewed periodically and will be adjusted by the Office of the Comptroller, as necessary. Further information on the latest maintenance and transactions fees, if any, should be obtained from the Comptroller's Bureau of Accountancy, Custodial Accounts Unit (212) 669-8069.

3.0 PROCEDURES FOR DEPOSITING SECURITIES IN LIEU OF CASH RETAINAGE OR FRANCHISE CASH DEPOSITS

A Depositor, subject to the Contracting Agency that they are doing business with, may withdraw any and all amounts held back from contract payments as Contract Cash Retainage or paid as Franchise Cash Deposits by depositing with the Comptroller (a) bonds or notes of the United States of America, or obligations, the payment of which is guaranteed by the United States of America, or (b) bonds or notes of the State of New York or (c) bonds of any political subdivision in the State of New York, with a par and market value at least equal to the Contract Cash Retainage amount requested for withdrawal or Franchise Cash Deposit required. The Depositor may, but cannot be required to, tender securities that have a par or market value in excess of the amount of retainage requested for release.

The procedural steps for initially depositing securities are as follows:

- 3.1** The Depositor submits a written notification to the Contracting Agency that it wishes to deposit securities in lieu of its Contract Cash Retainage or Franchise Cash Deposit. This notification must include the contract number, payee vendor code, the address to which the check is to be mailed, an active and monitored e-mail address to which correspondences will be sent, the federal tax identification number, any assignment information, and the amount of retainage requested for withdrawal or franchise cash deposit required.
- 3.2** Upon receipt of the Depositor's notification, the Contracting Agency must review its financial records for the specific contract and verify the accuracy of both the request and the Contract Cash Retainage in the City's *Financial Management System* (FMS Accounting) or the Franchise Cash Deposit being held under the contract and the pertinent assignment information.
- 3.3** For the deposit of securities in lieu of Contract Cash Retainage or Franchise Cash Deposits, the Contracting Agency will submit an *Agency Request for New Bond Substitution Account form* (Exhibit A) including approval of the Engineering Audit Officer for construction contracts, and a copy of the Depositor's request, to the Comptroller's Custodial Accounts Unit. The role of the Engineering Audit Officer is described in the Comptroller's Internal Control and Accountability

Directive #7, *Audit of Requests For Payment Received Under Contracts for Construction, Equipment, and Construction-Related Services.*

- 3.4 Upon approval the Contracting Agency must instruct the Depositor to submit a *New Transaction Request* (Exhibit B) and remit payment of the Account Maintenance fee, made payable to the Comptroller of the City of New York, to the Custodial Accounts Unit.
- 3.5 If the securities deposit request is for Contract Retainage, the Comptroller's Custodial Accounts Unit will create a *Retainage Summary by Commodity Line (RTGSUM)* document in FMS Accounting. The creation of the RTGSUM document will allow both the Contracting Agency and the Comptroller's Custodial Accounts Unit to monitor the retainage replacement activity. Requests to deposit securities in lieu of franchisees' cash deposits are handled off-line by the Comptroller's Custodial Accounts Unit.
- 3.6 For all New Account Requests the Custodial Accounts Unit will create a new account in CitiDirect. The creation of the CitiDirect account allows the Custodial Accounts Unit to monitor the activity and maintain securities being deposited.
- 3.7 Upon receipt of the required fees and New Transaction Request, the Comptroller's Custodial Accounts Unit will update the CitiDirect System of the new transaction. The creation of this transaction within CitiDirect notifies the Custodial Agent of the new security incoming.
- 3.8 The Depositor or the Depositors respective Broker Agent forwards all securities to the Custodial Agent.

Upon receipt of the listed securities, the Custodial Agent verifies the securities determining that they are acceptable for deposit with the City. The Custodial Agent officially accepts the securities for deposit and confirms this acceptance by updating the CitiDirect system. Comptroller's Custodial Accounts Unit processes through FMS Accounting a *Retainage Payout or Forfeiture (RTGPF)* to release a payment check to be sent to the Depositor, or the Depositors Broker, along with a signed copy of the New Transaction Request as a receipt.

4.0 SUBSTITUTION OF MATURED SECURITIES ON DEPOSIT

A Depositor may replace any or all matured securities on deposit by substituting them with other acceptable securities having a minimum par and market value at least equal to the value of the previously withdrawn Contract Cash Retainage or Franchise Cash Deposit. The procedure is as follows:

- 4.1 The Depositor must submit a *New Transaction Request* form (Exhibit B) to the Comptroller's Custodial Accounts Unit noting the fact that it is for a substitution. The request must provide all transaction details, see attached exhibit for required information.
- 4.2 Upon receipt of the Depositor's request, the Comptroller's Custodial Accounts Unit will update the CitiDirect system with the changes being made.
- 4.3 The Depositor or its authorized broker forwards all the securities and necessary information to the Custodial Agent.

- 4.4 The Custodial Agent verifies the securities and determines that they are acceptable for deposit with the upon this verification, the Custodial Agent will officially accept the new securities in substitution for those that have matured and update the CitiDirect system as a confirmation.
- 4.5 The Custodial Agent, in accordance with the Depositor's written instructions, delivers the proceeds of the matured securities.
- 4.6 The Custodial Accounts Unit notifies the Depositor of the finalized transaction via email using the address on account.
- 4.7 The Contracting Agency plays no role in the substitution of matured securities.

5.0 PAYMENT OF INTEREST DUE ON DEPOSITED SECURITIES

The Custodial Agent collects all interest on unmatured securities held and, unless otherwise directed, pays the interest when and as collected, to the Depositor.

If the securities mature and the Depositor does not re-substitute securities, any interest earned on the cash remaining in the account accrues to the City of New York and will not be paid to the depositor.

6.0 LOSS IN MARKET VALUE OF DEPOSITED SECURITIES

The Custodial Accounts Unit, on a monthly basis, ascertains that the market value and par value of the collateral deposited as security is equal to or exceeds the minimum market value and par value required. In the case of a deficiency, the Custodial Accounts Unit will promptly notify the Depositor.

The Depositor will be instructed to deposit additional collateral sufficient to eliminate such deficiency within ten business days. If a Depositor fails to remedy a deficiency within this timeframe, The Custodial Accounts Unit will charge to the Depositors account a \$20 fee for every business day the account is not up to the agency's set standard.

7.0 RELEASE OF SECURITIES UPON CONTRACT COMPLETION

The procedure for the release of deposited securities at the satisfactory conclusion of the contract or franchise is as follows:

- 7.1** The Contracting Agency must request that the Depositor provide a notarized statement confirming whether or not they have any existing outstanding liens or third party assignments against the Depositor, *Contractor Lien/Assignment Certification* (Exhibit C). The Contracting Agency must provide the Comptroller's Custodial Accounts Unit with a copy of this certification.

Upon receipt of the *Contractor Lien/Assignment Certification (Exhibit C)*, and after approval by the appropriate Agency Head, the Contracting Agency should formally approve the release of the securities being held and, for Contract Retainage, forward a *New Transaction Request form* (Exhibit B), with a copy of the *Contractor Lien/Assignment Certification* (Exhibit C).

- 7.2** If the release is based upon a contractor's completion of a construction contract, the Contracting Agency, as part of its approval process, and prior to notifying the Comptroller's Custodial Accounts Unit, must instruct its engineers to conduct an inspection of the completed work. Contracting Agency engineers must prepare an inspection report and forward it to the Contracting Agency Head along with a letter of certification authenticating that the work is complete and in compliance with the terms of the contract.

The letter of authorization must be certified by the Engineering Audit Officer as described in Comptroller's Internal Control and Accountability Directive #7, *Audit of Requests For Payment Received Under Contracts for Construction, Equipment, and Construction-Related Services*. All necessary supporting documentation, including the Engineer's inspection report and certification letter must be maintained on file at the Contracting Agency.

- 7.3** The Comptroller's Custodial Accounts Unit, upon review and approval of the Contracting Agency's request, will locate the Vendor Customer identification number in *FMS Accounting* to ensure there is no hold on payments to the Depositor and update the CitiDirect system.

A *Comptroller Lien Confirmation Request* (Exhibit D) is sent to both the Department of Finance's Lien and Disbursements Unit and the Asset Location Unit to confirm that there are no pending liens or levies against the Depositor.

Each Department of Finance unit will sign and return the Lien Confirmation Request indicating if there are any outstanding liens or encumbrances against the contractor or agreement and return to the Custodial Accounts Unit.

- 7.4 After all necessary form have been submitted and approved the Depositor will submit an approved copy of the Depositor's delivery instructions to the Custodial Agent whom will then release held funds and or securities in accordance with the created CitiDirect transaction.

The Custodial Agent will release the securities in accordance with the written delivery instructions provided by the Depositor.

8.0 REDEPOSIT OF PREVIOUSLY WITHDRAWN CASH RETAINAGE OR FRANCHISE CASH DEPOSITS

Depositors are permitted to withdraw securities that have been deposited with the City by redepositing equivalent cash. The procedures for redepositing cash are as follows:

- 8.1 The Depositor must submit a written request to the Comptroller's Custodial Accounts Unit in the form of the *New Transaction Request* form (Exhibit B).
- 8.2 The Comptroller's Custodial Accounts Unit will verify the cash receipt amount required in FMS Accounting for release of the securities being held for Contract Retainage and deposit the check(s). After the check(s) has cleared, the Comptroller's Custodial Accounts Unit will enter the transaction details on-line into *FMS Accounting* by means of the *Retainage Summary by Commodity Line (RTGSUM)* document. Franchise Cash Deposit activity is not available via FMS Accounting and is handled off-line by the Comptroller's Custodial Accounts Unit.
- 8.3 The Comptroller's Custodial Accounts Unit will then initiate preparation of the CitiDirect Release following the same procedure provided in §7.0 for the release of deposited securities.
- 8.4 The Comptroller's Custodial Accounts Unit will notify the Contracting Agency upon the redeposit of previous withdrawn Cash Retainage or Franchise Cash Deposits. Once again, the Contracting Agency is now responsible for managing, in FMS Accounting, the cash retainage.
- 8.5 The Contracting Agency plays no role in the redeposit of previously withdrawn Cash Retainage or Franchise Cash Deposits.

9.0 RELEASE OF CASH RETAINAGE THROUGH FMS ACCOUNTING

The procedure for releasing a Depositor's Contract Cash Retainage at the satisfactory conclusion of the contract, is as follows:

- 9.1 The Contracting Agency must enter the transaction details into FMS Accounting by completing the following document: *Retainage Summary by Commodity Line (RTGSUM)*, authorizing release of the cash retainage.

- 9.2** If the release is based upon a contractor's completion of a public works contract, the Contracting Agency Head must instruct its engineers to conduct an inspection of the completed work.

The Contracting Agency engineers must prepare an inspection report and forward it to the Contracting Agency Head along with a letter of certification authenticating that the work is complete and acceptable under the contract. The letter of authorization must be certified by the Engineering Audit Officer as described in the Comptroller's Internal Control and Accountability Directive #7, *Audit of Requests For Payment Received Under Contracts for Construction, Equipment, and Construction-Related Services*. All necessary supporting documentation, including the engineer's inspection report and certification letter should be kept on file at the Contracting Agency.

10.0 RELEASE OF FRANCHISE CASH DEPOSITS

The procedure for releasing a Franchise Cash Deposit, at the satisfactory conclusion of the franchise agreement is as follows:

- 10.1** After the Contracting Agency reviews its records on the particular franchise agreement, and approves release of the Franchise Cash Deposit, the Contracting Agency must forward, *New Transaction Request form* (Exhibit B) denoting Franchise Release to the Comptroller's Custodial Accounts Unit.

The Contracting Agency must also request that the Depositor provide a notarized statement confirming whether or not they have any existing outstanding liens or third party assignments against the Depositor, *Contractor Lien/Assignment Certification* (Exhibit C). The Contracting Agency must provide the Comptroller's Custodial Accounts Unit with a copy of this Certification.

- 10.2** The Comptroller's Custodial Accounts Unit will locate the Vendor Customer identification number in *FMS Accounting* to ensure there is no hold on payments to the Depositor, and if satisfactory, process the payment voucher to refund the Franchise Cash Deposit to the franchisee and update the CitiDirect system.

11.0 AGENCY RECORDKEEPING REQUIREMENTS

Contracting Agencies are required to maintain comprehensive and up-to-date financial records for each contract, franchise, revocable consent and concession or other agreement. The documentation should incorporate detail and summary records of:

- 11.1** Current and cumulative contractor billings and payments,
- 11.2** The amount of the Cash Retainage or Franchise Cash Deposit required by the contract or agreement,
- 11.3** The current and cumulative amounts retained from payments due the contractor or deposited as security by the franchisee, and

11.4 The current and cumulative amounts of securities that have been deposited in lieu of Cash Retainage or the Franchise Cash Deposit.

Complete information on the existence of any assignments made to third parties under the contract or agreement. Agencies must now maintain records of all assignments.