



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER

INTERNAL CONTROL AND ACCOUNTABILITY DIRECTIVES

DIRECTIVE #9: 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 rules and procedures for the administration of cash and securities that The City of New York (City) holds as collateral for performance on contracts, franchises, revocable consents and concessions, and other agreements.

Contractors are given the right, under Section 106 of the [General Municipal Law](#), to withdraw the whole amount, or any portion of the amount, 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certain authorized securities with a par and Market Value equal to, or greater than, the amount of retainage withdrawn.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 rules for the deposit, substitution, and release of securities, as well as rules for situations such as a loss in Market Value of deposited securities, the collection of interest on deposited securities, the reinstatement of previously withdrawn retainage or deposits and forfeiture for retainage that exceed six years since the date of substantial completion.

This Directive is issued pursuant to the authority of the Office of the Comptroller as provided in Chapter 5, Section 93 of the [*New York City Charter*](#).

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1. GENERAL INFORMATION

1.1 *Effective Date*

This Directive is effective immediately and supersedes the previous version, issued August 10, 2012.

1.2 *Assistance*

Questions or comments concerning this Directive should be addressed via [Technical and Professional Standards Unit Email](mailto:directives@comptroller.nyc.gov) (directives@comptroller.nyc.gov); by telephone at: (212) 669-3675; or by mail to: The Office of the Comptroller, Attention: Technical & Professional Standards Unit, Bureau of Accountancy, David N. Dinkins Municipal Building, One Centre Street, Room 200 South, New York, NY 10007.

1.3 *Comptroller's Internal Control and Accountability Directives*

An inventory of existing [Comptroller's Internal Control and Accountability Directives](#) is available on the [Comptroller's Website](#).

2. DEFINITIONS

For the purpose of this Directive, the terms listed below have the following definitions:

- “Broker Agent” are brokers that act as an agent for the Depositor.
- “CitiDirect” is CitiBank’s custodial processing system in which all retainage and Franchise Security Deposits are recorded.
- “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. Any Contract Retainage not substituted by securities is also known as “Contract Cash Retainage”
- “Contract Security Retainage” is Contract Retainage that has been substituted partially or in full by authorized securities (refer to Section 4) with a par and Market Value equal to, or greater than, the amount of retainage withdrawn.
- “Contracting Agency” an entity that has entered into a contract, franchise, revocable consent, concession or other agreement with retainage or security deposit provisions.
- The “Custodial Agent” is Citibank NA, 399 Park Ave, Level B Vault, New York, NY 10022.

- “Depositor” is used to refer to either a contractor (vendor/payee) or franchisee that has Cash Retainage or a Franchise Security Deposit held by the City of New York or has deposited authorized securities in lieu of the Cash Retainage or Franchise Security Deposit.
- The “Financial Management System (FMS)” is the City of New York's integrated accounting and budgeting system.
- “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 [New York City Charter](#). This collateral can be deposited in the form of cash or authorized securities.
- “Market Value” is the price at which the security could be bought and sold for in the marketplace.
- “Minimum Market Value” also known as “MMV” is the amount of retainage withdrawn or the amount required for the Franchise Security Deposit.
- “Par Value” also known as face value or nominal value refers to the amount at which a security can be redeemed for at maturity.

3. ANNUAL MAINTENANCE FEES

Section 93(o) of the [New York City 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 of the fee is reviewed periodically and adjusted by the Office of the Comptroller, as necessary. Please direct all inquiries regarding maintenance fees via email to:

CustodialUnit@comptroller.nyc.gov, or via telephone at: (212) 669-8069.

4. PROCEDURES FOR DEPOSITING SECURITIES IN LIEU OF CASH RETAINAGE OR FRANCHISE SECURITY DEPOSITS

A Depositor, subject to the Contracting Agency with which they are doing business, may withdraw any and all amounts held back from contract payments as Contract Cash Retainage or paid as Franchise Security 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 Security 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:

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 Security 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 correspondence will be sent; the Federal tax identification number; any assignment information; and the amount of retainage requested for withdrawal or Franchise Security Deposit required.
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 Security Deposit being held under the contract and the pertinent assignment information.
3. For the deposit of securities in lieu of Contract Cash Retainage or Franchise Security Deposits, the Contracting Agency submits an [Agency Request for New Bond Substitution Account/Account Update Form](#), including approval of the Engineering Audit Officer for construction contracts or agreement for the Franchise Security Deposit, 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 [Directive #7 – Audit of Requests for Payment Received under Contracts for Construction, Equipment, and Construction-Related Services](#).
4. The Custodial Accounts Unit instructs the Depositor to submit a [New Transaction Request Form](#) and remit payment of the Account Maintenance fee, made payable to the Comptroller of the City of New York.
5. For all New Transaction Requests, the Custodial Accounts Unit makes a request to Department of Finance authorizing Citibank to open a new custody account. Citibank creates 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.
6. The Custodial Account Unit requests a signed W-9, cash delivery instructions, and the required fees to be submitted along with the [New Transaction Request Form](#). Upon receipt of all required documents, the Comptroller's Custodial Accounts Unit updates the CitiDirect System with the new transaction. The creation of this transaction within CitiDirect notifies the Custodial Agent of the new security incoming.
7. The Depositor or the Depositor's 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. Custodial Accounts Unit processes a request through the *Retainage Summary by Commodity Line (RTGSUM)* table to create a “Release – Collateral Substitution”. A *Retainage Payout or Forfeiture (RTGPF)* is generated overnight from FMS to release a payment check to be sent to the Depositor. The Custodial Accounts Unit notifies the Depositor via e-mail to confirm completion of the transaction.

5. 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 Security Deposit. The procedure is as follows:

1. The Depositor must submit a [*New Transaction Request Form*](#) to the Custodial Accounts Unit noting the fact that it is for a substitution. The request must provide all transaction details, see attached appendices for required information.
2. Upon receipt of the Depositor’s request, the Custodial Accounts Unit updates the CitiDirect system with the changes being made.
3. The Depositor or its authorized broker forwards all the securities and necessary information to the Custodial Agent.
4. The Custodial Agent verifies the securities and determines that they are acceptable for deposit. The Custodial Accounts Unit approves and accepts the new securities in substitution for those that have matured.
5. The Custodial Accounts Unit, in accordance with the Depositor's cash delivery instructions, delivers the proceeds of the matured securities through the CitiDirect system and sends notification to the Depositor via email.

The Contracting Agency plays no role in the substitution of matured securities.

6. PAYMENT OF INTEREST DUE ON DEPOSITED SECURITIES

The Custodial Agent collects all interest on unmatured securities held and notifies the Custodial Accounts Unit. The Custodial Accounts Unit processes the interest payment to the Depositor per the cash delivery instructions, unless otherwise directed.

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 is not paid to the depositor.

7. LOSS IN MARKET VALUE OF DEPOSITED SECURITIES

The Custodial Accounts Unit, on a daily 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 per the contractual agreement. In the case of a deficiency, the Custodial Accounts Unit promptly notifies the Depositor.

The Depositor is 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 reserves the authority to withhold future interest or contractual payments until the deficiency is resolved.

8. RELEASE OF SECURITIES UPON CONTRACT COMPLETION

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

1. If the release is based upon a contractor's completion of a construction contract, the Contracting Agency, as part of its review 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 [*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.

The Contracting Agency notifies the Custodial Accounts Unit upon the successful completion of the contract and submit an [*Agency Request for New Bond Substitution Account/Account Update Form*](#).

2. The Custodial Accounts Unit requests that the Depositor provide a notarized statement confirming whether or not he/she has any existing outstanding liens or third party assignments against the Depositor, via a [*Contractor Lien/Assignment Certification Form*](#). This certification should be submitted along with a [*New Transaction Request Form*](#).
3. The Comptroller's Custodial Accounts Unit, upon review and approval of the Contracting Agency's request, locates the vendor customer identification number in *FMS Accounting* to ensure there is no hold on payments to the Depositor and update the CitiDirect system.

An email is sent to the Department of Finance - Collection Division/ OCA /External Inquiry Unit Lien to confirm that there are no pending liens or levies against the Depositor. The Department of Finance confirms if there are any outstanding liens or encumbrances against the contractor or agreement, and emails the Custodial Accounts Unit. If there are outstanding liens, no release takes place until the liens are satisfied.

4. After all necessary forms have been submitted and approved, the Custodial Accounts Unit releases held funds and/or securities within the CitiDirect system.

The Custodial Accounts Unit notifies all parties upon successful completion.

9. 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:

1. 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 [*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.

2. The Contracting Agency must enter the transaction details into FMS Accounting by processing the request through the RTGSUM table, authorizing release of the cash retainage.

FMS generates a RTGPF document that is approved by the Custodial Accounts Unit.

10. RETAINAGE HELD AND NOT RELEASED UPON SUBSTANTIAL COMPLETION

Contracting Agencies are responsible for ensuring compliance with all contractual obligations associated with Contract Retainage. In the event that the Contracting Agency does not seek the release of the Contract Retainage at the conclusion of the contract, and a period of more than six years has passed since the date of substantial completion, the Comptroller removes the Retainage liabilities from the City's accounting records.

11. RELEASE OF FRANCHISE SECURITY DEPOSITS

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

1. After the Contracting Agency reviews its records on the particular franchise agreement, and approves release of the Franchise Security Deposit, the Contracting Agency must forward an [Agency Request for New Bond Substitution Account/Account Update Form](#).
2. The Custodial Accounts Unit requests that the Depositor provide a notarized statement confirming whether or not he/she has any existing outstanding liens or third party assignments against the Depositor via a [Contractor Lien/Assignment Certification Form](#).
3. The Custodial Accounts Unit locates the vendor customer identification number or IRS tax ID number in FMS Accounting to ensure there is no hold on payments to the Depositor. An email is sent to the Department of Finance – Collection Division/ OCA /External Inquiry Unit Lien to confirm that there are no pending liens or levies against the Depositor. The Department of Finance confirms if there are any outstanding liens or encumbrances against the contractor or agreement and emails the Custodial Accounts Unit. If there are outstanding liens, no release takes place until the liens are satisfied.
4. The Custodial Accounts Unit processes the payment to refund the Franchise Security Deposit to the franchisee through the CitiDirect system.

The Custodial Accounts Unit notifies all parties upon successful completion.

12. 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:

1. Current and cumulative contractor billings and payments;
2. The amount of the Cash Retainage or Franchise Security Deposit required by the contract or agreement;
3. The current and cumulative amounts retained from payments due the contractor or deposited as security by the franchisee; and
4. The current and cumulative amounts of securities that have been deposited in lieu of Cash Retainage or the Franchise Security Deposit.

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

13. DIRECTIVE #9 EXHIBITS

The following pages contain images of these forms, which are noted throughout this Directive:

- *Agency Request for New Bond Substitution Account/Account Update Form*
- *New Transaction Request Form*
- *Contractor Lien/Assignment Certification Form*

Fillable PDF versions of these forms can be found on the [Retainage and Franchise](#) page of the Comptroller's website.

13.1 Exhibit A: Agency Request for New Bond Substitution Account/Account Update Form



Office of the New York City Comptroller
 1 Centre Street, Room 200 South New York, New York 10007

AGENCY REQUEST FOR NEW BOND SUBSTITUTION ACCOUNT/ACCOUNT UPDATE

Select One Option:

Retainage

Franchise

Print

Date: _____

Agency Name: _____ Agency #: _____

Vendor Name: _____ Vendor #: _____

Address: _____ Contract #: _____

City: _____ State: _____ Zip: _____ Tax ID #: _____

Email Address: _____ Account #: _____

(C.U Created)

Request Type: Select One

Summary Of Retainage/Franchise Account (To be completed by Agency)

Beginning Cash Balance: _____ Remaining Cash Balance: _____
(Equals Total Cash Less Substitution)

Change Request _____ Beginning Bond Balance: _____

Ending Bond Balance: _____

Prepared By: _____ Signature: _____ Date: _____

Title: _____

Department Certification: _____ Signature: _____ Date: _____

Title: _____

Engineering Audit Officer's Certification: _____ Signature: _____ Date: _____

Title: _____

For Custodial Unit Use Only.	
RECEIVED BY: _____	DATE: _____
PROCESSED BY: _____	DATE: _____
There is a \$375.00 annual custodial Fee that must be collected in order to process new account deposits.	

****All information Required. Transactions will NOT be processed if incomplete information is submitted****
 For any questions please contact the Custodial Accounts Unit [CustodialUnit@comptroller.nyc.gov]

13.2 Exhibit B: New Transaction Request Form



Office of the New York City Comptroller
 1 Centre Street, Room 200 South New York, New York 10007
 NEW TRANSACTION REQUEST

Select One Option:

Retainage

Franchise

Date: _____

<input type="checkbox"/> Deposit	<input type="checkbox"/> Substitution	<input type="checkbox"/> Release
Vendor Name: _____		Account #: _____
Address: _____		Contract #: _____
City: _____	State: _____	Zip: _____
Email Address: _____		Beginning MMV Change in MMV
Payee/Vendor #: _____ <small>(for Franchise use Tax Id#)</small>		Total MMV
Clearing Agent #: _____	Clearing Agent Name: _____	
Broker Agent #: _____	Account # to Clearing Agent #: _____	

*All Released Funds and Securities will be delivered to the broker account

Description of Securities			Value		Date		
<u>Substitution</u> <small>(Select one)</small>	Cusip- Description	Coupon Rate	Market	Par	Trade	Settlement	Maturity
Select One		0.00%					
Select One		0.00%					
Select One		0.00%					
Select One		0.00%					
Select One		0.00%					
Select One		0.00%					
Select One		0.00%					
Select One		0.00%					

Citi Bank Delivery Instruction		For Custodial Unit Use Only
<u>DIC</u> Citibank #0908 Customer Six-Digit Custody Account # with Citibank: Customer Name: Agent ID: 27603 Institution ID: 29424	<u>FED</u> CITIBANK NYC/CUST Customer Six-Digit Custody Account # with Citibank: Customer Name: ABA #021000089 DDA: 36854059	Received By & Date: _____ Transaction Created By & Date: _____ Verified, Authorized & Released By & Date: _____
There is a \$375.00 annual custodial Fee that must be collected in order to process new account deposits.		

****All information is Required. Transactions will NOT be processed if incomplete information is submitted****
 For any questions please contact the Custodial Accounts Unit [CustodialUnit@comptroller.nyc.gov]

13.3 Exhibit C: Contractor Lien/Assignment Certification Form

Depositor Letterhead

Contractor Lien/Assignment Certification

Date

Contracting Agency Address

Dear (Contracting Agency Contact):

Re: Contractor
Contract Number
Payee/Vendor #

This letter is to advise you that to the best of our knowledge we:

- Do or do not (circle one) have any outstanding liens against the company or contract
- Do or do not (circle one) have an assignment against the company or contract
- Enclose copy of the assignment, if applicable

Our company Federal Tax ID number is _____.

Sincerely yours,

Vendor Name _____

Print Name _____

Title _____

Telephone # _____

Notary _____

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