

## ADDENDUM ONE

### TELEMETRY AND SCADA UPGRADES FOR MBWWTP AND VARIOUS LOCATIONS W-10-012-201 CITY OF CHATTANOOGA, TENNESSEE

The following changes shall be made to the Contract Documents, Specifications, and Drawings:

#### I. Clarifications

1. The Pre-Bid Meeting Minutes are attached and hereby made a part of the contract documents.
2. The Updated General Wage Decisions (GWD) for 2016 is attached and hereby made a part of the contract documents. It shall replace the current 2016 GWD located in the project manual (pdf specifications pages 277 to 280).
3. Replace the following sections in the project specifications:
  - a. Spec Section 00 11 16 Advertisement for Bids –Please replace the current Section 00 11 16 with the attached revision and hereby made a part of the contract documents. (pdf specifications pages 13 to 18).
  - b. Spec Tennessee Code Annotated 66-34-103 - Please replace the current Tennessee Code Annotated 66-34-103 with the attached revision and hereby made a part of the contract documents. (pdf specifications pages 269 to 270).
  - c. Spec Tennessee Code Annotated 66-34-104 - Please replace the current Tennessee Code Annotated 66-34-104 with the attached revision and hereby made a part of the contract documents. (pdf specifications pages 269 to 270).
  - d. Spec Tennessee Code Annotated 66-34-203 - Please replace the current Tennessee Code Annotated 66-34-203 with the attached revision and hereby made a part of the contract documents. (pdf specifications pages 269 to 270).



/s/ Justin C Holland, Administrator  
City of Chattanooga,  
Department of Public Works

October 07, 2016

## Prebid Meeting Minutes

**TO:** ATTENDEES

**FROM:** David N. West, P.E.

**DATE:** October 4, 2016

### ***RESUME OF MEETING***

**WHEN:** Tuesday, October 4, 2016 10:00 A.M.

**LOCATION:** MBWWTP – Training Facility

**SUBJECT:** Pre-Bid Meeting

#### ATTENDEES.

Mr. Eric Brooks	City of Chattanooga
Mr. Jimmy Spence	City of Chattanooga
Mr. Alan Ogle	City of Chattanooga
Ms. Debbie Talley	City of Chattanooga
Mr. Brian Cate	City of Chattanooga
Mr. Stephen Porter	City of Chattanooga
Ms. Bonnie Mumpower Dodson	City of Chattanooga
Ms. Gina Ogle	SETDD
Mr. David West	Volkert, Inc.
Mr. Tom Lamb	Volkert, Inc.
Mr. Bob Biles	Volkert, Inc.
Mr. Brent Cunningham	Jacobs
Mr. Will Shelton	Jacobs
Mr. Fred Weaver	Revere Controls
Mr. Billy Stott	Revere Controls
Mr. Robert Calhoun	Adman Electric
Mr. Frank Gonzales	C2i
Mr. Wes Thompson	Haren Construction
Mr. Curtis Jenkins	Nabco Electric
Mr. Wes Bowman	Nabco Electric
Mr. Todd Thompson	Tri State Electric
Mr. Robbie Bearden	Tri State Electric
Mr. William Kelly	MR Systems
Mr. Derek Mathews	Lord & Company

## Prebid Meeting Minutes

1. Opening remarks – Mr. David West, Volkert, Inc.
  - a. Introductions
    - Owner – City of Chattanooga
    - Program Manager - Jacobs
    - Engineer – Volkert, Inc.
    - TDEC State Revolving Fund
    - Southeast Tennessee Development District
    - Sole Source Provider – Motorola Solutions
  - b. Pre-Bid Meeting (Not Mandatory) – Please sign the attendees list
2. Project Scope/Description:
  - a. The work includes, but is not limited to, the following:
    - The Project consists of the following major elements of construction: updated telemetry and SCADA for the MBWWTP and designated remote sites, which will include removal and installation of remote terminal units (RTU's), antennas and lead-in cables, network cable installation, grounding, wiring, software integration, coordination of additional upgrades performed by others, and all incidentals necessary for the completion of the project.
    - Furthermore, the project scope of work also includes task 1 to 10 as detailed in the contract documents.
  - b. The contract documents for this project are to be followed. If any Contractor assumes that any item included in the documents will be waived or not required he does so at his own risk.
4. Bid Documents
  - a. Refer to Section 00 21 13 Instructions to Bidders
  - b. Purchase Bids from 8:00 a.m. to 4:30 p.m., Monday through Friday, at the City of Chattanooga Purchasing Department, 101 East 11th Street, Suite G13, Chattanooga, TN 37402, phone (423) 757-5184, fax (423) 757-0949.
  - c. Cost of Contract Documents is \$100 per set. No part of the purchase will be refunded for any reason. **Make sure the set is dated “revised September 2016”.**
  - d. Bid Bond in the amount of 5% of Bid with Surety licensed to do business in TN and listed in U.S. Treasury Circular 570.
  - e. No Bid shall be withdrawn within 120 calendar days of receipt of Bids.
5. Qualifications
  - a. Refer to Section 00 21 13 Instructions to Bidders, and Section 00 45 13 Statement of Bidder's Qualifications
    - Bidder shall maintain a permanent place of business
    - Must be licensed by State of Tennessee to perform work under contract

## Prebid Meeting Minutes

- Bidder shall demonstrate adequate construction experience and sufficient equipment resources to properly perform work.
- Owner reserves the right to reject any bid if bidder fails to satisfy qualifications.

6. Bidding Requirements– See Instructions to Bidders (Section 00 21 13)

- a. Bid shall be submitted no later than the date and time prescribed and at the place indicated in the Advertisement for Bids and shall be enclosed in a sealed envelope with the “Contractor’s Identification” form securely attached thereto and shall contain the Bid security and other required documents.
- b. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside with the notation “BID ENCLOSED.” A mailed Bid shall be addressed to the place indicated in the Advertisement for Bids.
- c. A Bid must be made on a separate Bid Form. The Bid Form shall not be altered in any way.
- d. Section 00 45 77 – Contractor’s Identification must be completed, with one copy attached to the bid package, and one copy inside the bid package.
- e. The sealed envelope shall contain the Bid Form (Section 00 41 00), the Bid security, and the documents listed below. The Bidder shall submit one original and two copies of all documents in the envelope.
  - Statement of Bidders Qualifications
  - Affidavit of No Collusion by Prime Bidder
  - Drug-Free Workplace Affidavit
  - Attestation Regarding Personnel Used in Contract Performance
  - Certification By Proposed Prime or Subcontractor Regarding Equal Employment Opportunity
  - Certification Regarding Debarment, Suspension and Other Responsibility Matters
- f. Bidder shall promptly give ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by ENGINEER is acceptable to Bidder.
- g. Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder. Owner also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder. Nothing herein shall be deemed to limit the discretion of the City to determine whether or not a bidder not hereby disqualified is the lowest responsible bidder.

## Prebid Meeting Minutes

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### 7. Bidder Questions and Addenda

- a. Use Section 00 21 14 – Request for Bidder Information. Submit by fax, email or mail to City of Chattanooga Purchasing Department. [bidinfo@chattanooga.gov](mailto:bidinfo@chattanooga.gov).
- b. Questions received less than ten (10) days prior to the date for opening the Bids may not be answered.
- c. Bidders are required to purchase a set of plans and specifications to get on the plan holders list. Only bidders on plan holders.

### 8. Bid Opening

- a. Date/Time – October 25, 2016 until 2:00 P.M.
- b. Location – City of Chattanooga Purchasing Department, 101 East 11<sup>th</sup> Street, Suite G13, Chattanooga, TN

### 9. Contract Completion Time:

- a. Substantial Completion within 252 Calendar Days from the Notice To Proceed.
- b. Final Completion within 273 calendar days from the Notice To Proceed.

### 10. Liquidated Damages:

- a. \$1,000 for each day after Substantial Completion if work is deemed to not be substantially complete, and \$1,000 for each day after Final Completion if Contractor has not completed the work.

### 11. Site Access:

- a. All work to be completed shall be on the City of Chattanooga's property or easement.
- b. Work will either be at one of the remote sites or at the MBWWTP.
- c. It is the Contractor's responsibility to ensure that all employees have any required documentation and/or authorization to work in the U.S.A.

### 12. Project Specific Requirements

- a. The Contractor shall coordinate with vendors for the items and tasks associated with each, as listed in the Contract Documents.
- b. Sole Source Equipment and Services
  - Motorola Equipment and Services
- c. Construction Schedule
  - The construction schedules shall be in CPM format.
  - The CONTRACTOR shall submit the Preliminary Project Schedule (PPS) for approval at least 30 days after the effective date of the Contract

## Prebid Meeting Minutes

Agreement.

- The CONTRACTOR shall submit the Overall Project Schedule (OPS) within 60 days after the date of the Notice to Proceed.
- Construction schedules can be created using either Primavera or MS Project.

### 13. Safety

- a. Refer to Section 00 72 00 General Conditions and 00 73 00 Supplementary Conditions.

### 14. Work Hours

- a. Work Hour Restrictions – Work hours shall be 7:00 a.m. to 6:00 p.m. unless City has more specific restrictions.

### 15. DAVIS-BACON Act

- a. This project is being funded by a State Revolving Fund loan on or after 2010 EPA Fiscal Year. The loan recipient must be in compliance with all applicable requirements of the Davis-Bacon Act. Gina Ogle – Administrative Assistant, Southeast Tennessee Development District [gogle@sedev.org](mailto:gogle@sedev.org)

### 16. Other Items

- a. It is the Contractors responsibility to repair any existing utilities that are damaged during construction.
- b. The items discussed here today are not intended to be all-inclusive. It is the Contractor's responsibility to review the Contract Documents and comply with all provisions.
- c. Replace project specification section 00 11 16 Advertisement for Bids with the attached revised section 00 11 16 Advertisement for Bids.
- d. Replace the "Tennessee Code Annotated 66-34-104, 66-34-203, 66-34-103" section of the project specifications (pdf pages 269 and 270) with the attached "Tennessee Code Annotated 66-34-103, Tennessee Code Annotated 66-34-104, and Tennessee Code Annotated 66-34-203"
- e. Additional Bidder information (RTU documentation, and Existing RTU Code) can be downloaded at the following link: [https://securedocs.volkert.com/cgi-bin/FileManager/Manager.pl?file=\(shared\)Central%20Engr%20Tennessee%2FW-10-012-2010\\_Additional%20Files%20for%20Bidders.zip&link=574bf91dabf8da0db1257c796b5bb0a8&a=170](https://securedocs.volkert.com/cgi-bin/FileManager/Manager.pl?file=(shared)Central%20Engr%20Tennessee%2FW-10-012-2010_Additional%20Files%20for%20Bidders.zip&link=574bf91dabf8da0db1257c796b5bb0a8&a=170)  
This information is **not** considered to be part of the Contract Documents.
- f. Remote sites are secure and coordination with the Owner will be required to gain access to each site.

## Prebid Meeting Minutes

### 17. Contractor Questions/Statements

- a. Gina Ogle with SETDD stated the following:
  - Salary employees working more than 60% of the time other than supervising must be paid overtime when the work over 40 hours per week.
  - The General contractor will be responsible for all of their sub-contractors adherence to the Davis-Bacon Act.
  - All employees must pay their employees weekly.
  - SETDD will conduct employee interviews and review certified payroll.
- b. Can the budget for the project be shared? **No**
- c. Is the repeater work underway? **No, they are scheduled to start the work shortly after the NTP of this project. Worse case is the beginning of the year.**
- d. All Questions after this meeting need to be officially submitted to the City's Purchasing Department.
- e. What is the difference between this project and the previously bid project? **This project is basically the removal and installation of the remote site RTU's and the FIU in the control room. All of the other control room upgrades were removed and added to the control room upgrade project.**



General Decision Number: TN160146 09/16/2016 TN146

Superseded General Decision Number: TN20150146

State: Tennessee

Construction Type: Heavy  
Including Water and Sewer Line Construction

Counties: Hamilton and Sequatchie Counties in Tennessee.

HEAVY CONSTRUCTION PROJECTS (including sewer/water construction).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.15 for calendar year 2016 applies to all contracts subject to the Davis-Bacon Act for which the solicitation was issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.15 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2016. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/08/2016
1	05/06/2016
2	09/16/2016

\* ELEC0175-012 06/01/2016

Hamilton County

	Rates	Fringes
ELECTRICIAN.....	\$ 30.56	14.5%+6.65

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ELEC0429-008 09/01/2015

Sequatchie County

	Rates	Fringes
Electrician.....	\$ 24.84	11.90

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ENGI0917-022 05/01/2015

	Rates	Fringes
Operating Engineers:		
Bulldozer and Crane.....	\$ 26.72	9.90
Forklift.....	\$ 24.53	9.90

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LABO0846-001 05/01/2013



	Rates	Fringes
LABORER: Common or General.....	\$ 13.85	4.90

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SUTN2009-144 12/02/2009

	Rates	Fringes
LABORER: Flagger.....	\$ 8.73	0.00
LABORER: Pipelayer.....	\$ 11.68	0.00
OPERATOR:		
Backhoe/Excavator/Trackhoe.....	\$ 16.82	0.00
OPERATOR: Loader.....	\$ 13.50	0.00
TRUCK DRIVER: Dump Truck.....	\$ 10.76	0.00

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the

Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

**TELEMETRY AND SCADA UPGRADES  
CONTRACT NUMBER W-10-012-201**

**CITY OF CHATTANOOGA, TENNESSEE**

The City of Chattanooga Purchasing Department will receive separate sealed BIDS for furnishing all materials, labor, tools, equipment and appurtenances necessary for the construction of the Telemetry and SCADA Upgrades project at 101 East 11<sup>th</sup> Street, Suite G 13, Chattanooga, TN 37402 until 2:00 p.m. local time, on October 25<sup>th</sup>, 2016, and, then, at said time, publicly open and read the BIDS aloud.

A Pre-Bid Conference is scheduled for October 4th, 2016 at 10:00 a.m. local time, in the City of Chattanooga Training Facility, Moccasin Bend Wastewater Treatment Plant, 455 Moccasin Bend Road, Chattanooga, TN 37405. Bidder attendance is encouraged but not mandatory.

The work to be bid on is as follows: The Project consists of the following major elements of construction: updated telemetry and SCADA for the MBWWTP and designated remote sites, which will include installation of remote terminal units (RTU's), antennas and lead-in cables, network cable installation, grounding, wiring, software integration, coordination of additional upgrades performed by others, and all incidentals necessary for the completion of the project.

The allotted time for construction is 273 calendar days.

The information for Bidders; Bid Form; Form of Agreement; Drawings; Specifications information; Bid Bond, Performance Bond, and Payment Bond information; and other contract documents may be examined at the addresses below:

City of Chattanooga  
Purchasing Department  
101 E. 11th Street, Suite G13  
Chattanooga, Tennessee 37402  
Phone: 423-643-7230  
Fax: 423-643-7244  
[bidinfo@chattanooga.gov](mailto:bidinfo@chattanooga.gov)

Volkert, Inc.  
1428 Chestnut Street, Suite 110  
Chattanooga, Tennessee 37402  
423-842-3335

Mrs. Marilyn Robinson,  
Executive Director  
Nashville Minority Business Office  
1919 Charlotte Avenue, Suite 310  
Nashville, TN 37203  
615-255-0432

**Builder's Exchange of Tennessee**

Nashville Office  
2322 Winford Ave.  
Nashville, TN 37211

Knoxville Office  
300 Clark St.  
Knoxville, TN 37921

Copies of the CONTRACT DOCUMENTS may be obtained at the office of the City of Chattanooga Purchasing Department, located at 101 East 11<sup>th</sup> Street, Suite G13, Chattanooga, TN 37402, Phone (423)643-7230, Fax (423) 643-7244, [bidinfo@chattanooga.gov](mailto:bidinfo@chattanooga.gov) upon payment of \$100.00 for each set. No part of the purchase price will be refunded.

Each Bid must be accompanied by a Bid Bond, prepared on the form of Bid Bond attached to the Contract Documents or a Surety Company's Standard Bid Bond, duly executed by the Bidder as principal and having as surety thereon a surety company licensed to do business in the State of Tennessee and listed as a certified company in the latest issue of U.S. Treasury Circular 570, in the amount of five percent of the Bid.

No bid may be withdrawn within 120 days after the scheduled time for receipt of bids.

### **DAVIS-BACON ACT REQUIREMENTS**

This project is being funded by a State Revolving Fund loan on or after 2014 EPA Fiscal Year. The loan recipient must be in compliance with all applicable Davis-Bacon requirements.

### **DISADVANTAGED BUSINESS ENTERPRISES (DBE) REQUIREMENTS**

Any contract or contracts awarded by the Owner through this invitation for bids will be funded by a State Revolving Fund (SRF) loan from the State of Tennessee. State and Federal funds will be involved in this project, and, as a result, Bidders must comply with the SRF Loan Program's Disadvantaged Business Enterprises (DBE) requirements including contacting a minimum of 10 qualified DBE sub-contractors, professional service providers, vendors, and/or suppliers by certified mail to solicit bids. The apparent successful Bidder must submit to the Owner copies of the certified letters and return receipts prior to contract award. Neither the State of Tennessee nor any of its departments, agencies, or employees is or will be a party to this Invitation for Bids or any resulting contract(s) awarded by the Owner.

### **SPECIAL NOTICE TO DISADVANTAGED BUSINESS ENTERPRISES (DBE) FIRMS**

All qualified Disadvantaged Business Enterprises (DBE) firms desiring to bid as a General Contractor, sub-contractor, professional service provider, supplier, or equipment vendor are encouraged to contact Ms. Marilyn Robinson at the Nashville Minority Business Center office listed above to review bidding/contract documents. Qualified Disadvantaged Business Enterprises (DBE) firms may also contact City of Chattanooga Purchasing Department at the address above, in order to obtain a list of prospective bidding General Contractors or to obtain copies of bidding/contract documents.

All bidders must be licensed and shall comply with all requirements of the State of Tennessee Contractor's Licensing Act.

Visit City website at: [www.chattanooga.gov/general-services/purchasing/bidssolicitations](http://www.chattanooga.gov/general-services/purchasing/bidssolicitations) for specific contract information.

The City of Chattanooga is an Equal Opportunity Employer.

Any contract or contracts awarded under this Advertisement for Bids are expected to be funded with local funds in addition to funds indicated elsewhere.

The Owner will in no way be liable for any costs incurred by any bidder in the preparation of its Bid in response to this Invitation to Bid.

CITY OF CHATTANOOGA, TENNESSEE

RECOMMENDED FOR APPROVAL:

APPROVED:

/s/ William C. Payne, P.E., City Engineer  
Department of Public Works

/s/ Justin C. Holland, Administrator  
Department of Public Works

END OF DOCUMENT

\*\*\* Current through the 2014 Regular Session and amendments approved at the November 4, 2014 General Election \*\*\*

Title 66 Property  
Chapter 34 Prompt Pay Act  
Part 1 General Provisions

Tenn. Code Ann. § 66-34-103 (2015)

**66-34-103. Withholding of retainage -- Violations -- Penalties.**

(a) All construction contracts on any project in this state, both public and private, may provide for the withholding of retainage; provided, however, that the retainage amount may not exceed five percent (5%) of the amount of the contract.

(b) The owner, whether public or private, shall release and pay all retainages for work completed pursuant to the terms of any contract to the prime contractor within ninety (90) days after completion of the work or within ninety (90) days after substantial completion of the project for work completed, whichever occurs first. As used in this subsection (b), work completed shall be construed to mean the completion of the scope of the work and all terms and conditions covered by the contract under which the retainage is being held. The prime contractor shall pay all retainages due any subcontractor within ten (10) days after receipt of the retainages from the owner. Any subcontractor receiving the retainage from the prime contractor shall pay to any subsubcontractor or material supplier all retainages due the subsubcontractor or material supplier within ten (10) days after receipt of the retainages.

(c) Any default in the making of the payments shall be subject to those remedies provided in this part.

(d) In the event that an owner or prime contractor withholds retainage that is for the use and benefit of the prime contractor or its subcontractors pursuant to § 66-34-104(a) and (b), neither the prime contractor nor any of its subcontractors shall be required to deposit additional retained funds into an escrow account in accordance with § 66-34-104(a) and (b).

(e) (1) It is an offense for a person, firm or corporation to fail to comply with subsection (a) or (b) or § 66-34-104(a).

(2) (A) A violation of this subsection (e) is a Class A misdemeanor, subject to a fine only of three thousand dollars (\$3,000).

(B) Each day a person, firm or corporation fails to comply with subsection (a) or (b) or § 66-34-104(a) is a separate violation of this subsection (e).

(C) Until the violation of this subsection (e) is remediated by compliance, the punishment for each violation shall be consecutive to all other such violations.

(3) In addition to the fine imposed pursuant to subdivisions (e)(2)(A) and (B), the court shall order restitution be made to the owner of the retained funds. In determining the appropriate amount of restitution, the formula stated in § 40-35-304 shall be used.

**HISTORY:** Acts 2007, ch. 201, § 3; 2008, ch. 804, § 3; 2012, ch. 609, § 1.



\*\*\* Current through the 2014 Regular Session and amendments approved at the November 4,  
2014 General Election \*\*\*

Title 66 Property  
Chapter 34 Prompt Pay Act  
Part 1 General Provisions

Tenn. Code Ann. § 66-34-104 (2015)

**66-34-104. Retention of portion of contract price in escrow -- Applicability --  
Mandatory compliance.**

(a) Whenever, in any contract for the improvement of real property, a certain amount or percentage of the contract price is retained, that retained amount shall be deposited in a separate, interest-bearing, escrow account with a third party which must be established upon the withholding of any retainage.

(b) As of the time of the withholding of the retained funds, the funds shall become the sole and separate property of the prime contractor or remote contractor to whom they are owed, subject to the rights of the person withholding the retainage in the event the prime contractor or remote contractor otherwise entitled to the funds defaults on or does not complete its contract.

(c) In the event that the party withholding the retained funds fails to deposit the funds into an escrow account as provided herein, such party shall be responsible for paying the owner of the retained funds an additional three hundred dollar (\$300) penalty per day for each and every day that such retained funds are not deposited into such escrow account.

(d) The party with the responsibility for depositing the retained amount in a separate, interest-bearing, escrow account with a third party shall have the affirmative duty to provide written notice that it has complied with the requirements of this section to any prime contractor upon withholding the amount of retained funds from each and every application for payment, including:

(1) Identification of the name of the financial institution with whom the escrow account has been established;

(2) Account number; and

(3) Amount of retained funds that are deposited in the escrow account with the third party.

(e) Upon satisfactory completion of the contract, to be evidenced by a written release by the owner or prime contractor owing the retainage, all funds accumulated in the escrow account together with all interest on the account shall be paid immediately to the prime contractor or remote contractor to whom the funds and interest are owed.

(f) In the event the owner or prime contractor, as applicable, fails or refuses to execute the release provided for in subsection (c), then the prime contractor or remote contractor, as applicable, may seek any remedy in a court of proper jurisdiction and the person holding the fund as escrow agent shall bear no liability for the nonpayment of the fund to the prime contractor or remote contractor; provided, however, that all claims, demands, disputes, controversies, and differences that may arise between the owner, prime contractor or prime

contractors, and remote contractor or remote contractors regarding the funds may be, upon written agreement of all parties concerned, settled by arbitration conducted pursuant to the Tennessee Uniform Arbitration Act, compiled in title 4, chapter 5, part 3, or the Federal Arbitration Act, 9 U.S.C. § 1, et seq., as may be applicable.

**(g)** In contracts to which the state or any department, board or agency of the state, including the University of Tennessee, is a party, interest shall be paid on the retained amounts at the same rate interest is paid on the funds of local governments participating in the local government investment pool established pursuant to § 9-4-704, for the contract period.

**(h)** The provisions of this section shall be applicable to the state, any department, board or agency of the state, including the University of Tennessee, and all counties and municipalities and all departments, boards or agencies of the counties and municipalities, including all school and education boards, and any other subdivision of the state.

**(i)** This section shall be applicable to all prime contracts and all subcontracts thereunder for the improvement of real property when the contract amount of such prime contract is five hundred thousand dollars (\$500,000) or greater, notwithstanding the amount of such subcontracts.

**(j)** Compliance with this section shall be mandatory, and may not be waived by contract.

**(k)** Failure to deposit the retained funds into an escrow account as provided herein, within seven (7) days' receipt of written notice regarding such failure, is a Class A misdemeanor.

**HISTORY:** Acts 1975, ch. 345, §§ 1-4; T.C.A., §§ 64-1148 -- 64-1151; Acts 1985, ch. 340, §§ 1, 2; 1986, ch. 551, § 9; 2007, ch. 189, § 43; 2007, ch. 201, §§ 1, 2; T.C.A. § 66-11-144; Acts 2008, ch. 804, §§ 1, 2; 2010, ch. 875, §§ 1, 2; 2012, ch. 609, §§ 2-5.

*Tenn. Code Ann. § 66-34-203*

TENNESSEE CODE ANNOTATED  
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\*\*\* Current through the 2014 Regular Session and amendments approved at the November 4,  
2014 General Election \*\*\*

Title 66 Property  
Chapter 34 Prompt Pay Act  
Part 2 Owner/Contractor Payment

Tenn. Code Ann. § 66-34-203 (2015)

**66-34-203. Withholding of payment or retainage by owner.**

Nothing in this chapter shall prevent the owner from reasonably withholding payment or a portion of a payment to the contractor; provided, that such withholding is in accordance with the provisions of the written contract between the owner and the contractor. The owner may also withhold a reasonable amount of retainage as specified in the written contract between the owner and the contractor; provided, however, that the retainage amount may not exceed five percent (5%) of the amount of the contract.

**HISTORY:** Acts 1991, ch. 45, § 1; 2007, ch. 201, § 4.