

## **STOP NOTICE PROCEDURE**

### **A. BACKGROUND INFORMATION**

The first step in the STOP NOTICE process is the filing of a PRELIMINARY NOTICE. This notice must be filed by certain subcontractors or laborers within twenty (20) days after any work or delivery of materials starts on the job site. Any time a PRELIMINARY NOTICE is received, a copy should be made for the department receiving the notice with the original being sent immediately to General Services for their control file.

Whenever site inspections are made by District personnel, a record of the date on which a particular subcontractor begins work or delivery of materials should be kept. Documentation of when a subcontractor begins work will help determine the enforceability of a STOP NOTICE.

It is important that the District handle a STOP NOTICE correctly. If a valid STOP NOTICE is received, and the money is not withheld, the District may have to pay twice--once to the contractor and once to whoever filed the STOP NOTICE. If the money is withheld when it should not be, the District may violate its contract with the contractor and be liable for damages.

### **B. RECEIPT OF STOP NOTICE**

When a District employee receives a STOP NOTICE, the department having received the notice should make a copy for its files and immediately send the original to the General Counsel and a copy to Facilities Management, General Services, and Accounting Operations. Any pertinent documentation, such as PRELIMINARY NOTICES, discussed above should be sent to the General Counsel with the notice.

The General Counsel shall inform the subcontractor and the contractor, in writing, of the receipt of the STOP NOTICE. A copy of the correspondence will be sent to Facilities Management, General Services, and Accounting Operations.

If a subcontractor pays ten dollars (\$10.00) to the District prior to completion of project, General Services shall give the filer written notice of the filing of a NOTICE OF COMPLETION on the project within ten (10) days of the filing of a NOTICE OF COMPLETION by the District.

NOTICE OF COMPLETION shall be filed and recorded with the County within ten (10) days of project completion or acceptance.

### **C. WITHHOLDING OF FUNDS**

Upon receipt of a STOP NOTICE, the total amount withheld in conjunction with the STOP NOTICE should be the amount of the claim plus additional funds sufficient to pay legal fees and interest on the claim. As a general rule, one hundred twenty-five percent (125%) of the claim is appropriate. Amounts withheld pursuant to a STOP NOTICE shall be in addition to any retention withheld from the contractor pursuant to the terms of payment contained in the District's contract with the contractor.

Facilities Management and Accounting Operations shall work together in the withholding of funds. Until notified that the STOP NOTICE is released, Accounting Operations will not issue

a warrant to the contractor unless the payment request indicates that the appropriate amounts have been deducted.

The District must pay all undisputed amounts to the general contractor no later than sixty (60) days after completion of the work as defined in Public Contract Code, section 7107. The District may withhold one hundred fifty percent (150%) of disputed amounts.

It is the subcontractor's responsibility to file a STOP NOTICE early in the process. The District is not at fault if there is inadequate retention to cover the STOP NOTICE.

#### **D. RELEASE OF STOP NOTICE**

Following the receipt of a STOP NOTICE, funds shall continue to be withheld until one of the following occurs:

##### **RELEASE IS FILED BY THE SUBCONTRACTOR AND APPROVED BY THE GENERAL COUNSEL**

When a RELEASE is filed, it means that the subcontractor who originally filed the STOP NOTICE has agreed for whatever reason that money need not be withheld (usually because the contractor has paid).

If received by any department, an original RELEASE should be sent to the General Counsel. If the General Counsel determines the RELEASE is valid, he or she will inform Facilities Management, General Services, and Accounting Operations, to end the withhold. Otherwise, the STOP NOTICE remains in effect.

##### **RELEASE BOND IS FILED BY THE CONTRACTOR AND APPROVED BY THE GENERAL COUNSEL**

This is a special type of surety bond filed by the contractors to guarantee payment of the withheld amount. It is optional for the District to accept a RELEASE BOND.

If received by any department, an original RELEASE BOND should be sent to the General Counsel to determine its validity. If the General Counsel determines that the RELEASE BOND is valid, he or she will inform General Services and Accounting Operations to end the withhold. Otherwise, the STOP NOTICE remains in effect.

##### **CONTRACTOR AFFIDAVIT IS FILED BY THE CONTRACTOR AND APPROVED BY THE GENERAL COUNSEL**

This is a statement by the contractor contesting the validity of the claim that resulted in the STOP NOTICE. In effect, it is a statement by the contractor that the subcontractor has been paid or is not owed any money.

If received by any department, an original CONTRACTOR'S AFFIDAVIT should be sent to the General Counsel. If the CONTRACTOR'S AFFIDAVIT is inadequate in form, the STOP NOTICE remains in effect. If it is valid, the General Counsel will advise the subcontractor that the CONTRACTOR'S AFFIDAVIT has been received. The subcontractor may then file a COUNTER-

**AFFIDAVIT.**

If a COUNTER-AFFIDAVIT is received by any department, the original should be sent to the General Counsel. If the COUNTER-AFFIDAVIT is inadequate, or one is not received, then the General Counsel will inform Facilities Management, General Services, and Accounting Operations to end the withhold, and the STOP NOTICE is released. Otherwise, the STOP NOTICE remains in effect.

**FINAL NOTES:**

It is imperative that each department send all pertinent information to the proper parties at the earliest possible time. General Services shall be provided a copy of all documentation regarding STOP NOTICES. Backup material is of special importance when reviewing a STOP NOTICE. Records of the work being done on each job site should be updated frequently. If these steps are taken, the STOP NOTICE procedure will safeguard the District against possible future claims.