

Contractors Want Retainage Reform

Contractors largely agree that retainage is a costly anachronism that does more harm than good. The practice of holding back a percentage of a project's contract price (typically 5% to 10%) until the owner determines that the job has been successfully completed has been part of the construction industry since the 19th century.

While most contractors would prefer to see retainage disappear completely, it's more likely that legislative efforts will successfully modify and reform retainage over time.

The Problems with Retainage

Owners support the continued use of retainage since it offers them leverage over contractors and subcontractors when disputes arise over extra work or delays on a project. For their part, contractors argue that they often experience lengthy delays in collecting retainage payments, which can create cash flow problems.

A Possible Alternative Approach

For most contractors, the time to extract concessions from owners on retainage is when the contract is being negotiated. Several or all of the following points may be relevant.

- o How change orders will affect the release of retainage.
- o Whether retainage will be kept in an interest-bearing escrow account.
- o Whether line-item release of retainage is appropriate.
- o Whether another form of security can be given as a substitute for retainage.

What the Future May Hold

Retainage is likely to remain an integral part of the construction industry for the foreseeable future. However, if retainage reform comes, it's likely to be at the state level. Already, some states cap the amount of retainage allowed. Others mandate early or line-item release of the funds in certain circumstances. Still other states require the money to be held in interest-bearing escrow accounts.

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