



AGC of America Specialty Contractors Council (SCC) Best Practices Guidance for Retainage

Introduction

It is common for project owners, prime contractors and other contracting parties to hold retainage. This practice has financial implications, increases the cost of doing business, and ultimately, the cost of construction, as sub-tier parties must borrow from banks or resort to other strategies to maintain their cash flow. To put the impact of retainage in perspective, the Construction Financial Management Association's 2007 Construction Industry Annual Financial Survey reports that the net earnings (before income taxes) for a specialty contractor was only 2.9%, less than the percentage of retainage often held.

In the hope of eliminating the hidden yet substantive costs associated with retainage, many leading professionals in the construction industry recommend that retainage be reduced or eliminated whenever and to the extent that it is practical. If retainage cannot be completely eliminated, these professionals recommend that alternative forms of security be considered.

Guidance

Early, informed decisions and negotiations regarding retainage can greatly impact the cash flow of all contracting parties. Parties should actively consider the following:

1. Parties can begin to raise questions about retainage as they prepare their bids and proposals.

- A. Payment terms and conditions, including the amount of retainage, should be specified.
- B. If retainage is required, the following specific items may be discussed to reduce the retainage amount:
 - i. The subcontractor's qualifications
 - ii. How that party has performed on similar projects in the past
 - iii. If the proposed retainage would discourage the best and most competitive specialty contractors in the area from participating in the project
 - iv. If a discount in the contract price will eliminate or reduce the retainage amount

2. Sub-tier parties should read and understand all documents that collectively comprise the agreement between the owner and prime contractor, including the general conditions of that agreement.

The retainage-related items that parties should be sure to note include, but are not limited to, the following:

- A. The percentage of any retainage
 - B. All other payment terms and conditions
 - C. The availability of and control over the project funds
 - D. The duration of any retainage
 - E. Any acceptable alternatives to cash retention
 - F. Whether any retainage extends to contracts exclusively for materials
3. **Contracting parties may negotiate contractual terms and conditions. Each party should make an independent determination of the terms and conditions that it considers acceptable, and identifying, negotiating, and/or accepting the following are among the terms and conditions subject to each firm's independent business judgment:**
- A. Alternate forms of retention, such as: retention bonds, letters of credit, and interest-bearing escrow accounts
 - B. Terms of any retention, including: amount, any line-item release, any reduction of total percentage withheld as project progresses
 - C. Any opportunities to assume additional risk, or provide additional assurance to the contracting parties, such as: pay-if-paid clauses, pay-when-paid clauses, providing lists of all subcontractors (at all tiers) and all vendors, and progress payments and final lien releases
 - D. Any discounts

Resources

The following resources may be helpful when considering options related to retainage:

- A. Guideline on Retainage from "Guidelines for a Successful Construction Project"
www.constructionguidelines.org/pdf/D3kRetainage.pdf
- B. ConsensusDOCS 200 (9.2.4 Retainage) and ConsensusDOCS 750 (8.2.2 Retainage)
www.agc.org/contracts or www.consensusdocs.org

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