

Retention payments in the construction industry

Responding on the practice of cash retention under construction contracts

Introduction

The British Woodworking Federation is the trade body for the £3.8 billion wood products manufacturing and joinery contracting. We have over 700 members servicing this market.

As a member of Build UK we support the position that retentions should be abolished and are committed to working with Build UK and fellow members to ensure that we reach this position as early as is practicable.

Background

We along with over 20 other construction trade bodies (led by ECA) are signatures of the open letter to Greg Clarke MP in support of the Retentions Deposit Scheme that identifies:

- Some £10.5 billion of the overall construction sector turnover of £220 billion is held in retentions by clients and main contractors from SMEs down the supply chain.
- An estimated £7.8 billion in retentions monies has been unpaid across the construction sector over the last three years.
- £700m worth of retentions were lost over the last three years due to upstream insolvencies.
- Banks do not consider unprotected retentions as security for lending purposes to SMEs.

Retentions have been abused in the construction sector to increase profits, compensate for poor tendering and to build working capital. They do not encourage efficiency and productivity nor act to help contractors achieve practical completion on a timely basis. The use of retentions create cash flow problems (especially when combined with the average of 105 days to receive payment in the report), engenders mistrust and undermines productivity and investment in the supply chain, Retentions also, as exposed starkly by the Carillion collapse this week, expose contractors to insolvency risk. The purpose of holding retentions to protect clients has failed. They are not effective as a measure to improve quality (in many cases the sub-contractor has had to assume that they will never get the retention back).

Working Practice

Retentions are rarely released by contractors on time or in accordance with the contract (and almost never without chasing). The process is inefficient at best and often becomes so drawn out (with retentions held for years) that the subcontractor can commit no further resource to collection. In this instance it becomes a discount to the sub-contractor and additional profit to the contractor, regardless of the standard of work and service.

Reasons to withhold can be spurious and in the current process, the burden of proof lies with the sub-contractor before monies can be recovered. There is a clear conflict of interest here for the main contractor. Whilst legal action is an option, it is expensive and time consuming. Added to this, procurement practice now means the potential customer pool for sub-contractors is small and conflict could limit their opportunity to work on any subsequent contracts awarded to that contractor.

Comments received from members

Joinery contractor < £1 million turnover

"This is the tip of the iceberg though as many of these "big boy" firms treat their subcontractors and suppliers with contempt sometimes and have no thought or the slightest bit of concern to what impact late payments will make to SMEs."

Joinery contractor c£7 million turnover

"Value of retentions outstanding for 2017 is £45.5k. At this stage we wouldn't regard any as lost, but, they are never paid when due, must always be chased. This involves significant time and cost of recovery including potential legal fees."

Joinery contractor < £ 1million turnover

"We are a small joinery company who turnover around £x million. The retentions process is unnecessary hassle, seldom are they paid on time and almost never without chasing. Unless we are tenacious we would never see them again. It is another administrative burden and risk for us. We currently are subjected to 23 live retentions totalling £15,158 some dating back to 2015."

Joinery contractor < £3 million turnover

"I now build in retentions into our COSTS and the price, I know that's not an exact science as you are dealing with percentages of the tender/contract price but it goes some way to cancelling it out in case it is never forthcoming. We have one project that is about £400k with a 3% retention and has gone over time by...wait for it...nearly 3 years!

"You'd be horrified if you spent a day on a government project site, after a week I'm about ready to top myself. Frightening the waste of resources."

Joinery contractor - £5 million turnover

"Most contractors are just formalising their use of late payment/retentions to enable them to carry on as before, the initiatives have had little effect on contractors payment regimes, the only way is for SME subcontractors to refuse to work for those that do not respect them, but an almost impossible ask for those who need work...."

Recommendations

We have no issues with the methodology used to assess the impact of [retentions in the consultation](#). It is clear from comments received from members that many of the findings are consistent with their experiences.

We believe there is enough evidence to show retentions should be abolished as soon as is practicable.

We support calls for the Construction (Retention Deposit Schemes) Bill 2017-1 to be brought forward in the wake of the Carillion collapse which spotlights the unacceptable risk that this practice places on sub-contractors. Such a scheme would as described need to be tightly controlled, but would not be difficult to establish - precedent and a framework exists in the Tenancy Deposit Scheme and there are working models in place in Australia and New Zealand. There is no reason that this could not be in place within this parliamentary cycle as an interim measure.

In the interim Government should also issue formal clarification on the rules they expect to be adhered to related to payment and retention on all public-sector contracts and outline clear sanctions when they are not adhered to. This letter would be useful clarification for contractors and helpful leverage for sub-contractors when presented with unfair contractual terms.

Yours faithfully,



Iain McIlwee
Chief Executive
British Woodworking Federation
E: iain.mcilwee@bwf.org.uk

