The Time Has Come to Declare War on Retainage

By Eddie Williams

The practice of retainage—a vestige of another age—is unfair.

Most erectors have at times experienced cash flow problems. When this occurs, we immediately check our accounts receivable and feel pretty good until we realize that a large amount of our receivables are earned but not currently collectable because they are retainage.

Why should erectors, one of the earliest trades on site, have to wait months, and sometimes years, to collect our final payment for work performed?

Can you purchase a new suit and tell the clerk that you will pay 90% now and after wearing it for a year you will pay the remaining 10% without interest, provided it still fits?

Why is our money held until the landscaping is complete or until a dispute between the owner and general contractor (not relating to our work) is settled?

In today's tight bid market, even the withholding of 5% is often more than anticipated job profit and creates a serious cash flow problem.

The origin of retainage was a burgeoning railroad industry in 1840s Britain that was growing so quickly that too many construction firms started up for the amount of work that was available. Railroad companies hedged their investments against the resulting wave of bankruptcies by demanding a deduction of 20% or more from payments in case a contractor couldn't complete the work it promised. Given the volatile circumstances in which retainage originated, it is a historical oddity that retainage remains commonplace today when construction markets are so very different. Although subcontractors have made progress against working with high levels of retainage, the practice is widespread enough that they must still take steps to protect their companies from the economically damaging effects of retainage.

Even with warranties, bonds, alternative sureties, and the ability to extensively qualify subcontractors, many customers (that is, owners, general contractors, and construction managers) still see all subcontractors as the "same" and collect retainage as if all subcontractors were in immediate peril of bankruptcy (as was arguably the case in 1840s Britain). The practice of retainage is truly a vestige of another age.

We can correct this out of date and unjust practice by working together. Our battle will have to be won one state at a time. Since 1982, there has been no retainage withheld on federal contracts unless the contractor is not performing satisfactorily. Twenty-seven states do not hold retainage on public work.

We must push for:

- No retainage on bonded projects
- Line item release of retainage
- Maximum 5% withheld and reduced at 50% completion of each trade's work
- No occupancy permit until all parties are paid in full or unpaid amounts are deposited into an interest bearing escrow account with the interest payable to party owed

SEAA is working closely with the American Subcontractors Association and other trade associations to achieve meaningful retainage reform. Here is how you can help in the effort:

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- Contact your state representative to make them aware of the burden this often abused practice places on small business.
- Make this a priority with the PACs of other trade organizations that you are involved in, such as your local chapter of the AGC or ASA.
- Meet with local architects, owners, and general contractors either individually or by speaking at their group meetings.
- Publicize the injustice of retainage in local papers and other publications.

For more information, please call the Steel Erectors Association of America (SEAA) office at 336.294.8880 or go to the SEAA web site at: **www.seaa.net**. ★

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