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A Guide to Standards and Practices in the Construction Industry

Addressing Holdbacks

The most common reasons for withholding funds on a construction project are as follows: There may be a statutory requirement for a holdback, as is the case under the Builders Lien Act, or there may be a contractual agreement to holdback funds, generally in the event of deficiencies in the work. While both reasons are legitimate on their face, abuses can happen.

Some public owners may try to rely on the statutory holdbacks despite the fact that the applicable legislation does not apply. Others may impose unreasonable contractual obligations on the contractor and withhold funds for purposes other than warranty the work or guard against possible problems in the future. While public owners may take such an approach thinking it will ultimately protect their interests, it actually can result in an inequitable and unstable construction pyramid.

The payment schedule is critically important in the progress of a construction project. Any disruption or inequity in this process can upset the timely completion of the project, not only by causing disputes, but also by complicating the movement of funds down the construction chain. It is important, therefore, for public owners to evaluate their current policies on withholding funds and ensure that those policies are reasonable and appropriate.

In determining what is a reasonable withholding of funds on a construction project, public owners should look to standard industry procedures. The BC Construction Association has developed a policy for holdbacks that reflects the position of the Canadian construction industry. We encourage public owners to adopt the following policies in managing their construction projects.

Deficiencies:

Where there are deficiencies, the consultant should provide the contractor with a complete and concise list to enable completion by a mutually accepted date. Funds held back for deficiencies should be based on the value of the outstanding work and should not exceed two times said value.

Builders Lien:

The requirements of the Builders Lien Act should be complied with in all applicable circumstances. No funds should be withheld on projects where lien rights do not exist.

Making use of standard industry policies and procedures on public construction results in quality construction!

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