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## Retention Madness!

The Department for Business, Energy & Industrial Strategy (BEIS) have reported in their 'RETENTIONS IN THE CONSTRUCTION INDUSTRY BEIS Research Paper 17' that £700 million worth of cash retention has been lost in construction over a three-year period because of insolvencies. Significantly, 44% of surveyed contractors had experienced retentions being withheld in the last three years because of upstream insolvencies. Main Contractor or Client insolvencies are particularly damaging as they can be involved in many projects with multiple supply chain sub-contractors.

Although, Insolvency lost retentions is a problem, it is not the only problem. In 2002, a report into retentions published by the Trade and Industry Committee, multiplied sector Gross Value Added (GVA) by an average retention percentage of 5% to estimate retentions held. The retention estimate result was a jaw dropping £3.25bn per annum based on an annual construction output of £65bn in the UK at that time. As the construction sector has grown since 2002, the House of Commons Library estimated in their briefing paper, Construction industry: statistics and policy, that in 2014 the output was £103bn, so considering the increase in output, the retentions held now will be greater. Furthermore, the Specialist Engineering Contractors' Group point to an estimate of £7.8 billion of retentions being unpaid across the construction sector over the last three years.

The BEIS report highlights that delays in paying retention is commonplace in the construction sector. Around 71% of contractors surveyed with experience of having retentions held in the last three years have experienced delays in receiving retention monies over the same period.

Data from the BEIS's contractor survey indicate that there is wide variation between the experiences of different contractors, with some experiencing no delays, while others experience delays of over a year. Although, average delays at each tier of the supply chain is several months. The extent of this average delay is significantly longer for tier 2 and 3 contractors compared to tier 1 contractors.

The contractor survey also provided evidence of frequent non-payment of retentions, with over half of participants reporting that they have experienced non-payment, be it partial or full, over the past three years. Research from the Federation of Master Builders indicate that 66% of small-sized construction companies are not paid within 30 days, with nearly 25% having to wait four months to have invoices paid.

Several reasons for late or non-payment of retention monies mentioned in the contractor survey include, disputes over defects, contractors becoming insolvent and contractors not asking for their retention money as they are keen to maintain good relationships with their Main Contractor. Additionally, the contractor survey identified that a number of contractors were not aware of legislation that would be beneficial to them when trying to obtain payment.

Retentions drain money away from specialist contractors and stop them using it to invest in their business and workforce. It is an unfair burden that the supply chain should not have to endure and must be stopped. Indeed, parliament agrees, in 2002 and 2008, the business Select Committee recommended phasing out cash retentions because they were outdated and unfair to small firms. No surprise there as the Banwell report, commissioned in 1962, recommended the abolition of retentions altogether. The Lathan report, commissioned in 1995, recommended that cash retentions should be at least protected in a trust account. In 2016 the retention issue was raised in a parliamentary debate and the government minister stated that there would be an evidence based review which would be completed by the end of 2016. The review has not been completed. So, the retention madness continues!

The Confederation delivers a multitude of CPD courses that will bring contractors up-to-date with contractual legislation and best practice. The courses will instil knowledge so that contractors can challenge unfair contracts and practices and increase their likelihood of receiving their retention payment.

For over 30 years the Confederation of Construction Specialists has been supporting construction specialist companies. By providing up-to date relevant contract training courses, professional advice and contractual guidance, the Confederation of Construction Specialists enables specialist companies to optimise the ways in which they operate contractual arrangements when dealing with Main Contractors or clients

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