ZERO RETENTION?

We are all familiar with cash retention whereby the client holds a % of payment for completed works until it is deemed completed free of defects.

The purpose of cash retention is to provide security to the client so that any defects will be rectified appropriately. However, with cash being “king” in construction, an inadequate cash flow is one of the major reasons that construction companies fail.

Retentions though are problematic for all parties and the practice of ‘passing on’ retentions in order to secure cash flow, together with the loss of retentions due to insolvency, has a significant impact on cash flow throughout the supply chain. As such, retentions generally do not provide an appropriate or proportionate mechanism for ensuring quality and fair payment.

To find out if, and what further intervention was required by the government in 2017/18 they (the government) consulted on whether further intervention was required in respect of retentions.

In a bid to abolish zero retention, Build UK submitted a joint response with the Civil Engineering Contractors Association. (CECA), supported by the Construction Products Association (CPA), which called for a joint approach of Government legislation to abolish cash retention by no later than 2025, supported by the industry developing and implementing a phased roadmap.

Build UK has published two documents in support of this ambition:

1. Roadmap to Zero Retentions

The roadmap sets out key milestones to deliver zero cash retentions between now and 2023, two years ahead of the target date.

Notable key milestones include:

(i) the publication by Build UK of a standard form of retention bond;
(ii) the provision of support for implementing other forms of security, by the end of 2019.

2. Minimum Standards on Retentions

Members of Build UK have agreed a number of minimum standards on retentions. The guide sets out the drafting amendments that are required to the JCT D&B 2016 Contract and Sub-Contract, and the NEC4 ECC and Sub-Contract to give effect to the minimum standards.

This would not come without its challenges, just a couple of challenges to contend with are below;

- Providing security when working with a supply chain where there is not an established relationship.

- A perceived lack of viable alternatives to retentions that provide similar levels of security.

The few benefits of the intended outcome are below;

- Improved quality of completed works on construction projects, and increased assurance that any defects that do occur will be rectified appropriately, without the threat of unfair payment.
- Increased collaboration and transparency in the construction industry, ensuring that any forms of security used against defects are appropriate and proportionate.

If the construction industry moves to zero cash retentions by 2025, then care will need to be taken to ensure that a balance is struck between improving cash flow for contractors and sub-contractors on the one hand, whilst preserving security for clients that, for example, outstanding or defective works will be completed.

There has been no response from Government to the consultation which is a specific commitment within the Construction Sector Deal.