Navigating Oregon's New Retainage Law: A Game Changer for Construction Projects

In a move aimed at modernizing the construction landscape, the Oregon legislature enacted a significant amendment to the state's retainage requirements for both public and private construction ventures.

Effective March 7, 2024, HB 4006-A brings forth crucial updates and clarifications on retainage options, paving the way for contractors on Oregon projects to receive 100% of their progress payment without retainage being held or placed in an escrow account.

Here's What You Need to Know

1. RETAINAGE SURETY BOND OPTIONS

+ Both general contractors and subcontractors now have the opportunity to circumvent retainage by opting for a retainage surety bond.
+ Subcontractors can purchase and post a retainage surety bond with the general contractor, who will subsequently post its bond with the owner on behalf of the subcontractor.
+ Contractors engaged in large commercial and public improvement construction contracts will have the option to procure and post a surety bond with the owner and lender, effectively eliminating retainage from their progress payments. The specific form of the surety bond is outlined in ORS 701.435(4) (2024).

2. FLEXIBILITY IN BOND POSTING

+ Contractors can post a retainage surety bond at any point before the final payment under the construction contract. Once the bond is in place, retention will no longer be withheld, and any previously withheld retention will be promptly disbursed to the contractor.

3. COST IMPLICATIONS

+ The costs associated with surety bonds are to be borne by the party posting the bond.
+ The costs for retention bonds are typically between 1–2% of the retainage amount.

4. REPEAL OF ESCROW REQUIREMENT

+ The previous mandate for retainage to be deposited in an interest-bearing escrow account has been repealed and is no longer obligatory for contracts initiated after March 7, 2024.
+ Contractors now have the option of having the retainage deposited in an interest-bearing account with a bank or financial institution, eliminating many of the pitfalls associated with having funds held in escrow.

5. TRANSITIONAL PROVISIONS

+ Contracts executed between January 1, 2020, and March 7, 2024, remain subject to the previous law necessitating interest-bearing escrow accounts for retainage on construction contracts exceeding $500,000.

It should be noted that opting for retainage surety bonds can bolster contractors' liquidity and credit profile. By eliminating the need for retainage withholding, contractors gain access to increased liquidity, which can positively impact their creditworthiness and borrowing capacity. The ability to access 100% of progress payments is particularly beneficial for contractors working on long-term projects when retention could be held for several years.

This legislative overhaul marks a pivotal juncture in the evolution of progress payment structures for construction projects in Oregon. Under prior law, the holding of retention could pose significant cash flow strain to contractors. The legislature recognized the issue, and HB 4006 was passed unanimously by the House and Senate on an emergency basis.