



Retainage & Bonding Workgroup

August 12, 2022

WORKGROUP OBJECTIVE

- Identify ways to reduce the barriers of retainage and bonding on small and limited public works
- Streamline requirements for all public owners

Members	
Jolene Skinner, L&I (Lead)	Angela Peterson, Port of Seattle
Mark Riker/Josh Swanson, Labor	Cindy Magruder, UW

WHY ARE THEY BARRIERS?

- Long time to wait for retainage to be released
- Cost for surety is costly for new/small contractors on public works projects
- Paperwork is lengthy
- Capacity to bond additional projects is limited

WHY ARE THEY NECESSARY?

- Provide protections to:
 - Workers
 - Public funds/Owners
 - Taxes (workers' comp, unemployment, and excise)
 - Contractors
- More difficult and expensive to recover unpaid wages, taxes, etc.

RISKS WITH WAIVING

- Unpaid workers
- Taxpayers pay twice if L&I/DOR/ESD pursue owner for payment of unpaid wages/taxes
- Increase of workers' compensation premiums for all contractors if taxes are left unpaid

RESEARCH ON OTHER STATES

<https://www.keglerbrown.com/biddingandcontracts/50-state-summaries/>

- Unable to find any other state that waives the retainage and/or bond

NEW YORK CITY MWBE

https://www1.nyc.gov/assets/sbs/downloads/pdf/about/mwbe-reports/fy21_q1q2_mwbe_compliance_rpt.pdf

- Focuses on capacity building
 - **Bond Readiness** - 12-session cohort providing classroom instruction on financial management skills, agency participation, training + 1/1 assistance, and introduction to surety agents.
 - **Bonding Services** – A six-hour QuickBooks for Construction clinic; webinars and one-hour one-on-one bonding assistance sessions to assist firms with organizing their bookkeeping, accounting practices, and preparing applications for bonding, understanding surety bond application preparation concepts.

NEW YORK CITY MWBE

https://www1.nyc.gov/assets/sbs/downloads/pdf/about/mwbe-reports/fy21_q1q2_mwbe_compliance_rpt.pdf

- **Mentor Program** – Host regular networking events where founders representing various industries and backgrounds provide insights/help
- **Strategic Steps for Growth** – An 8-month program in partnership with NYU providing a network of experts plus strategic skills needed to run a growing company and create a custom, three-year growth plan for their businesses.
- **Contract Financing Loan Fund** - enhances the ability of business owners to access the capital they need to win, take on and perform successfully on NYC contracts, and reduces the cost of capital to a 3% annual interest rate

NEW YORK CITY MWBE

https://www1.nyc.gov/assets/sbs/downloads/pdf/about/mwbe-reports/fy21_q1q2_mwbe_compliance_rpt.pdf

- **Agency Compliance** – All procurement professionals must attend training to become knowledgeable about MWBE certifications and goals along with strategies/best practices on identify MWBE contracting opportunities.

21% of prime construction contracting dollars awarded during the 1st two quarters of FY21 were awarded to MWBE firms.

OTHER STATES

- **City of Los Angeles** – contractor development program <https://www.metro.net/about/contractor-development-and-bonding-program/>
- **Oregon** – separate \$30K bond for prevailing wages <https://www.oregon.gov/ccb/public-contracting/Pages/public-works-bond.aspx>
- **Louisiana** – Bonding assistance program, state guarantees 25% of contract price or \$100K, whichever is greater <https://www.opportunitylouisiana.com/led-news/news-releases/news/2018/07/26/louisiana-bonding-assistance-program-available-for-small-contractors>

IDEAS DISCUSSED THUS FAR

- OMWBE co-sign the waiver of retainage/bond to guarantee the payment of workers and taxes
- Only allow waiver of retainage for both SWR + LPW and not any waiver of the bond
- Remove retainage and bond requirements for both SWR + LPW contracts less than \$5,000 (57% of overall projects) (MRSC recommendation)
- Allow waiver of retainage and bond for both SWR + LPW contracts \$5K-\$35K (25% of overall projects)
- Agency/state assisted bonding....more to explore

NEXT MEETING – AUGUST 16

- Rachel from OWMBE to join and discuss what barriers they see and what assistance they provide
- Michael from WSDOT to join and discuss WSDOT opportunities plus results from their recent prompt payment event
- How would a tier system work for larger public owners?