



CITY OF
PORTLAND, OREGON

GOVERNMENT RELATIONS

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Senate Committee on Labor and Business
Oregon State Capitol
900 Court St. NE
Salem, OR 97301

RE: HB 4006

Chair Taylor and Members of the Committee,

Thank you for the opportunity to provide testimony on HB 4006, a bill that would allow contractors to utilize bonds in lieu of retainage when entering a contract with a public contracting agency. The City of Portland submitted testimony in opposition to this bill when it was first heard in the House and has since had numerous conversations with Representative Holvey's office, AGC, and other local governments about this bill. Our main concern is that moving away from retainage will require public contracting agencies to engage with a third party to get compensated when a contractor fails to adequately perform on a contract or if something else goes wrong in the execution of a contract. This will add delay, financial cost, and staff time to collecting what a local government is owed when a contract is not properly completed. As such, this bill will add additional financial costs to many public contracts at a time when costs are already rising. Going through the surety bonding process is particularly concerning to our contracting professionals.

We appreciate the conversations we have had with AGC and understand their desire for this change. Retainage requires money be provided and held in escrow until the completion of negotiations with a contractor at the end of a project. This is an additional upfront cost for the contractor so we understand the desire to move away from this model; but doing so without proper safeguards for contracting agencies could be detrimental to local governments across the state. One provision highlighted by AGC is that the bill allows for contracting agencies to still require retainage from a contractor for 'good cause.' We understand that AGC sees this as a safety mechanism for local jurisdictions to use when they have reason to believe that there might be problems collecting from a contractor at the end of a project. However, from our perspective, 'good cause' is not adequately defined in HB 4006 to provide the necessary safeguards.

To address some of our concerns, the City of Portland respectfully requests an amendment to define what constitutes 'good cause' to allow a contracting agency to

require retainage under this new law. While we would still have concerns about this bill, a sufficient definition of 'good cause' would move our position to neutral. Without an amendment defining 'good cause,' the City of Portland remains opposed to this bill. The Portland City Attorney's Office has drafted the following proposed definition of 'good cause' for your consideration:

In Section 1 at ORS 279C.560(1)(c), we can suggest deleting the final clause because good cause should also relate to the contractor's past performance, not just unique project circumstances (in version I'm looking at, p. 1, lines 18-21).

(c) A contracting agency may reject bonds, securities or other instruments that a contractor submits under paragraph (a)(A) of this subsection or a surety bond that the contractor submits under paragraph (a)(B) of this subsection only if the contracting agency first finds in writing good cause for the rejection ~~that is based on unique project circumstances.~~

We would want to make the same deletion in Section 1 at ORS 279C.560(8)(b)(A) (in version reviewed at, p. 3, lines 20-21):

(A) The contracting agency finds good cause in writing to reject the surety bond ~~based on unique project circumstances;~~

And then we could suggest adding language defining good cause by adding to Section 1 a new ORS 279C.560(10)

(10) For purposes of this Section, a contracting agency may find good cause for rejecting a surety bond due to unique project circumstances or due to a contractor's history of performance, including whether a contractor has failed to complete a project on time, whether a contractor has been assessed liquidated damages, and whether a contracting agency was previously required to call on the contractor's surety bond.

With an amendment defining 'good cause' the City of Portland would feel comfortable attempting to implement this bill over the next year and providing technical feedback ahead of next year's long session. With no amendment, the City of Portland strongly urges you to delay passage of this bill.

Thank you for your time and consideration.

Sincerely,

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