

'Trigger' Dates for Contract Closeout

Substantial Completion, Physical Completion and Final Acceptance

Definitions of these three terms are critical, as they trigger liquidated damage clauses (if any) and dates for retainage release and claim acceptance under the performance/payment bond.

Project contract documents should clarify that for the purposes of RCW 60.28.011 **completion of all contract work** means **final acceptance by the legislative body of the agency**.

Retainage Release

For projects underway prior to September 1, 1992, RCW 60.28.010(2) applied:

"(2) The moneys reserved under the provisions of subsection (1) of this section, at the option of the contractor, shall be: (a) Retained in a fund by the public body until thirty days following **the final acceptance** of said improvement or work as completed; "

Since September 1, 1992, RCW 60.28.011 has applied to retainage releases:

"(a) After **completion of all contract work** other than landscaping, the contractor may request that the public body release and pay in full the amounts retained during the performance of the contract, and sixty days thereafter the public body must release and pay in full the amounts retained ..."

Performance/Payment Bond Claim Filing Deadline

RCW 39.08.030 Conditions of bond -- Notice of claim -- Action on bond -- Attorney's fees.

"... all such persons mentioned in RCW [39.08.010](#) shall have a right of action in his, her, or their own name or names on such bond for work done by such laborers or mechanics, and for materials furnished or provisions and goods supplied and furnished in the prosecution of such work, or the making of such improvements: *PROVIDED, That such persons shall not have any right of action on such bond for any sum whatever, unless within thirty days from and **after the completion of the contract with an acceptance of the work by the affirmative action** of the board, council, commission, trustees, officer, or body acting for the state, county or municipality, or other public body, city, town or district, ...*"

The 2004 Division I-99 (APWA) definitions for Substantial Completion, Physical Completion and Final Acceptance are:

Substantial Completion Date

The day the Engineer determines the Contracting Agency has full and unrestricted use and benefit of the facilities, both from the operational and safety standpoint, and only minor incidental work, replacement of temporary substitute facilities, or correction or repair remains for the physical completion of the total contract.

Contract Completion Date

The date by which the work is contractually required to be physically completed. The Contract Completion Date will be stated in the Notice to Proceed. Revisions of this date will be authorized in writing by the Engineer whenever there is an extension to the contract time.

Physical Completion Date

The day all of the work is physically completed on the project. All documentation required by the contract and required by law does not necessarily need to be furnished by the Contractor by this date.

Completion Date

The day all the work specified in the contract is completed and all the obligations of the Contractor under the contract are fulfilled by the Contractor. All documentation required by the contract and required by law must be furnished by the Contractor before establishment of this date.

Final Acceptance Date

The date on which the Contracting Agency accepts the work as complete.