

ACCEPTANCE OF CONTRACT

Question:

Do you happen to know the RCW that determines that a City Council shall be responsible for accepting a public works that has been bid, as complete? Of is there even such an RCW? Seems to me that if the CC awards a project they should be the ones to give final acceptance on that same project.

Response:

There is no RCW that states directly that a council/commission has to accept a project.

RCW 39.08030 states (in part) "...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, .." This implies that the trigger date for claims against the performance/payment bond is council/commission acceptance.

However, RCW 60.28.011 states (in part) "... (2) Every person performing labor or furnishing supplies toward the completion of a public improvement contract shall have a lien upon moneys reserved by a public body under the provisions of a public improvement contract. However, the notice of the lien of the claimant shall be given within forty-five days of completion of the contract work, and in the manner provided in RCW 39.08.030. ..." Here the trigger date for retainage release is contract completion, which could be any one of four dates (substantial completion, physical completion, contract completion or final acceptance) per the Standard specifications. The 1989 RCW refers to 'final acceptance of the work', which was changed in 1992 to 'completion of all contract work'.

For ease of tracking (and sanity) it makes sense to establish a common trigger date for both the performance/payment bond and retainage, which an agency can set by policy or ordinance. For larger projects, 'acceptance of the work' by the council/commission should be the common trigger date. For smaller projects, delegation of acceptance (per RCW 39.08.030) to a department head and use of the Completion Date per the Standard Specifications as the common trigger date makes sense.

FYI. Division I-99 (APWA Supplement) of the Standard Specifications reads:

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.