



U.S. Department  
of Transportation  
**Federal Transit  
Administration**

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## **REGION 10 BULLETIN NO: 2012-22**

Subject: Contract Retainage: Code of Federal Regulations versus Revised Code of Washington

Program Area: Interim Guidance

Date: April 25, 2012

### **Note: This bulletin applies to construction contracts with the Federal Transit Administration (FTA) funding issued by grantees in the State of Washington**

It has come to FTA's attention there is some confusion with regards to compliance with the Revised Code of Washington (RCW) 60.28.011, which requires holding a retainage in public improvement contracts for up to 60 days, and the potential conflict with The Code of Federal Regulations (CFR), 49 CFR Section 26.29, <http://www.gpo.gov/fdsys/pkg/CFR-2011-title49-vol1/pdf/CFR-2011-title49-vol1-sec26-29.pdf> which requires FTA grantees to contractually ensure that prime contractors make full and prompt payment (within 30 days) upon the satisfactory completion of work.

Under Section 26.29, the public agency may hold a retainage upon the condition that prompt and incremental acceptances of portions of the prime contract are provided and that retainage is paid to the prime contractor (and the prime contractor is contractually required to make such payment to its subcontractors) within 30 days upon such completion and acceptances of incremental work. (See Section 26.29 for complete federal requirement). Thus, compliance with one legal requirement may conflict with the requirements of the other.

FTA grantees must comply with all federal laws and regulations for contracts funded by FTA grants, even if such legal requirements conflict with state laws. In keeping retainage from prime contractors, you must comply with 49 CFR Section 26.29 which provides in part:

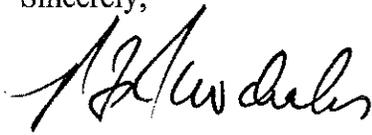
- (b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:
  - (3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for

satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

For further information, contact Region 10's Ted Uyeno at 206-220-7958 or email [ted.uyeno@dot.gov](mailto:ted.uyeno@dot.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "R.F. Krochalis". The signature is written in a cursive style with a large initial "R" and "K".

R.F. Krochalis  
Regional Administrator