

OSE Tip of the Day

A101, Part 3

July 24, 2020

If you were promised money and it either took too long to get all of it, or it seemed there was always a stumbling block to receiving it, you might have been a contractor or subcontractor.

This weeks subject is the most important to the Contractor and his/her subcontractors, Article 5 Payments. Sure sure, the contractor wants to construct the facility properly and make the Agency happy; but, if he/she ain't getting paid, the work and the relationship suffers.

Scanning Sections 5.1.1 through 5.1.6: The process for progress payments begins shortly after award of the contract. It is then that the Contractor provides to the Agency a Schedule of Values. The Schedule lists all of the components of the Work and allocates the entire sum of the contract into those components. This serves as the basis for reviewing the Contactor's Applications for Payment during the life of the contract. As the Work progresses, the Contractor submits Applications to the A/E and the Agency, typically once a month, as a progress payment. The A/E reviews the Applications, certifies them to be correct, and issues to the Agency a Certificate of Payment indicating the Application is correct and can be paid. In accordance with the contract and State law, the Agency shall make payment of a certified Application not later than twenty-one (21) days after receipt of the Application, ie. 21 days from the date the A/E receives it for the Agency. The law also requires the Contractor to pays his subcontractors their portions of the progress payment within 7 days of receipt of payment from the Agency.

The amount of the progress payment is indicative of the work performed for the previous month and references the various items in the Schedule of Values, multiplied by the percentage of that portion completed. The Application might also contain costs of materials or equipment that have been delivered and suitably stored on site, or suitably stored offsite per contract. There are several reasons why a progress payment may be reduced, and one of them is Retainage.

Section 5.1.7: Prior to Substantial Completion, a maximum of 3.5% may be withheld from a progress payment as Retainage. In the private sector, the full amount of retainage may be withheld until Completion. However, per SC Law and Section 5.1.7.2, the Contractor is due the retainage that is allocable to a completed division, or portion, of the Work as listed in the Schedule of Values. At Substantial Completion, the Contractor may submit an Application that requests all of the retainage previously withheld.

Assuming the project follows the standard of Final Completion to be achieved 30 days after Substantial, the Contractor will submit the final Application to indicate he/she has fully performed the contract. There are several items that must be received with the final application and they are noted in the A201.