

# CHAPTER 7

## CONSTRUCTION CONTRACT ADMINISTRATION

### DESIGN-BID-BUILD

#### 7.1 RELATED STATUTORY AUTHORITY

- 7.1.1 SC Code § 11-35-1220 permits the Chief Procurement Officer to prescribe forms for requisitioning, ordering, and reporting supplies, services, and construction.
- 7.1.2 SC Code § 11-35-3030 permits a maximum of 3.5% of progress payments to be retained pending completion of the work and allows release of retention for individual areas of work that are deemed complete.
- 7.1.3 SC Code § 11-35-3040 permits clauses providing for adjustment in prices, time of performance and other appropriate contract provisions.
- 7.1.4 SC Code § 11-35-3060 requires all construction contracts, including contract modifications, to be within the project's scope and budget as approved by the State Fiscal Accountability Authority (SFAA).
- 7.1.5 SC Code § 29-6-30 requires an Agency to pay to a Contractor the undisputed amount of any pay request within 21 days of receipt of the pay request. The law further requires that the Contractor pay its Subcontractors, and each Subcontractor shall pay their Subcontractors, within 7 days of receipt by the Contractor or Subcontractor. This law applies to all state Contractors, including design professionals.
- 7.1.6 SC Code § 29-6-40 provides grounds on which the Agency, Contractor, or Subcontractor may withhold application and certification for payment.
- 7.1.7 SC Code § 29-6-50 permits a Contractor to assess interest in the amount of one percent per month of the unpaid, undisputed amount of a periodic or final pay request not paid within 21 days of receipt of the pay request, providing written notice is given as required. Furthermore, a Subcontractor may assess interest in the amount of one percent per month of the unpaid undisputed amount of a periodic or final pay request not paid within 7 days after the Contractor's receipt of periodic or final payment, providing notice is given as required.

#### 7.2 INSPECTION AND TESTING SERVICES

- 7.2.1 During the construction period, OSE and any other legally constituted authorities have access to the project premises for periodic inspections. The A/E's Basic Services may include site visits and observations of work-in-progress, Substantial Completion inspections, Final Completion inspections and other inspections. Details of the A/E's observation requirements are set forth in the A/E contract.
- 7.2.2 The Agency must procure inspection and material testing services from firms on state contract to provide tests and inspections in accordance with Chapter 1 of each of the applicable International Code Council Series of Codes and with Chapter 17 of the International Building Code. This shall be documented using the Inspection/Material Testing Order (SE-955) and the Inspection/Material Testing Order Negotiation Worksheet (SE-955A).
- 7.2.3 OSE has entered into statewide term contracts for inspection and material testing services with the ultimate goal of ensuring the construction of facilities is performed in accordance with building codes and contract documents. The requirements and procedures for using inspection and material testing services on a project are set forth in Appendix G.2. Statewide term contracts for inspection and material testing services, including services and fees, and the listing of Inspection and Testing Firms, including point of contact, phone numbers, and addresses, may also be found in Appendix G.2.
- 7.2.4 Inspection and material testing firms shall use and maintain in the Contractor's job trailer, the Project Inspection/Material Testing Log (SE-965), the Project Inspection/Material Testing Deficiency Log (SE-966), and a copy of the inspection/material testing report. Copies may be found in Appendix G.1
- 7.2.5 The Agency must ensure that the Contractor schedules third party inspections and material testing services required by the owner in the contract documents.

#### 7.3 BUILDING / CONSTRUCTION PERMIT

- 7.3.1 A Building/Construction Permit (SE-580) must be issued to the Contractor for all construction awards, whether within or over the Agency construction certification, prior to construction.
- 7.3.2 If the proposed contract value is within the Agency's construction contract certification, the Agency shall complete the SE-580, sign the Agency Certification and Approval, and provide a copy to the Contractor. The Statement of Responsibilities for Special Inspections (SE-962), if special inspections are required, shall be signed by all parties and a copy provided to all parties.

- 7.3.3** If the proposed contract value exceeds the Agency's construction contract certification, the Agency shall submit to OSE a fully completed SE-580 signed by the Agency, an executed SE-955 and SE-955A, and a signed SE-962. OSE will approve the permit by signing the SE-580 and returning a signed copy to the Agency

#### **7.4 PRE-CONSTRUCTION CONFERENCE**

- 7.4.1** The Agency should hold a pre-construction conference for all contracts exceeding \$50,000 in value. Items to consider for discussion during the pre-construction conference are located in Appendix B.2.
- 7.4.2** The Agency's Project Representative and the A/E's Project Manager should conduct the pre-construction conference. Other attendees should include the Agency's construction Project Manager (if assigned), third party inspectors, general Contractor, major Subcontractors, and the inspector(s) hired by the Agency.
- 7.4.3** The Agency must give the OSE Project Manager a minimum of seven (7) days' notice of the date, time, and place of any pre-construction conference. If the OSE Project Manager believes circumstances warrant their attendance, they will notify the Agency. Alternatively, if the Agency desires the OSE Project Manager's attendance, the Agency should notify them.
- 7.4.4** The Agency should provide for the keeping and distribution of the meeting minutes to all attendees. The Agency may assign this duty to the A/E by contract.

#### **7.5 NOTICE TO PROCEED**

- 7.5.1** The Agency must issue the SE-390 to the Contractor on all contract awards whether within or over the Agency construction certification. The SE-390 shall not be issued until the Building/Construction Permit (SE-580) has been issued.
- 7.5.2** The Agency must use the date of commencement established in the SE-390 for determining the date(s) of Substantial Completion and Liquidated Damages. The Date of Commencement should be set at least seven (7) days after the date of the SE-390 to allow the Contractor time to mobilize its work forces. This time may be waived if approved by the Contractor.
- 7.5.3** The Agency must send a copy of the SE-390 to OSE on the same day it sends the SE-390 to the Contractor. The Agency should send copies of the executed contract, performance and payment bonds, and certificate of insurance to OSE, for information only, after they are obtained from the Contractor.

#### **7.6 CONSTRUCTION SCHEDULES**

- 7.6.1** The Contractor is responsible for providing a construction schedule for the Agency and A/E's information. The contract documents should define the required level of detail. At a minimum, the schedule should:
- A.** Indicate dates for Commencement, Substantial Completion, and Final Completion.
  - B.** Provide a graphical representation of the major events to occur on the project, including coordination of the project with the work of others, if any.
  - C.** Provide a graphical representation of each phase of construction and occupancy; and
  - D.** Indicate dates that are critical to the project.
- 7.6.2** The Agency should make sure that the Contractor updates and maintains the schedule as required by the contract documents.

#### **7.7 SHOP DRAWINGS**

- 7.7.1** The Contractor is responsible for preparation of shop drawings that are required by the contract documents. The contract documents set forth the details for shop drawing submittal, review, and approval.
- 7.7.2** Fire Sprinkler System Shop Drawings
- A.** Prior to the Fire Protection Engineer of Record (FPEOR) submitting reviewed shop drawings to the State Fire Marshal's Office, the FPEOR shall submit a completed form, Request for Fire Sprinkler System Shop Drawing Review for State Construction Projects, to the OSE Project Manager for signature. This form can be found at: <http://statefire.llr.sc.gov/osfm/forms/engineering/Request%20for%20Fire%20Sprinkler%20System%20Shop%20Drawing%20Review%20for%20SCP%202018.0626.pdf>.
  - B.** The OSE Project Manager will sign and return the form to the FPEOR. The FPEOR shall then include the signed form with the shop drawing submittal to the Office of State Fire Marshal.

## 7.8 EVALUATION OF SUBSTITUTIONS

- 7.8.1 The Contractor may submit to the A/E requests to provide materials and equipment different from that specified in the Contract Documents.
- 7.8.2 The Agency has the sole discretion to accept or reject any of these requests. The contract documents provide details for request submittal, review, and approval.

## 7.9 SUBSTITUTION OF SUBCONTRACTORS

### 7.9.1 Substitution of Unlisted Subcontractors

A Contractor may substitute one prospective Subcontractor for another, with the approval of the Agency only in accordance with the conditions provided in Section 5.2 of the AIA A201 (SCOSE Version).

### 7.9.2 Substitution of Listed Subcontractors

- A. A Contractor may substitute a listed Subcontractor only under conditions allowed by § 11-35-3021. In considering a request for substitution, the Agency should consider prior interpretations of this statute by the Procurement Review Panel and the Chief Procurement Officer for Construction.
- B. Panel decisions are located at <https://procurement.sc.gov/legal/legal-panel-orders>. CPOC decisions are located at <https://procurement.sc.gov/legal/legal-decisions-ose>. Of particular interest is the Panel's decision in Protest of Pizzagalli Construction Company, Case No. 1991-8 wherein the Panel ruled that substitution under § 11-35-3020(2)(b)(iii) [now § 11-35-3021] is only allowed when the facts giving rise to the request for substitution occur after contract award.
- C. For further discussion see footnote 3 in Protest of Melloul-Blamey Construction SC LTD, Case No. 2008-003A (Before the CPOC). In Melloul-Blamey, the CPOC stated that the circumstances set forth in § 11-35-3020(2)(b)(iii)(bb) & (cc) [now § 11-35-3021(1)(ii) & (iii)] may be exceptions to the rule announced in Pizzagalli.

## 7.10 CHANGE ORDERS

### 7.10.1 General Information

- A. A Change Order is any written amendment to a construction contract to which all parties agree.
- B. A Change Order normally modifies one or more of the following elements of the contract:
1. Scope of Work
  2. Contract Sum
  3. Contract Time
- C. Under no circumstances may the Contractor proceed with the work of a Change Order until it is properly approved as noted below.
- D. The parties shall process change orders using the Change Order to Construction Contract (SE-380) and Change Order Request Summary (SE-380, Page 2).

### 7.10.2 Change Order for Contracts within Agency Construction Contract Certification

- A. When the original construction contract is within the Agency's construction contract certification limit (as determined by Department of Procurement Services (DPS) Auditors, process change orders as follows:
1. If the Change Order does not cause the total construction contract amount to exceed the Agency's construction contract certification limit, then the Agency may approve the work. The Agency does not need to notify OSE of these Change Orders.
  2. If the Change Order causes the total construction contract amount to exceed the Agency's construction contract certification limit, then OSE must approve the Change Order before the Contractor may perform any work. The Agency must submit the Change Order to OSE, along with copies of the following:
    - a. The approved Form A-1 (if the project is required to be established as a PIP).
    - b. Last detailed cost estimate prepared before bidding.
    - c. The SCBO advertisement; and
    - d. Bidding Documents, including addenda.
  3. OSE and the Agency will thereafter administer the construction contract as a contract that originally exceeded the Agency's construction contract certification limit.

- B. Nothing in this provision allows an Agency to issue a Change Order that will cause a small purchase as defined in Chapter 8 to exceed the limits for the type of procurement method used (i.e., a contract under \$10,000 made without obtaining competitive quotes may not be converted to a purchase in excess of \$10,000).

### 7.10.3 Change Orders for Contracts above Agency Construction Contract Certification

- A. When the original construction contract award exceeds the Agency's construction contract certification limit, process Change Orders as follows:
  1. If the Change Order has any item or change in work exceeding the Agency's construction Change Order certification limit, OSE must approve the change order before the Contractor can perform any work. The Agency must send the Change Order (both deduct and add), along with all substantiating data noted in Section B to OSE for review and approval.
  2. If the Change Order has all items or changes in work within the Agency's construction Change Order certification limit, the Agency may approve the work. The Agency must send a copy of the approved Change Order, along with all substantiating data noted in Section B to OSE for information within 30 days of the Agency's approval of any item included in the Change Order.
- B. **Substantiating Data:** The Agency must submit substantiating data containing the following:
  1. One copy of the completed Change Order.
  2. One copy of supporting cost and schedule data including the following:
    - a. Sufficient detail to explain the scope of work covered by the Change Order (attach plans, specifications, details, written description, adjustments in cost with back-up information, and quantities of material and labor as required for explanation).
    - b. Contractor's justification for adjustment in the contract sum including properly itemized and substantiating data with sufficient detail to show the following:
      - (1) That the cost involved is both fair and reasonable to all concerned.
      - (2) That the cost is appropriately related to the quantities of materials and labor involved including material invoices and Subcontractor(s) costs, and
      - (3) That the amount of the Contractor's markup (overhead and profit) is as indicated in the contract.
    - c. Justification for increasing the time of the contract using information to verify weather-related or other delays not controlled by the Contractor.

### 7.10.4 Failure to Obtain OSE Review and Approval

- A. Failure to obtain OSE approval for a Change Order, when required by agency certification limits, results in the Change Order being an unauthorized procurement requiring termination or a justification for ratification.
- B. Failure to submit Agency-approved Change Orders for OSE information within the time specified in 7.10.3.A.2 could result in the Agency having to have the Contractor perform corrective work on the project in an untimely manner to bring the project into compliance with code requirements.

### 7.10.5 Determining if a Change Order is Within Agency Certification

- A. The DPS - Audit and Certification web page contains a link at the bottom of the page to a listing of Agency construction Change Order certifications located at:  
[https://www.procurement.sc.gov/files/Agency%20Certification%20List\\_A%26C%208-30-22a.pdf](https://www.procurement.sc.gov/files/Agency%20Certification%20List_A%26C%208-30-22a.pdf).
- B. To determine whether the Agency or OSE can approve the work:
  1. The value of a Change Order item is the total cost required to complete an individual item of work. For example: installation of a drinking fountain may take mechanical, electrical, plumbing, carpentry, painting, and wall covering installation to complete the individual work item.
  2. The value of the individual item determines whether OSE authorization is required.
  3. The value determination applies to any change in work whether it deducts or adds to the contract amount.
- C. The Agency may not break down a Change Order into separate, related items of work to circumvent the requirement for approval by OSE. For example, an Agency may not break a Change Order adding a parking lot to a contract down into separate items such as one for grading and one for paving.

## 7.11 CHANGE ORDERS: DELAYS AND TIME

- 7.11.1 The Agency must promptly evaluate a Contractor's claim for time to avoid claims for acceleration and damages.

- 7.11.2** The Agency must document any adjustment in contract time by Change Order. Except in the case of continuing delay, the Agency must execute the Change Order within 14 days after the Contractor submits written notice of the claim for additional time, provided that:
- A.** Any request for adjustment of time includes written substantiation and justification for the change; and
  - B.** The A/E has provided written justification concerning the time claimed.
- 7.11.3** A claim for time should include any associated costs and the effect the delay will have on the progress of the work. Only one claim is necessary when an on-going delay is evident during a project.
- 7.11.4** The Agency should not convert Change Directives to Change Orders until time claims and contract values are resolved.
- 7.11.5** The Agency must send a Change Order for time to OSE for information. Change Orders for only time are considered to be within an Agency's certification.

## **7.12 CHANGE DIRECTIVES**

### **7.12.1 General Information**

- A.** A Change Directive allows the Agency to direct the Contractor to make urgently needed changes in the scope of the contract documents without completing the Change Order process described above.
- B.** If time is of the essence, the use of a Change Directive may provide relief for the time that it may take for the Agency and the Contractor to reach full agreement on the cost or time impact of a change in scope.
- C.** A Change Directive must be in writing and should suggest the method the Agency proposes for determining any adjustment to the contract sum and time.
- D.** The Agency may issue a Change Directive using AIA Document G714.
- E.** An Agency may issue Change Directives as necessary. The Agency's construction Change Order certification limit does not apply.
- F.** The Agency should use a Change Directive rather than a Change Order in all cases where there is a lack of total agreement between the Agency and the Contractor on the cost and schedule impact of all item(s) contained in a change to the work.
- G.** When a Change Directive provides for an adjustment to the contract sum, the parties must make final adjustment in accordance with the Change Order provisions of the contract.
- H.** Portions of a Change Directive that are not in dispute may be included in the Contractor's applications for payment prior to the Change Directive being converted to a Change Order.
- I.** The Agency should number Change Directives sequentially and separately from Change Orders.

### **7.12.2 Submittals**

- A.** If the Agency or A/E estimates that the Change Directive will exceed the Agency's construction Change Order certification, the Agency, after signing the directive, must submit it to OSE. The Agency must include attachments and documentation with sufficient detail to provide an explanation of the scope of work that is in the Change Directive.
- B.** The Agency must submit the Change Directive to OSE at the same time it issues the Change Directive to the Contractor.
- C.** OSE will review the Change Directive for any impact on compliance with building codes and other State standards. OSE will communicate any concerns raised by this review to the Agency.

### **7.12.3 Converting Change Directive to Change Order**

- A.** When the Agency and the Contractor have negotiated a final agreement on the adjustments to the contract sum and the contract time related to the Change Directive, they must convert the Change Directive to a Change Order.
- B.** The parties should reference the Change Directive in the Change Order and attach the Change Directive to the Change Order.
- C.** The Agency must process the Change Order as set forth in Section 7.10.

## **7.13 RESOLUTION OF CONSTRUCTION CLAIMS AND DISPUTES BETWEEN CONTRACTOR AND AGENCY**

### **7.13.1 Claims Handled by the A/E**

- A.** As part of its Basic Services, the A/E acts as the initial interpreter of the requirements of the construction documents, providing information to the Agency and the Contractor concerning the acceptability of the work.

- B. The party making a claim must submit the claim in writing to the A/E as required by the contract documents. The party must support their claim with adequate documentation.
- C. The A/E will review claims as required by its contract with the Agency, and either approve or reject claims by providing a written decision, giving reasons for the decision.
- D. The A/E will notify those involved of any recommended changes in the contract sum or contract time.
- E. If the A/E's initial decision is acceptable to the Agency and the Contractor, the parties must prepare a Change Order as outlined in the contract documents. The Agency must process the Change Order as outlined in Section 7.8.
- F. If the A/E's initial decision is not acceptable to the Agency or the Contractor, the Agency should first attempt to resolve the claim by mutual agreement. The State Engineer strongly urges that the Agency and the Contractor use every available means to resolve all claims through negotiations and informal mediation. OSE Project Managers are available to assist.

#### **7.13.2 Claims Handled by OSE**

If the Agency or the Contractor makes a claim after the Agency's approval of the Contractor's final payment, the claimant must submit the claim directly to the State Engineer.

### **7.14 CLAIMS BY OTHERS**

- 7.14.1 The Contractor is responsible for resolving all claims between its suppliers and Subcontractors. If the Contractor requests assistance, the Agency should assist the Contractor, suppliers, or Subcontractors in resolving their disputes.
- 7.14.2 When the Agency becomes aware that the Contractor is not paying suppliers or Subcontractors, the Agency should discuss this with the Contractor and notify the surety company. If requested by the Agency:
  - A. The Contractor should provide justification for not paying the Subcontractor or supplier; and
  - B. The A/E should render an opinion to the Agency as to the Contractor's justification for the lack of payment to a Subcontractor or supplier.
- 7.14.3 The Agency should cooperate with the surety in responding to claims of non-payment from Subcontractors and suppliers.
- 7.14.4 Pending resolution of claims by others, the Agency should consider withholding appropriate sums from payments to the Contractor if such withholding is required to protect the interests of the State. However, the Agency must follow the terms and conditions of the contract in withholding any payments.

### **7.15 DISPUTES OR UNRESOLVED CLAIMS**

- 7.15.1 Only the Agency, the A/E and its direct consultants, and the Contractor and its direct Subcontractors are entitled to submit a request for resolution of a contract controversy to the State Engineer.
- 7.15.2 A party submitting a dispute to the State Engineer for resolution must do so in accordance with § 11-35-4230. See Chapter 1.

### **7.16 APPLICATION AND CERTIFICATION FOR PAYMENT**

- 7.16.1 The Contractor should submit applications for payment to the A/E in the form of AIA Documents G702 and G703. If the Agency is not using an A/E or other outside consultant, the Contractor should submit its pay applications directly to the Agency.
- 7.16.2 The A/E (or Agency) will review the Contractor's application for payment and accompanying progress schedules and other back-up information. Based on the A/E's on-site observations, the A/E will determine the amounts due the Contractor and submit recommendations for payment in writing to the Agency.
- 7.16.3 After review and certification of the amounts due the Contractor, the A/E will send the applications for payment to the Agency.

### **7.17 PROGRESS PAYMENTS TO CONTRACTORS**

- 7.17.1 When a Contractor has performed in accordance with the provisions of its contract, the Agency must pay the Contractor the undisputed amount of any pay request within 21 days of the A/E's or Agency's receipt of that pay request. The Contractor shall pay to his Subcontractor(s) and each Subcontractor(s) shall pay to his Subcontractor(s), within seven days of receipt by the Contractor or Subcontractor of each periodic or final payment. The law considers the A/E's receipt of the pay request as the equivalent of the Agency's receipt since the A/E is acting as the Agency's representative.

- 7.17.2** If the Agency delays payment to a Contractor by more than 21 days, the Agency must pay the Contractor interest, beginning on the due date, at the rate of one percent a month or a pro rata fraction thereof on the unpaid balance as may be due. However, the Agency will owe interest ONLY if the Contractor notified the Agency in writing that such interest might be due at the time the Contractor requested payment.
- 7.17.3** The Agency may request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers the amount paid by the Owner to the Contractor for their portion of the work. If the Contractor fails to furnish such evidence within seven days, the Agency may contact Subcontractors to ascertain whether they have been properly paid.

## **7.18 WITHHOLDING PAYMENT TO CONTRACTORS**

- 7.18.1** In addition to any retainage stated in the contract for construction, the Agency may withhold additional amounts as required to protect the interests of the State. Reasons for additional withholding are set forth in the contract.
- 7.18.2** When the Agency has determined to its satisfaction that unsatisfactory job progress has caused or will cause the actual contract time to exceed the specified (or adjusted) contract time, and if the contract includes a provision for assessing actual or liquidated damages, payment shall be withheld from the Contractor in amounts necessary to cover the anticipated damages.
- A.** Such amounts to cover damages for late completion are in addition to retainage, the balance for incomplete work and any amounts withheld for other reasons stated in the contract.
  - B.** Actual or Liquidated Damages to be assessed a Contractor are NOT to be incorporated into a Change Order, as they are not changing the value of the contract. They are only to be listed as a line-item deduction from the amount paid on the pay application.
  - C.** The Agency shall use the Assessment of Contract Liquidated Damages (SE-395) to calculate and document the amount of Liquidated Damages charged to the Contractor.
- 7.18.3** When re-inspection and/or re-testing services are required due to construction discrepancies or failures by the Contractor, the re-inspection and/or re-testing fees are NOT to be incorporated into a Change Order, as they are not changing the value of the contract. They are only to be listed as a deduction from the amount paid on the pay application.

## **7.19 RETAINED AMOUNTS OF PROGRESS PAYMENTS (RETAINAGE)**

- 7.19.1** In any contract for construction that provides for progress payments in installments based upon an estimated percentage of completion, the Agency may not retain more than 3½ % of each progress payment.
- 7.19.2** Upon final completion of the work, the Agency must include in the final payment to the Contractor, retained amounts of progress payments not previously released.

## **7.20 SUBSTANTIAL COMPLETION**

### **7.20.1 General**

- A.** The A/E should declare Substantial Completion only if construction is sufficiently complete, in accordance with the contract documents, such that the Agency can occupy or utilize the project (or a portion) for the use for which it is intended.
- B.** The work remaining for the Contractor to complete after substantial completion should be minor in nature such that it will not disrupt the occupants unduly or prevent them from carrying out their normal functions.
- C.** The Contractor is responsible to correct work that the A/E or Agency rejects for failure to conform to the requirements of the contract documents, whether they discover such non-conforming work before or after Substantial Completion.

### **7.20.2 Inspections for Substantial Completion**

- A.** The Agency shall give OSE a minimum of ten (10) days' notice of the date, time, and place of the Substantial Completion inspection so that the OSE Project Manager may attend.

- B. Where applicable, the following individuals should be present for the inspection, unless the Agency waives their attendance:
  1. A/E's Architect of Record.
  2. Agency's Project Manager.
  3. Mechanical Engineer of Record.
  4. Electrical Engineer of Record,
  5. Fire Protection Engineer,
  6. Other design professionals as applicable.
  7. Local Fire Marshal's representatives; and
  8. Other authorities having jurisdiction.
- C. If additional Substantial Completion inspections are required, the Agency may charge the Contractor for all costs of re-inspection. These charges are NOT to be incorporated into a Change Order, as they are not changing the value of the contract. They are only to be listed as a line-item deduction from the amount paid to the Contractor on the final pay application.

#### **7.20.3 Declarations of Substantial Completion**

- A. After the A/E determines the project is in compliance with the Contract Documents, they may declare Substantial Completion by issuing the Certificate of Substantial Completion (SE-550), signed by the Agency and the A/E.
- B. The parties must indicate on the certificate the number of days allowed until final completion.
- C. The Agency must submit a copy of the fully completed SE-550 to the Contractor and OSE.
- D. Issuance of the SE-550 terminates the Agency's right to impose Liquidated Damages (if any) and establishes the beginning date for the warranties and the one-year corrective work period.
- E. The Agency must obtain permanent insurance on the work from the Insurance Reserve Fund as soon as it and the A/E issue a certificate of Substantial Completion.

#### **7.20.4 Work after Substantial Completion**

- A. After Substantial Completion, the Contractor shall complete the work of the contract that the Agency has declared to be substantially complete within the time set by the Contract to achieve Final Completion. No additional work shall be added to the contract after Substantial Completion has been declared without the approval of OSE.
- B. Any Change Orders or Change Directives issued after Substantial Completion must be approved by OSE regardless of the amount of the change or the certification levels of the Agency. Failure to do so may result in the Change Order being an unauthorized procurement requiring termination or a justification for ratification.

### **7.21 CERTIFICATE OF OCCUPANCY / USE**

#### **7.21.1 Requirements for Obtaining a Certificate of Occupancy/Use**

- A. A Certificate of Occupancy/Use (SE-585) must be issued for any building or structure that is constructed or renovated with state funds, or a project that is built on state property. The State Engineer or his designee will approve the SE-585.
- B. An SE-585 must be issued for all projects that require a Building/Construction Permit (SE-580). Agencies must coordinate with OSE to determine if an SE-580 and SE-585 are required for a specific project.
- C. The Agency may not use any building or project or change an occupancy classification for any building requiring an SE-580 until the State Engineer has issued the approve SE-585.
- D. The State Engineer will approve the SE-585 upon completion of the following:
  1. The OSE Project Manager receives and accepts all A/E and third-party-inspector inspection reports, including the SE-966 with all deficiencies resolved.



2. The A/E provides copies of tests to the Agency (and OSE as requested) for the following (unless provided throughout the project):
    - a. Fire sprinkler system (properly completed NFPA 13, 24 and others, as applicable).
    - b. Mechanical equipment.
    - c. Plumbing (including domestic water sanitary testing report).
    - d. Fire Alarm (properly completed latest edition of NFPA 72 form).
    - e. Electrical.
    - f. Emergency power.
    - g. Structural.
    - h. Soil; and
    - i. Other testing that may be listed in the contract documents.
  3. The A/E and Agency have received all items that are required for Substantial Completion (see Section 7.20) per the contract documents; and
  4. OSE Project Manager (or their delegate) inspects the building or structure and determines the construction to be in accordance with the Contract Documents.
- E. The State Engineer or his designee may, in their sole discretion, issue a Temporary or Partial Certificate of Occupancy/Use before the entire work is complete upon receipt of:
1. Certification by the Agency, A/E, and Contractor that such portion of the work is safe for occupancy, and
  2. Agreement by the OSE Project Manager, after a review of the project.

#### **7.21.2 Revocation of a Certificate of Occupancy**

The State Engineer has the authority to suspend or revoke the SE-585 if:

- A. The certificate is issued in error.
- B. The certificate is issued on the basis of incorrect information supplied; or
- C. It is determined that the building or structure (or a portion thereof) is in violation of any part of the building codes.

## **7.22 RECORD DOCUMENTS**

**7.22.1** At the end of the project, the Agency should receive from the A/E one set of record documents (including reproducible plans that reflect all changes that are on the Contractor-provided “red line” drawings and specifications) and warranty/guaranty information.

**7.22.2** The Agency should refer to the A/E’s contract and the construction contract for details on these drawings.

## **7.23 FINAL COMPLETION**

**7.23.1** When the Contractor believes his work is totally complete, he shall submit the Certificate of Final Completion (SE-560) to the A/E and request a final inspection. This should be no later than the time allowed on the SE-550, Certificate of Substantial Completion. Upon receipt of the SE-560, the A/E will:

- A. Survey the work to verify that the project is ready for final inspection.
- B. If they disagree with the Contractor’s assessment of the status of the project, notify the Contractor accordingly.
- C. If they agree with the Contractor’s assessment of the status of the project, schedule a final completion inspection with the Agency and Contractor.

**7.23.2** The A/E will perform the final completion inspection, along with those attending the inspection and, if the results are acceptable, the A/E and Agency will sign the SE-560 and declare that the project is finally complete.

## **7.24 CONTRACT CLOSURE AND FINAL PAYMENT**

**7.24.1** Closure of the contract, including final payment to the Contractor, requires the following:

- A. An SE-560 issued by the A/E and accepted by the Agency.
- B. The Contractor’s submission, to the A/E, of the following:
  1. An affidavit, in the form of the AIA G706, that wages, bills for materials and equipment, and other indebtedness connected with the work have been paid.

2. A certificate in the form of AIA G715 issued by an authorized representative of the Contractor's insurance company certifying completed project insurance coverage as required by the contract documents.
3. A statement that the Contractor knows of no reason that the completed project insurance will not be renewable to cover the period required by the Contract Documents.
4. Consent of surety, if any, to final payment, in the form of AIA G707.
5. Other information required by the Agency establishing the Contractor's payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims and security interests arising out of the contract, all in the forms as designated by the Agency.
6. Inspection reports that may not be a part of the record documents.
7. Redline drawings showing the as-built conditions.
8. Warranties.
9. Operation and maintenance manuals; and
10. A final payment application.

7.24.2 Upon final completion and the Agency's receipt and approval of the Contractor's final payment application, the Agency must pay the Contractor all funds remaining due, including all amounts retained from progress payments.

## 7.25 ONE-YEAR CORRECTIVE WORK PERIOD

7.25.1 The Contractor is contractually bound to correct all deficiencies noted within one year after the date of Substantial Completion.

7.25.2 Based on the requirements of the agreement between the Agency and the A/E, the Agency should have the A/E inspect the project ten months after Substantial Completion for any deficiencies that may have developed during the one-year period after Substantial Completion.

7.25.3 Upon completion of the inspection, the A/E should issue a written report to the Agency, OSE, and the Contractor indicating deficiencies the Contractor must correct.

7.25.4 Upon receipt of the report, the Contractor is obligated to correct the noted deficiencies in a timely manner.

7.25.5 Failure by the Agency to perform this inspection, prior to the end of the one-year period after Substantial Completion, could void any recourse for correction of latent deficiencies by the Contractor or any enforcement under the Performance Bond.

## 7.26 PROJECT CLOSE-OUT

7.27.1 When an Agency determines that a PIP project is complete, the Agency shall submit a Form A-1 to the Capital Budgeting Unit for approval to close out the project.

7.27.2 When an Agency determines that a Non-PIP project is complete, the Agency shall submit written notification to OSE to close out the project.