Double vertical lines in the margin indicate areas of material change since the October 1997 edition.

CHAPTER 7

CONSTRUCTION CONTRACT ADMINISTRATION FOR PROJECTS OF STATE AGENCIES & DEPARTMENTS, POSTSECONDARY EDUCATION, PSCA, AND SIMILAR AUTHORITIES

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A. APPLICABILITY of CHAPTER

This chapter sets forth requirements and procedures for administering construction contracts of projects supervised and administered by the Technical Staff. The types of projects to which this chapter applies includes projects of:

- State Agencies & Departments
- Postsecondary Education
- Public School & College Authority (PSCA)
- Alabama Building Renovation Finance Authority (ABRFA)
- Alabama Corrections Institution Finance Authority (ACIFA).
- Alabama Mental Health Finance Authority (AMHFA)
- Other "authorities" established by legislative acts to fund specific construction or improvement programs and which are assigned by the legislative act to the ABC for administration and supervision.

B. INTRODUCTION

The Contract Administration Division of the Technical Staff supervises the administration of construction contracts through the ABC's uniform documents and standard forms. All documents submitted for a project are checked for completeness, accuracy, and the presence of any prerequisite documentation prior to receiving approval of the Technical Staff. Payments by State Agencies, Departments, the PSCA and other "authorities" to contractors, suppliers, and consultants must be approved by the Technical Staff and are subject to disapproval in the absence of compliance with prerequisite procedures and requirements**.**

BEFORE PROCEEDING WITH THE REQUIREMENTS OF THIS CHAPTER, it is recommended that the reader first refer to the "Summary of ABC Requirements by Project Type" in the Introduction to this Manual and then to the project appendix indicated in the "Summary" to obtain a general understanding of the ABC's authority, requirements, and procedures applicable to the proposed project.

This Manual only addresses requirements and procedures of the ABC, before proceeding with preparation of bid documents or submittals to the ABC the design professional should determine whether sources of project funding (such as federal funding) or regulations peculiar to the Awarding Authority may require modification or supplementation of the ABC requirements and procedures. If it is determined that such modification or supplementation will be necessary, contact the Technical Staff for guidance as to the appropriate method.

C. DOCUMENT REQUIREMENTS

1. USE OF ABC UNIFORM DOCUMENTS AND STANDARD FORMS

ABC uniform documents and standard forms contained in Appendix B and Appendix C are to be utilized for all phases of construction contracting and administration. Appendix B contains standard forms to be utilized by the design professional in performing his or her administrative services. Appendix C contains uniform documents and standard forms which are to be bound into the project manual establishing the project's advertisement, bidding instructions, contractual documents, and administrative forms. Chapter 5 discusses the acceptable methods of reproducing, altering, and modifying these documents.

2. USE OF BC PROJECT NUMBER

In the ABC's document management system all documents relative to a "project" are stored under a seven-digit Building Commission Project Number [Example: BC#2001567]. All new projects are assigned a BC Project Number and the design professional is advised of the number. **All project related correspondence and documents subsequently submitted to the ABC must clearly display the BC Project Number.** A space is provided for this number on all uniform documents and standard forms.

The scope of a "project" is the scope of the Work covered by the O/A Agreement. Therefore, the BC Project Number assigned to the O/A Agreement will also cover all resulting bid packages and construction contracts. Frequently, an O/A Agreement will involve improvements to be made at several different schools within a school system, in such cases each bid package and construction contract performed will be recorded and tracked under the BC Project Number assigned to the O/A Agreement. If the scope of an O/A Agreement is expanded by Amendment resulting in additional bid packages and construction contracts, the additional bid packages and contracts will be recorded and tracked under the BC Project Number of the original O/A Agreement.

3. QUALITY OF DOCUMENTS SUBMITTED TO THE ABC

The ABC utilizes a document management system which is capable of scanning, storing, retrieving, and faxing documents. To produce an acceptable quality in documents retrieved from this system, the following is required of documents submitted to the ABC:

a. Submit original documents - no carbon copies.
b. Do not highlight text. Highlighted text does not produce a good scanned image.
c. Preferably, submit only letter size (8½ X 11) documents.
d. Preferably, send only one-sided documents.

4. QUANTITY OF DOCUMENTS TO BE SUBMITTED

a. Plans and Specifications: Only one (1) set of plans and specifications is to be submitted for plan review under Chapter 3.

b. Contractual Documents: Six (6) complete sets of contractual documents bearing originals of all signatures, notarizations, and attachments are to be submitted to the ABC. "Contractual Documents" include: O/A Agreements and Amendments, Construction Contracts with Bonds, Change Orders and Modifications to Construction Contracts, and any other agreements or documents that require the signature of the Governor as an approving or contracting party.

c. Other Documents: In general, six (6) copies of all other documents requiring the approval of the ABC are to be submitted to the ABC. Such documents include Statements for Services, Applications for Payment, invoices, etc. Exceptions to this rule are noted elsewhere in this Chapter.

d. Contractor's Submittal Data and Shop Drawings: Copies of the contractor's submittal data and shop drawings **ARE NOT TO BE SUBMITTED TO THE ABC**.

D. PREPARATION and EXECUTION of the CONSTRUCTION CONTRACT

The bidder to whom a Construction Contract is awarded must execute and return the contract, with (1) performance and payment bonds, executed by a surety company duly authorized and qualified to make such bonds in Alabama, and (2) evidence of insurance as required by the bid documents within the period specified or, if no period is specified, within 15 days after the contract and bond forms are presented to the bidder. Under extenuating circumstances the Awarding Authority may extend this period up to five days. (§39-2-8, Public Works Law) A longer period than 15 days for the return of the executed contract, bonds, and evidence of insurance may be provided for in the Bid Documents.

It is the responsibility of the design professional to prepare the Construction Contract and deliver it, with bond forms, to the contractor for acceptance and execution. The following ABC standard contract and bond forms are to be utilized:

ABC Form C - 5: Construction Contract
ABC Form C - 6: Performance Bond
ABC Form C - 7: Payment Bond

These forms are contained in Appendix C and are available through the internet from the ABC's Web site [www.bc.state.al.us] where they can be completed "on line". Six (6) copies of the contract and bonds, bearing original signatures of the contractor, Awarding Authority, and surety, are to be submitted to the Technical Staff for approval, processing, and distribution.

1. CHECKLIST - PREPARATION and APPROVAL of CONSTRUCTION CONTRACTS and BONDS, ABC Form B-7

ABC Form B-7, "Checklist for Preparation/Approval of Contract and Bonds", is contained in Appendix B. The design professional should use this Checklist when preparing the contract for acceptance and signature by the contractor. When the contractor returns the signed contract with bonds, the design professional should use the Checklist in reviewing and approving the documents for forwarding to the Awarding Authority. A copy of the Certified Bid Tabulation must ~~also~~ accompany the executed contract and bonds. **It is of the utmost importance that figures shown on the bid tabulation correspond with those shown on the Construction Contract as this is part of the verification of the competitive bid process.**

2. EXECUTION AND PROCESSING OF THE CONTRACT

Appendixes A-1, A-2, and A-3 describe required signatures and typical routing and processing of Construction Contracts for PSCA, State Agency, and Postsecondary Education projects. Processing of Construction Contracts for special construction projects or programs are to be developed consistent with the Legislature's authorizations of such projects or programs. The Technical Staff

will make final distribution of the fully executed and approved contract and bonds to the contractor, Awarding Authority, design professional, and any other required party.

3. PROJECT DATA FORM, ABC Form B-9

After the Construction Contract has been executed, the design professional shall complete and submit ABC Form B - 9, Project Data Form, to the ABC's Contract Administrator. This form is contained in Appendix B and is available through the internet from the ABC's Web site [www.bc.state.al.us] where it can be completed "on line".

4. BIDDER'S FAILURE TO EXECUTE CONTRACT AND BONDS

If the bidder to whom the contract is awarded fails or refuses to sign the contract, to furnish the required bonds, or to provide evidence of required insurance within the specified period of time, the Awarding Authority may award the contract to the second lowest responsible and responsive bidder. If the second lowest responsible and responsive bidder also fails or refuses to contract, to furnish the required bonds, or to provide evidence of required insurance within the specified time, the Awarding Authority may award the contract to the third lowest responsible and responsive bidder. Failure or refusal to return the executed contract and bonds within the specified time is grounds for forfeiting all or part of the proposal guaranty. (§§ 39-2-6 & 11, Public Works Law)

5. AWARDING AUTHORITY'S FAILURE TO COMPLETE EXECUTION OF CONTRACT

The Awarding Authority is to approve the bonds and evidence of insurance and complete execution of the contract within 20 days of receipt of the documents, unless the contractor agrees in writing to a longer period of time. A Notice To Proceed is to be issued (by the Technical Staff) within fifteen days after final execution of the contract, and execution by the Governor if his or her signature on the contract is required by law, unless the contractor agrees in writing to a longer period of time. Failure by the Awarding Authority to complete execution of the contract or issue a Notice To Proceed within these time periods, or agreed extended periods, shall be just cause for the withdrawal of the contractor's bid and contract without forfeiture of bid security. (§§ 39-2-9, 10, & 11, Public Works Law)

E. NOTICE TO PROCEED

The Notice to Proceed (NTP) with the work will be issued to the contractor by the Technical Staff. Final distribution of the fully executed and approved contract and bonds is made with the NTP. The NTP will be issued after verification that the project's plans and specifications received final approval of the review staff. **If it is found that the plans and specifications do not have final approval status due to the absence**

of response to review comments or untimely submittal, the issuance of an NTP and distribution of the contract will be held in abeyance pending resolution of design issues by the design professional.

The NTP will state both the date upon which the Work may commence and the date upon which the Work is to be completed. With the NTP the Technical Staff will also provide the contractor with appropriate standard forms and a "Contractor's Checklist" identifying submittal items required by the ABC.

F. INITIAL DOCUMENTS REQUIRED from CONTRACTOR

Upon receipt of the contract and Notice to Proceed, the contractor will be required to submit the following documents to the Technical Staff through the design professional.

1. SCHEDULE OF VALUES

The General Conditions require the submission of the contractor's proposed Schedule of Values within 10 days after receipt of the Notice to Proceed. The Schedule of Values is to be a breakdown of the contract price which will be the basis for approving the contractor's monthly progress payments. The detail and format of the Schedule of Values is to be determined by the Awarding Authority and design professional, the criteria dictated by the ABC is that it be on 8½ × 11 inch paper so that it is compatible with our electronic filing system.

The Schedule of Values submitted by the contractor may be rejected if it is apparent that overhead, profit, and costs have been disproportionately assigned to the earlier, "front-end" elements of work or if it does not otherwise reflect a reasonable breakdown of values. The contractor's home-office overhead and profit are to be proportionately distributed throughout the various elements of the Schedule of Values. The contractor's on-site supervision and other on-site and direct overhead costs may be included in a "General Requirements" category. If a "General Requirements" category is utilized, an understanding should be reached among the contractor, design professional, and Awarding Authority as to what costs are included and on what basis they are to be paid. The contractor's "up-front" costs for bond and insurance premiums (other than payroll insurance) and mobilization may be paid in the first pay estimate, but typically should not exceed 2 to 3% of the contract amount. Other costs, such as supervision, temporary facilities, layout and engineering, and quality control testing, are costs that are incurred throughout the life of the project and should be paid as earned on a monthly basis.

The ABC recommends establishing line items in the Schedule of Values for such requirements as "as-built" drawings, instruction of maintenance personnel, and Operating & Maintenance Manuals. Such line items emphasize these requirements and improve the likelihood of timely accomplishment of these typically belated administrative obligations. Reasonable values for such items may be predetermined by the design professional and Awarding Authority and stipulated in the bid/contract documents.

2. PROGRESS SCHEDULE - ABC Form C - 11

On all projects exceeding 60 days duration, the contractor shall prepare and submit for approval by the design professional a reasonable schedule showing the order in which the contractor proposes to carry out the work; refer to "Progress Schedule" in the General Conditions. ABC Form C-11, Progress Schedule and Report, or a similar format, is to be utilized for this purpose on all projects and is to be updated monthly and submitted to the Technical Staff with each pay request. ABC Form C-11 provides the minimum bar chart information needed by the Technical Staff for monitoring purposes, but more scheduling detail is acceptable. On larger, more complex projects, CPM or other more detailed scheduling methods should be specified, but only ABC Form C-11, or a similar format, is to be updated and submitted to the Technical Staff monthly.

3. LIST OF SUBCONTRACTORS

The General Conditions require the names of subcontractors to be submitted concurrently with the execution of the contract. This list should be inclusive of any additional subcontractors that were not required to be named in the bid process.

G. PAYMENTS to CONTRACTORS

1. MONTHLY PROGRESS PAYMENTS

The contractor is to be paid on a monthly basis commensurate with the progress of the work. ABC Form C-10, Application and Certificate for Payment (with the Contractor's updated Schedule of Values attached), is to be used for requesting payments. In preparing estimates for progress payments, materials suitably stored on site, materials suitably stored and insured off-site, and preparatory work may be taken into consideration. If materials stored off site are to be considered in progress payments, General Conditions Article 29, Progress Payments, provides prerequisites for such payments.

Any amount to be paid to a contractor must be approved by the design professional and Awarding Authority. If the design professional or Awarding Authority approves an amount that is less than the amount requested by the contractor, the contractor is to be notified in writing of the amount approved and the reason for not approving the amount requested.

Appendixes A-1, A-2, and A-3 describe typical approvals, routing, and processing of applications for payment for PSCA, State Agency, and Postsecondary Education projects. Processing of applications for payment for special construction projects or programs are to be developed consistent with the Legislature's authorizations of such projects or programs.

2. RETAINAGE

"Retainage" is defined as the money earned and, therefore, belonging to the contractor which has been retained by the Awarding Authority conditioned on final completion and acceptance of all work required by the contract. Retainage shall not be relied upon to cover or off-set the cost of uncompleted or uncorrected Work.

In making monthly progress payments to the contractor, the Awarding Authority is to retain 5% of the estimated value of the completed work, materials stored on site, and materials stored and insured off-site and after 50% completion is accomplished no further retainage is to be withheld. Retainage must be withheld until final completion and acceptance of the work covered by the contract.

3. PAYMENTS WITHHELD

In addition to retainage, the General Conditions to the Contract provide that an Awarding Authority may withhold payments from a contractor to the extent necessary to protect the Awarding Authority from loss due to causes listed in General Conditions Article 31, Payments Withheld.

4. FINAL PAYMENT

Approval of an Application for Final Payment by the design professional and Awarding Authority represents that all requirements in the field, such as completion of "punch list" items, have been completed to their satisfaction. Such approval should not be withheld for items that are covered by warranties. Upon verification that all prerequisite requirements and procedures have been completed, the ABC will approve the Application for Final Payment and forward it for issuance of payment.

ABC Form B-13, FINAL PAYMENT CHECKLIST & TRANSMITTAL, contained in Appendix B, is to be completed by the design professional and used to transmit the contractor's Application for Final Payment. This form is intended as a tool by which the design professional, Awarding Authority, and ABC can quickly verify that all administrative requirements have been accomplished for approval of Final Payment.

H. CHANGE ORDERS

Actions arising from provisions of the General Conditions of the Contract can necessitate modification of the Construction Contract by Contract Change Orders. Five articles which specifically pertain to Change Order action are:

Article18, DEDUCTIONS FOR UNCORRECTED WORK: Provides that, at the Awarding Authority's discretion, work at variance with the contract requirements may remain in place and uncorrected if an equitable deduction from the contract is offered by

the contractor and approved by the Awarding Authority.

Article 19, CHANGES IN THE WORK: Addresses changes that may be requested by the Awarding Authority. It establishes that the Awarding Authority may make changes within the general scope of the work, establishes change order procedures, and provides three methods from which the Awarding Authority may choose to determine the monetary value to be added to, or deducted from, the contract amount for changes.

Article 20, CLAIMS FOR EXTRA COST OR EXTRA WORK: Establishes conditions under which a contractor's claim(s) for extra cost or extra work can be considered under Article 19 or pursued under Article 24, Resolution of Claims and Disputes.

Article 21, DIFFERING SITE CONDITIONS: Defines "Differing Sites Conditions", establishes that the contract can be adjusted for Differing Site Conditions under Article 19, and establishes procedures to be followed if Differing Site Conditions are encountered.

Article 23, DELAYS: Provides for extending the Contract Time for certain conditions beyond the contractor's control, such as strikes, fires, unusually adverse weather, etc.

When it is necessary to modify the Contract, the provisions of the above articles regarding notifications and detailed cost proposals are to be enforced and the following procedures followed:

1. CHANGE ORDER JUSTIFICATION, ABC Form B-11

Changes In The Work stipulates that the Awarding Authority may make changes **"within the general scope"** of the Contract, which limits the types of changes that can be made. More importantly, the requirements of the state's Competitive Bid Laws may limit the extent to which work may be awarded through change order action as opposed to award through the competitive bid process. In that the Competitive Bid Laws do not specifically address construction contract change orders, there are not clear-cut rules by which to measure their limitations. Additionally, court rulings and opinions issued by the Office of the Attorney General have maintained that public officials should be allowed discretion in administering the Competitive Bid Laws as long as they are acting in good faith and in the public interest. Therefore, when considering making changes to the contract, the design professional and the Awarding Authority should be cognizant of the potential of conflict with the Competitive Bid Laws. **Determination of legality of change orders rests with the Awarding Authority and its legal advisor.** In an opinion of June 15, 1979, the Office of the Attorney General offered guidelines for making such determinations.

ABC Form B-11, Change Order Justification, is contained in Appendix B and provides a means through which the Awarding Authority and design professional consider the AG's guidelines and the intent of the Competitive Bid Laws. A Change Order Justification is to be submitted with each proposed Change Order, except for Change Orders which only address extensions of time. The form is to

be prepared by the design professional and signed by the design professional and the Awarding Authority. **It is highly recommended that the Awarding Authority's legal advisor review each proposed Change Order and confirm justification of change order action by signing the respective Change Order Justifications.**

2. CONTRACT CHANGE ORDER, ABC Form C-12
CHANGE ORDER CHECKLIST, ABC Form B-12

ABC Form C-12, Contract Change Order, contained in Appendix C, must be utilized in making changes to the Construction Contract. The form is to be prepared by the design professional. The form is self-explanatory and must be completed in its entirety. Typically required signatures for PSCA, State Agency, and Postsecondary Education projects are shown in Appendixes A-1, A-2, and A-3 respectively. **CONSENT OF SURETY**, with current Power of Attorney for the individual signing for the surety, IS REQUIRED FOR ALL CHANGE ORDERS, except Change Orders addressing only extensions of time. ABC Form B-12, Change Order Checklist, is provided in Appendix B as a simple reference to be followed to assure that all required aspects of change order documents are provided.

3. CHANGE ORDER PROCESSING

Appendixes A-1, A-2, and A-3 describe typical routing and processing of Contract Change Orders for PSCA, State Agency, and Postsecondary Education projects. Processing of Contract Change Orders for special construction projects or programs are to be developed consistent with the Legislature's authorizations of such projects or programs.

4. ABC APPROVAL OF CONTRACT CHANGE ORDERS

The ABC's approval of a Contract Change Order will be based upon the following reviews:

a. Code Review: Each Contract Change Order will be reviewed by the Plan Review Division giving consideration to changes in the work which may affect code compliance of the originally approved plans and specifications. Clarification from the design professional may be requested for changes suspected of affecting the building's code compliance and for which inadequate information is provided in the change order documents.

b. Technical and Procedural Review: Each Contract Change Order will be reviewed by the Contract Administration Division checking for completeness, accuracy, and compliance with contractual and procedural requirements. Conspicuous or apparent pricing errors or variances from contract provisions will be questioned.

I. CLAIMS and DISPUTES

The General Conditions of the Contract provide for the Director's final, binding, and conclusive resolution of claims and disputes that may arise between the contractor and Awarding Authority in state-funded contracts. (Final resolution of locally-funded contracts is not specifically defined unless Modified General Conditions or Special Conditions address this matter.)

In the event that an issue does arise between the contractor and the Awarding Authority, every effort should be made to resolve the issue between them with the objective assistance of the design professional. The General Conditions encourage, but do not require, mediation as a means of settling disputes. Only when an impasse to agreement or compromise is reached should an issue be submitted to the Director for settlement. An issue may be submitted to the Director upon written agreement by the contracting parties to do so. The form of this agreement and the procedures to be followed for the resolution of claims and disputes shall be prescribed by the Director.

J. SUBCONTRACTORS' and SUPPLIERS' CLAIMS of NONPAYMENT

Should a subcontractor or material supplier have a valid claim of nonpayment by a contractor for work performed or materials supplied on any public works project in Alabama, the claimant's source of remedy is the contractor's surety through the Payment Bond.

Frequently, the subcontractor or supplier will serve notice to the Awarding Authority or ABC of its claim of nonpayment. In such cases, sub-section 39-1-1(b) of the Public Works Law requires the entity receiving the notice to promptly furnish the claimant with a certified copy of the Payment Bond and construction contract. It is suggested that the claimant also be furnished with a copy of section 39-1-1.

Additionally, the following two articles of the General Conditions of the Contract address actions that the Awarding Authority may take in response or relative to claims of nonpayment:

PAYMENTS WITHHELD: Addresses the Awarding Authority's right to withhold amounts from payments to the contractor to cover the amount(s) of claimed nonpayment(s).

FINAL PAYMENT: Addresses the Awarding Authority's right to require the contractor to furnish releases of claims and/or other instruments evidencing settlement of claims prior to Final Payment.

K. LIQUIDATED DAMAGES

Under Liquidated Damages, the General Conditions of the Contract provides that "...unless otherwise provided in the Contract Documents, a time charge of 6 percent interest per annum on the total Contract Sum may be made against the Contractor for the entire period after expiration of the Contract Time that the Contractor fails to achieve Substantial Completion of the Work,…If part of the Work is substantially completed within the Contract Time and part is not, the stated charge for liquidated damages shall be prorated to that portion of the Work that the Contractor fails to substantially complete within the Contract Time." **The rate or amount of liquidated damages should be a reasonable, supportable forecast of actual damages that the Awarding Authority is likely to incur due to late completion of the project.** If 6 percent interest is excessive or inadequate, a **supportable** daily amount or percentage rate should be stipulated in Modifications to the General Conditions. If liquidated damages are not justifiable for a particular project they should be deleted by Modifications to the General Conditions.

The time for completion of the work should be stated in the Construction Contract and the date by which the work is to be completed will be stated in the Notice to Proceed. The date by which the work is to be completed may be extended by change order. Unless otherwise provided in Modifications to the General Conditions or Special Conditions, the Certificate of Substantial Completion (discussed in Chapter 8) will establish the date upon which the work is deemed "complete" relative to assessment of liquidated damages.

The amount of liquidated damages is to be deducted from the Final Payment to the contractor. A change order, even if unilateral, must be issued to the contract to account for this deduction. If a severe time over-run is being experienced, a sufficient amount should be withheld from the contractor's payment to cover the potential amount of liquidated damages.

L. PROJECT CLOSEOUT

The closeout of a Construction Contract, or "Project Closeout", is achieved upon the Awarding Authority's issuance of Final Payment to the contractor. However, upon completion of the work in the field, certain administrative requirements must be accomplished by the contractor and the design professional must verify that other contractual matters are finalized before Final Payment can be approved. This section sets forth the minimum requirements that must be accomplished before the Technical Staff can approve Final Payment. **The design professional should ascertain what additional requirements may be imposed by the project funding source(s) or Awarding Authority**.

1. CERTIFICATE OF SUBSTANTIAL COMPLETION

The Certificate(s) of Substantial Completion, accounting for the completion of all

areas and/or phases of the Work, must be fully executed and forwarded to the Technical Staff. See Chapter 8 for further information.

2. ADVERTISEMENT OF COMPLETION

Under Final Payments, the General Conditions of the Contract provide that the contractor must advertise completion of the project for four successive weeks as a prerequisite to Final Payment. The article stipulates how the advertisement must be published, or posted, and what evidence of publication must be provided. This article is consistent with the provisions of Public Works Law, Subsection 39-1-1(f) applying to projects of $50,000 or more in value. Final payment cannot be made until thirty (30) days after this advertisement requirement is completed.

For projects of less than $50,000 in value, advertisement of completion, or posting of notice of completion, for one week is required of the Awarding Authority. Final payment can be made at any time after this requirement is completed. If the Construction Contract is for less than $50,000 and the ABC's General Conditions are used, the Applications for Partial and Final Payments article should be amended to be consistent with this provision of the Public Works Law.

ABC Form C-14, Form of Advertisement of Completion, is contained in Appendix C. A copy of the actual advertisement and the publisher's affidavit of publication is to be attached to each copy of the contractor's Application for Final Payment. If any part of retainage is to be released to the contractor prior to Final Payment, the advertisement and affidavit are to be submitted with the Application for Payment applicable to such release of retainage.

3. RELEASE OF CLAIMS

A release of claims or other instruments as described in the General Conditions to the Contract may be required of the contractor prior to Final Payment. If notices of claims have been given by subcontractors or suppliers during the course of the project, the contractor must furnish releases of claims from the claimants or other instruments acceptable to the Awarding Authority.

A copy of each release of claims is to be attached to each copy of the contractor's Application for Final Payment. If any part of retainage is to be released to the contractor prior to Final Payment, releases of claims are to be submitted with the Application for Payment applicable to such release of retainage.

4. WARRANTIES

All specified warranties must be furnished to the Awarding Authority by the contractor, with copies or evidence of same provided to the Technical Staff as stated below. Regardless of when the warranties are furnished to the Awarding Authority, these requirements should be addressed to the Technical Staff at the

time of submission of the contractor's Application for Final Payment.

a. CONTRACTOR'S ONE-YEAR WARRANTY: Under Guarantee of the Work, the General Conditions of the Contract provide that the contractor guarantees the work for one year after completion. The date upon which this warranty begins is established in the Certificate of Substantial Completion. Unless provided otherwise in Modifications to the General Conditions, the contractor is not required to furnish this warranty in writing; however, it is recommended that the contractor provide a letter which reconfirms this warranty and the dates thereof. A copy of such letter should be forwarded to the Technical Staff.

b. GENERAL CONTRACTOR'S 5-YEAR ROOF WARRANTY: ABC Form C-9, General Contractor's Roofing Guarantee, is contained in Appendix C and is required to be included in the specifications of all projects administered by the ABC and which involve roofing work. THIS GUARANTEE IS BY THE GENERAL CONTRACTOR, not a subcontractor. Any other roof warranties to be provided by the roofing manufacturer, subcontractor, or general contractor are in addition to this guarantee. This guarantee, bearing original signature of the general contractor, is to be furnished to the Awarding Authority AND the Technical Staff **with the Certificate of Substantial Completion**.

c. OTHER ROOFING WARRANTIES: If the contract specifies any other roofing warranties to be provided by the roofing manufacturer, subcontractor, or general contractor in addition to the 5-year roof warranty, such warranties shall also be furnished to the Awarding Authority AND Technical Staff **with the Certificate of Substantial Completion.**

d. OTHER WARRANTIES: The Technical Staff need not be furnished copies of other warranties specified in the contract; however, the design professional is to notify the Technical Staff that this requirement has been fulfilled.

5. AS-BUILT DRAWINGS

Verification must be given to the Technical Staff that (contractor prepared) "as-built" drawings and specifications have been provided to the Awarding Authority in accordance with contract requirements.

6. OPERATING AND MAINTENANCE MANUALS

Verification must be given to the Technical Staff that contractor prepared maintenance instructions and Operating & Maintenance Manuals have been furnished to the Awarding Authority in accordance with contract requirements.

7. RECONCILIATION OF CONTRACT TIME

If the date of substantial completion stated in the Certificate(s) of Substantial Completion is later than the contract date of completion stated in the Notice To Proceed, or as extended by change orders, a time over-run exists which must be reconciled. This can be done by: (1) executing a change order extending the contract time to the date of substantial completion, (2) providing the Technical Staff with a statement from the design professional and Awarding Authority explaining that the over-run was justifiable or acceptable, or (3) assessing liquidated damages commensurate with the over-run. If liquidated damages are assessed, a change order (unilateral, if necessary) must account for the amount of liquidated damages deducted from the contractor's final payment.

M. OWNER'S OCCUPANCY and ASSUMED RESPONSIBILITIES

When the Awarding Authority (owner) takes possession of, or occupies, the completed project, the owner must assume many responsibilities previously performed by the contractor. Building security, maintenance, utility services, and insurance become the owner's responsibility and the owner must be prepared to assume these responsibilities on the date of substantial completion, unless some other date is agreed upon with the contractor. This transfer of responsibilities occurs on the date of substantial completion (or other agreed date) regardless of whether the owner actually moves into the building. If it is agreed by the contractor that any of these responsibilities will transfer to the owner on a date subsequent to the date of substantial completion, this agreement must be recorded in an attachment to the Certificate of Substantial Completion.

Owners frequently occupy portions of a building or move furnishings and equipment into a building prior to the date of substantial completion. In such cases it is of extreme importance that the owner consults with its insurance advisor to coordinate the owner's insurance coverage with that of the contractor.