

Construction Newsletter

2007 Legislative Update - Public Works

Several laws affecting Public Works were revised during the 2007 Legislative Session. This newsletter is a brief review of these changes. Additional information regarding these issues may be provided by contacting the ABA Construction Section at 682-5574 or via our website at arkansasbuildingauthority.com. These legislative changes became effective July 31, 2007.

Paul Ehenger, State Construction Administrator • Anne W. Laidlaw, Director

Retainage Withholdings and Releases

The method of withholding retainage remains the same. Retainage is withheld at a rate of ten percent (10%) of progress payments when due until the project design professional certifies the project is fifty percent (50%) complete. Upon certification no further retainage is withheld. However, change orders which increase contract amount may trigger withholding of additional retainage. Retainage must be released within thirty (30) days of completion of all work, including punch list items. Unlike private market projects, the manner in which retainage is withheld and released is governed by public works laws. The Design Professional nor the State can withhold or release more or less than the amount specified in these laws.

If the contract requires the Contractor to purchase or furnish materials or equipment that will be stored on site or in a bonded warehouse no retainage will be withheld on that amount of the submitted progress payment.

If the project is deemed in the contract documents to be phased work and the language in the contract documents reflect the work in phases (such as Phase I, II, III etc...) retainage will be released within 30 days upon that portion's completion and in proportion of the total project.

Certificate of Final Completion

In addition to the process described above, a certificate of final completion will be completed and signed by all the parties involved (Contractor, Design Professional, Owner, with final signature by the ABA Observer). The date entered on the form establishes the final completion date. The Owner has thirty (30) days from the final completion date to release retainage. The certificate is available on our website on the Construction Section page.

Prohibiting Contracts with Illegal Immigrants

Act 157 of 2007 establishes the prohibition of State agencies entering into contracts with a vendors/contractors that employs or contracts with illegal immigrants. Contractors must certify online prior to entering into a state contract that they are not employing or contracting with illegal immigrants.

Website access can be found at: http://www.arkansas.gov/dfa/procurement/pro_immigrant.html. Subcontractors must certify the prohibition to the contractor as well.

Bid Securities and Emergency Contracting

State agencies now have the option in emergency contracting to waive a contractor of having to submit a bid security based on factors of the urgency of the work and the availability of obtaining a bid security for the work. The waiver does not effect the requirement of obtaining a performance and payment bond.

Public Art Program

The threshold for setting aside funding for art in state projects which exceed five (5) million dollars was set at up to one-half (1/2) percent of the total project cost. One-half (1/2) or less will be set aside and designated within the MOF for the purchase/commission of art through the program.

New Forms Available

Visit our website to view or download new and updated forms designed to assist you manage your projects. Some examples are:

- Change Order Form
- Certificate of Final Completion
- Change Order Calculation Template
- Design Professional Close-Out Guidance
- Design Professional Checklist
- Agency Request for Final Payment