

# USDA - RURAL DEVELOPMENT

## Construction

Bid, Contracts, Meetings, Change  
Orders, Closeout



# RURAL DEVELOPMENT REGULATIONS

website

<http://www.rurdev.usda.gov/home.html>



# State Engineer's Role in Construction Management

- Agency's technical representative
- Approves and signs most paperwork
- Inspection (for RD purposes only)
- Makes sure documentation is done

# State Engineer's Role in Construction Management

- Why do we even do it?
  - Protect the interest of the taxpayer
  - Protect the interest of the Owner / borrower
- Aren't we already paying someone for this?

# Components

- Review bid and contracts
- Pre-construction meeting
- Monthly construction meetings
- Inspections: review RPR reports
- Change orders
- Payments to contractor and engineer
- Pre-final, final and warranty inspections

# Post-Bid/Pre-Award Submittal

- Bid Tabulation
- Engineer's Recommendation for Award
- Contractor signed RD- Form 400-6 , AD-1048, and RD Instruction 1940-Q Exhibit A-1
- As-bid Form E (budget form)
- RD MUST concur on bid BEFORE award



# Post-Bid/Pre-Award Submittal

- Bid tab has all prices for all items for all contractors
- Look for “unusual” prices; do these impact project budget?
- Engineer’s recommendation: after bid, defines which alternatives are being recommended, has total for each contract

# Post-Bid/Pre-Award Submittal

- Are the 3 RD forms signed (not printed)
- RD 400-6 – Are both sides provided
- Form E – All as-bid prices agree with bids and recommendation
- Budget sufficient? Contingency reasonable?



# Post-Bid/Pre-Award Submittal

- If everything is in order, RD will issue a letter to the Engineer concurring on bid and authorizing award of contract (copy Owner and Area Specialist)

# Post-Award/Pre-Construction Submittal

- Owner's Board resolution of award
- Notice of Award
- Executed agreement for each contract
- Contractor's Certificate of Insurance
- Contractor's executed Performance and Payment Bonds EJCDC C-610 (2013) and EJCDC C-615 (2013)

# Post-Award/Pre-Construction Submittal

- Certificate of Owner's Attorney
- Resident Construction Inspector's Resume
- Regulatory Agency Approval(s), Permits
- NYSDEC confirmation of SWPPP NOI
- RD State Engineer MUST concur on contract(s) prior to preconstruction meeting

# Post-Award/Pre-Construction Submittal

- Board resolution dated ON/AFTER RD bid concurrence
- Notice of Award dated ON/AFTER resolution
- Contract dated ON/AFTER Notice of Award date
- Bonds dated ON/AFTER date of contract

# Post-Award/Pre-Construction Submittal

- Bonds **MUST** be on 2013 forms
- All info completed
- Check contract dollar and word amounts
- Power of attorney complete / correct / date
- Original signatures
- Dates correct
- No modifications

# Post-Award/Pre-Construction Submittal

- Read the RD Contract Document Review letter to find out what to submit
- One copy of most things to Area Specialist and one copy to State Engineer
- RD doesn't need all the copies of the contracts
- RD DOES need all copies of the GC-A

# Post-Award/Pre-Construction Submittal

- RD will issue a letter to the Engineer, copy for Owner and Area Specialist and RD Construction Control Inspector (CCI), concurring on contract(s) and authorizing coordination with Area Specialist to schedule preconstruction meeting
- Area Specialist schedules Precon (checks all items of Letter of Conditions)

# Pre-construction Meeting

- Led by Project Engineer
- Area Specialist and RD Inspector must attend
- Owner, Engineer, Contractor's Rep (with signing authority) must attend
- Recommend Regulatory Agency & Utility companies also attend
- Sign in sheet for all attendees to sign



# Pre-construction Meeting

- Engineer prepares and distributes agenda to all attendees and interested parties
- RD's "Guide B" to be completed/read/discussed; may be merged with Engineer's agenda
- Clearly describe expectations for project – timelines, payments, change orders, etc.

# Pre-construction Meeting

- Meeting minutes distributed by Engineer after the meeting and must document discussions and verbal agreements
- Notice to Proceed may not be issued until after pre-construction meeting and Area Specialist has all necessary paperwork

# Monthly Progress Meetings

- Led by Engineer
- Attended by RD Inspector (CCI), Owner, Engineer, and Contractor
- Updated progress schedule from Contractor

# Payment Estimates

- If any payment is being requested, the following **MUST** be submitted as one package:
  - FORM E Budget Sheet
  - Tabulation sheets for each section of Form E
  - All administrative and technical invoices
  - Contractor's partial pay application
  - Engineer's monthly report or meeting minutes (submitted within 5 days after meeting)

# Payment Estimates

- Recommend emailing draft to RD inspector prior to monthly meeting
- Submit no more frequently than monthly
- Submit six copies, all with original signatures
- First page must be on EJCDC C-620 (2013)
- Backup pages may be on Contractor's or Engineer's form as long as it's in the same format

# Payment Estimates

- Everything on the pay estimate form **MUST** be filled out
- Change orders **NOT** yet approved by RD shall **NOT** be reflected on the pay estimate
- Stored materials must have paid invoices (or invoices first month, paid invoices second month) and stored in an approved location

## Form E changes

- Administrative – requires Owner Board resolution, subject to review/approval by LAS
- Technical services – requires engineering amendment or other documentation, subject to review/approval by State Engineer
- Construction – requires change order, subject to review/approval by CCI or State Engineer
- Direct expenditures – requires documentation, subject to review/approval by State Engineer

# Contract Change Orders

- Submit six copies, all with original signatures, to State Engineer or RD Construction Control Inspector (CCI)
- Provide a draft copy of the front sheet to the Area Specialist and State Engineer/CCI at the same time
- First page must be on EJCDC C-941 (2013)
- Fully complete Change Order Form



# Change Orders

- Area Specialist
  - Confirms availability of funds
- State Engineer or CCI
  - Reviews technical aspects
  - Adequate documentation
  - Verifies within scope
  - Approves / Disapproves

# Contract Change Orders

- Include ALL supporting information (labor and equipment hours, quantities, invoices/quotes for material prices, drawings/maps)
- Include justification (if Regulatory requirement, provide copy of letter)
- Engineer is responsible to provide copies of pay estimates and change orders to fiscal advisors

# Contract Change Orders

- Recommend sending an electronic copy to RD before the change order is finalized / signed to verify its eligibility, completeness, etc.

# Contract Change Orders

**ALL CHANGE ORDERS MUST BE APPROVED BY RD STATE ENGINEER OR CCI BEFORE CHANGE ORDER WORK MAY START AND BEFORE CHANGE ORDER MAY BE REFLECTED ON THE PAY ESTIMATE. NO EXCEPTIONS.**



# Contract Change Orders

- Final over/under change order is to zero out all quantities, including previous change order work.
- Final quantities must equal actual quantities installed.
- Final contract amount must equal work to date.

# Inspection Services

- RD approval of the inspector
- What to do/expect
- What not to do/expect

# Roles of the Inspector

- Observe & report
  - Know the contract
  - Document
  - Safety

# Observe

- Inspector is there whenever the contractor is working (unless part-time inspection has been approved by the Owner AND RD)
- Inspector is aware of what is going on
- Inspector is knowledgeable in type of construction
- Testing of materials



# Report

- Review report format with RD prior to use
- Daily logs
  - Who, what, when, where, how many, time
- Distribute to all interested parties
  - Who
  - How often
- Signature (digital)

# Safety

- The Contractor is responsible for site safety; check contract requirements
- Inspector should let appropriate people (Contractor and Owner) know immediately of safety concerns or violations

# What RD Will Not Do

- Will not direct the contractor
- Will not act as Engineer
- Will not act as Owner

# Common Problems to Avoid

- Inspector not on site
- Inspector and/or Owner directs contractor
- Inspector and/or Owner makes deals with contractor
- Owner / Engineer does not respond in a timely manner

# Substantial Completion

- Work is completed and can be used by Owner.
- Reduction of retainage **MAY** be allowed
- Any uncompleted work is not paid for until that work is completed
- Must retain twice the value of the work remaining, if not more

# Certificate of Substantial Completion

- Certificate of Substantial Completion (CSC) MUST be submitted within a reasonable time from date of substantial completion.
- CSC is effective on date shown, regardless of when signed.
- Area Specialist needs a copy with original signatures; State Engineer / CCI can receive it electronically



# Certificate of Substantial Completion

- Form EJCDC C-925 for CSC
- Punch list **MUST** be attached to CSC
- Owner, Engineer, and Contractor must sign
- Time to complete punch list items is to be shown on the CSC

# Certificate of Substantial Completion

- Critical date – 1 year warranty period starts
- Liquidated damages start if work isn't complete by date of substantial completion
- Date by which CSC must be achieved is given in the Notice to Proceed, extended by change orders if applicable



# Substantial Completion

- Any building should be ready for the Owner to occupy and use
- Need to have a Certificate of Occupancy (C of O), copy e-mailed to Area Specialist, CCI, and State Engineer
- Electrical inspection may be needed to obtain the C of O – up to local Code Enforcement Officer

# Inspections – Substantial Completion

- Critical players
  - Owner
  - Consulting Engineer/Resident Inspector
  - Contractor
  - Funding agencies
  - Regulatory agencies
- Discuss all conditions of construction and project closeout

# Punch List

- Complete all punch list items before final payment
- What if the contractor won't do the work
  - Engineer and Owner deals with
  - proper notification per attorney and contract
  - contact bonding company
- Final inspection needs to be attended by the Owner, the Engineer, the Resident Inspector; RD CCI or State Engineer only if there were major punch list issues.

# Components of Closeout

1. Substantial completion
2. Punch list work
3. Final contractor over/under change order
4. Contractor closeout documents
5. Other closeout documents
6. Engineer closeout documents
7. Use of remaining funds
8. 11 month warranty inspection

# Contract Closeout Documents

- Certificate of Substantial Completion
- Prefinal / final inspections with Owner, Engineer, Contractor, and RD
- Final over/under change order
- Contractor Release of Liens (AIA G706 and G706A)
- Contractor Consent of Surety (AIA G707)

# Contract Closeout Documents

- Engineer's certification to Regulatory Agency
- Regulatory Agency's Approval Letter (no longer issued?)
- Engineer's certification that construction is compliant with all NYS codes (via contract documents)
- Warranty information (copy of transmittal these sent to the Owner)

# Contract Closeout Documents

- Owner's Board's resolution accepting project as complete and authorizing final payment
- Contractor's final payment application
- Final Form E

# Inspections – Final

- Complete all project closeout items before acceptance
- If contractor not responsive, after giving notice owner should complete work with funds retained and send any remaining moneys to contractor
- Critical players
  - Owner, Engineer/Resident Inspector, Contractor, Rural Development State Engineer or CCI



# Use of Remaining Funds

- Once all construction contracts are done (or nearly so), Owner/Engineer may submit a request for using remaining funds (if any).
- Eligible items - necessary for operating, maintaining, and protecting the facilities.
- Within SCOPE identified in approved PER
- RD State Engineer must approve request for eligibility. Typically a Direct Expense.

# Use of Remaining Funds

- Direct expenditures not approved by RD State Engineer or State Architect are not to be reflected on the Form E-Project Budget
- Once approved, Owner/Engineer obtains min. three quotes for each item
- Quotes and final cost estimate must be submitted & approved by RD

# Warranty Inspection

- 11 months after substantial completion
- Owner, Engineer, and Contractor should attend
- RD CCI/State Engineer must attend
- Good idea to talk to operator
- Any concerns are to be addressed in writing to the contractor

# Liquidated Damages

- Part of Agreement; Not a penalty
- To be enforced; change in Contract Times documented in Change Order
- Carefully consider amounts
  - Interest
  - Engineering/Inspection
  - Administrative costs
  - Other costs

# Contractor Default

- Follow contract terms & notice requirements
- Check state laws that may apply
- Allow surety reasonable time to respond
- Notify state licensing agency and Treasury Department if surety is unresponsive
- Keep Owner's attorney informed and verify that proper procedures are followed

# Construction Administration/Inspection Costs

- Approved in Engineering Agreement
- RD approval of amendments for additional time; justification
- Contractor exceeds Completion dates:  
additional engineering/inspection costs to be covered by Liquidated Damages

# Questions?



Committed to the future of rural communities.