

Port of Tacoma	Facilities Development Policies And Procedures	
Division	Engineering	Title: Public Works Contract Completion
Category	Public Works	
Procedure No:		

I. Policy	<p>A. The Port will formally identify when public works construction contracts are completed in order to administer payments in accordance with Washington statutes and in order to identify warranty milestones.</p>
II. Completion Milestones Defined	<p>A. Substantial Completion occurs when the Port can use or occupy the work, or a designated portion of thereof, for the use for which it is intended, and when all documentation reasonably required to operate the facility has been submitted to the Port. Documentation required prior to Substantial Completion includes:</p> <ol style="list-style-type: none"> 1. Maintenance and operations manuals; 2. Warranties; and 3. Submittals required by the specifications 4. Occupancy permit and related approvals by authorities having jurisdiction. <p>B. Final Completion occurs when all remaining contractual requirements have been fulfilled. The date of Final Completion triggers the lien filing periods. Requirements for Final Completion include:</p> <ol style="list-style-type: none"> 1. Completion and reinspection of punchlist items 2. Submittal of final invoice and approval by project manager 3. Receipt of as-built record drawings 4. Submittal of any other contract requirements <p>C. Acceptance is the formal action of the Port Commission accepting the work as complete. Acceptance is required only for contracts greater than \$75,000. Acceptance should be requested when all of the elements required for completion have been fulfilled.</p> <p>D. These terms and the requirements for each are further described in this policy.</p>

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III. Contract Document Provisions	<p>A. The Contractor's schedule of values will allocate 5% of the contract amount to contract closeout activities unless modified by the supplemental conditions.</p> <p>B. Final Completion will be accomplished within thirty days after Substantial Completion unless modified in the supplemental conditions.</p> <p>C. Liquidated damages for failure to achieve Final Completion will be assessed at 10% of the daily rate of liquidated damages stated in the contract documents for Substantial Completion unless modified by the supplemental conditions.</p> <p>D. The notice of Substantial Completion will state whether the Port shall assume responsibility for security, maintenance, heat, utilities, risk of loss, and insurance with respect to the Work or designated portion thereof determined to be Substantially Complete. If such writing does not so state, all responsibility for the foregoing items shall remain with the Contractor until the date of Final Completion.</p> <p>E. Warranty periods begin to run as of the date of Substantial Completion unless the notice of Substantial Completion specifies another date, such as an earlier beneficial occupancy date.</p>
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IV. Substantial Completion Procedure	<p>A. The contractor will notify the Project Manager when the work is ready for inspection and will submit the record drawings prior to inspection. Submittal of warranty documents and maintenance and operations manuals should be complete before the final inspection is scheduled.</p> <p>B. Warranty submittals should be carefully reviewed by the Project Manager. Warranty provisions containing short notice deadlines, onerous ongoing inspection requirements or broad limits on liability shall be returned for revision or rejected. When the submittals have been approved, warranty documents and maintenance and operations manuals should be transmitted to the entity responsible for operating the facility, either Maintenance or the Port's client.</p> <p>C. The Project Manager will send email notice that the work is ready for final inspection to the Maintenance and Environmental Departments. Either department will notify the Project Manager if there are reservations or questions about the work's completion or compliance with permit requirements.</p> <p>D. The Project Manager will conduct the final inspection with the contractor and the project A/E. If the work is ready for the Port to occupy or use for the purpose intended, and the documentation is complete, the Project Manager will prepare for the Chief Engineer's signature a written notice to the contractor of the date of Substantial Completion. The notice will include:</p> <ol style="list-style-type: none"> 1. A punchlist of work items remaining to be completed; 2. Any submittal items remaining; 3. A specific reservation of any work which is not complete or any claim or issue outstanding; 4. Whether the Port assumes responsibility for security; maintenance, heat, utilities, risk of loss, and insurance; 5. Whether the warranty period commences; and 6. A time frame, usually thirty days, for receipt of record drawings. <p>E. The Project Manager will email a copy of the notice to the Maintenance, Risk Management, and Environmental Departments.</p>
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V. Final Completion	<p>A. Final Completion triggers the lien filing periods under the retainage and performance and payment bonds.</p> <p>B. After Substantial Completion, the following actions must occur before the Project Manager determines that the project is complete:</p> <ol style="list-style-type: none"> 1. Completion of punchlist items; 2. Receipt of any remaining submittal items; 3. Receipt and approval of final invoice; 4. Contractor's submittal of list of all suppliers and subcontractors and the amounts paid to each; 5. Completed record drawings showing all changes made during construction. <p>C. The Project Manager will send the contractor a notice of Final Completion which:</p> <ol style="list-style-type: none"> 1. Identifies the date of Final Completion; 2. Identifies the retainage lien filing period as forty-five days after the date of Final Completion; 3. Identifies the bond lien filing period as thirty days after the date of Final Completion; 4. Identifies the assessment of liquidated damages, if any. <p>D. Subcontractors cannot receive their retainage until a notice of Final Completion has been issued. Therefore, if the thirty-day deadline for Final Completion has elapsed and it appears unlikely that the contractor will complete the required actions, the Project Manager may request the Chief Engineer's approval to issue a notice of Final Completion which specifically identifies the actions not completed and which notifies the contractor that the Port will claim against the contractor's remaining progress payment, bond or retainage for the costs of substitute performance.</p>
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VI. Acceptance	<p>A. For construction contracts greater than \$75,000.00 acceptance is the formal action of the Port Commission accepting the work as complete.</p> <p>B. The Project Manager will prepare a Commission agenda memorandum recommending acceptance of the work as complete. The Capital Program Manager will prepare a project cost report itemizing construction, design, project management and all other project costs to date. A summary of the project costs to date will be provided to the Commission.</p> <p>C. For construction contracts less than \$75,000.00 no formal acceptance is required; the date of Final Completion shall serve as the date of acceptance.</p>
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VII. Retainage	<p>A. Upon issuance of the notice of Final Completion the Capital Program Manager will prepare and submit to the Department of Revenue a Notice of Completion of Public Works Contract. Retainage shall not be released until forty-five days have elapsed after the date of Final Completion and all of the following have been received:</p> <ol style="list-style-type: none"> 1. Certificate of Payment of State Excise Taxes by Public Works Contractor issued by the Department of Revenue; 2. Approved Affidavits of Wages Paid for the contractor and all subcontractors. <p>B. If any lien filings are received the retainage shall not be released until the lien is satisfied or otherwise resolved by the Port.</p> <p>C. In the event that a subcontractor fails to file its Affidavit of Wages Paid, the contractor may file the Affidavit of Wages Paid on behalf of the subcontractor and the Port will accept the approved Affidavit.</p> <p>D. If no liens have been filed or the filed liens have been satisfied, at the expiration of the forty-five day period and receipt of the releases described in paragraph VII A, the Capital Program Manager will prepare a form Contract Retainage Release for signature by the Project Manager and Chief Engineer.</p> <p>E. The approved Contract Retainage Release will be transmitted to the Finance Department for disbursement of funds. Concurrent with transmittal of the Contract Retainage Release the Capital Program Manager will provide the Finance Department with instructions to close the capital project number and book the project costs to the lines of business and asset or parcel number as appropriate.</p>
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<p>VIII. Lien Filings</p>	<p>A. A lien against the performance or payment bond may be filed within thirty days after the date of Final Completion.</p> <p>B. A lien against the retainage may be filed within forty-five days after the date of Final Completion.</p> <p>C. A general notice of lien will be treated as filed against both the bond and retainage.</p> <p>D. Upon receipt of a notice of lien the Capital Program Manager will review the terms of the performance and payments bonds to identify any notice requirements. A copy of all liens will be promptly transmitted to the surety together with a request for payment or other action by the surety within a specified timeframe.</p> <p>E. Prior to the expiration of the thirty day filing period the Capital Program Manager will notify the Project Manager of the deadline and ask if the Port has any outstanding issues or claims against the contractor. If so, the Project Manager will prepare a written notice of lien against the bond and/or retainage as appropriate, with a copy to the contractor.</p>
<p>IX. Lien Payments</p>	<p>A. The schedule and amounts of payments from the retainage for satisfaction of liens will be determined by the Director, Contracts and Risk Management in consultation with Port Counsel. The general order of priority of lien payment is:</p> <ol style="list-style-type: none"> 1. wage claims; 2. excise taxes owed to the Department of Revenue; 3. liens of subcontractors or suppliers who furnished material or labor for the project; 4. claims of the Port against the contractor.

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X. Early Contract Termination	<p>A. If the Port terminates a construction contract prior to Final Completion, either for contractor default or for the Port's convenience, the lien filing period must be triggered so that the retainage may ultimately be released.</p> <p>B. Prior authorization from the Port Commission is required to terminate a construction contract in excess of \$75,000.00. For contracts less than \$75,000.00 the Project Manager will prepare a notice of Final Completion for signature by the Senior Director of Facilities Development which:</p> <ol style="list-style-type: none"> 1. Identifies the reason for termination 2. Identifies the date of Final Completion 3. Identifies the progress of work as of the date of Final Completion 4. Identifies the retainage lien filing period as forty five days after the date of Final Completion 5. Identifies the assessment of liquidated damages, if any; and 6. Reserves any outstanding claims or issues. <p>Following issuance of the notice of Final Completion to the contractor, the Capital Program Manager will prepare and submit to the Department of Revenue a Notice of Completion of Public Works Contract and send a copy to the contractor's surety. The remaining steps of this procedure apply to the early contract termination.</p>
XI. Beneficial Occupancy	<p>Beneficial Occupancy is the date that the Port begins occupying the facility even if it is not ready for the use intended. Ideally the Port will not commence occupancy until Substantial Completion. However, if the Port elects to occupy part or all of a facility before it is ready for the use intended, the occupancy is presumed to trigger equipment warranties absent a contrary writing. Therefore, the Project Manager should issue a written notice to the contractor identifying the date of beneficial occupancy and stating whether the equipment warranty periods commence as of the date of beneficial occupancy.</p>

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XII. Warranty	<p>All communication during the warranty period should be routed through the prime contractor even if a supplier or subcontractor is making the repairs. Performance of work as required during the warranty period is covered by the scope of the contractor's performance bond. Therefore, if the contractor fails to respond to the Port's request for repairs during the warranty period, the Project Manager should immediately review the terms of the performance bond for notice deadlines. The Project Manager should then issue a written request for repairs to both the contractor and surety with a specific deadline for response.</p>
XIII. FORMS	<p>A. Sample Notice of Substantial Completion ..\..\FORMS\ALL-USE\TEMPLATE\CTDOCS\substcompl.dot</p> <p>B. Sample Notice of Final Completion ..\..\FORMS\ALL-USE\TEMPLATE\CTDOCS\completion.dot</p> <p>C. Sample Department of Revenue Notice of Completion of Public Works Contract ..\..\FORMS\ALL-USE\TEMPLATE\CTDOCS\Revenue.dot</p> <p>D. Sample Retainage Release Checklist ..\..\FORMS\ALL-USE\TEMPLATE\CTDOCS\Retainage Rel.dot</p>