400 | Post-Construction

The Sections in this Group describe the post-construction period and related issues. The Sections consist of the following:

410 | A/E’s Project Closeout
420 | Owner’s Project Closeout
430 | Owner Occupancy
440 | Correction Period
This Section will address the responsibilities of the A/E following the satisfactory completion of all of the Contractor’s contractual obligations.

**Project Completion Concept**

The completion of services and work varies from each of the Team Members. The contractual responsibilities, other than actual construction, are completed as part of the closeout process. For the Contractor, the closeout process starts concurrent to the final stages of construction and is completed after the construction is finished but prior to the Contract Completion Date. Since the Contractor, Construction Manager, A/E, Contracting Authority, and Owner have different closeout responsibilities, the Closeout Period is slightly different for each.

The Post Construction Stage is initiated only after the following is completely satisfied: Issuance of **Certification of Contract Completion** (F390-01) forms that evidences the satisfactory completion of all items listed in the “State of Ohio Standard Requirements for Public Facility Construction.”

Diagrammatically, the closeout periods for the primary team members can be illustrated as follows:
Architect/Engineer Closeout Responsibilities

The closeout responsibilities of the A/E commence with the closeout period of the Contractor and continue beyond the approval of the Certification of the Contract Completion into the Post Construction Stage. The following represents many of the closeout responsibilities of the A/E.

Acceptance of O&M Manuals

- The A/E will review the preliminary submittal list of proposed Shop Drawings and Submittals from the Contractor for completeness and conformity to the specifications and addendum.
- The A/E establishes the Shop Drawing and Submittal Log to parallel the proposed Contractor's submittal list.
- The A/E receives and accepts the manuals prior to the equipment demonstrations. These manuals will be distributed to the Owner’s Staff for review 7 days prior to the Contractor and Manufacturer’s demonstrations to allow the Owner to become familiar with material prior to meeting with the manufacturer’s representatives.

Acceptance of Construction

- During the course of the construction process the A/E is responsible to review the construction work for acceptance of material and equipment installed. This includes earthwork and the conformance of construction to the design intent. Payment of Work implies the acceptance of Work in place. (This does not prohibit the A/E from directing any defective Work from being replaced.)
- The Contractor's retainage payment will not be withheld to fund the Contractors completion of Work. The A/E will not accept and recommend payment of Work not completed.

Contractor's Closeout Checklist

- The A/E establishes a Contractor’ Closeout Checklist for each Contractor. The Contractor specific closeout checklist is distributed to the associated Contractor with copies to the Owner and OFCC when the construction commences.
- The A/E will record items on the Closeout Checklist as the Contractor completes and submits them. Dates received forwarded to the Owner will be documented.
- The A/E certifies that the Contractor's Checklist is inclusive of all items obligated by the contract from the Contractor.
- The A/E transmits a copy of Each Contractor's Closeout Checklist is to OFCC as part of the Record Documents.
The Following Diagram represents many of the Contractor's activities:

**Special Testing**
- Written Special Testing Reports, as defined by Department of Commerce, are delivered to both Ohio Department of Commerce (building authority) and to OFCC at the end of construction.
- Testing Services are an Additional Service to the A/E contract.
- Testing Services must be by a licensed firm specializing in testing services as defined by the Department of Commerce. Typical services may include:
  - Geotechnical testing – Soil Borings
  - Geotechnical testing – Construction Administration
  - Concrete testing
  - Masonry unit and mortar testing
  - Steel erecting and weld connections
Other special testing not required by the Department of Commerce:

- Air and water balancing reports:
  - The A/E will be responsible for retaining an independent professional consultant specializing in Testing Services. The independent Consultant will perform test and provide all test reports. This service is beyond the scope of the A/E’s Basic Services and will be contracted as an Additional Service.
  - The Contractor must request in writing for balancing services. The Contractor must request balancing services once the systems and equipment are operational and prior to the Contractor's Punch List.
  - The Contractor must include corrections, adjustments, and conformance to the balancing report requirements prior to requesting the Final Inspections from the Building Authorities.
  - The A/E will be responsible to update any air and water balancing reports if Change Orders are required as part of the corrective Work. Updated balancing reports are considered part of the required “Record Documents”.

Demonstration of Equipment and Mechanical Systems

- The A/E verifies that the Contractor demonstrates all equipment and mechanical systems by the manufacturer representatives.
- The A/E verifies that the Owner has received the manufacturer’s operational literature, warranties, and manuals prior to the demonstrations.
- The A/E documents the Owner's questions and concerns during the demonstration period and verify responses are made in writing from the manufacturer representatives.
- The Contractor is responsible for completing Certification of Equipment Demonstration (F390-03) and transmitting it to the A/E as part of the Record Documents.

Extra Materials

- The A/E will establish, in consultation with the Owner, acceptable location(s) for the delivery of the Contractor’s Extra Materials (“Attic Stock”).
- The Contractor must obtains written a receipt of the date, location, and person that received the Extra Materials.
- The Contractor transmits to the A/E all copies of receipts of delivery to allow the A/E to visit location(s) to verify compliance of the specifications and addendum.
- The A/E delivers a copy of the Contractor's transmittals to OFCC as part of the Record Documents.

Correction Period and Contact Numbers

- The A/E documents on Certification of Warranty Commencement (F390-02) the manufacturer name, length, commencement date, end date, and contact of each warranty.
- Service contact warranty phone numbers are referencing to a manufacturer's service department not an electronic recording machine.
- The A/E delivers a copy of the completed form to OFCC as part of the Record Documents.

Contractor's Punch List Items

- The A/E reviews the Contractor's written Punch List to verify that all Work conforms to the design intent and is complete. (All Work must be complete; including the Contractor’s final cleaning prior to the Final Punch List by the A/E.)
- The A/E is responsible for the coordination of a walk-through inspection with the Owner and OFCC Representatives for the final punch list.
● The A/E is responsible to incorporate the Owner and OFCC’s punch list items into one punch list and distribute copies to the Contractor(s), Owner and OFCC Representatives.

Reviewing the Corrections of the Final Punch List Items

● The Contractor provides the A/E written notice of completion of the Final Punch List. Upon written notice, the A/E is responsible to review and provide written notice to the Contractor of acceptance or any further corrections necessary for the A/E’s recommendation to the Owner for acceptance.

● The A/E sends written notice to the Contractor of acceptance of the completion of punch list items and issues a copy to OFCC as part of the Record Documents.

As-Built Documents

● The A/E establishes periodic meetings during Construction Administration to assure that each Contractor is recording their as-built conditions as the project progresses. The A/E reviews the documents once each month during the construction.

● The Contractor delivers the As-Built Drawings to the A/E at the completion of construction and not later than the A/E’s acceptance of the Final Punch List item as completed.

● The Contractor incorporates all Change Orders, and Addendum items into the Contractor’s As-Built Record Documents.

Contractor Evaluation

● The A/E and CM will, at the request of OFCC, provide documentation and recommendations for all issues pertaining to the Contractor Evaluation (F140-99) and deliver it to OFCC as part of the Record Documents.

● OFCC may incorporate the A/E’s and CM’s comments as part of the OFCC final evaluation of the Contractor and place the evaluation in the permanent file.

Record Documents

● The A/E is responsible to establish an outline of Record Documents at the beginning (i.e., within 60 days after the Notice To Proceed) of the construction period and for submitting it to OFCC for acceptance.

● OFCC acceptance does not preclude additional record documents being required by OFCC.

● As a minimum, Record Documents specifically include Drawings, Specifications and Addendum that incorporate the Contractor(s) As-Built conditions.

● The A/E transmits a copy of an electronic file of Drawings and Specifications as part of the Record Documents required by OFCC. The format is defined by the Contracting Authority as part of the A/E’s agreement.

● The A/E must revise the original contract Drawing tracings or computer files as required by the A/E Agreement for Professional Design Service with the information contained on the As-Built Drawings provided by the Contractor. The revised original contract drawing tracings or computer files must be labeled "Record Drawings" and show the date of the A/E’s revision. The A/E will deliver the Record Drawings to the Owner in the number and format required by the Agreement for Professional Design Services. The A/E will also deliver to the Owner the As-Built Drawings used in the preparation of the Record Drawings.

● The Owner may thereafter use the Record Documents for any purpose relating to the Project including, completion of, or renovation of, or additions to the Project.

Project Closeout

OFCC arranges a project closeout meeting with the Owner.
The meeting identifies any problems in the project's processes and identifies improvements to procedures, which can be implemented on subsequent projects.

OFCC places a copy of all closeout documents in the OFCC central file and delivers the second copy of Record Documents to the Owner for their records.

- The copy of record documents is available for Owners who misplace their files.
- OFCC stores all documents as electronic files.

OFCC compares the budget information from the initial budget to the actual cost to allow future cost information for other projects.

OFCC and the Owner compare their records for funds still outstanding in the project.

OFCC reviews the procedures for handling future warranty issues.

**Project Evaluation**

The Project Manager will prepare makes the final evaluation of the Contractor, A/E, and Construction Manager.

All evaluations are placed in the permanent file for future reference during OFCC’s evaluation of qualifications or performances for subsequent projects.

Evaluations of a specific company will be available for review by that company upon request.
420 | Owner’s Project Closeout

This Section will address the responsibilities of the Owner following the satisfactory completion of all of the Contractor's contractual obligations. The Owner’s closeout responsibilities commence during the closeout period of the Contractor, during which the Owner must have increasing contact with the A/E and Contractor as the project is being completed and being prepared to be turned over to the Owner. The following represent the Owner closeout responsibilities.

Receive and Review O&M Manuals

The Owner will provide a place to store the O & M Manuals and product information, and establishes procedures for access and retrieval by maintenance staff. The Owner will receive the Manuals from the Contractor. The Owner will identify staff who routinely operate and maintain or service the equipment or mechanical systems on which the Contractor provides education and training. The Owner will distribute the Manuals to its staff for review so that they may prepare for the demonstration and training and knowledgeably review warranty issues with the Manufacturer's representatives prior to the demonstration and training.

Participate in Architect/Engineer’s Punch List

The Owner’s Representative may participate in the A/E’s final punch list inspection and in the creation of the Punch List. The A/E will incorporate the Owner's punch list items as part of the A/E’s final Punch List.

The Owner may give authorization to the A/E to proceed with the punch list inspection without input from the Owner's Representative, but forfeits the right to add punch list items. No second “Owner’s Punch List is permitted. (A/E must appropriately document Owner’s authorization.)

Participate in Demonstration and Training

Arrange times for the demonstration and training with the Contractor and participate as required. Required demonstration and training should be listed in the specifications and usually include:

- HVAC equipment
- Electrical equipment
- Special systems

Receive Extra Materials

The Owner will make an area available to receive and appropriately store the Extra Materials delivered by the Contractor. The Owner will, in person, receive the extra materials and sign a receipt for them. The Owner will not permit the unsupervised delivery of Extra Materials.

Receive Record Documents

The Owner will provide an area for storage of Record Documents delivered by the A/E. The Owner will sign a receipt acknowledging that all Documents have been received.

Performance Evaluation

The Owner may prepare recommendations and documentation pertaining to the performance of the Contractor, the A/E, and the Construction Manager and provide the information to OFCC.
Acceptance of the Project

After the A/E confirms that the Contractor has completed all Punch List items, the A/E recommends to the Owner that the Owner formally accept the project by signing the Contractor's final Payment Request, which the A/E will forward to OFCC for processing and final payment.

The Owner will provide OFCC with written acceptance of the project as completed. Written acceptance from the Owner assures that the facility is under general operations and that the building is occupied by its staff.

The Project Coordinator will verify that all Contractors, the A/E, the Construction Manager and OFCC are 100 percent invoiced and paid. The Project Coordinator will review the findings with the OFCC Fiscal Officer to confirm the results and send authorization to the Owner who may then cancel the balance of encumbrance funds on record.
Facility Startup

Facility Startup consists of activities performed by the Owner which are required to prepare the Project for occupancy.

Common Facility Startup Activities

- Strip and wax floors
- Install artwork & special graphics
- Install signage not provided by the Contractor

Reserved parking signs and equipment

- Emergency evacuation plan signage
- Employee workstation nameplates
- Install and clean furniture and movable equipment
- Install and set up computers, telephones and other equipment
- Stock cabinets, shelves and storage rooms
- Verify and issue keys; issue passes required for use with entry control systems
- Final building cleaning
- Install floor mats and other items provided by independent vendors
- Install window coverings
- Install and stock vending machines
- Install pay telephones
- Install cable TV service; install and connect TV's and connect to cable
- Provide paper products in restrooms
- Program thermostats to suit specific operational needs
- Install fire extinguishers if not provided by Contractor
- Establish telephone and communication numbers
- Install and test equipment
- Receive dietary stock (if required)

Activities Other Than Facility Startup

- In addition to Facility Startup activities, the Owner may need to perform activities to permit occupancy which are not specifically related to the physical facility. They may include:
  - Train staff on emergency procedures
  - Create staff directories
  - Contracting with a moving company
  - Notification of customers, suppliers, the post office and others of the new address
  - Purchasing updated stationery, business cards, etc.
  - Correction of addresses on pre-printed forms and publications
  - Contract for maintenance, and supplies
- Arranging telephone service
- Contracting for other services such as HVAC maintenance, lawn care, and snow removal
- Establish internal operational procedures, e.g. mail pick-up and distribution
- Install live plants

Partial / Phased Occupancy

Due to the complexities of the Project or the Owner’s operation requirements, the Owner may have required that the Project sequence be organized, or formally phased, so that the Owner can occupy a portion(s) of the Project as it is completed. Commissioning activities, and other activities related to relocation, such as may need to be organized accordingly.

Such an arrangement probably means that work adjacent to the occupied area is not complete. The Owner may need to coordinate with the A/E and Contractors to ensure that the partially complete fire alarm system, telephone and data, PA system, emergency power system, etc., and all utilities and are properly configured and programmed to function in a configuration other than the completed project.

Maintenance Program

Preventive Maintenance

- The Owner should establish a preventive maintenance (PM) program in accordance with the recommendations of the manufacturers of the components, systems, and equipment. Such recommendations should be included the O&M Manuals.
- PM programs can be established by the Owner, as a simple log with dates, which remind staff what needs to be done when, and by whom (e.g. individual, outside contractors.) and blanks in which to indicate when the work was done, and by whom.
- A more elaborate PM program can be created by the Owner with software packages, which are available for the purpose, or by a consultant.

Corrective Maintenance

- The Owner should refer to the O&M Manual and follow manufacturer’s recommendations.
This Section addresses activities of the Owner with regard to warranties and problems which become evident during occupancy of the facility.

Responsibilities During the Correction Period

Discovery and Resolution of Apparent Warranty Issues

- The A/E's responsibilities end after closeout of the project. Monitoring of the project during occupancy and resolving problems becomes the Owner's responsibility.

- The Owner will inspect the facility at regular intervals for issues which it believes may be possible warranty items. To provide proper documentation concerning any such discovered item the Owner should:
  - Keep a notebook or other organized system of notes with dated entries including when the problem was first noted, by whom, and what conditions were noted, and with similar information for subsequent observations.
  - Take measurements, photographs, samples, or collect other documentation as appropriate.
  - Identify the Contractor whom it appears is responsible for the problem and inform the Contractor of the findings in writing.
  - Meet with the Contractor to review the matter.
  - If the Contractor agrees that it is defect covered under the warranty, arrange a time for the Contractor to make repairs.
  - Determine in advance what corrective measures the Contractor proposes, approve or take exception to the proposed corrective measure as appropriate, and ensure that the Contractor performs the measures as both parties agreed they would be corrected.
  - If the Contractor does not acknowledge that the defect is covered under the warranty, the Owner should contact OFCC for guidance. OFCC may provide telephone consultation on warranty issues at no cost to the Owner, but reserves the right to charge an appropriate fee for issues which require travel, research, or prolonged communication.
  - If the problem is unresolved, the Owner should contact the Contractor's Surety and seek resolution. (The warranty is a part of the Contract, is in effect for one year after project completion. The Surety has a responsibility to complete any work not performed by the Contractor, including honoring the warranty.)
  - If the problem is substantial and both the Contractor and the Surety fail to resolve the matter, the Owner should seek legal advice.
  - If the Owner has noted a possible defect but has made no specific determination that a warranty issue exists, the Owner should monitor the issues more closely and conduct inspections more thoroughly as the end of the warranty period approaches.

Inspection Before the Expiration of the Correction Period

- The Owner should conduct a thorough inspection of the facility in the eleventh month of the correction period.

- The A/E may have been contracted in the original design agreement to perform such an inspection as an extra service and may conduct it on the Owner's behalf. In such case the A/E will communicate any problems found to the appropriate Contractor. The A/E will most likely not take any further action on the Owner's behalf. (Such services are awkward contractually since it is not good practice to keep the A/E's contract open and retain part of the A/E's fee for a year pending completion of this item.)

- Any warranty items discovered should be addressed as described in the item above. It is important that the Owner notify the Contractor of any items found within the warranty period, and that proof of notice (such as the registered mail receipt) be kept.
Incomplete or Defective Work

If the Owner discovers, either during, or after the expiration of a warranty, that the Contractor failed to complete work, or that work performed was not in compliance with the Contract Documents, that may be a contractual matter, not a simple warranty issue. The Owner should notify OFCC and seek advice.

Suspected Design Defects

If the Owner discovers suspected design defects, the Owner should notify OFCC and seek legal advice.

Longer Term Warranties

There may be building components or systems that have warranties provided by manufacturers which are longer than one year. Any such warranties should be identified in the O & M Manual. The Owner will treat such Warranties as described above.

Such warranties often apply to:

- Roofing. (20 year warranties are not uncommon)
- High quality finishes on architectural sheet metal. (20 year warranties against fading are common)
- Refrigeration equipment
- Compressors
- Pumps

It is important that the Owner be aware of these warranties and not inadvertently violate any provisions of them by efforts to make repairs. Such warranties may have strict language voids the warranty if the Owner has performed acts or omissions which are not in strict compliance with the terms of the warranty.

The Owner should contact the issuer of the warranty to make a claim. Names and phone numbers of the appropriate contact person (often a firm that acts as the manufacturer’s representative) should be included in the O & M Manual.
The Sections in this Group describe extra services, which may be performed in the course of a project. The Sections consist of the following:

- 510 | Constructability
- 520 | Commissioning
- 530 | Remediation
- 540 | Public Exigency
- 550 | Facility Performance Evaluation
This Section identifies the requirement for incorporating Project Constructability Services (PCS) into the project and outlines the responsibilities of the various parties involved.

**Review by Project Manager**

On all projects, the Project Manager will conduct a complete review of the Contract Documents giving special attention to the Solicitation, Bid Form, Supplementary Conditions, Wage Rates, all Division 01 sections of the Specifications to verify that the Construction Documents are clear, accurate, and well coordinated.

**Types of Constructability Review**

The PCS will be accomplished by one of two general methods:

- **TYPE 1:** Projects with a Construction Budget of less than $500,000:
  
  - The Project Manager will personally perform the PCS, with guidance and supervision by the Program Manager.

- **TYPE 2:** Projects with a Construction Budget of $500,000 or more:
  
  - The PCS will be performed by a PCS Consultant selected by the Project Manager in consultation with the Project Owner.
  
  - The PCS Consultant will be selected from a list of pre-qualified professional services firms created and maintained by OFCC. Alternatively, and at the discretion of the Program Manager for the project, the PCS Consultant may be selected through a Qualifications Based Selection process approved by the Executive Director.

Projects without a Construction Manager involved, at the discretion of the Program Manager, may contract for PCS from a company on the current “On-call Constructability Services Consultants List” maintained by OFCC.

Projects with a Construction Manager involved, will use the CM to perform the PCS.

- Basic PCS will normally be included in Basic Services in the CM Agreement. Additional Constructability Services may be contracted with the CM at the discretion of the Program Manager.

**Scope of Constructability Services**

Basic Constructability Services typically begin when the CDs are 95 percent complete and continue through completion of the CDs. At such period in the document preparation process, the CDs have been developed to the level at which the A/E is prepared to submit the CDs to the Division of Industrial Compliance at the Ohio Department of Commerce (DOC) for Plan Approval.

Prior to releasing the documents to the PCS Consultant or before performing an internal Project Manager constructability review, and before authorizing the A/E’s submittal for plan review, the Project Manager will confirm that the CDs, including the technical specifications, are 95 percent complete.

**Scope of Basic Constructability Services:**

- Project Discovery
  
  - Convene and conduct meeting
    
    - Attendees: Owner, OFCC, A/E and, if applicable, CM
    
    - Review the Program, Project Budget; current plans and specifications
    
    - Review Budget and Detailed Cost Estimate
  
- Analyze CDs for Constructability
  
  - Evaluate the plans and specifications
    
    - Check for completeness, clarity, consistency and coordination
• Identify potential conflicts, overlaps and information gaps

• Produce a written report
  • Drawing review comments
    • Use directive, specific commentary
    • Do not use vague commentary
    • List by drawing sheet number, detail references
    • Provide relevant cross-referencing
    • Obtain prior approval by Project Manager if comments are not on provided on the drawings
  • Specification review comments
    • Use specification section number, page and paragraph references
    • Cross-reference to drawings as possible and appropriate
    • Use direct, specific commentary
    • Do not use vague commentary

• Present the Findings
  • Convene and conduct meeting
    • Attendees: Owner, OFCC, A/E and, if applicable, CM
    • Sub-consultants may attend as applicable
    • Present, review, and discuss findings

• Architect/Engineer’s Pre-bid Release
  • Before authorizing any project for bid advertisement, the Project Manager will obtain a signed statement from the A/E specifically stating that the A/E has considered the recommendations and suggestions from the constructability review and has incorporated all that the A/E deems appropriate. The statement will also include the A/E’s justification for not incorporating a response to any review comment, recommendation, or suggestion.

Additional Constructability Services

The Project may have or may develop special needs. In such situations, certain optional services may be appropriate to successfully manage the project. Such services should be considered as early in the project as possible and typically are an extra cost to the project budget.

In general, many Additional Constructability Services begin earlier in the design process than Basic Constructability Services and may even parallel the entire process.

Additional Constructability Services can be added to the project at anytime. These services may include, but are not limited to:

• Verify the logic and clarity of the breakdown of the work to be performed by the Contractor.
• Verify that the documents contain the information necessary to define which of the several Contractors will perform the specific work to bridge between two or more Contractor’s areas of responsibility or scope of work.
• Evaluate the plans and specifications with regard to the feasibility of construction considering such factors as project schedule, project interfaces, utility relocations or shutdowns, material availability, site constraints, etc.
• Analyze any construction constraints imposed by design requirements, site construction considerations, sequence of construction, means and methods, or construction materials.
• Evaluate the A/E’s proposed time for contract completion on the Bid Form, comment on milestone dates and liquidated damages, if any; and phasing plans, if applicable.
- Evaluate the A/E’s detailed cost estimate against the construction budget, project phasing, if any, and construction contract amounts and construction alternate estimates listed in the Solicitation.
- Value engineering of alternative building components or building systems.
- Review of the plans and specifications prior to release for bidding to ensure that the modifications conform to the comments from the constructability review(s).
- Analyze Addenda issued during the bidding process.
- Preparation of a target (or default) Construction Progress Schedule to be included in the Procurement Documents.
- Preparation of the Construction CPM Schedule as the independent scheduling consultant for the project. Such service may include schedule monitoring and updates.

**Cost of Constructability Review**

At a very early stage of the project, the project team should identify the scope of the PCS. The Project Manager will coordinate with the Owner to ensure that appropriate funding is available.
This Section defines the usual types of remediation projects and the means utilized to accomplish remediation.

Traditional Remediation Projects

Definition: Traditional remediation projects repair structures, equipment, or site work or replaces them at the end of their expected lives.

A traditional remediation project may be administered by an Owner which is authorized to locally administer projects if the estimated project cost falls within the approved limits of local administration authority. Otherwise, OFCC will administer the project. All work must comply with ORC Chapter 153.

Exigency Remediation Projects

Definition: All projects which are declared to be a “Public Exigency” by the Director of Administrative Services are considered remediation projects, whether a project is for a physical structure, obstruction of construction, or places people or facilities into an imminent danger of injury or obstruction. The project is the correction of an existing or imminent condition.

The scope of the project for exigency projects will be confined to the matters identified in the Declaration and will not be expanded to include unrelated or marginally related work.

The Ohio Facilities Construction Commission may not enter into contracts to perform services until the Director of DAS sends notice to the Director of Budget and Management and the President of the Controlling Board.

The Director of Administrative Services has the authority to contract in accordance with ORC 123.15(C). See Section 530 of this Manual for the process of declaring a Public Exigency.

Defective Work Remediation Projects

Definition: The Executive Director may issue a declaration of “defective work” on the Executive Director's own initiative or upon the request of an Owner. The Executive Director's declaration will identify the specific defective work, damages incurred, if any, by the Owner, and the corrective action required to remedy the defects.

Testing, exploratory investigations and the work of any specialty consultants will initially be funded by the Owner. Should investigative reports confirm damage which warrants the Executive Director to make a declaration of Defective Work and initiate a remediation project, the cost of investigation will become part of the corrective cost liability of the party which is determined to have caused the damages.

The Executive Director will consider any one of the following items as justification to declare a “Defective Work” remediation project:

- **Failure** to construct or perform as contracted within the Contract Documents.
- **Failure** to design or adequately create documents to require the proper use of material(s), mechanical equipment, fire suppression, plumbing, electrical, communication, security, or other systems, failure to provide adequate structural load capacities, failure to perform or accommodate functional program requirements, or failure to follow manufacturers’ recommendations or nationally accepted standards and guidelines.
- **Failure** in the design or construction of component systems or mis-use of a component system or individual elements within the whole system.
- **Failure** to construct to comply with the building codes or other regulations of the authority having jurisdiction, or comply with local building or licensing authorities concerning State, federal and local agencies of authority.
The Executive Director will send notice to the Contractor, A/E or other party of its responsibility to provide corrective work as part of a “defective work” remediation project.

- The Executive Director will enter into a Memorandum of Understanding with each Contractor and A/E, as appropriate, which will assign responsibilities for performing corrective measures to the appropriate parties, describe the procedures for accomplishing those measures, or both, and outline a specific schedule for the performance of the remediation.

- Failure of a Contractor, A/E or Consultant to enter into a Memorandum of Understanding will result in OFCC contacting the respective party’s surety or insurance company, and recording the noncompliance in the party’s evaluation form in OFCC’s files.

Indication of a Contractor’s or A/E’s noncompliance on an evaluation form may cause OFCC to not consider that Contractors or A/Es for selection to perform work or provide services on future projects.
This Section identifies the uses of “Public Exigency” for construction projects, how “Public Exigency” project processes differ from traditionally managed project processes and the procedures required to obtain the declaration of a “Public Exigency” for a project.

Definition of a Public Exigency

The definition in ORC 123.23 includes:

- An injury or obstruction that occurs in any public work and that materially impairs its immediate use or places in jeopardy property adjacent to it;
- An immediate danger of such an injury or obstruction; or
- An injury or obstruction, or an immediate danger of an injury or obstruction, that occurs during the process of construction of any public work and that materially impairs its immediate use or places in jeopardy property adjacent to it.

Declaration of Public Exigency

Request for Declaration of Public Exigency

- The initial step in the process is a written request signed by the Director of a State agency, or the Chief Executive Officer of an Institution of Higher Learning, that the Executive Director of OFCC declare that a Public Exigency exists for a particular situation. The request should be addressed to the Executive Director of OFCC, with a copy to the Chief of Projects. The request should include the following information:
  - A detailed description and analysis of the problem, including the specific injury obstruction, jeopardy, etc.
  - Description and analysis of how the problem materially impairs the immediate use of the property
  - Any remedial steps, tests, etc. already completed
  - An estimate of the cost to remediate the situation
  - An estimated time frame to complete the remediation
  - The rationale for why the problem meets the requirements set forth in ORC 123.23
  - If local administration is requested, the rationale for that request
  - Any other information the agency Director or CEO deems appropriate
- In the case where the Executive Director of OFCC declares a Public Exigency on the Executive Director’s own initiative, OFCC may create the equivalent of a request on the Executive Director’s behalf.

OFCC Evaluation

- The Chief of Projects, or a licensed professional staff member designated by the Chief of Projects, will review the request and prepare a memorandum outlining the Chief of Projects’s recommendation for the declaration of an exigency or the reasons against a declaration as it pertains to ORC 123.23, and forward the recommendation to the OFCC Legal Counsel.

Legal Counsel Review

- Subsequent to the Chief of Projects’ evaluation, OFCC Legal Counsel will review the Request and the Chief of Projects’ recommendations and prepare a memorandum for the Executive Director detailing a legal analysis of whether the situation described by the Agency meets the “Public Exigency” definition in ORC 123.15. OFCC Legal Counsel will prepare a formal “Declaration” document to be issued by the Executive Director. The Declaration must detail the specifics of the exigency project, including the specific problem, the remedial steps to alleviate the problem, the estimated amount necessary to remediate the problem, and the estimated time necessary for remediation. See Exhibit (L540-03).
**Director's Review and Approval**

- The Executive Director will review the entire file associated with the Request, including the Chief of Projects' and OFCC Legal Counsel analysis and recommendation. If the Executive Director determines an exigency exists, the Executive Director will sign the documents prepared by OFCC Legal Counsel.

**Declaration**

- Upon the Executive Director's determination and approval, the Executive Director will forward the signed documents to the appropriate parties and distribute photocopies and electronic copies as appropriate.

**Notification Memorandums**

- The Executive Director will also notify the President and members of the Controlling Board and the Director of the Office of Budget and Management of the Declaration. The Notification contains the details of the Declaration and provides similar information contained in the Declaration.

**Management of Exigency Projects**

Once the Executive Director notifies the Director of the Office of Budget and Management, OFCC, the Agency, or the Institution of Higher Education may enter into contracts for the performance of services to manage, furnish labor and materials, or construct any structures and buildings necessary for the remediation of the defined scope of the project declared as an exigency.

OFCC will subsequently issue a recommendation for the requesting Agency to prepare a Controlling Board request so that the Agency may receive approval and encumber funds required for the payment of OFCC project management and Public Exigency processing, A/E(s), Contractor(s), and others as required.

**Misconceptions about Exigency Projects**

**All Public Exigency projects are emergencies.**

- While an exigency constitutes an immediate problem, the definition of an exigency does not require that the matter be an emergency which requires immediate resolution, rather, that the matter is of such significance that it warrants expedited resolution.

**Every request made in the proper format by an Agency Director is declared a Public Exigency.**

- The decision of the Director of Administrative Services to declare a public exigency is a legal decision. Therefore, a determination must be made that the facts presented meet the legal definition of a public exigency.

**Projects declared a Public Exigency do not require oversight by the Office of Budget and Management.**

- While the project normally does not go before the Controlling Board, notice is required to be sent to the Director of the Office of Budget and Management.

**An Exigency may not be declared by the Executive Director of OFCC without a request from an Agency Director.**

- The Executive Director of OFCC may issue a Public Exigency on his/her own initiative or upon the request of the director of any State agency.

**The Executive Director of OFCC does not have to comply with ORC 153 to execute Exigency projects.**

- ORC 123.23 (B) states that the Director of DAS shall comply with ORC 153, with the exception of paragraph 123.23(C), which permits OFCC, an Agency, or Institution of Higher Education to commence work on the Exigency once notice is made to the Director of the Office of Budget and Management.
The Sections in this Group describe extra services, which may be performed in the course of a project. The Sections consist of the following:

- 602 | Accounts Receivable
- 605 | Accounts Payable
- 610 | Billing Rates
- 640 | Lien Requirements
- 650 | Escrow Accounts
- 670 | Project Tracking System
- 680 | Revenue Projections
Accounts Receivable

This Section identifies the mechanisms for the processing of accounts receivable.

OFCC Billing Mechanisms

OFCC invoices Owners of Projects for the services it provides by issuing an Intrastate Transfer Voucher (ISTV) for each billable service or event. The ISTV alpha codes are as follows:

- Project fees and change order fees: "N"
- Special Services: "ND"
- Energy Services: "NE" and "NN"
- Ohio Facilities Construction College: "NI"

When an Owner is unable to pay via an ISTV, the Owner may use the ISTV as an invoice and pay OFCC by check.

Billings are processed monthly or as a service event occurs.

OFCC also accepts payments for Ohio Facilities Construction College by check.

Billing Structure

The standard OFCC Fee initial billing is for 40 percent of the fee based upon the estimate of construction and is billed at the time the A/E’s contract is executed. The remaining 60 percent of this fee is billed at the time construction contracts are executed. Fees for the additional scope implemented by change orders are processed as the change orders occur.

When OFCC acts as the A/E, provides services by listed Consultants, or provides other services, the service, known as OFCC Additional Services or OFCC Extra Services, are collectively referred to as “Special Services”. The fees for such services are billed monthly or as the project progresses through various stages, including Schematic, Design Development, Construction Documents, Bid/Award, Construction Administration, reimbursables, execution of constructability review contracts, or as is reasonable for other services. This information is entered into CIPTS monthly.

OFCC invoices services performed by OFCC Energy Services as follows:

- Energy Audits: 2 percent of the contract amount.
- Energy renovation projects: 9 percent for design and 2 percent for project management.
- Performance Contracts: 9 percent of the contract price, with:
  - 60 percent of that fee billed at the time of the contract signing;
  - 30 percent billed at construction, and then;
  - 1 percent yearly for the next ten years.
- The Energy Specialist communicates with the OFCC Fiscal Officer, the Business Office Accounts Receivable Manager and the project’s owners regarding the timing of these fees.

The Ohio Facilities Construction Commission conducts educational seminars known as “Ohio Facilities Construction College”. OFCC accepts payments for the seminars by check or by ISTV for State agencies. Fees are set by OFCC and collected for each session for which an attendee registers.
This Section identifies the procedures for the processing of OFCC accounts payable.

The GSD Business Office receives all invoices and identifies them according to program unit. The Business Office payables clerk forwards invoices to the appropriate OFCC staff for review and approval. The Ohio Facilities Construction Commission designated employees include, for operating expenses, the Fiscal Officer, and, for Listed Consultant's fees, the Project Services Coordinator or Program Services Coordinator as applicable. These employees also initiate the purchasing documents as needed.

When the invoices are processed by the Business Office payables clerk, they are coded using the applicable spending responsibility center (SPRC) to identify the various projects or the internal sections.
610 | OFCC Fees & Billing

This Section identifies the OFCC Fee Structure and how fees are billed to agencies.

The Ohio Facilities Construction Commission is partially funded by fees generated from services provided to Owners of State facilities. The following Rates and Procedures are the basis for determining the fees for Agency and Higher Education clients.

OFCC Basic Services

These fees are for the Basic Services provided by OFCC on projects that are "typical" for their category, size, duration, and are produced using the contracting concepts and practices endorsed by OFCC at the time this fee schedule is issued. OFCC reserves the right to adjust its fee on special or complex projects and for additional services (e.g., quality assurance testing, constructability services, facility programming, technical surveying). As in the past, OFCC shall apply the fee to the total construction cost.

<table>
<thead>
<tr>
<th>Fee</th>
<th>Total Construction Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.00%</td>
<td>first $250,000</td>
</tr>
<tr>
<td>3.00%</td>
<td>$250,001 up to $4 million</td>
</tr>
<tr>
<td>1.00%</td>
<td>$4 million up to $20 million</td>
</tr>
<tr>
<td>0.75%</td>
<td>$20 million and over</td>
</tr>
</tbody>
</table>

Note: Rates are cumulative through the categories

OFCC will invoice the fees, which are due and payable upon their issue, as follows:

- 40% when the Architect/Engineer Agreement is executed
- 60% when the construction contracts are executed

OFCC Additional Services

In certain circumstances, projects may require more attention from OFCC than routinely provided within the Basic Services category. OFCC reserves the right to assess these fees for any type of professional services for any phase or portion of a project.

In such cases, OFCC will review the services required with the customer representative to reach mutual understanding of the scope and intent of the services and the OFCC fees necessary to cover the additional and special services. OFCC will initiate a letterhead agreement for the OFCC Additional Services that includes the pertinent information, including the payment schedule. Upon receiving a properly completed agreement, OFCC will commence activity according to the terms of the agreements.

All special project and complex project work, such as, but not limited to OFCC-design services, planning studies, structural analysis, cost estimating, environmental testing, etc., are OFCC Additional Services and will be negotiated and treated on an individual basis, as noted above. In the case of complex projects, OFCC may elect to use a multiplier to arrive at an equitable fee.

OFCC also recognizes that the Owner can sometimes need to adjust the scope of the project late in the Construction Stage. For a variety of reasons, such "out of sequence" change orders can cause the construction period to extend well beyond the then-current approved completion date. As typical for all change orders, OFCC will evaluate the proposed out of sequence scope change. If the standard OFCC change order fee is sufficient to cover OFCC services, no additional fees will be requested. However, when the proposed scope change is of a magnitude that cannot be properly supported within the standard OFCC change order fee, OFCC will assess the project for the additional services necessary to cover the differential cost between the change order fee and the actual cost of OFCC services. The assessment for OFCC additional services will not be applied to weather-related delays.
Local Administration Fee

It is intended to offset a portion of the cost of processing requests for local administration, publishing the local administration advertisement in the Ohio Register, developing and maintaining the Standard Requirements and related documents, assisting with claims resolution processes that are specifically attributable to the locally-administered projects, and other points. As such, it is appropriate that OFCC assess a fee to projects that are administered locally to more fairly recover the costs to OFCC. The fee is described below.

The OFCC fee for projects locally administered (e.g., projects funded in whole or in part by state funds and are approved for local administration by OFCC) is shown in the following chart. OFCC will attach the fee assessment upon approval of the local administration request and prior to release of the project for advertisement in the Ohio Register.

<table>
<thead>
<tr>
<th>Local Administration Fee</th>
<th>fee</th>
<th>Total PROJECT Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.00%</td>
<td></td>
<td>*fees, contingencies, construction costs</td>
</tr>
</tbody>
</table>

Periodic reporting of contract amounts is necessary, as described below. The fee will be invoiced and paid as follows:

- **Initial Billing:**
  - Payable upon Controlling Board approval of Architect/Engineer's contract:
    - Estimated Total Project Budget x 1.00% x 80%
      - Initial billing amount based upon the estimated project budget in the request for local administration.
  - Secondary Billing:
    - Payable upon Controlling Board approval of Contractor contract; prior to Notice to Proceed.
      - Revised Total Project Amount (which includes all fees and contingencies) x 1.00% minus initial payment received (which includes release of contingency plus 1% for OFCC).
        - The Local Authority must provide to OFCC a certification of the revised project budget based upon the actual contract amounts, after the Local Authority opens all bids and prior to their issuing of a Notice to Proceed. Upon receiving the certification, OFCC will adjust the fee to reconcile the difference between the estimated fee (based on the estimated budget) and the actual fee (based on the current project amount) and will issue an invoice for the adjusted balance. In this manner, the fee amounts are based on actual bid amounts.
  - **Final Billing:**
    - Payable after each fiscal year AND contract closeout (as appropriate).
      - The intent of the end-of-fiscal-year billing is to reconcile the billings to date against the known cost of the project to date; and, for smaller and short-lived projects, to serve as the final billing. The intent of the final billing is to invoice and receive 1% of the Total Project Cost as determined at the end of the project.
        - Reconciled Project Total x 1.00% less previous payments received
          - At the end of each fiscal year, the Local Authority will provide a report to OFCC for each project approved for local administration that indicates the original project amount, and the current project amount to date for each project. Within 90 days after each project is closed out, the Local Authority will provide a final cost report for each contract to OFCC.

CM Project Additional Services

The various Construction Manager methods of contracting, especially on projects of less than $20 million total project construction value, place a disproportionately larger work burden on state resources. Consequently, OFCC will assess each CM project to determine the extent of the additional burden to the
state and to OFCC specifically, that the CM contracting may create for the project. Should there sufficient indication of additional burden to OFCC, the project will be assessed appropriate fees for the additional services.

The additional burden can occur in or as a result of many areas, such as, but not limited to, the CM selection process, contract negotiation and award process, administration and management of separate and multiple bid packages, processing CM payments, reviewing multiple bid package estimates, additional field inspection and observation, etc.

Due to the natural ability to customize CM options, OFCC deems that it the best interest of all parties to tailor any additional CM-related fee for the individual project. Therefore, when a project is a candidate for CM contracting, OFCC will meet with the Owner representatives to reach mutual understanding of the scope and impact of CM services and to establish the additional fee for the additional work.

Similar to the process for other additional or special fees for its services, OFCC will treat the additional fees, if any, for the CM-type of project as an OFCC Additional Service and initiate a letterhead agreement that includes the pertinent information.

Payment for the fees shall be due and payable in full at the time the CM contract is executed. Upon receiving a properly completed agreement, OFCC will commence according to the terms of the agreement.
This Section identifies the requirements relative to liens and the processing of liens. The procedure described below is not intended to serve as legal advice to any party. It is merely a statement of the general procedures used by OFCC to comply with ORC 1311.25 to 1311.32. Owners, Contractors, and others should consult with an attorney for answers to specific legal questions.

Mechanic's Liens

The process and requirements for filing a mechanic's lien is different for a public construction project than it is for a private project. Since liens for public improvement projects cannot be filed against the property, the liens are filed against the funds due the prime contractor. Refer to ORC 1311.25 to 1311.32.

Notice of Commencement

OFCC will create a Notice of Commencement of Public Improvement as required by the ORC sections referenced above for all projects administered by OFCC. The notice will list each of the Contractors and its bonding company, and will give the name and contact information of the official upon whom the lien affidavit should be served. For OFCC administered projects, lien affidavits and related correspondence should be sent to:

- Sara Freetage, Fiscal Officer
- Ohio Facilities Construction Commission.
- 4200 Surface Road
- Columbus, Ohio 43228-1395

Notices of Commencement of Public Improvement are posted on the OFCC website at http://ofcc.ohio.gov.

Lien Affidavit Requirements

The lien affidavit includes:

- Project number and name,
- Name of the prime contractor against which the line is being filed,
- Amount owed and the number of days since last labor/materials were furnished.

The affidavit must be signed and notarized.

OFCC Receipt of Lien

Upon receipt of a valid lien affidavit, OFCC:

- Mails a copy of the affidavit to the Contractor against whose funds the lien has been filed along with a cover letter giving the Contractor 20 days from its receipt of the affidavit to dispute the lien.
- Places the amount of the lien into an escrow account pending resolution of the lien.

The funds in escrow may be released to the lien claimant if the Contractor does not dispute the lien within 20 days as required.

Escrow Management

The lien and any amount in escrow is released upon OFCC's receipt of:

- A signed release of lien document from the lien claimant or the attorney representing the claimant, or;
- A negotiated settlement signed by both the contractor and the lien claimant or their attorneys, or;
- A court order, or;
The Contractor provides to OFCC a surety bond in the amount of one and a half times the amount of the lien, along with a copy of a notice to commence suit served upon the lien claimant.
650 | Escrow Accounts

This Section identifies the processing procedures for escrow accounts.

Types of Escrow Accounts

There are three types of escrow accounts:

- Retainage
- Lien
- Miscellaneous funds

- Retainage escrow agreements are signed by the Contractor at the beginning of a Contract. OFCC keeps them on file until the project reaches 50 percent completion. At that time the Owner is given one copy of the retainage escrow agreement and directed to prepare a check for the amount of the retainage. Should the Owner need to add the bank's name and address to the OAKS Financial module (“FIN”), State Accounting will accept a copy of the escrow agreement as backup. The Owner then prepares the warrant/check and mails it to GSD’s Business Office.

- Lien and miscellaneous escrows do not require a Contractor’s signature on the escrow agreement. When an agency/owner is directed by OFCC to prepare a check for escrow they are also directed to mail it to DAS GSD's Business Office. Should the agency/owner need to add the bank’s name and address to OAKS FIN, State Accounting will accept a copy of the escrow agreement as backup.

Deposits and Accounts

All checks intended for deposit into escrow are received in the GSD Business Office. The Business Office logs them and sends a photocopy of each check to OFCC's Fiscal Officer. The Fiscal Section identifies the check by project and type of escrow and prepares a “deposit letter” to accompany the deposit, and pulls the respective escrow agreement. The Fiscal Section gives this packet to the Business Office which mails it and the warrant/check to the recipient, and logs the event. In the escrow file, OFCC keeps a copy of each check and the deposit letter.

Once retainage escrow checks are deposited, the files pertaining to them are moved to the main project file. Lien escrow and miscellaneous escrow files are kept in the Fiscal Section for further activity.

The Business Office reconciles the escrow accounts with each bank on a monthly basis. Any discrepancies are reported to the OFCC Fiscal Officer to be resolved.
670 | Project Tracking

This Section identifies the process for tracking the fiscal data related to projects administered by OFCC.

OAKS Capital Improvements

OFCC annually manages millions of dollars related to Capital Improvements Projects. Beginning in 2007, OFCC participated in the development of the Ohio Administrative Knowledge System (OAKS), which is designed to replace many of the State's central systems. The Capital Improvements (CI) module within the OAKS project will replace OFCC's legacy system, which was introduced in 1987. It features a Web-based project management system designed to virtually eliminate paper bidding, submittals, payment requests, change orders, etc. OAKS CI will eventually become the State's vehicle for reporting and collecting EDGE information for capital project contracts.

OFCC began administering all active projects with OAKS CI on July 1, 2010. The 2012 Edition of the Standard Requirements and professional services agreements contains specific requirements for the use of OAKS CI for Contractors, A/Es, CMs, and others. The OAKS Capital Improvements Web site has additional news and information about the transition to the new system at [http://ci.oaks.ohio.gov](http://ci.oaks.ohio.gov). For more information about OAKS CI, contact Steve Mayo at 614-728-4310 or [steve.mayo@ofcc.ohio.gov](mailto:steve.mayo@ofcc.ohio.gov).
This Section identifies the process for projecting revenue for the Ohio Facilities Construction Commission operations.

Sources of Information

In the normal course of fiscal planning, the OFCC Fiscal Section maintains a projection of revenue. The projection is based on information obtained from the following sources:

- The Ohio Register,
- Contract Recommendation Letters,
- Letters granting Local Administration authority,
- Controlling Board requests,
- Encumbrances,
- Billings,
- Any other documents, which may provide updated information.

Projections

Projections for revenue resulting from administration fees which, will be assessed on typical OFCC administered projects are initially based on announcements which appear in the Ohio Register, which identify the initial estimates of construction cost, fees, and overall budget limits for all substantial projects. The Fiscal Section enters projects into the Fiscal Database as soon as they are announced. Projected dates for approval of funding for the A/E Agreement and the Construction Contracts dates, and consequent OFCC billing dates are obtained from the Project Manager assigned to each project. The database is constantly updated as new information becomes available.

Reconciliation

When the actual billing information is added to this database, it is reconciled against the projected billings and discrepancies are researched. The Project Manager should know of any delays in the project which would impact the timing of project fees. Updated projections are made. Any unresolved issues are reported to the OFCC Fiscal Officer for further action.