

## CHAPTER 9: PROJECT CONSTRUCTION

### 9.1 INTRODUCTION

Management of construction is the borrower's responsibility. However, the Agency will monitor construction to ensure that it complies with the project plans and specifications and to protect the government's security interest. Consequently, the Agency plays an active oversight role in the construction process, from reviewing planning documents to inspecting construction work. This chapter describes the Agency's procedures for carrying out these responsibilities. It summarizes the requirements established under RD Instruction 1924-A, and RD Instruction 1924-C.

The chapter is organized as follows:

- Section 1 describes construction requirements, including construction standards, contracting methods, contractor requirements, and cost certification procedures.
- Section 2 describes the contracting procedures from the invitation to bid through the preconstruction conference and the notice to proceed.
- Section 3 describes the Agency's responsibilities during construction, including inspections, concurrence in change orders and contractor payments, and the contract close-out process.

### 9.2 OVERVIEW OF THE AGENCY'S ROLE IN THE CONSTRUCTION PROCESS

The Agency's involvement in the construction process begins with the submission of the initial application. The State Architect reviews all construction documents, beginning with the preliminary planning documents and concluding with the final plans, specifications and cost estimate. The State Architect will advise the loan approval official on acceptability of the project design, specifications, and cost estimates before the loan is closed or construction begins (whichever occurs first). The State Architect will also consult with the State Environmental Coordinator regarding any mitigation measures required by the environmental review, which may affect project plans and specifications. The State Architect acts in an advisory role to the processing and approval officials, unless specifically delegated responsibility for "approval" of design, contracts, etc.

The Agency concurs in the borrower's selection of a contractor and in the construction contract. The Agency requires that a preconstruction conference be held, as described in Paragraph 9.11.

During construction, the Agency assumes an oversight role, performing inspections and concurring in change orders and contractor payments. The Agency also performs a final inspection before contract close-out.

(Note: The Agency's role in construction oversight does not diminish the role of the project architect hired by the borrower. The project architect is responsible to the borrower for

ensuring that the project is constructed according to the Agency-accepted plans and specifications. The project architect's responsibilities include regular inspections, payment certifications, change order approvals, and other oversight of construction activities.)

### 9.3 CONSTRUCTION FINANCING

There are two methods of financing construction: interim financing and multiple advances.

- **Interim financing.** If the borrower obtains interim financing, an interim lender provides the funds for construction and the Agency does not close its loan until after construction. The Agency prefers to use interim financing whenever possible since it is, in essence, financing a finished product.
- **Multiple advances.** If the borrower obtains multiple advances, the Agency advances funds to the borrower to pay for construction as the work progresses. If multiple advances are used, the borrower must document that interim financing is not available at suitable rates or terms.

These methods are described in Chapters 4 and 5. Regardless of the method used, the Agency will assist in monitoring the construction process as described in this chapter.

### 9.4 IDENTIFY-OF-INTEREST RELATIONSHIPS

If any parties in the construction process have an identity-of-interest (IOI) relationship with the borrower, the following steps must be taken:

- The borrower must disclose the IOI relationship to the Agency;
- The construction costs must compare favorably with projects not involving an IOI; and
- The contractor must certify all actual costs in accordance with cost certification procedures described in Paragraph 9.8.

## SECTION 1: CONSTRUCTION REQUIREMENTS

### 9.5 CONSTRUCTION STANDARDS

Construction standards are prescribed in RD Instruction 1924-A. Projects must be designed to meet or exceed:

- The development standard adopted by the Agency in the State where the project is located;
- Agency thermal performance standards; and
- Applicable state and local laws, ordinances, codes, and regulations.

Land and site development must meet the standards and requirements in RD Instruction 1924-C. These requirements are discussed in Chapter 3. The project architect must certify that the final plans and specifications comply with these standards prior to Agency approval of the loan. *Form RD 1924-25, Plan Certification*, must be used for this purpose. In addition, the project architect must also certify that the project has been designed in accordance with all applicable accessibility standards and guidelines. These standards may include, but not be limited to, the Uniform Federal Accessibility Standards (UFAS), the Fair Housing Act Accessibility Guidelines (FHA/AG), the Americans with Disabilities Act Accessibility Guidelines (ADA/AG), and any applicable State or local requirements.

### 9.6 METHODS OF CONSTRUCTION

There are three methods of constructing Multi-Family Housing projects: competitive bid contracts, negotiated bid contracts, and owner-builder.

#### A. Competitive Bid

All construction contracts must be awarded by competitive bid unless an exception is granted for a negotiated contract or the owner-builder method of construction, as described in Paragraphs 9.6 B and C.

For competitive bidding, the borrower provides public notice inviting contractors to submit a bid within a specified time frame. Contracts are selected based on cost and awarded to the lowest responsible bidder.

The contractor and the contract price must have Agency concurrence. The contractor must be licensed as required by the State and must not be on the list of debarred contractors. Unless waived by an interim lender, the contractor must provide a performance and payment bond or an acceptable alternative as described in RD Instruction 1924-A.

The competitive bidding process is discussed further in Paragraph 9.9.

## B. Negotiated Contract

Borrowers may request an exception from competitive bidding if they prefer to use a specific contractor or if the competitive bidding process does not yield an acceptable bid. Negotiated contracts are often used by borrowers with a construction company having an IOI. The Leadership Designee may grant an exception only if the following conditions are met:

### Competitive Bids and Negotiated Contracts

At times of high-construction activity when construction prices tend to be higher, negotiated bids may provide lower costs. At times of low-construction activity, competitive bidding is more likely to yield lower costs.

- The cost under the negotiated contract compares favorably with similar and recent construction in the market area;
- The proposed contractor is a reliable contractor and licensed to perform the construction work in accordance with local requirements where the project is located; and
- The reasons for requesting the exception from competitive bidding are documented.

The information required for a written request to grant an exception to the competitive bidding requirements must be in accordance with RD Instruction 1924-A.

## C. Owner-Builder [RD Instruction 1924.13(e)(2)]

The Owner-builder method of construction is used when the construction company is identical to the borrower/owner entity. Owner-builders must be qualified to perform the construction work and show that they are licensed in accordance with local requirements where the project is located. There is NO written agreement or contract between the borrower and the construction company to build the project. However, there will be separate contracts with companies to perform portions of the work, such as plumbing and electrical systems.

Before granting an exception to allow an owner-builder arrangement, the Loan Originator and the State Architect/Engineer will review the borrower's written request, drawings, specifications, and cost estimates to determine whether the arrangement is in the best interest of all parties. All borrowers with owner-builder construction arrangements are required to certify the final construction costs as described in Paragraph 9.8.

The information to be included in the borrower's written request must be in accordance with RD Instruction 1924-A.

## 9.7 CONTRACTOR REQUIREMENTS

The Agency must ensure that the contractor meets the requirements described below.

### **A. Debarment and Suspensions**

All contractors submitting a bid in excess of \$25,000 must certify that they are not currently debarred or suspended from participating in Federally funded programs. The certification statement is included on *Form AD 1048, Certification Regarding Debarment*. Failure to submit the certification is grounds to reject the bid. It is the Agency's responsibility to check the list of debarred and suspended contractors to make sure the contractor is not listed there (even if the contractor has submitted the certification).

### **B. Insurance**

The contractor must have property and liability insurance for construction to protect the borrower and contractor from a variety of losses. The construction contract must not become valid until proof of insurance is received by the Agency. The amount of coverage and the other insurance provisions of the coverage must be in accordance with the project's construction documents.

### **C. Payment and Performance Bonds**

Payment and performance bonds covering the contractor's work must be executed prior to the start of any construction. The bonds must each have a face value of 100 percent of the construction contract. These surety bonds must only be obtained from a corporate bonding company listed on the current U.S. Department of Treasury Circular 570 (published annually in the *Federal Register*), as holding a certificate of authority, as an acceptable surety on Federal bonds, and as legally doing business in the State where the project is located.

If interim financing is involved, the interim lender may waive the bonding requirement. The waiver must be in writing and attached to the contract documents.

An alternative to the bonding requirement is a letter of credit. Requirements for letters of credit are discussed in Paragraph 9.7 D.

### **D. Letters Of Credit**

In lieu of payment and performance bonds, the lender (or in the case of multiple advances, the Agency) may accept an unconditional and irrevocable letter of credit issued by another lending institution to secure the completion of construction. The letter of credit must equal the amount of the construction contract and must remain in effect until the date of final acceptance of work by the owner and the lender (or the Agency). In addition, the letter of credit must stipulate that the lending institution that issued the letter of credit, upon written notification by the owner or lender (or the Agency) of the contractor's failure to perform under the terms of the contract, will provide payment up to the amount of the contract to satisfy all prior debts incurred by the contractor in performing the contract and all funds necessary to complete the work.

An irrevocable Letter of Credit issued by a bank or other approved financial institution must meet strict credit quality requirements (see Exhibit 9-1 for credit quality requirements) and be for 100 percent of the construction contract. Further requirements for letters of credit include:

- The issuing institution must not be an affiliate of the lender, unless it has an acceptable rating from an approved rating agency, which is not an affiliate of the lender;
- Federal Home Loan District Bank-enhancement of a member bank letter of credit is an acceptable method for meeting Agency credit standards;
- Rural Development, USDA, must be named as the sole beneficiary;
- The term must be a minimum of 1 year; and
- The form of the letter of credit and the sight draft must be reviewed and approved by the Agency.

<b>Exhibit 9-1</b>		
<b>Credit Quality Requirements for Letters of Credit</b>		
<b>Rating Agency</b>	<b>Type of Collateral</b>	<b>Rating</b>
Thomson’s Bankwatch	N/A	B or better
S&P	Long-term senior debt, if rated, or long-term bank deposit	A or better
Moody’s	Long-term senior debt, if rated, or long-term bank deposit	A or better

**E. Warranties**

At the time the project is determined ready for occupancy, the contractor must execute *Form RD 1924-19, Builder’s Warranty*, providing a 12-month warranty on work performed and materials supplied.

**F. Compliance with Civil Rights Requirements**

The applicant/borrower must comply with all applicable civil rights requirements. A partial list includes:

- Architectural Barriers Act (ABA);
- Section 504 of the Rehabilitation Act of 1973 and UFAS;
- Americans with Disabilities Act and ADA/AG;

- Fair Housing Act and FHA/AG;
- Executive Order 11246; and
- Any State or local requirements.

## 9.8 COST CERTIFICATION

In certain cases the borrower, contractor, subcontractors, and suppliers must each provide a certification of the actual costs of construction. Appropriate circumstances for cost certification include:

- All situations where there is an IOI; and
- Other cases deemed appropriate by the Agency. For example, the Agency may request cost certifications to assist in cost tracking and help determine whether bids on future projects are reasonable.
- Cost Certification will be performed in accordance with § 1924.13 (e)(1)(v).

The actual direct costs to the company with an IOI with the borrower must be reported on *Form RD 1924-13, Estimate and Certificate of Actual Cost* and audited by a licensed Certified Public Accountant (CPA) in accordance with Government audit standards (GAS). The audit may be contracted out by the Agency.

Reviewing construction costs is an ongoing process for Agency staff, beginning with the preliminary cost estimate provided in the initial application through the final payment to the contractor.

A short summary of the cost review process is provided in Exhibit 9-2.

**Exhibit 9-2**

**Overview of the Cost Review Process**

The Loan Processing Staff will:

- Compare the applicant's preliminary cost estimate to historic costs and nationally recognized cost databases and discuss any concerns with the applicant.
- Review the applicant's cost estimate provided on *Form RD 1924-13*, and ensure any previous concerns were addressed satisfactorily.
- Review payment requests and change orders to check arithmetic and verify that totals do not exceed contract limits.
- Review the final payment request and the cost certification provided on *Form RD 1924-13*.



## SECTION 2: CONTRACTING PROCEDURES

### 9.9 COMPETITIVE BIDDING PROCEDURES

The borrower is responsible for following proper bidding procedures in accordance with RD Instruction 1924-A. Generally, the project architect oversees the bid invitation and selection process. The Agency serves only in an oversight role to ensure that proper bidding procedures are followed.

The purpose of competitive bidding is to obtain acceptable construction services for the lowest costs possible. To be successful, the process must maximize open and free competition. Conditions must not exist or be established that would give preference to a specific bidder or type of bidder. If no acceptable bids are received, the borrower may competitively rebid the contract or proceed to a negotiated bid, subject to Agency approval.

#### A. Contents of the Bidding Package

For competitive bids, the project architect prepares documents to be distributed in the bidding package. The bidding package must include the items listed in RD Instruction 1924.13(e)(1)(ii).

#### B. Distribution of the Bidding Packages

The invitation to bid must be distributed to all interested parties. The borrower may send the invitation directly to specific contractors from whom bids are desired, but public notice must always be required so that other contractors have an opportunity to bid. Prospective bidders can be informed of requests for bids through publication in local newspapers, plans services and similar services.

### 9.10 AGENCY CONCURRENCE IN THE CONTRACT

Normally, the borrower, project architect, bidders, and interested persons attend a bid opening. An RD representative should attend each bid opening. The RD representative is an observer, not a referee, and as such cannot waive bidding requirements and should not address any questions concerning bid acceptability, responsiveness of bids, responsibility of bidders, etc.

#### A. Review of the Bid

The borrower must submit the following for Agency review:

- A bid summary that shows the project architect's estimate of costs and all bids submitted.
- A revised final cost breakdown on *Form RD 1924-13*.

- The project architect's recommendation. (If the project architect does not recommend that the bid be awarded to the lowest bidder, the recommendation must include a justification for an award to a higher bidder, or, to accept no bids.); and
- Documentation of the borrower's decision (copy of the bid selected).

Loan Processing Staff should review the bid documentation to confirm the following items:

- The selected bid is properly completed including the bid bond;
- Based on the revised final *Form RD 1924-13*, there is enough money is to cover the construction costs; and
- The project architect has provided sufficient justification for the borrower's bid selection.

After these items have been reviewed, the Agency should advise the borrower in writing of any problems or of its concurrence with the bid award.

## **B. Contract Documents**

The borrower may use the construction contract form published by the American Institute of Architects (AIA Document A-101) with the Agency-approved amendment (RD Instruction 1924-A, Guide 1, Attachment 6). RD Instruction 1924-A also references use of Agency forms for MFH and other more complex projects. Other contract documents, acceptable to the Loan Approval Official and containing the requirements of RD Instruction 1901-E may be used provided they are customarily used in the area and protect the interest of the borrower and the Government. In such cases, the OGC should be consulted.

The construction contract must contain the nondiscrimination language required by Executive Order 11246 and regulations issued by the Department of Labor (DOL). That language may be found in the DOL regulations at 41 CFR 60 [§ 60-1.4(b)] and on pages 2 through 4 of *Form RD 1924-6, Construction Contract*.

A contract is signed and concurred in by the Leadership Designee (or his/her delegate) after it is signed by the borrower and contractor. The Agency is not a party to the contract and does not incur any liability under it, but still must ensure that the borrower and the contractor comply with all applicable regulatory requirements.

Loan Processing Staff should maintain all construction-related documents in the borrower's construction file. A complete list of contract documents is provided in Exhibit 9-3. See RD Instruction 1924-A for more guidance on contract documents (1924.13(e)(1)(ii) and Guide 1).

## 9.11 PRECONSTRUCTION CONFERENCE

Once the contract is awarded and executed, all interested parties must attend a preconstruction conference. The conference serves to clarify arrangements and expectations in advance to avoid conflicts later in the construction process. *Form RD 1924-16, Record of Preconstruction Conference*, or an industry equivalent may be used as a guide for an agenda.

The preconstruction conference should include the borrower, contractor, architect, lender representatives (if interim financing was obtained), and an Agency representative. The project architect should lead this meeting. It should cover, at a minimum, the following items:

- Responsibilities of all parties, including the contractor, the Agency, and the borrower, including identifying the authorized representatives for each entity;
- The work to be undertaken;
- Applicable wage rates and The United States Equal Employment Opportunity Commission (EEOC) requirements;
- The U.S. Department of Labor Occupational Safety and Health Administration (OSHA) requirements;
- Contractor's use of the site (parking, security, permits, dust control);
- Protection of stored materials;
- Mitigation measures required by the environmental review;
- Procedures to be used for inspection, change orders, and payment requests;
- Timeframes for starting and completing work;
- Requests for extending contract times;
- The contract agreement and any subcontracts;
- Dispute resolution procedures; and
- Close-out procedures.

**Exhibit 9-3**  
**Contract Documents**

- Advertisement for Bidders;
- Instructions for Bidders;
- Bid;
- Bid Bond;
- *Form RD 400-6, Compliance Statement*
- Notice of Award;
- *Form AD 1048, Certification Regarding Debarment and Suspension*
- RD Instruction 1940-Q, Exhibit A-1, Disclosure of Lobbying Activities
- Agreement between Owner and Contractor
- Certificate of Owner's Attorney;
- Contract Concurrence;
- Payment Bond;
- Performance Bond;
- Notice to Proceed;
- General Conditions of the Construction Contract ;
- *Form RD 3560-31, Identity of Interest Disclosure/Qualification Certificate;*
- Drawings and specifications;
- Contract Change Order;
- Payment request or certification;
- Labor Standards Provisions, only for projects subject to Davis-Bacon
- Wage determinations (Department of Labor); and
- *Form RD 1924-19 Builder's Warranty, or equivalent.*

**9.12 NOTICE TO PROCEED**

The Notice to Proceed establishes the contractor's permission to proceed with construction. It gives the contractor permission to go to the borrower's land and begin work, and it identifies the start date for the time period of the contract. It is issued by the borrower after the contract has been executed and the preconstruction conference has concluded. It is signed by the borrower and the contractor. The Notice to Proceed should not be issued until the Agency loan is closed (for multiple advances) or the interim lender has concurred (for interim financing).

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## SECTION 3: CONSTRUCTION OVERSIGHT

### 9.13 PROGRESS INSPECTIONS

The borrower maintains full responsibility for the quality of construction; however, the Agency must still take steps to protect the value of its investment. Consequently, the Agency must conduct periodic progress inspections to ensure that work is proceeding as planned. These inspections must be performed by persons with knowledge of MFH construction and experience in conducting Agency inspections.

#### A. Timing of Inspections

Inspections must take place prior to authorization of partial payments, normally at least monthly. In addition, the following three inspections must take place for each building:

- The initial inspection must be made just prior to or during the placement of concrete footings or monolithic footings and floor slabs.
- Another inspection must be made when the building is enclosed; structural members are still exposed; roughing in for heating, plumbing, and electrical work is in place and visible; and wall insulation and vapor barriers are installed. Customarily, this is prior to installation of brick veneer or any interior finish materials.
- The final inspection must be made when all development has been completed and the project is ready for occupancy for its intended use.

#### Who Performs Inspections?

Several parties have an interest in the satisfactory completion of project construction and, therefore, conduct inspections.

- The project architect has the primary responsibility for performing regular inspections. These inspections should take place at least monthly and serve to document partial payment requests.
- An Agency representative with sufficient knowledge of MFH construction should also inspect the property on a monthly basis and as needed. It is good practice for the Agency architect to coordinate with the project architect to perform joint inspections and to time these inspections with partial payment requests.
- The interim lender (if there is one) is also encouraged to make inspections of the

## B. Inspection Procedures

Actual construction work needs to be inspected to determine and verify that terms and conditions of the construction contract are met. The project plans and specifications signed by all parties are used to judge the acceptability of the work. Items that do not meet these or other contract documents must be either removed, corrected, or in some cases accepted with an adjusted price.

The Agency inspector must use *Form RD 1924-12, Inspection Report*.

- The inspection report must provide a description of the conditions seen, especially those that differ from the plan and specifications. Discrepancies with the plans and specifications must be brought to the attention of the project architect and documented until the issue is resolved.
- For inspections prior to making payment, the inspector must confirm the estimated values of work completed and properly stored materials and itemize the percent of work complete for each task. Payments must be adjusted if there are any discrepancies.
- If environmental mitigation measures are required and included in the construction contract, the inspector must document compliance with such measures on the report. Noncompliance with mitigation measures should be reported promptly to the Loan Originator.
- A (pre-final) inspection must be made to determine if the project is ready for occupancy. If so, the project architect must issue a Certificate of Substantial Completion and submit a written report (punch list) of the work yet to be completed to the owner, the contractor, and the Agency. The project architect should notify the Agency in sufficient time for the Agency to participate in the inspection. The owner, project architect, Approval Official, and State Architect should jointly participate in the inspection. The Agency should receive a copy of all inspections from applicable regulatory authorities at this time.
- The inspection report must be signed by the Agency inspector.
- Copies of all inspection reports (by the Agency inspector, the project architect, and any other inspectors, e.g., local, State, fire marshal) should all be kept in the construction file by the Agency.



## 9.14 CHANGE ORDERS

Change orders are used to address changes in: facility design; labor or material or their cost; or the time requirement of the project. They are used when an owner, the project architect, or local authorities require changes in the work or other unforeseen circumstances require a change in the contract's scope of work. Any changes that occur after a contract is executed and affect project design, materials, costs, scope, or schedule must be documented as a contract change order. The owner, with the assistance of the project architect, will obtain Agency concurrence in writing for all change orders prior to the performance of the work. The change order becomes a part of the construction contract. Form RD 1924-7, Contract Change Order, or its equivalent must be used. Changes that are deemed minor and do not affect costs should be documented as field orders by the project architect.)

- Generally, total changes to the work should not exceed 20 percent of the original contract cost. If changes exceed this threshold, an increase in performance and payment bonds will be necessary.
- The change order must be supported by a cost breakdown, including any profit and overhead. No additional profit or overhead is allowed in IOI cases if either totals more than the amounts included in the final Agency-approved cost estimate on Form RD 1924-13.
- If the change orders result in an increase in project costs, there are several ways to pay for these costs:
  - ◇ The borrower finds the funds elsewhere.
  - ◇ Costs are reduced from another part of the project, and a deductive change order is executed to document that change. Where funds are derived from reductions in other portions of the work it is critical to assure that these changes do not affect the overall value of the project. It may be necessary to refer such changes to the appraiser for this determination.
  - ◇ In rare cases, the Agency may make a subsequent loan. Subsequent loans may only be made to complete, improve, repair, or make modifications to a project. Subsequent loan funds may not be used to reimburse an owner for additional contributions that were made to complete a project. In addition, no commitment for additional funds will be made by the Agency unless, and until, additional funds have actually been obligated. Finally, if a subsequent loan is made, the borrower equity and initial operating capital contribution requirements apply, and the total amount of the combined loans may not exceed 95 percent of the appraised value, or total development cost, whichever is less.

- ◇ No increase in per-unit development cost will be approved, whether the circumstance causing the cost increase occurs before, during, or after the construction period, unless these conditions were unforeseen factors beyond the owner's control; design changes that were required by the Agency or local government; or changes in financing that were approved by the Agency. Any increase in cost must be approved by Rural Development in writing before the expense is incurred.
- ◇ Under no circumstances will a cost increase request be approved without concurrent agreement between Rural Development and the applicant/borrower as to how the cost increase will be funded. In most cases, this will mean that the owner will need to contribute additional funds.
- If the change orders result in a decrease in project costs:
  - ◇ Unused funds may be used to cover certain other eligible project costs only if they were unknown to the borrower at the time the loan was approved.
  - ◇ Otherwise, the amount of the loan will be decreased and the funds deobligated.
- Change orders do not generally require preparation of *Form RD 1940-22, Environmental Checklist for Categorical Exclusions* or amendment of the original environmental assessment, provided that the action will not alter the purpose, operation, location, or design of the project as originally approved.

## 9.15 PARTIAL PAYMENTS

The borrower and the Agency must take proper precautions to ensure that all payments made to the contractor are properly applied against bills for materials and labor procured under the contract.

*Form RD 1924-18, AIA Form G702*, or other professionally recognized form that contains architect certification and approval, approval of the borrower, and conditional concurrence of Agency must be used. If the Agency form is not used, Agency concurrence language must be added to the form used.

The following procedures must be used in approving construction payments:

- Payment requests are submitted by the contractor to the owner. The request must include a statement showing total amount owed to date for material and labor procured under the contract. It may also include evidence showing that previous partial payments were applied properly. The payment requests should provide the same breakdown of construction costs as the final and approved cost estimate before construction began.

- The breakdown of cost items in the payment requests must be the same used in the final Agency-approved cost estimate on Form RD 1924-13.
- The project architect and the borrower must review the request and confirm its accuracy, based on a site inspection, before signing and forwarding it to the Agency.
- Payment requests may include costs associated with a change order only when the change order is approved by the Agency. Each approved change order should be entered as a separate cost line item on the request form.
- The Agency will concur with the or require revision to the amount of partial payment based on a site inspection.
- The borrower must retain a percentage of the amount due the contractor in accordance with RD Instruction 1924-A until all work has been completed and accepted. The surety company that issued the payment and performance bonds, if applicable, must provide a written consent for the retainage to be released. Retention percentages must be clearly articulated in the construction contract. When construction is determined to be substantially complete, but some work remains to be completed, an amount adequate to cover any remaining work items must be withheld from the contractor. See Paragraph 9.17 for a discussion of final payments at contract close-out.

## **9.16 OBTAINING THE CHECK FOR MULTIPLE ADVANCES**

Once the Agency has approved the payment request, the MFH Servicing Official must order the check using AMAS. Note that the check request will take approximately 5 days from request to receipt.

When the check is received it is deposited in the supervised bank account in accordance with RD Instruction 1902-A. As work is completed, the Agency can release these funds to the borrower. If all work for that payment request is completed at the time of check receipt, the entire amount of the check can be released immediately to the borrower.

It is important to monitor the maximum debt limit (MDL) for the loan. The MFH Servicing Official should ensure that that the disbursed amount plus accrued interest does not exceed the MDL.

## **9.17 CONTRACT CLOSE-OUT**

When work is complete, the contract is closed out—all payments are made and all claims are released. However, prior to close-out, the Agency and the borrower must ensure that all work was performed according to the contract and that it meets acceptable standards.

### **A. Final Inspection**

The project architect should coordinate the final inspection with all parties, including the Agency and the interim lender's fee inspector (if applicable), so that all inspectors may be present on the site at the same time. A final inspection must be conducted before the final payment to the contractor to ensure that all work is performed according to project plans and specifications and meets all applicable codes and quality standards. If the project is receiving interim financing, the Agency loan must not be closed until this inspection is performed.

A final inspection is conducted when all construction work is completed, including any punch-list items, and the project is fully ready for its intended use. The owner shall acknowledge final acceptance by signing an Agency inspection report. The final inspection will be made at the earliest possible date after completion of the planned development. When several buildings are involved, inspections may be made upon completion of each building. No inspection will be recorded as a final inspection until all deficiencies or nonconforming conditions have been corrected. When codes and ordinances require inspections by local authorities, their final acceptance will be required prior to the Agency's final inspection and acceptance.

### **B. Final Payment**

The final payment to the constructor will be based on the results of the final inspection. Before the final payment can be made, the final documents as listed below must be executed:

- *Form RD 1924-9, Certificate of Contractor's Release*, or other professionally recognized form.
- *Form RD 1924-10, Release by Claimants*, or other professionally recognized form.
- *Form RD 1924-19, Builder's Warranty* or equivalent, and any related documents required by the contract.
- Acceptance by responsible public authority. When local or state codes and ordinance require inspections, final acceptance by the local authority will be required prior to final inspection. A certificate of occupancy may be evidence of this inspection.
- Final Certificate of Payment by the project architect.
- Cost certification, if applicable.

If work cannot be completed due to weather or other extenuating circumstances (e.g., landscaping work that cannot be done during the winter), the borrower will withhold funds to ensure completion of the work. Usually, the amount withheld is 1.5 to 2 times

the dollar value of the work completed. (This serves as an incentive to the contractor to return and complete the work.)

Interim funds remaining because of early completion of construction will be returned. The leftover interest may be used for certain other eligible loan purposes critical to the completion of the project that were unknown to the applicant and contractor at the time the loan was approved.