

**LOUISIANA CAPITAL IMPROVEMENT PROJECTS
PROCEDURE MANUAL
FOR DESIGN AND CONSTRUCTION
2006 Edition**

- ARTICLE 1. CONDITIONS OF THE CONTRACT**
- ARTICLE 2. DEFINITIONS**
- ARTICLE 3. OWNER-USER AGENCY RESPONSIBILITIES**
- ARTICLE 4. CONSTRUCTION BUDGET (AFC)**
- ARTICLE 5. COMPENSATION**
- ARTICLE 6. PAYMENTS TO THE DESIGNER**
- ARTICLE 7. DESIGNER'S SERVICES**
- ARTICLE 8. DESIGNER'S ACCOUNTING RECORDS**
- ARTICLE 9. TERMINATION OF CONTRACT**
- ARTICLE 10. ABANDONMENT OR SUSPENSION**
- ARTICLE 11. OWNERSHIP OF DOCUMENTS**
- ARTICLE 12. SUCCESSORS AND ASSIGNS**
- ARTICLE 13. EXTENT OF AGREEMENT**
- ARTICLE 14. GOVERNING LAW**
- ARTICLE 15. OTHER CONDITIONS, INCLUDING INSURANCE**

ARTICLE 1

CONDITION OF THE CONTRACT

- 1.1 The Louisiana Capital Improvement Projects Procedure Manual for Design and Construction, 2006 Edition, herein referred to as the “Procedure Manual” or the “Manual” and any amendments thereto, as published by Facility Planning and Control Department, shall be a part and condition of the Contract Between Owner and Designer, herein referred to as the “Contract”.

ARTICLE 2

DEFINITIONS

- 2.1 *The Owner* is the State of Louisiana, Office of the Governor, Division of Administration, the responsibilities of which shall be exercised by the Commissioner of Administration or the designated representative, Facility Planning and Control Department.
- 2.2 *The User Agency* is the agency, department, division, board, or institution which will be the principal user of and for which the facility is being designed and constructed, as named in the Contract. Where reference is made hereinafter to the User Agency, it will refer to both the Umbrella and Local entities of the department, board, agency, division, etc. (Examples: The LSU Board of Supervisors and the Department of Health and Human Resources are Umbrella Using Agencies and Local Using Agencies such as LSU-Alexandria and Pinecrest State School are under their respective jurisdiction and administration).
- 2.3 *The Designer* is a person or organization professionally qualified and licensed to practice Architecture, Engineering, or Landscape Architecture in accordance with the laws of the State of Louisiana, who is to perform Basic Services for the Project, as named in the Contract.
- 2.4 *Consultants* are individuals or organizations engaged by the Owner or the Designer to provide professional consultant services complementing or supplementing the Designer’s Services. As applicable, Consultants shall be licensed to practice in accordance with laws of the State of Louisiana. The Owner shall engage or have the Designer furnish as part of the Designer’s Services the services of Consultants which are deemed necessary for the project. Normal Consultants are architects, landscape architects, civil, structural, mechanical and electrical engineers, and others required to provide the services required or implied by the scope of the project; compensation for which is included in Designer’s basic fee. Special Consultants are those, other than the above, which the Owner may approve, to perform special services and for which compensation will be in accordance with Article 5.5.
- 2.5 *The Project* is a Capital Outlay Project for which funds have been appropriated or other public government project for which funds are available, as specifically defined in the Program attached to and stated in the Contract between Owner and Designer.
- 2.6 *The Available For Construction (AFC)* is the actual amount of funds available for awarding the construction contract(s).

ARTICLE 3

OWNER-USER AGENCY RESPONSIBILITIES

- 3.1 The Owner's designated representative shall be the Facility Planning and Control Department. The User Agency shall designate a representative authorized to act in its behalf with respect to the Project.
- 3.2 After selection of the Designer and prior to signing of the Contract, the Owner shall furnish to the Designer the Preliminary Program, as described below, and a statement of the Available Funds for Construction (AFC).
- 3.3 After the Contract is signed by the Owner, the Owner shall schedule and hold a Pre-Design Conference at the Office of Facility Planning and Control or at a location designated by the Owner. This conference shall be attended by the Designer and representatives of the Owner and User Agency.
 - 3.3.1 The purpose of this conference shall be to initiate a general review and discussion of the Project, including, but not limited to, adopting or confirming the following:
 - 1) The Preliminary Program defining (a) the type of usage, number and sizes of spaces required, (b) adjacency considerations, (c) the type and number of people using the facility and (d) the activities to be held in the facility;
 - 2) The location of the facility, and relevant site information;
 - 3) The Funds Available for Construction (AFC) and the Designer's Fee;
 - 4) The Time Schedule outlining anticipated completion dates of designated phases as described in Article 7 hereinafter and the anticipated period of construction. The Time Schedule for planning phases shall commence with the date of the Pre-Design Conference and shall continue until delivery of all construction documents to the Owner sufficiently complete, coordinated and ready to bid. The number of calendar days in the time schedule shall take into account review periods agreed to between Designer and Owner. Documents will be considered to be "sufficiently complete, coordinated and ready for bid" only if the advertisement for bid can be issued with no further revisions to the Documents except minor corrections and/or additions that can be made by addenda. Corrections and/or additions that require reissuing drawings must be approved by Facility Planning and Control. Design time will not necessarily end at the receipt of the initial Construction Documents Phase submittal to Facility Planning and Control. Any unreasonable re-submittals required to complete the documents will be included in the design time.
 - 5) A detailed review of the latest Instructions to Designers and the Bidding and Construction Contract Forms as described in Article 7.1.4.1 (c) hereinafter, which will be given to the Designer prior to his signing the Contract, and the compliance with which shall be a part of the Designer's obligation under the Contract, including any reasonable revisions made by the Owner and agreed to by the Designer.

- 3.3.2 The Owner shall reimburse the Designer, in addition to the fee, the cost of site surveys described in 7.1.1.4 when deemed necessary by the Designer and agreed to by the Owner. These shall include, but not be limited to, a topographic survey prepared by a registered land surveyor and a geotechnical investigation prepared by a professional engineer.
- 3.4 The Owner and the User Agency shall examine all documents submitted by the Designer and shall render decisions pertaining thereto, within the scheduled review period to avoid unreasonable delay in the progress of the Designer's Services.
- 3.5 The Owner will select a testing laboratory to perform all required tests during construction, and will contract for and pay for all such testing services.
- 3.6 The Owner shall provide record construction documents of existing buildings or facilities for renovation or addition projects, when those are available.

ARTICLE 4

CONSTRUCTION BUDGET (AFC)

- 4.1 The Construction Budget is the amount of funds Available For Construction (AFC) of the Project as fixed by the Owner and stated in the Contract Between Owner and Designer.
- 4.2 The Designer shall be responsible for designing the project so that the base bid does not exceed the funds Available for Construction. The use of any alternate bids must be approved by the Owner. The Owner will take into consideration abnormal escalation in construction costs that can be substantiated.
- 4.3 At the completion of the Program Completion Phase, as stated hereinafter in Article 7, the Designer shall determine whether the funds Available for Construction are realistic for the project when compared with the Completed Program. At this point, or at any other submissions of Probable Construction Cost by the Designer, if such Probable Construction Cost is in excess of funds Available for Construction (AFC), the Owner shall have the option to:
 - 1) Instruct the User Agency to collaborate with the Designer to revise the program so that it will be within the funds available for construction; such program revisions shall be done without additional compensation to the Designer, except as provided in Article 7.3.4, hereinafter:
 - 2) Provide additional funds to increase the Funds Available for Construction (AFC);
or
 - 3) Abandon or suspend the project.

Any adjustment in the Funds Available for Construction during design shall include an appropriate adjustment in the fee

- 4.4 When the lowest bona fide Base Bid exceeds the amount Available for Construction, the Owner shall have the option to (1) have the Designer, without additional compensation, modify the Construction Documents as required in order to rebid the project to be within the amount Available for Construction, (2) provide additional funds to award the Construction Contract, or (3) abandon the project.

- 4.4.1 The lowest bona fide Base Bid is defined as the lowest Base Bid submitted by a licensed Contractor, and not withdrawn in accordance with R.S. 38:2214 which complies in every respect with the bidding requirements of the Contract Documents.
- 4.5 When the lowest bona fide bid is below the amount available for construction and the designer has reduced the original program scope to reduce costs, and the lowest bona fide bid is less than 90% of the available funds for construction, the Owner shall have the option to have the Designer, without additional compensation, modify the Construction Documents as required to restore requirements of the program that were eliminated to reduce cost.

**ARTICLE 5
COMPENSATION**

Compensation to be paid to the Designer for services and reimbursable expenses shall be as follows.

- 5.1 The fee for Basic Services, as described in Article 7 hereinafter, shall be calculated as the product of the fee percentage, adjusted for inflation, and the amount Available For Construction (AFC), adjusted for inflation. The fee percentage shall be computed by the formula:

$$\text{FEE PERCENTAGE} = \frac{46.10}{\text{Log (AFC (1975 BCI/Current BCI))}}$$

The fee shall be computed by the following formula:

$$\text{FEE} = \text{FEE PERCENTAGE (AFC(1975 BCI/Current BCI)(Current CPI/1975 CPI)}$$

Where “BCI” = Building Cost Index as published by Engineering News Record and “CPI” = Consumer Price Index as published by U.S. Department of Labor, Bureau of Labor Statistics.

Since the annual average computed in December of the BCI and CPI are used, fee calculations are based upon the most current calendar year average of both indices. Should fee modifications occur during the course of the project, the BCI and CPI index factors used to calculate the original fee shall be used. If a project, through no fault of the Designer, is inactive for more than 24 months, the current BCI and CPI index factors shall be applied to the project once re-activated.

- 5.2 Compensation to be paid the Designer may be appropriately modified by the Owner prior to the selection of the Designer for certain projects as follows:

- 5.2.1 Simple (.85 of basic compensation), to be determined by Owner - single use projects generally of utilitarian character without complication or detail. Buildings with a high degree of repetition may be included in this classification.
- 5.2.2 Average (1.00 of basic compensation), to be determined by Owner - projects of conventional character requiring normal attention to design and detail, including complete mechanical and electrical systems.
- 5.2.3 Medium Complex (1.1 of basic compensation), to be determined by Owner - projects of special character and/or function requiring an above average level of skill in design and containing more than ordinary requirements of scientific, mechanical and electrical equipment.
- 5.2.4 Complex (1.15 of basic compensation), to be determined by Owner - projects of highly specialized design character and function requiring a high degree of design skill and requiring extensive, or special scientific, electronic, mechanical and electrical equipment and design expertise.
- 5.3 The Owner may evaluate the scope, function, complexity, image and context of the project and adjust modifiers listed above.
 - 5.3.1 A Renovation Factor of up to 1.25, of applied fees, to be established and set by the Owner for each individual project, will be multiplied by the fee percentage to arrive at the Fee for renovation projects, when determined by the Owner to be justified. This Fee shall include verifying existing conditions and/or any other additional work incidental to renovation projects. The Renovation Factor will be set in proportion to the additional work anticipated by the Owner. The Renovation Factor will not be applied to re-roofing projects, except in unusual circumstances.
 - 5.3.2 Full Time Observation Services. An addition may be made to the Basic Fee for full time observation services during construction if determined by the Owner to be warranted.
 - 5.3.3 Duplicated Work Factor shall be subject to negotiation between the Owner and Designer on an individual project basis.
 - 5.3.4 Multiple Contracts. If the Owner determines that the best interest of the Project is served by bidding and constructing the Project under two or more separate contracts, the fee shall be established for each portion by application of the formula in 5.1 above.
 - 5.3.5 If a project consists of more than one element, to be bid and constructed under one contract, then the AFC to be used in computing the fee under the formula in 5.1 above shall be the sum of the AFC's of each element.
 - 5.3.6 Prefabricated Buildings. A fee to be established and set by the owner for each individual project, not to exceed that stated in 5.1 above.

- 5.4 Payment to the Designer for Additional Services, defined in Article 7.3, shall be made on the basis of Designer's Direct Personnel Expense for performing such services multiplied by a factor of 3.0.
- 5.4.1 Direct Personnel Expense is defined as the normal, straight-time direct salaries of all the Designer's personnel engaged in the Project (technical but not clerical). This shall also include the direct salaries of Designer's Consultants involved in the additional services.
- 5.4.2 Routine change orders which involve a small amount of effort will not involve extra compensation. Before the Designer prepares a change order for which he feels he is entitled to extra compensation due to the extra effort involved, he shall so notify the Owner and secure Owner's approval to proceed with the change order. When final payment is made to the Designer, all such change orders will be reviewed by the Owner and the Designer's contract will be amended to reflect extra compensation for the change orders which the Owner has determined merit additional fee. The fee will be computed by increasing the contract award by the amount of change orders that qualify for additional fee as described above and recalculating the fee.
- 5.4.3 Designer shall prepare change orders caused by errors or omissions of the Designer without additional compensation.
- (1) The Designer shall be financially responsible for costs that result from errors and/or omissions that exceed an acceptable level pursuant to the standard of care as described in Article 7.1. The Owner shall participate in the cost of omissions to the extent of the value received by the Owner.
- Errors* are changes to the work caused by the Designer for which the Contractor is entitled to payment but for which the Owner receives no value. Typically, these involve work that has been constructed and must be demolished and replaced.
- Omissions* are changes to the work caused by the Designer for which the Contractor is entitled to payment for which the Owner receives value. Typically these involve work that must be added to contract with little or no change to the work that has been constructed.
- 5.4.4 Preparation of documents required for change orders for any cause shall not be started without Owner's prior written approval.
- 5.5 Reimbursable Expenses are in addition to the compensation for Basic and Additional Services and include actual expenditures made by the Designer, his employees or his professional consultants in the interest of the project as directed and authorized by the Owner in writing prior to their incurrence.
- 5.5.1 The Designer shall pay for the cost of printing Construction Documents for the Owner's and User Agency's use and for regulatory agencies' approvals. The

Owner will reimburse the Designer the cost of printing and distribution of all other sets of Construction Documents, over and above the amount of the deposits on same retained by the Designer. The plan distribution and deposits will be as described in the Instructions to Designers. This will include necessary sets for the Contractor to construct the project. If the Designer proposes and the Owner agrees to an alternative form of document distribution, such as an electronic format, the Designer will be reimbursed the direct cost of this method in lieu of the reimbursement described above.

5.6 Designer will be paid for prolonged contract administration and observation of construction should the contract time, as may be extended, be exceeded due to no fault of the Designer and liquidated damages are recommended by the Designer. The amount of such payment shall be computed by dividing 20% of the basic total fee by the number of days construction time, as extended, and multiplying by the number of days of liquidated damages recommended by the Designer.

5.7 Liquidated Damages: When the Designer exceeds the established time schedule, as described in Article 3.3.1-4, including any extensions of time approved by the Owner, then the amount of the fee shall, as liquidated damages, be reduced by an amount as stated in the advertisement for Designer’s selection, for each working day past the original or extended date that the Designer has not delivered all Construction Documents to the Owner sufficiently complete, coordinated and ready to bid. Completeness will be determined by the Owner as described in Article 6.1.2 and Article 7.1.4.

ARTICLE 6

PAYMENTS TO THE DESIGNER

6.1 Payments on account of Designer’s Services shall be made as follows:

6.1.1 Basic Services

1) Upon satisfactory completion of all Basic Services for each phase as described in Article 7, submission of all documents to the Owner and User and upon the Owner’s and User’s approval of same, which approval shall not be arbitrarily withheld, payment for the following phases of the Designer’s services will be made in one lump sum (with the exception of the Construction Documents Phase as described below in 6.1.2); such payments shall be up to the following percentages of the Designer’s fixed fee, either interim or final, as applicable, which percentages are cumulative:

	Phase %	Cumulative %
Program Completion Phase	5%	5%
Schematic Design Phase	10%	15%

Design Development Phase	15%	30%
Construction Documents Phase	30%	60%
Bidding and Contract Phase	5%	65%
Construction Phase	30%	95%
Construction Close Out Phase	5%	100%
Total:	100%	100%

2) Monthly in proportion to the Contractor's Certificate for Payment for the following phase: Construction Phase 95%

3) Upon satisfactory completion and furnishing required documents to the Owner for the following phase:

Construction Close-Out Phase 100%

Maximum of 1% (or \$2,000 maximum) of the Designer's fee may be withheld from construction close-out payment until completion of 1 year warranty inspection period.

6.1.2 A partial payment for the Construction Documents Phase shall be made when the Designer has completed 100 percent of the Construction Documents and has submitted these to the Owner, the User Agency, and the other required statutory agencies and the Owner determines by inventory check and conformity with Article 7 that all required documents have been submitted, and are sufficiently complete, coordinated and ready to bid, then the Designer shall be entitled to a payment of 70 percent of the fee for the Construction Documents Phase. Should the Owner's approval of the Construction Documents not be issued within 45 days of submittal due to no fault of the Designer, then the Designer shall be paid an additional payment of 20 percent of the fee for the Construction Documents Phase. The balance of the fee for this phase will be due upon completion of review by Owner and User, when corrections have been made, and when the project is approved for bidding. For projects with an AFC over \$10 million, interim payments up to 50 percent of the fee for the Construction Documents Phase may be made by agreement between the Owner and the Designer.

6.1.3 If any phase or phase payment is delayed through no fault of the Designer, the Owner and Designer may negotiate a partial payment.

6.1.4 The Designer shall promptly pay consultants. By signing the Professional Design Services Invoice, the Designer agrees that all consultants will be promptly paid those amounts due them out of the amount paid to the Designer within thirty (30) days. Upon receipt of reasonable evidence of the Designer's failure to pay consultants' amounts due them, the Owner may withhold all or part of the

Designer's payment until he is satisfied that any amounts owed have been paid or otherwise settled.

- 6.2 Payments on account of Designer's Additional Services and for Reimbursable Expenses shall be made on submission of Designer's invoices with supporting data, and their written approval by Owner and User Agency and issuance of an amendment to the Contract covering such services.
- 6.3 Payments to the Designer on Termination, Abandonment or Suspension shall be made in accordance with Articles 9 and 10, hereinafter.

ARTICLE 7

DESIGNER'S SERVICES

- 7.1 **Basic Services.** The Designer's Basic Services consist of the phases described below and include the normal Services of the Designer and normal complementary or supplementary Services of his Consultants, and any other services included in the Contract. Review Documents of each phase shall be submitted to the Owner and to the User Agency for their approval. In addition, for the Construction Documents Phase, Review Documents shall be submitted to regulatory agencies designated by the Owner or required by law, for their approvals. Designer shall not proceed to any subsequent phase until the requisite written approvals are received and until authorized by the Owner in writing to so proceed. All statements of probable Construction Cost shall be adjusted to the anticipated bid date of the project.

The Designer shall be responsible for compliance with all applicable codes. All items not specifically covered by codes shall be designed in accordance with the standards established by accepted professional groups or by industry standard for that specific item of work.

The Designer shall be responsible, to a reasonable standard of care, for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications and other services furnished under this contract. The Designer shall without additional compensation, correct or revise any errors or deficiencies in the designs drawings, specifications, and other services.

- 7.1.1 **Program Completion Phase**

- 1) After the initial pre-design conference the Designer shall meet and work with the User Agency to determine more detailed program requirements for the project and shall refine and complete the program in a form acceptable to the Owner.
- 2) The Designer shall determine whether the funds Available For Construction are realistic for the project when compared with the completed program, as described in Article 4.3.
- 3) The Completed Program shall be submitted to the Owner and the User Agency for their written approval and thereafter only the Owner shall have authority to alter

the Program. Any authorization by the Owner to alter the Completed Program shall be in writing.

- 4) The Designer shall, as part of this Contract, provide all geotechnical investigations, topographic surveys and other site related information necessary for the design of the project. The Designer shall obtain one or more proposals from registered land surveyors and geotechnical engineers when required for the Project and recommend to the Owner for his approval.
- 5) The Designer shall finalize the Time Schedule as described in Article 3.3.1-4, for the Owner's approval.

7.1.2 Schematic Design Phase

- 1) Based on the approved Completed Program, funds Available For Construction, Site Location and Time Schedule, the Designer shall prepare Schematic Design Documents in such format and detail as required by the Owner, consisting of drawings, outline specifications and other documents illustrating the general scope, scale and relationship of the Project components for the written approval of the Owner and the User Agency. Detail submittal requirements are described in the Instructions to Designers.
- 2) The Designer shall submit to the Owner and User Agency a Statement of Probable Construction Cost based on current area, volume or other unit costs method.
- 3) An analysis of requirements of the Louisiana Code for State Owned Buildings as they relate to this project shall be prepared by the Designer and submitted for review and approval. It shall be the responsibility of the designer to verify (with Facility Planning and Control, the State Fire Marshal and the Department of Health and Hospitals) the latest edition of the codes and standards in effect for use on a project.

7.1.3 Design Development Phase

- 1) Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the Program or the funds Available for Construction, the Designer shall prepare, for approval by the Owner, Design Development Documents consisting of drawings, expanded outline specifications based on of the Construction Specifications Institute (CSI) format, and other documents to fix and describe the size and character of the entire project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be required. Detail submittal requirements are described in the Instructions to Designers.
- 2) The Designer shall submit to the Owner and User Agency a Statement of Probable Construction Cost based on the current version of the Construction Specifications Institute format. This shall have back-up material and data in such format and detail as required by Owner to support each of the Divisions.

- 3) The Designer shall submit a more detailed analysis of the codes required by the Louisiana Code for State Owned Buildings, consisting of, but not necessarily limited to, statements of (1) Classification of occupancy, (2) Classification of construction, (3) Code allowable area increase for exceptions. Special attention shall be given to Department of Natural Resources regulations concerning requirements for pipe lines.
- 4) A preliminary Energy Conservation Analysis for the Project shall be prepared by the Designer and submitted to the Owner for review and approval. The requirements of this analysis shall be as detailed in the Instructions to Designers, referred to hereinbefore.

7.1.4 Construction Documents Phase

- 1) Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the funds Available for Construction, authorized by the Owner, the Designer shall prepare for written approval by the Owner, the User Agency, and other State Regulatory agencies as required by law, the following documents bearing the Designer's seal and those of his consultants, all sufficiently complete and clear to define the quantity and quality of the work to bid and build the Project:
 - (a) Working Drawings, Dimensioned plans, elevations, sections, details and schedules of all architectural, landscaping, civil, structural, mechanical and electrical work in the project. Detail submittal requirements for working drawings are contained in the Instructions to Designers.
 - (b) Technical Specifications - of the materials, processes or systems to be incorporated in the work, using the Construction Specifications Institute format. State law prohibits the Designer from closing specifications on any item in the specification except as provided for in R.S. 38:2290-2296 and in R.S. 38:2290. A. Any reason for closing specifications as provided for by law shall be brought to the attention of the Owner in writing for review. Additional requirements for specifications are contained in the Instructions to Designers documents, which will be furnished to the Designer.
 - (c) Bidding and Construction Contract Forms - the Owner will furnish to the Designer policy requirements that the Designer must include in his Documents on the following: Advertisement for Bids, Instructions to Bidders, Bid Form, General Conditions, Supplementary General Conditions, Contract Between Owner and Contractor, Performance and Payment Bond, Non-Collusion Affidavit, and other forms used by the Owner. The Designer shall consult with the Owner to determine if a Prevailing Wage Determination from the Secretary of Labor should be included in the Documents and obtain one if necessary.
 - (d) All documents shall be complete and coordinated. The Designer is responsible for coordination of all documents and all disciplines. The

Designer is responsible for coordination between all named products and performance criteria.

- 2) The Designer shall submit to the Owner and User Agency an updated Statement of Probable Construction Cost based of the Construction Specifications Institute format with back-up material as described in 7.1.3 above.
- 3) The Designer shall update and verify the Energy Conservation Analysis prepared in the Design Development Phase.
- 4) The Designer shall submit one bound copy of all design calculations on the Project for the Owner's files.

7.1.5 Bidding and Contract Phase

- 1) Upon receipt of written approval from the User Agency and other State regulatory agencies, receipt of corrected and completed Construction Documents, and approval of the latest Statement of Probable Construction Cost, the Owner may advertise the Project for bids and shall be assisted by the Designer in obtaining bids. It is the Designer's responsibility to have approvals which have not expired or will not be expired by the time of anticipated contract award.
- 2) The Designer shall be responsible for the furnishing and distribution of copies of Construction Documents to (1) all Contractors licensed in accordance with State law who desire to bid the Project, subject to deposit requirements as provided for in the Advertisement for Bids, (2) to recognized construction trade organizations maintaining plan rooms as directed by the Owner (3) to the User Agency, and other State agencies and regulatory authorities as required or directed by the Owner. Plan deposits shall be in accordance with the Owner's requirements and Public Bid Law. Designers may recommend alternative methods of document distribution for approval by Facility Planning and Control. Alternative methods must:
 - a) Provide equal or better access by potential bidders than the conventional method described in the Instructions to Bidders. For exclusively electronic plan distribution, prospective plan holders must be able to download files in a reasonable time and print paper copies, or have them printed, at a reasonable cost.
 - b) Comply with all provisions of Public Bid Law particularly with regard to R.S. 38:2212 A (1) (e).
- 3) The Designer shall be responsible for evaluating prior approval requests for substitution of materials, products and equipment required by the applicable statutes and Owner Procedures.
- 4) The Designer shall prepare and issue all addenda, in accordance with the Contract Documents, as required to modify or clarify the Construction Documents. Items not included in the approved program and/or items previously rejected or not approved shall not be included in **any** addendum without Owner's approval.

- 5) The Designer shall arrange, prepare for and conduct a pre-bid conference in accordance with the Contract Documents.
- 6) Unless waived by the Owner, the Designer shall be present for the opening of bids by the Owner and shall provide a form for assisting the Owner in tabulating the bids.
- 7) After receipt of bids, the Designer shall analyze the bids, consult with the Owner and User Agency and make written recommendation to the Owner to (1) award the Construction Contract to the lowest responsible bidder or (2) reject all bids.

7.1.6 Construction Phase

- 1) The Designer shall provide administration of the Construction Contract as set forth herein and in the Construction Documents.
- 2) After award of the Construction Contract, the Designer shall complete and submit to the Owner a Cost Data Form, in a format provided by the Owner.
- 3) The Designer shall make written recommendations for the Owner's approval, for the type and number of tests required for the Project, as soon as the Construction Contract has been awarded. The Owner will select, contract for and pay for such testing services.
- 4) The Designer, as the representative of the Owner during the Construction Phase, shall advise and consult with the Owner and all of the Owner's instructions to the Contractor shall be issued through the Designer. The Designer shall have authority to act on behalf of the Owner to the extent provided herein or as provided for in the Contract Documents unless otherwise modified in writing.
- 5) After the execution of the Construction Contract the Owner will issue a Notice to Proceed to the Contractor and will notify the Designer to arrange for and conduct a pre-construction conference.
- 6) The Designer and his principal consultants shall visit the project as often as necessary to become generally familiar with the progress and quality of the work and to determine if the work is proceeding in accordance with the contract documents. Such visits by the Designer shall **not be less** than once per week when the work is in progress.

The Designer's principal consultants shall visit the project as often as necessary to become generally familiar with the progress and quality of the work related to their disciplines and to determine if that work is proceeding in general accordance with the contract documents. Such visits by the principal consultants shall not be less than an average of once per two weeks while the scope of their work is being performed. The Designer shall **not** assume the role of his principal consultants in making site visits. In addition, project visits by both the Designer and his principal consultants shall be made at key points in the construction process.

On the basis of the Designer's and principal consultant's on-site observations, he shall endeavor to guard the Owner against defects and deficiencies in the Work of the contractors. A written report of each visit to the project shall be prepared by

the Designer and each of his principal consultants and shall be transmitted to the Owner, User Agency, and Contractor within seven (7) calendar days after each visit.

- 7) The Designer agrees that his designated representatives on the construction project shall be qualified by training and experience to make decisions and interpretations of the Construction Documents and such interpretations shall be binding upon the Designer as if made by him. All such decisions shall be confirmed in writing immediately with copies to the Owner and Contractor, conditioned that such decisions and interpretations shall not modify adversely the requirements of the contract documents. If at any time, the Owner determines that the designated representative does not meet these qualifications, the Designer shall promptly replace the representative. This paragraph does not apply to the Designer's full-time project representative.
- 8) Based on observations at the site and on the Contractor's Applications for Payment, the Designer shall determine the amount owing to the Contractor and shall issue Certificates for Payment in such amounts. No Certificate of Payment shall be issued until a schedule of values has been received from the Contractor. The issuance of a Certificate for Payment shall constitute a representation by the Designer to the Owner, that the Work has progressed to the point indicated and that to the best of the Designer's knowledge, information and belief, the quality of the Work is in general accordance with the Contract Documents and that the Contractor is entitled to payment in the amount certified. By issuing a Certificate for Payment, the Designer shall not be deemed to represent that he has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Contract sum. The Designer shall process certificates as promptly as possible with copies to the Contractor, and in any case within seven (7) calendar days. If a certificate is held up or adjusted for any reason, written notice stating the reasons for the delay or adjustment must be given to the Contractor and Owner within seven (7) days.
- 9) The Designer shall instruct the Contractor to establish and conduct a regular schedule of monthly meetings, to be held on the job site each month throughout the construction period, and shall require attendance at the meetings by representatives of his principal Consultants. The Owner and User Agency shall be notified of such meetings and may be represented. It shall be the principal purpose of these meetings, or conferences, to effect coordination, cooperation and assistance in every practical way to the end of maintaining progress of the project on schedule and completing the project within the contract time.
- 10) The Designer shall prepare and submit to the Owner, User Agency and Contractor a monthly Status Report on the Project. The form of the Report shall be supplied to the Designer at the Pre-Construction Conference. The Designer's Status Report shall be submitted to the Owner monthly along with the Contractor's Certificate for Payment and Designer's Statement for Professional Services.
- 11) The Designer shall be the interpreter of the requirements of the Contract Documents and the impartial judge of the performance there under by both the Owner and Contractor. The Designer shall make decisions, on all claims of the

- Owner or Contractor relating to the execution and progress of the Work and on all other matters or questions related thereto.
- 12) The Designer shall have authority to reject work which does not conform to the Contract Documents. If the Designer considers it necessary or advisable to insure the proper implementation of the intent of the Contract Documents, he shall request the Owner to authorize special inspection or testing of any Work in accordance with the provisions of the Contract Documents whether or not such Work be then fabricated, installed or completed.
 - 13) The Designer shall promptly review shop drawings, samples and other submissions of the Contractor only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents. The Designer shall promptly respond to all requests for information from the Contractor within a reasonable time period. The Designer shall be held accountable as described in Section 5.4.3.
 - 14) Only with the authorization of the Owner, shall the Designer prepare Change Orders. The Designer shall obtain from the Contractor his estimate of cost and time changes in accordance with the Contract Documents for the Change Order, review and approve same, and submit it to the Owner for approval before any changes are made in the Contract. No additional compensation shall be due the Designer for preparation of Change Orders without the written prior approval for such compensation by the Owner, except as described in Article 5.
 - 15) R.S. 38:2241.1 entitled Acceptance of Governing Authority defines the procedures to be followed in accepting a project and gives the Owner the discretion to make acceptance on either full completion or substantial completion. Upon completion of the work, or on substantial completion or for partial occupancy, as requested by the Owner, the Designer shall conduct an inspection of the project with the Owner, the User Agency and the Contractor to determine if the Contractor's work is in general accordance with Contract Documents. The Designer shall prepare a list of items (punch-list) for correction or completion together with an assigned dollar value.

When the Owner desires to accept on either full or substantial completion, the Designer shall recommend such acceptance in writing and shall issue a Certificate for Payment of funds due the Contractor, excepting retained percentage, liquidated damages and the value of the punch-list items. Upon the Contractor's furnishing of a clear lien certificate, the Designer shall make a final inspection and issue a final certificate for the retainage. A Certificate of Payment for punch-list items shall be issued upon their completion.

Upon recommendation of acceptance, the Designer shall receive, review and forward to the User Agency guarantees, operation, and maintenance manuals, keys and other closing documents as required by the Contract Documents. Designer shall obtain a written receipt for these and forward same to the Owner, together with copies of all guarantees and warranties.

7.1.7 Construction Close-Out Phase

- 1) After acceptance of the Project by the Owner, the Designer shall prepare and furnish to the Owner (1) a Final Report in the format and containing information as required by the Owner, and (2) two sets of Record Drawings (As-Built) prepared by the Designer, in an archival quality format, for the Owner and User Agency files. The Record Drawings shall be prepared on the basis of information furnished by the Contractor and the change orders and shall be reviewed with and approved by the Contractor prior to submission. Designer shall require in the specifications that the Contractor provide, as part of the Operations and Maintenance Manual, all materials identified in the specifications ultimately installed on the project.
- 2) Designer shall review and approve completion of “punch-list” items remaining after acceptance and shall certify final payment to the Contractor. If the Designer does not find the work acceptable under the Contract Documents after the first onsite punch list review, the Designer shall make one additional punch list review. If the work is still not acceptable, the Designer, and each of the Designer’s principal consultants, shall be paid for their time at the project site, for each additional punch list review at the rate specified in the Contract Documents; to be withheld by the Owner from the unpaid funds remaining in the Construction Contract sum.
- 3) Warranty Work: The Designer shall be required to follow up on items to be corrected during the warranty period and shall arrange for and conduct an on site review of the Project prior to expiration of the one year warranty period and shall be required to inform the Owner, User Agency and Contractor of any items to be corrected and shall inspect the Project as required until the work is completed.

7.2 Project Representation Beyond Basic Services

- 7.2.1 If the Owner and Designer agree that more extensive representation at the site is required than is described in Article 7.1.6, then the Designer shall provide one or more Project Representatives to carry out such responsibilities at the site.
- 7.2.2 Such Project Representatives shall be selected, subject to Owner’s approval, employed and directed by the Designer, and the Owner shall compensate the Designer for such services in an amount equal to the approved salary of the Project Representative times a multiplier of 1.6. If, in the opinion of the Owner, such representatives are either negligent or unqualified to perform their duties, the Designer’s representative shall be replaced promptly, without protest.
- 7.2.3 Through the services of such Project Representatives, the Designer shall endeavor to provide further protection for the Owner against defects and deficiencies in the work.
- 7.2.4 The Owner shall have the option of providing one or more Project Representatives at the site during construction, which representative(s) shall be paid by the Owner and shall be under his direction.

7.3 Additional Services

Additional Services, as required by the Owner, shall be provided by the Designer only when authorized in writing by the Owner, prior to performance of the services, and shall be paid for by the Owner as hereinbefore provided. Such services will be incorporated into the contract by an amendment on their completion. Additional services may include, but are not limited to, the following:

- 7.3.1 Providing design services relative to future facilities, systems and equipment which are not included to be constructed as part of the Project.
- 7.3.2 Providing interior design and other services required for the selection of furniture and furnishings, and movable equipment.
- 7.3.3 Preparing measured drawings when these are not available, or for archival research.
- 7.3.4 Providing extensive Program revisions during the Program Completion Phase when the necessity of such as additional services is authorized in writing by the Owner.
- 7.3.5 Providing any other special services not otherwise included in the Contract or not customarily furnished in accordance with generally accepted Designer's practice.

ARTICLE 8

DESIGNER'S ACCOUNTING RECORDS

- 8.1 Records of Direct Reimbursable Expenses and expenses pertaining to Additional services on the Project, and for services performed on the basis of multiplier times Direct Personnel Expense, shall be kept on the basis of generally accepted accounting principles and shall be furnished and/or made available to the Owner or his authorized representative on request.

ARTICLE 9

TERMINATION OF CONTRACT

- 9.1 The Contract between Owner and Designer may be terminated by either party upon seven days written notice to other party, should said other party fail to perform in accordance with its terms, through no fault of the terminating party, or the contract may be terminated by mutual consent.
- 9.2 In the event of termination by the Owner due to failure of the Designer to perform satisfactorily, the Designer shall receive no compensation beyond that already paid or due for the last satisfactorily completed phase. Any work done shall become the property of the Owner to be used at his discretion without additional compensation to the Designer. No compensation shall be paid to the Designer for any uncompleted phase, except by written agreement between Owner and Designer prior to termination. Such termination shall constitute the Designer being held at fault under the terms of R.S. 38:2313-4-B.(5) which provides that problems with time delays, cost overruns or design inadequacies for which the Designer is held to be at fault shall be taken into account by the selection boards in considering past performance on public projects.

- 9.3 In the event the Contract is terminated by mutual consent the Designer shall be paid for all work completed prior to termination, and all work done shall become the property of the Owner to be used at his discretion without additional compensation to the Designer.

ARTICLE 10

ABANDONMENT OR SUSPENSION

- 10.1 If any work designed or specified by the Designer is abandoned or suspended in whole or in part by the Owner, the Designer is to be paid for the Services rendered up to receipt of written notice from the Owner, as follows:
- (1) If the abandonment or suspension occurs at the completion of a Phase, the Designer shall be paid the full amount due on completion of such phase as described in Article 6.1.1.
 - (2) If the abandonment or suspension occurs during a phase, the Designer shall submit to the Owner all documents prepared by him up to receipt of written notice from the Owner, and the Owner shall compensate the Designer up to the percentage completion of that phase.
- 10.2 Should the Project be reactivated, the new fee will be computed on the basis of the revised funds Available for Construction. The Designer's fee for the phases of work required to complete the Project shall be the percentages for such phases stated in Article 6.1.1 applied to the new fee.

ARTICLE 11

OWNERSHIP OF DOCUMENTS

- 11.1 Drawings and Specifications are, and shall remain, the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without the approval of, or additional compensation to the Designer. The Designer shall not be liable for injury or damage resulting from re-use of drawings and specifications if the Designer is not involved in the re-use project. Prior to re-use of construction documents for a project in which the Designer is not also involved, the Owner will remove and obliterate from such documents all identification of the original Designer, including name, address and professional seal or stamp.
- 11.2 Upon completion of the Project, tracings shall remain in the files of the Designer, with Record Drawings (As-Builts) being furnished to the Owner and the User Agency, as called for in Article 7.1.7. The Designer shall have the right to re-use the Construction Documents on other projects not constructed for the Owner.
- 11.3 The right of ownership provided for above shall not be transferable.

ARTICLE 12

SUCCESSORS AND ASSIGNS

12.1 The Owner and the Designer each binds himself, his partners, successors, assigns and legal representatives to the other party to the Contract and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of the Contract. Neither the Owner nor the Designer shall assign, sublet or transfer his interest in the Contract without the written consent of the others.

**ARTICLE 13
EXTENT OF AGREEMENT**

13.1 The Contract, this Manual, and the Instructions to Designers represent the agreement between the Owner and the Designer. The Contract may be amended only by written instrument signed by the Owner and the Designer.

**ARTICLE 14
GOVERNING LAW**

14.1 The Contract shall be governed by the laws of the State of Louisiana. The Nineteenth Judicial Court in and for the Parish of East Baton Rouge, State of Louisiana shall have sole jurisdiction in any action brought under this contract.

**ARTICLE 15
OTHER CONDITIONS**

15.1 Insurance - Prior to the signing of the Contract between Owner and the Designer, the Designer shall furnish to the Owner proof of coverage for the following:

15.1.1 Insurance. Professional Liability Insurance shall be required as per the Owner's requirements on a project by project basis. Refer to Exhibit B of the contract for the extent of coverage required. Insurance will be required at the time of contract execution between the Owner and the Designer. Proof of coverage will be required at that time. No deductible shall be in excess of 5 percent of the amount of the policy.

15.1.2 Comprehensive General Liability with minimum limits of \$500,000 per accident/occurrence.

15.1.3 Comprehensive Automobile Liability Insurance with minimum limits of \$300,000 per accident/occurrence.

15.1.4 The Designer shall provide a certificate of insurance as proof Workmen's Compensation coverage.

15.2 Affidavit: The designer, on signing the Contract, shall submit to the Owner, on such form as the Owner shall designate, a Non-Collusion Affidavit.

15.3 When the Time Schedule has been established by the Owner and Designer as described in Article 3.3.1, a Completion Date shall be set up for delivery of 100 percent completed,

coordinated and ready to bid Construction Documents to the Owner. If the designer is delayed through no fault of his own, then the Completion Date shall be extended accordingly, provided the Designer makes such request in writing before starting the subsequent phase and the Owner approves such as justified.

15.4 Non-Binding Mediation

In an effort to resolve any conflicts that arise during or following the completion of the Project, the Owner and the Designer agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise. If non-binding mediation is not successful, then arbitration is the only remedy available to all parties of the Contract. Arbitration, mediation and/or any legal action resulting from this Contract shall take place in East Baton Rouge Parish.

The Owner and Designer further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants to likewise include providing for mediation as the primary method for dispute resolution between the parties to those agreements.

If this non-binding mediation fails to resolve any conflicts, then the following Arbitration clause shall take effect.

All claims, disputes and other matters arising from the Contract shall, at the option of the Owner, be decided by arbitration. To the extent possible, such arbitration proceedings shall be conducted in accordance with the Construction Industry Association Rules of the American Arbitration Association. Any such arbitration proceeding shall, at the option of the Owner, be consolidated with or joined to other arbitration proceedings between the Owner and other persons or entities under contract with the state for the construction, repair or alterations of the project in question.

15.5 Fault

Time delays, cost overruns, design inadequacies or other problems with the performance of the Designer may result in the Designer being held at fault. The Owner shall determine if the Designer is to be held at fault as provided in R.S. 38: 2313(B)(5).