

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

2020 Edition

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ARTICLE 1

CONDITION OF THE CONTRACT

- 1.1 The Louisiana Capital Improvement Projects Procedure Manual for Design and Construction, 2020 Edition, herein referred to as the “Procedure Manual” or the “Manual” and any amendments thereto, as published by the Office of Facility Planning and Control, shall be a part and condition of the Contract Between Owner and Designer, herein referred to as the “Contract.”

ARTICLE 2

DEFINITIONS

- 2.1 *Available Funds for Construction (AFC)*—the budgeted amount of funds, established by the Owner prior to bidding, available for awarding the construction contract(s).
- 2.2 *Consultants*—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. Typical 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 fee for basic services. 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.
- 2.3 *Designer*—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 *Owner*—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, the Office of Facility Planning and Control (FP&C).
- 2.5 *Project*—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 *User Agency*—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 are "umbrella" using agencies and "local" using agencies such as LSU-Alexandria and Pinecrest Support and Services Center are under their respective jurisdiction and administration).

- 2.7 *Standard of Care*—The Designer and their professional Consultants shall perform their services consistent with the skill and care ordinarily provided by similar professionals practicing in the same or similar locality under the same or similar circumstances.

ARTICLE 3

OWNER-USER AGENCY RESPONSIBILITIES

- 3.1 The Owner’s designated representative shall be the Office of Facility Planning and Control (FP&C). 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 Available Funds 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 are 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 re-submittals required to complete the documents will be included in the design time. If the Designer exceeds the established time schedule for ready to bid documents for reasons that cannot be

attributed to the Owner or User, liquidated damages will be assessed in accordance with Article 5.5.

(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 made available to the Designer prior to his/her signing the Contract. Compliance with these documents shall be a part of the Designer's obligation under the Contract, including any revisions made by the Owner and agreed to by the Designer.

- 3.3.2 Per Article 5.3.1, the Owner shall reimburse the Designer the cost of site surveys described in Article 7.1.1(4) when deemed necessary by the Designer and agreed to by the Owner. These shall include, but are not 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 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

AVAILABLE FUNDS FOR CONSTRUCTION (AFC)

- 4.1 The AFC, as defined by Article 2, shall be 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 AFC. The use of any alternate bids must be pre-approved by the Owner. The Owner will take into consideration abnormal escalation in construction costs that can be substantiated prior to bid.
- 4.3 At the completion of the program completion phase the Designer shall make recommendations regarding whether the AFC is realistic for the project when compared with the completed program. At this point, or at any other submissions of the project's statement of probable cost (construction cost estimate) by the Designer, if such statement of probable cost is in excess of the AFC, the Owner shall have the option to:
- (1) instruct the User Agency to collaborate with the Designer to revise the program so that the anticipated base bid will be within the AFC; such program revisions shall be done without additional compensation to the Designer, except for extensive program revisions authorized in writing by the Owner;
 - (2) provide additional funds to increase the AFC; or
 - (3) abandon or suspend the project.

Any adjustment in the AFC, approved in writing by the Owner during design shall include an appropriate adjustment in the fee. The fee shall not be modified at any time after advertising for bids, except as allowed per Article 5.1.1(4) and Article 5.1.3.

- 4.4 When the lowest bona fide base bid exceeds the AFC, 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 AFC;
 - (2) provide additional funds to award the construction contract without adjustment of the fee if the project scope remains the same; or
 - (3) abandon the project.
- 4.4.1. The lowest bona fide base bid is defined as the lowest base bid submitted by a responsible and responsive bidder, not withdrawn in accordance with R.S. 38:2214, and which complies in every respect with the bidding requirements of the contract documents.
- 4.5 When the lowest bona fide base bid is less than 90 percent of the AFC and the Designer has reduced the original program scope to reduce costs, the Owner shall have the option to have the Designer, without additional compensation, modify the construction documents to restore elements of the program that were eliminated to reduce cost.

ARTICLE 5 COMPENSATION

- 5.1 The fee for basic services to be paid to the Designer shall be as follows.
- 5.1.1 The fee for basic services, shall be calculated as the product of the fee percentage, adjusted for inflation, and the Available Funds 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 averages computed in December of the BCI and CPI are used, fee calculations are based upon the most current calendar year average of both indices.

- (1) 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.
- (2) 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's remaining phases once re-activated, unless the new index factors reduce the fee. In that case, the index factors shall not be revised.

- (3) Multiple construction 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 construction contracts, the design fee shall be established for each portion by application of the formula and modification factors herein.
- (4) Fee adjustments for alternates are as follows.
 - (a) If an alternate, pre-approved by the Owner, has a cost estimate within the AFC, the Designer's compensation for said alternate is already included within the Designer's base fee.
 - (b) If an alternate, pre-approved by the Owner, has a cost estimate in excess of the AFC, the Designer shall receive compensation for the value above the AFC for that portion of the phase completed as described in Article 6.1.1(1), (by increasing the AFC for Designer fee purposes). If an alternate is based on a substitute system requiring additional design effort, then the total estimated cost shall be used in determining the AFC for design fee purposes for phases completed. If the scope contained in that alternate is not awarded at bid, but later included as a change order and the Designer compensated per Article 6.1.1(1), the compensation shall be adjusted such that the Designer shall not be compensated twice for the same work.
 - (c) If the lowest bona fide base bid, is less than 90 percent of the AFC, refer to Article 4.5, regarding any additional compensation for alternates and change orders.

5.1.2 Modification factors. Prior to selection, the Owner shall have the discretion to evaluate the scope, function, complexity, image, and context of the project and apply modification factors listed below to the Designer's compensation for basic services.

- (1) Complexity factor shall be based upon the complexity of the project scope as determined by the Owner.
 - (a) Simple (0.85 of basic compensation), to be determined by Owner—single use projects generally of utilitarian character without complication or detail, such as pre-engineered buildings. Buildings with a high degree of repetition may be included in this classification.
 - (b) 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.
 - (c) 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.
 - (d) 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.

- (2) 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 additional work anticipated by the Owner. The renovation factor will not be applied to re-roofing projects, except in unusual circumstances.
- (3) An adjustment factor shall be applied, by the Owner, based on the design phases required in relation to typical basic services as described in Article 6. If all design phases are required, the adjustment factor shall be 1.0. If design phases, based on those described in Article 6, are not required due to previous work, or for other reasons as determined by the Owner, eliminated or reduced, then this factor may be reduced below 1.0, prior to Designer selection, or negotiated with the Designer if an existing contract is amended. If an adjustment factor less than 1.0 is applied, the reduction in total Designer fee shall not be applied to each phase, but rather to reflect the phases reduced or eliminated, such that the Designer earns the proper fee for work performed at each phase.

5.1.3 Change orders. Preparation of documents required for change orders for any cause shall not be started without Owner's written approval. Fee adjustments for change orders shall be as follows.

- (1) Routine change orders, which involve a small amount of effort, will not involve extra compensation. The Designer shall notify and obtain the Owner's prior written approval before preparing a change order for which he/she feels is due extra compensation for the extra effort involved. At the construction close-out phase, 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 AFC (for Designer fee purposes) by the amount of change orders that qualify for additional fee as described above and recalculating the fee.
- (2) Designer shall prepare change orders caused by errors or omissions of the Designer without additional compensation. The Designer shall be financially responsible for costs that result from errors. The Owner shall participate in the cost of omissions to the extent of the value received by the Owner. The Designer will be notified of any claims of error or omission designations made to a change order prior to execution by the Owner.

Errors—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. Therefore, where the Owner receives no value, the Designer is responsible for 100 percent of the cost.

Omissions—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.

- 5.2 Payment to the Designer for additional services shall be made on the basis of a detailed scope of work, a proposal from the Designer, and negotiations between the Owner and Designer. All additional services must be pre-approved in writing by the Owner prior to start.

Direct Personnel Expense—if referenced as part of the Designer’s proposal, 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.

- 5.3 Reimbursable expenses are in addition to the compensation for basic and additional services and include actual expenditures made by the Designer, his/her employees or professional Consultants in the interest of the project as directed and authorized by the Owner in writing prior to their occurrence.

5.3.1 The Owner shall reimburse the Designer the direct cost for all geotechnical investigations, topographic surveys, and other related information, prior approved by the Owner and necessary for the design of the project.

5.3.2 The Designer shall pay for the cost of printing and distribution of construction documents for the Owner's and User Agency's use, and for regulatory agencies' approvals, and as required for the Designer and Consultant’s own use. The Owner will reimburse the Designer the direct 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. 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. The intent remains the same for the Designer to bear costs for internal and consultant use.

- 5.4 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 required per the contract documents. The amount of such payment shall be computed by dividing 20 percent of the basic total fee by the number of days construction time, as extended, and multiplying by the number of days of liquidated damages as required by the contract documents.

- 5.5 When the Designer exceeds the established time schedule, including any extensions of time approved by the Owner, unless the extension is due to actions by the Owner or User, then the amount of the fee shall be reduced by an amount, as liquidated damages, as stated in the advertisement for Designer's selection, for each calendar 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 of the construction document phase will be determined by the Owner as described in Articles 6.1.2 and 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, submission of all documents to the Owner 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 Article 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	20%	35%
Construction Documents Phase	25%	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 percent

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

Construction Close-out phase—100 percent

* One percent of the Designer's fee up to \$2,000 maximum may be withheld from construction close-out payment until completion of the one 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 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 80 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 10 percent of the fee for the construction documents phase. The balance of the fee for this phase will be due upon the completion of review by Owner and User, when corrections have been made, and a complete set of bid documents are submitted to the Owner. For projects with an AFC over \$10 million, interim payments up to 50 percent of the fee for the construction document 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 45 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 the Owner 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/her 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 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 is the responsible party to investigate and determine the applicable

authorities with jurisdiction, beyond that of those referenced in the Louisiana Building Code for State Owned Buildings, and reflect such requirement of those authorities regarding adequacy of the design and its ability to meet licensure requirements for operation, if required.

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, in accordance with Article 5.1.3(2), shall without additional compensation, correct or revise any errors or deficiencies in the design's 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 make recommendations whether the AFC is 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.
- (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, AFC, Site Location, and Time Schedule, the Designer shall prepare Schematic Design Documents, investigating **two** alternative design concepts, unless Owner directs otherwise. Submission shall be 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 Cost based on current area, volume or other unit costs method.
- (3) An analysis of requirements of the Louisiana Building 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 the latest edition of the codes and standards in effect for use on a project. The Designer is responsible for

identifying all regulatory agencies and permits necessary for the completed project to function as needed.

7.1.3 Design Development Phase

- (1) Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the Program and/or the AFC, the Designer shall prepare, for approval by the Owner, Design Development Documents consisting of drawings, expanded outline specifications based on 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 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 Building Code for State Owned Buildings, consisting of, but not necessarily limited to, statements of:
 - (a) classification of occupancy,
 - (b) classification of construction, and
 - (c) code allowable area with increase for exceptions.
- (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.
- (5) The Designer shall submit FEMA Flood Zone requirements including the flood zone requirements of the National Flood Insurance Program, plus local ordinances associated with the floodplain.

7.1.4 Construction Documents Phase

- (1) Based on the approved Design Development Documents and any further adjustments authorized by the Owner, in the scope, quality, or AFC of the Project the Designer shall prepare for written approval by the Owner, the User Agency, and other State and Federal Regulatory agencies as required by law, the following documents bearing the Designer's seal and those of his/her 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. During the preparation of the technical specifications, the Designer shall make recommendations for the Owner's review, regarding the type and number of tests required for the Project. 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 the Louisiana Administrative Code's Title 34, Part III, Section 901. Any reason for closing specifications as provided for by law shall be brought to the attention of the Owner in writing for review by the Designer. Additional requirements for specifications are contained in the Instructions to Designers documents, which shall be furnished to the Designer.
 - (c) Bidding and Construction Contract Forms - the Owner shall furnish to the Designer policy requirements that the Designer must include in his/her 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 Cost based on the Construction Specifications Institute format with back-up material as described in Article 7.1.3 above. This estimate is especially important, as the Designer's estimate (Base Bid) shall be shown on FP&C's Bid Tabulation Form for the Bid Opening, in coordination with R.S. 38:2212(H). In addition, the updated Statement of Probable Cost (Base Bid and any Owner approved alternates) may affect the Designer's fee per Articles 4.3 and 5.1. Any adjustment of the AFC must be approved in writing by the Owner.
 - (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 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) Prior to receipt of bids, and in accordance with all applicable public bid statutes, the Designer shall be responsible for the furnishing and distribution of copies of Bid Documents to:
 - (a) 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,
 - (b) the User Agency, other State agencies, and regulatory authorities as required, or directed by the Owner.
- (3) 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 R.S. 38:2212(D) and all other public bid statutes.
- (4) 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.
- (5) 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.
- (6) The Designer shall arrange, prepare for and conduct a pre-bid conference in accordance with the Contract Documents.
- (7) 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.
- (8) 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:
 - (a) award the Construction Contract to the lowest responsible and responsive bidder or
 - (b) 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 Owner will select, contract, and pay for testing services as recommended by the Designer and approved by the Owner.
- (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/her 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/her principal Consultants in making site visits. In addition, project visits by both the Designer and his principal Consultants shall occur at key points in the construction process, including as a minimum, installation of underground utilities, structural, foundation and all other reinforcement placement, concrete pours, open wall inspections, open ceiling inspections, framing inspections, roof installation, and any other significant work prior to its concealment, and other situations as the Designer deems appropriate.

Based on the Designer's and principal Consultant's on-site observations, he/she 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/her 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/her 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 directly from the Designer. 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.
- (8) Based on observations at the site and on the Contractor's Applications for Payment, the Designer shall determine the amount due the Contractor and shall certify and 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/she 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/her 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. The Designer shall make decisions 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/she shall request the Owner 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. The Designer shall be held accountable as described in Article 5.1.3(2).
- (14) Only with the authorization of the Owner, shall the Designer prepare Change Orders. The Designer shall obtain the Contractor's 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, as described in Article 5.1.3(1).
- (15) R.S. 38:2241.1 entitled Acceptance of Governing Authority defines the procedures in accepting a project and gives the Owner the discretion to make acceptance on 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 as described in R.S. 38:2248(B), and furnish it with his/her recommendation of acceptance.

When the Owner desires to accept on completion or substantial completion, the Designer shall recommend such acceptance in writing and shall review Contractor's application and certify 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, consent of surety, and an application for payment, the Designer shall certify payment for the retainage. Upon submittal of the Contractor's application for payment, the Designer shall certify payment on all completed punch list items after the forty-five day lien period.

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 As-Built Record Drawings and Specifications as described in FP&C's Instructions to Designers. The Record Drawings shall be prepared on the basis of information furnished by the Designer, inclusive of Supplemental Drawings, the Contractor, based on the as-built work, the required adjustments to the contract documents, and the change orders, and shall be submitted timely to FP&C. Contractor shall provide, as part of the Operations and Maintenance Manual, all items in the specifications as required.
- (2) Designer shall review and approve completion of "punch list" items remaining after acceptance and shall certify 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, if prior approved by the Owner.
- (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. The Designer 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 items are corrected.

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. 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 the Owner's 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. 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 when the necessity of such as additional services is authorized in writing by the Owner, or
- 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 the Owner's authorized representative on request.

ARTICLE 9

TERMINATION OF CONTRACT

9.1 The contract between Owner and Designer may be terminated by either party upon 30 days written notice to the 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 the Owner's 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(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 the Owner's 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 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 submit to the Owner all required deliverables and 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/her 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 AFC and Article 5.1.1(2) if inactive for more than 24 months. 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. Any required code update or scope change may merit additional services per Article 5.2, as the anticipated project design effort warrants.

ARTICLE 11

OWNERSHIP OF DOCUMENTS

- 11.1 Per R.S. 38:2317, any and all plans, designs, specifications, or other construction documents resulting from professional services paid for by the Owner shall remain the property of the Owner whether the project for which they were prepared was constructed or not. If a project is terminated for any reason prior to completion of the project, electronic copies of the most current drawings and specifications shall be transmitted by the Designer to the Owner.
- 11.2 Upon completion of the project, record drawings (as-builts) shall be furnished to the Owner and the User Agency. 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 him/herself, his/her 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/her 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 of 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, 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/her 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. The Designer shall continue to work during this process.

15.4 Non-Binding Mediation

15.4.1 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.

15.4.2 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.

15.4.3 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 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).