# CHAPTER 7 – DESIGN SERVICES: CONTRACT ADMINISTRATION, FEES, AND PAYMENTS

## SECTION 7.1 ARCHITECTURAL AND ENGINEERING FEES

### 7.1.1 University Policy

The University's policy is to compensate Architects and Engineers in a fair and reasonable manner for providing the high-quality services required by the Manual. Compensation or fees should be negotiated based on the scope of work, the estimated effort (man-hours) necessary to accomplish the work, and hourly rates comparable to those earned by other equally competent architects, engineers, technicians, and support personnel in the Commonwealth. This chapter provides guidance for determining fair and reasonable fees by using a detailed fee proposal describing the services to be provided and showing the estimated man-hours by discipline and skill level and the corresponding hourly rates for each.

## SECTION 7.2 A/E FEE PROPOSAL STANDARDS AND GUIDES

### 7.2.1 A/E Familiarity with the Manual

The A/E is expected to be thoroughly familiar with the Manual procedures, the scope of services, technical criteria and standards, submittal requirements, and standard forms required. These basic requirements, combined with the specific project requirements, are the basis for the fee proposal.

### 7.2.2 Competitive negotiations

All A/E firms selected for interview will be technically qualified to provide the services required for the project. The ranking of the A/E's is generally influenced by other factors such as selection of subconsultants, recent experience on a similar project, workload status and perceived ability to meet the schedule, or similar factors. Therefore, the top ranked firm is considered, by definition, "fully qualified technically and best suited" for the work. With this in mind, the intention is to negotiate hourly rates and fees for services which are fair and reasonable to the University, the A/E, and the taxpayers of the Commonwealth of Virginia.

### 7.2.3 Plans and Specifications

The A/E should be aware and keep in mind that there are differences between private work and University work. Particularly, the A/E must conform to Manual requirements and applicable CPSM requirements for describing and specifying the work to be performed as part of the construction contract. The A/E must also conform to the requirements of the University Procurement Rules as clarified and expanded upon in the Manual.

### 7.2.4 Personnel Classifications and Hourly Rates

The following shall be used as guidance by the A/E in developing its fee proposal and by the University in evaluating the proposal and negotiating the fees for services:

7.2.4.1 A/E Project Technical Personnel

- Technical personnel shall mean the A/E's project manager, architects (licensed), engineers (licensed) by discipline, designers including non-licensed architects and engineers, project

inspector, surveyor, survey team, interior designer, landscape architect, draftsman, estimator, specifications writer, typist / clerical staff, field inspectors, and CADD computer operators.

- "Principals", "Partners", "Associates", "CEO" and similar titles are generally considered by the University to be administrative and/or management functions whose costs have been included in the overhead markup of the rates for technical categories. Technical activities which are performed by principals, etc., are categorized for fee negotiations, for change orders, and for hourly rate payment at the rates indicated for the technical activity or function that the Principal, etc., may be performing. See the descriptions of Personnel Classifications below.

7.2.4.2 Hourly Rates

- The hourly rates proposed for the various classifications, categories, disciplines, and skill levels should be comparable to the average actual salary of qualified and competent persons in that skill level as marked up or adjusted for overheads and profit. Overhead markup consists of direct technical salary overhead (or "fringes") such as payroll taxes and insurances, vacation, holidays, health insurance premiums, and other benefits and of indirect or general office overhead such as administrative salaries, rent, utilities, business and liability insurances, telephone, equipment rental and depreciation, travel, promotion, etc. Hourly rates agreed to shall be the "marked – up" rates including all overheads and profit.
- General review, negotiations, supervision and such by the principals or other senior personnel are usually considered part of the general office overhead expense included in the hourly rates or the activity is part of the "project management" function.
- The University shall have the right to require the A/E to submit documentation to support the proposed hourly rates with mark-up factors proposed for use in the fee negotiations and fee determination when the proposed hourly rates exceed what the University considers the "norm" for the area. The average hourly rates by classification, including markups which are negotiated and accepted in fee negotiations, shall be recorded, and listed in the Memorandum of Understanding (MOU) which is appended to the A/E contract.
- A/E accounting methods and procedures for determining overhead and "marked- up" hourly rates often vary. For instance, policies on vacation, sick leave, holidays and employer contributions to insurance vary from A/E to A/E.
- Methods of tracking man-hours and expenses vary depending on whether the A/E is determining its overhead rates or the profitability of each project. The procedures presented herein use the "tax return" approach where general materials, supplies, depreciation of computers and software, insurances, and such, are treated as general office overhead expenses.
- The negotiated rates should be comparable to those of similarly experienced and qualified personnel in those classifications in Virginia firms providing similar services.

7.2.4.3 Technical Personnel Classifications

The following personnel classifications, categories, disciplines and skill levels descriptions are recognized as those directly involved with the management, coordination, planning, delivery and quality control of the A/E services required for the project:

- A/E PM / coordinator: An experienced and licensed architect or engineer who has overall responsibility for the management of planning, design, and construction administration to include the coordination of all disciplines, quality assurance, and delivery of the A/E services

to the University. A Principal of the A/E firm may perform this function, especially in a small firm. In larger firms a Principal, Associate or similarly "titled" person of the A/E firm may be assigned this responsibility. Regardless of title, the function is the same and the marked-up rate should be comparable to PMs of other firms in Virginia.

- Architect (Professional): A registered and licensed architect who has the knowledge, skills and experience to perform all architectural services required for the project, and who is qualified to be in "responsible charge" of the architectural aspects of the project.

- Cost Estimator: Skills required include a knowledge of building systems and components, the ability to read plans and specifications, the ability to make quantity takeoffs and apply pricing, the ability to obtain pricing information from reliable sources, knowledge of industry trends and conditions which will affect pricing, and the ability to adjust / apply such information to the specific project conditions and present a cost estimate with proper back-up documentation.

- CADD / Draftsperson: The skills required of this level position include tracing work already drawn to scale; drafting plans, sections and details to scale from sketches and data; modifying typical sections and details to be project/situation specific; and other miscellaneous duties supporting the preparation of contract documents. Depending on the personnel, organization and operation standards of the A/E, Designers (Architects and Engineers), Draftsman, or both may be required to use CADD or have CADD skills.

- Designer (Architects and Engineers): Architects and/or engineers who by education, practical experience or a combination of education and experience have the knowledge and skills to perform analyses, calculation, and/or detailing for portions of a project in a particular discipline. This level person usually has either a degree and is gaining experience to become certified – licensed – registered or has many years of experience in layouts, detailing and/or calculations and works under the supervision of a licensed professional.

- Engineers – Structural, Mechanical, Electrical, Civil (Professional): A licensed professional engineer who has the knowledge, skills and experience to perform the analyses and design, to prepare the documents for the particular discipline and to be "in responsible charge" of that discipline.

- Landscape Architect: A certified landscape architect who has the knowledge, skills and experience to provide the design and documents for the site landscaping for the project.

- Interior Designer: A certified interior designer who has the knowledge, skills and experience to provide interior design services and documents for the project. The layout of spaces, selection of finishes, and similar functions are Basic Services whether the A/E uses an Architect or an Interior Designer. "Additional Services of an Interior Designer" for Fee calculations / negotiations on state work relate to furnishings and accessories which are not part of the construction contract.

- Specifications/Report Writer: A professional level architect or engineer skilled in writing technical specifications for building and site related systems, equipment and components. The

Writer shall also be skilled in preparing contract documents and understand the basic legal requirements, applications and ramifications thereof.

- Typist / Clerical: Skills required include a knowledge of the terms and procedures of the design and construction process and proficiency in the use of word processing and spreadsheet applications used in the production of specifications, reports and associated typing and clerical functions.

7.2.4.4 Additional Services

Chapter 5 describes the Basic Services required of the A/E as well as the responsibilities of the Agency and typical additional services that the University may request the A/E to perform.

- The A/E and University will normally determine the additional services (i.e. services in addition to the "Basic Services" identified in the Manual) required of the A/E prior to or during contract negotiation and negotiate the fees for such services at the same time as the basic services fee negotiation. The additional services to be provided by the A/E and the compensation for such shall be set out in the contract or the MOU. Once the contract is signed, any additional or extra services required will be a change in scope and shall be authorized in writing by change order using Form HECO-11a/e. Any change order authorizing work to be performed which does not stipulate a fixed sum amount for the work shall be subject to audit by the University for a period of three years following conclusion of the contract.

Additional services that will be included are:

- Survey
- Geotechnical Report
- LEED Administration or management of other green building designations *(note: All University buildings will be designed to achieve LEED Silver certification, at minimum)*
- Commissioning *(note: Commissioning services must be by separate agent and is typically procured as a third party – inclusion of this scope of work by the A/E requires a D&F)*
- Archeology

7.2.4.5 Computer Services

Computer use is commonplace in the A/E profession for analyses, designs, drafting (plans), modeling (BIM), word processing (specifications) and estimating. As such, the computer is a "tool" used by the technical person to produce his/her product. These "tools" are purchased and depreciated or leased and are, therefore, considered a part of the A/E's office overhead expense included in its overhead. Only specialized computer services required by the Owner which must be acquired from an outside vendor are considered for payment in fee negotiations.

- Computerized analyses and designs for building systems, word processing, and data processing utilized by the A/E to provide Basic Services are normally considered by the Commonwealth to be a part of the project design effort and are not an additional service required by the University.

- Specialized outside computer analysis services required by the University for the project may be treated as an additional service. The compensation for such specialized computer analyses may be negotiated lump sum or a reimbursable expense. The allowable reimbursable expense method will normally be the actual charge made by an outside computer service organization plus 10% for A/E overhead and profit.

7.2.4.6 Special Consultants:

- Consultants engaged by the A/E to augment the A/E's staff to provide the required A/E services are considered by the University to be part of the A/E's staffing for the project.
- The University may require the use of a special consultant with a particular expertise related to some feature of the project. The A/E shall engage such a required consultant, subject to the University's approval, and incorporate such work in the services for the project. The compensation for such consultant shall be negotiated and set out in the MOU and included in the total A/E fee. The A/E will normally be allowed to mark up the University approved direct cost to the A/E of such special consultant by 10% for the A/E's overhead and profit.
- A Building Envelope Moisture Infiltration Analysis By independent consultant is required.

7.2.4.7 Reimbursable Expenses:

- The costs of long-distance phone calls, postage and similar expenses incurred by the A/E in the performance of the contract are considered by the University to be a part of the A/E's overhead expenses and are not normally reimbursable.
- The University shall reimburse the A/E for the reproduction of drawings, specifications, and other documents required for initial SD, PD, WD and Bid Set submittals in accordance with the policy in Chapter 8 at the actual costs plus 10% markup for handling. If re-submittals are required to correct deficiencies and/or complete the documents for submittal, the cost of reproduction for these submittals shall be borne by the A/E unless waived by the University.
- Where the A/E is engaged by the University to secure the reproduction of the Bid Documents, the A/E may be reimbursed for the actual direct cost of reproduction plus a markup of 10% to account for the A/E's overhead and handling cost in securing this service for the University. The cost of reproduction and sending addenda to address University review comments, clarify or supplement the Bid Document and/or correct errors or omissions are considered to be an expense of the A/E and shall not be included in the allowable reimbursement costs.
- The University shall reimburse the A/E for the actual costs of overnight or second day shipping of submittals and/or shop drawings when such method of shipping is directed by the University. The University should establish a budget amount for such reimbursements and include the same in the contract amount and as a line item in the MOU breakdown of the Fee.
- Compensation for travel and living expenses associated with the performance of the project scope of work will be included in the fee negotiated and set out in the MOU as a lump sum amount for travel and/or subsistence for each particular facet of the work where travel compensation is proposed by the A/E.
- The A/E may be reimbursed for travel and living expenses of technical personnel while traveling in the discharge of duties in connection with extra services authorized by the University. The travel rates and the per diem rates for lodging and subsistence shall not exceed the maximum amounts allowable for such expenses in the University's Travel Regulations. Records supporting such requests for reimbursement shall be subject to audit by the University.

- Each item / account planned for reimbursement should have a "budget" amount established and included in the contract with the condition that payment for these items will be subject to proper authorization and documentation. Further, the contract amount will be adjusted upward and downward by change order, as appropriate, based on the actual amounts approved for reimbursement.

7.2.4.8 Interior Design (Refer to Chapter 5, Section 5.2):

- The A/E's basic architectural services include sizing of spaces for the intended function, providing diagrammatic furniture layouts to the client to confirm functional layouts, and the selection and specification of building fixtures and finishes which are necessary to provide a complete and useable facility and/or which are included in the construction contract.
- "Interior design" as used in this Manual as an additional service pertains to the design, selection, arrangement and color coordination of furniture, furnishings and accessories. These items include but are not limited to desks, chairs, lamps, tables, screens, planters, artwork, draperies and similar furnishings which are procured separately from the construction contract.
- The "interior designer" shall verify the actual building surface finish colors applied by the Contractor and coordinate the selection of colors, fabrics and textures with the building colors. The "interior design" services also include the coordination with and preparation of procurement materials for the University Procurement Services for the furniture, furnishings and accessories.

## SECTION 7.3 A/E FEE PROPOSAL WORKSHEET (HECO-2.3)

### 7.3.1 Fee Proposals

The A/E shall prepare a detailed fee proposal using the HECO-2.3 (spreadsheet workbook format at OUA website with expanded cost data for breakdown of bidding and construction services and consultant services) as determined by the University PM. The hourly rates and the man-hours proposed should relate to the rates and times required for a qualified and competent person in that skill level to perform the work. Supplemental information shall be attached as necessary to support the proposed drawings, hourly rates and man-hour estimates.

### 7.3.2 Fee Proposal Instructions and Clarifications

Commonly used disciplines and classifications are indicated on the HECO-2.3 form. Additional classifications may be listed.

- Hourly rates should be the average for those persons in that skill level/discipline/classification. It is generally perceived that a person being compensated at a rate higher than the norm would be more efficient/productive/take less man-hours than a person being compensated at a rate at or below the norm.
- Indicate the drawing size and proposed / estimated number of sheets for each discipline. Attach a proposed or estimated list of drawings.
- Enter the estimated (proposed) number of hours for each discipline / skill level and multiply times the hourly rate to yield the estimate cost.

- CADD line is for drafting hours to produce a CADD basic plan for each level, wing or area to use as a base sheet for the various disciplines. The man-hours to produce the individual sheets for each discipline, whether manually or CADD, should be shown for the applicable discipline.
- Spec / Report Writer effort includes the mark up and edit of standard and / or master specification sections and writing any required special sections.
- Typist effort includes typing new specification sections and editing masters on the word processing program.
- Cost Estimate effort includes the takeoff of quantities and the application of prices to produce the Cost Estimate in the required format.
- Bid Assistance service includes the effort of the Professional to conduct the Pre- bid Conference, assist in opening Bids, and evaluate the bids / bidders for responsiveness and responsibility. It also includes the clerical level effort to receive document deposits, issue bid documents, receive/review returned bid documents and return deposits / issue refunds.
- Shop Drawing Review includes the professional/technical level effort to review shop drawings and other submittals to determine compliance and conformance with the requirements of the contract documents and the markup / approval of same. It also includes the clerical level effort to log submittals in and out, to copy markups from the reviewer's master review set to the copies being returned to the Contractor and others, and the distribution of same.
- Record Drawing Preparation includes the efforts of a Drafting level person to transfer data from change orders and the Contractor's "As Built" set of drawings and specs to the "Record Copy." This work also includes the Professional / Technical Level effort to compare the "As Built" set to the "Record Copy" for correctness.
- Construction Observation and Administration includes the Professional / Technical level effort to perform the on-site inspections / observations, job meetings, payment request evaluations and administrative functions required by the contract and the Clerical level effort to type minutes of meetings and similar functions.
- The Additional Services portion of the Worksheet is generally self-explanatory for the items listed. If those items are proposed to be provided by outside consultants / Subcontractors (excludes architectural, structural, mechanical, & electrical disciplines which are considered the A/E), the subcontract negotiated amount may be marked up 10% by the A/E for A/E overhead and profit. In-house additional services should be computed using the estimated man-hours and marked up hourly rates similar to the Basic Services Fee Proposal.

## SECTION 7.4 PROPORTIONING OF THE A/E FEE AND PAYMENTS:

### 7.4.1 Phases of Work

Payments to the Architect or Engineer for Design Phase and Construction Phase Services shall be based on the negotiated fee amount as proportionate for each phase of the project. The amount approved for progress payments shall be based on the Owner's judgment of the proportion of the work on that phase or facet which has been completed versus the work required / value of that phase or facet. The A/E fee shall be proportionated for each phase or facet of the work and shown in the A/E contract or in the MOU. The proportion of the fee should account for and show the negotiated amount for the following phases or facets of work:

- Pre-design services (Additional Services such as studies and similar activities.)
- Design Phase services, including:

  - Schematic Design (SD) phase
  - Preliminary Design (PD) phase / Design Development (DD)
  - Working Drawings (WD) Phase / Construction Documents (CD)
- Bidding phases services
- Construction phase services, including:
  - Shop drawing / submittal reviews and administration
  - Site visits, inspections and administration
- Project Closeout
  - Maintenance & Operations Manuals
  - Record Drawings, to include
    - Single line drawings
    - F-1 Report
    - CADD (including georeferenced plan drawings)
    - 3-D Model (BIM Files)
    - GIS files
  - Budgeted Reimbursable Amounts
- Additional Services (itemize)

7.4.1.1 – In addition to the proportional amount due for Design Phase or Construction Phase Services, the A/E shall be entitled to payment for authorized additional services performed and for authorized reimbursable costs incurred during the period.

7.4.1.2 – Where the Agency contracts with the A/E for less than or more than the basic services indicated for the various phases, the proportioning of the fee may be adjusted accordingly and shown in the MOU.

7.4.1.3 – Where a detailed breakdown of the A/E fee is not provided in the HECO-2.3 Fee Proposal Worksheet used for negotiation, the total negotiated A/E fee (excluding additional services and reimbursables) will be proportioned as follows:

| | | |
|---|---|---|
| Design Phase Services | = | 75% of Total Fee |
| Construction Phase Services (including Bidding) | = | 25% of Total Fee |

7.4.1.4 – Proportioning of A/E Fee: In consideration of the services required by the Manual, the proportioning of the A/E fee for progress payments during the various parts each phase will be as follows:

DESIGN PHASE SERVICES

- SD Phase: Value of the SD Phase is 20% of the Design Phase Fee. This phase is complete when outstanding issues are resolved, the SD documents are approved as evidenced by completion of the conditions shown on the Form HECO-4, and the A/E is authorized to prepare PD Plans and Specifications.
- PD Plans and Specifications (Design Development Phase): Value of the PD phase is 30% of the Design Phase Fee. However, a proportional part may be billed monthly during the development of the documents. This phase is complete when outstanding issues are resolved, the PD is approved as evidenced by completion of the conditions shown on the Form HECO-5, and the A/E is authorized to prepare WD.

- WD Plans and Specifications (Construction Documents Phase): Value of the WD phase is 50% of the Design Phase Fee. However, a proportional part may be billed monthly during the development of these documents. This phase is complete when outstanding issues are resolved, all changes have been made to the documents so that they are ready for bidding, and the WD and specifications are approved as evidenced by completion of the conditions shown on Form HECO-6.
- The University may withhold as retainage an amount not exceeding 5% of the dollar value of progress payments for the Design Phase Fee until the WD, including all corrections required to resolve review comments, are finally completed and acceptable. Retainage may be withheld for errors and omissions until project completion.

CONSTRUCTION PHASE SERVICES

- Bidding Phase: Value of this phase is 5% (maximum) of the fee amount for Construction Phase Services and is due upon award of the construction contract or rejection of bids (unless the A/E is obligated to redesign at no additional fee). Reimbursement for reproduction expenses for bidding documents would also be payable.
- A/E Construction Period Services: Value of this phase is 90% of the Construction Phase Services fee amount. This 90% is usually prorated over the total construction period including the 30 days allowed for punch list corrections and billed monthly during the construction phase as construction progresses.
- Project Closeout Phase: The remaining 5% of the fee (or sum as stipulated in the contract or MOU) for Construction Phase Services is allocated to closeout and Record Drawing preparation. It shall be payable when the A/E's services for the project are fully completed and "Record" drawings and specifications are delivered to the University, as set forth in Chapter 10.

7.4.1.5 Payments to the A/E - Payments to the A/E shall conform to the requirements in the A/E Terms and Conditions.

7.4.1.6 Payments by the A/E - Payments by the A/E to its consultants, Subcontractors and suppliers shall conform to the requirements in the A/E Terms and Conditions.

## SECTION 7.5 DETERMINING CHARGES FOR CHANGES IN THE SCOPE OF WORK:

### 7.5.1 Changes to the Scope of Services

The University shall notify the A/E in writing when a change in scope or "extra services" are required. The University and A/E shall develop a defined scope for the services and the A/E shall prepare a fee proposal for such work. A lump sum fee will normally be negotiated and agreed on and a written change order issued before the extra work is performed (i.e., changes in the plans or specifications, models, studies, etc.). In such cases, the fee negotiations will be based on the defined scope change or work to be done, the estimated technical personnel time to accomplish the work times the rates listed in the MOU, and any reimbursable expenses authorized.

- When the scope cannot be defined to allow a reasonable estimate of time required, the University may authorize the additional work at the hourly rates or unit costs listed in the MOU. In such cases, the University shall establish maximum fee limits, as applicable. Work beyond the maximum fee limit shall require justification and the University's approval prior to proceeding with further additional work.
- Many of the revisions or requirements included in a Revision to the Manual are made to reflect changes in the Code of Virginia, University Procurement Rules or other requirements which must have immediate compliance. Therefore, a revision to the Manual shall be effective on the date stipulated and shall apply to any and all projects for which an approved HECO-6 has not been issued as of the date printed on the revision.
- Prior to approval of the PD and issuance of the HECO-5, Revisions to the Manual can generally be incorporated in the A/E's work with little or no additional effort. If the A/E claims that incorporating the Revision into its services requires extra work, the A/E must notify the University of this claim and submit documentation to the University to clearly support such claim within 60 days of the distribution date of the Revision.
- If, after the HECO-5 is issued and before the HECO-6 is issued, the A/E determines that including changes resulting from the revision will require additional work on his part, the A/E shall, within 60 days of the distribution date of the revision, provide the University an itemized list of the additional work required by the revision. The University shall then provide direction to the A/E and, if necessary, issue a change order for the work.
- A/E's shall assure that the documents submitted for review contain the latest design requirements, the latest editions of forms, and the latest editions of the standard Instructions to Bidders and the General Conditions.

### 7.5.2 Hourly Rates for Changes in Work

The University and the A/E shall at the time of fee negotiations establish and record in the MOU the nominal hourly rates for all technical personnel categories, disciplines and/or skill levels to be used to calculate A/E fees for extra services or changes in the work. The hourly rates listed shall include all markups and adjustments for taxes, insurances, benefits, overhead, profit, etc. Technical activities by principals, such as PM, Architect, or Engineer, are categorized for payment at the rates indicated for the technical activity or function being performed.

### 7.5.3 Overtime for Changes in Work

No overtime requiring rates higher than regular rates shall be considered for payment for additional services. Consideration of the time for approved personnel when traveling in connection with the project (when such travel is required by the contract and authorized in writing by the University) shall be construed to be time engaged on the project up to the completion of an 8-hour workday.

### 7.5.4 Invoices for Changes in Work

Invoices or statements of expenses incurred by the A/E for reimbursables and for work authorized to be performed on an hourly rate or unit cost basis shall be rendered to the University monthly. Invoices shall be supported by a certified accounting of the time expended by date, by person, and the skill level of the work being done. (e.g. Drafting would be paid for at the "drafting" rate regardless of who does the work - principal, draftsman or trainee.) Statements shall show the cost during that period and indicate the status of the authorized work. The reporting of these costs shall be in such form and detail as required by the University. The

A/E's disbursements and job records shall be subject to audit by the University for work done on a reimbursable and/or hourly or unit cost basis. The University shall notify the A/E of any defect or deficiency in the invoice including supporting data within ten (10) days after receipt of same, and payment of approved invoices, or portions thereof, shall be made in accordance with Virginia Prompt Payment Statute.

### 7.5.5 Audit of A/E's Records

Any change order authorizing work to be performed which does not stipulate a fixed sum amount for the work shall be subject to audit by the University for a period of three years following conclusion of the contract. Also, any authorization for payment of reimbursable expenses shall be subject to audit by the University for a period of three years following the conclusion of the contract.

## SECTION 7.6 APPROVAL OF CHANGES TO A/E CONTRACT

### 7.6.1 Documentation of Changes

Changes in the Scope of Work and/or Cost of the A/E contract (HECO-3 and HECO- 3.2) will be documented through the execution of a HECO-11a/e, A/E contract change order. All A/E contract change orders must have the approval of the University Architect prior to commencing work associated with the change. Any A/E contract change order which increases the original contract amount by more than 25 percent or $50,000, whichever is greater, must have the prior approval of EVPFA or their designee.

### 7.6.2 Urgency and Notices to Proceed

If urgent conditions require the A/E to begin work associated with a change order prior to issuance of the formal change order, a Notice to Proceed shall be issued. Use of the Notice to Proceed is appropriate for reasons of safety, unforeseen condition remediation which will halt progress, prevention of loss, prevention of significant rework, or similar situations. Use the Notice to Proceed/Not to Exceed Change Request form. The Notice to Proceed will be approved by the University Architect and shall be formalized as a change order within 30 days.

## SECTION 7.7 CONTRACTUAL DISPUTES

(University Procurement Rules)

### 7.7.1 Terms and Conditions of the A/E Contract

See A/E Terms and Conditions, Section 32, for the procedures regarding contractual disputes.

### 7.7.2 Alternative Dispute Resolution

Pursuant to the Management Agreement Exhibit G, attachment 1, paragraph 56 and Code of Virginia § 2.2-4366, Alternative Dispute Resolution, the University may enter into an agreement with the A/E to submit disputes arising from the performance of a contract to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures entered into by the University shall be non-binding and subject to Code of Virginia § 2.2-514 as applicable. In the interest of successful completion of the project, disagreements and disputes should be resolved as soon as possible. The University and the A/E may choose to resolve their claims against one another by "Informal Alternative Dispute Resolution" procedure in lieu of instituting legal action. If the University and the Contractor both choose to avail themselves of this option, the following stipulations shall apply:

7.7.2.1 - The University and the A/E must both agree to pursue this process and each submit their "Application for Informal Alternative Dispute Resolution."

7.7.2.2 - The University Architect will review the applications and advise both parties of dates available for a hearing or deny the application for a hearing.

7.7.2.3 - The University Architect will assemble a Dispute Hearing Panel comprised of persons with expertise in the topics being disputed.

7.7.2.4 - Each party will be represented by its personnel with knowledge of the facts related to the dispute. Neither party will be allowed legal counsel at the hearing.

7.7.2.5 - The panel will review the application and facts presented by each party prior to the hearing.

7.7.2.6 - Each party will be given the opportunity to present its position and factual data on each item in dispute. Information shall be concise.

7.7.2.7 - The hearing panel will ask questions as appropriate and facilitate discussions toward an agreeable solution.

7.7.2.8 - If the parties do not agree on a solution during the hearing, the hearing panel through the CBO will render an opinion on the proper resolution of the dispute.

7.7.2.9 - It is intended that the hearing be efficient and last no more than one day.

7.7.2.10 - The cost of this service will be based on the time charged to the dispute resolution multiplied by the hourly rates for the panel. The cost will be divided and charged equally to the University and to the A/E, unless both parties agree to other arrangements and notify the CBO prior to the hearing.

7.7.2.11 - The "Application for Informal Alternative Dispute Resolution Procedure" shall contain the following information:

- A/E name
- University name
- Project name and Project Code Number
- List of items in dispute (The A/E and the University shall each submit a list of the items in dispute with its summary of the pertinent facts in the dispute.)
- Value of the items or work disputed (in dollars): $
- Documents and narrative presenting facts as the applicant sees for each disputed item
- Proposed solution or relief sought
- Signature of the Director Design & Construction for the University or the contract signature authority for the A/E