

**HECO-7DB**

**General Conditions oF THE DESIGN-BUILD Contract**

**For Capital Outlay Projects**

1. This addendum, HECO-7DB, modifies the Commonwealth of Virginia’s General Conditions of the Design-Build Contract DGS-30-056 Form CO-7DB (Revised 04/15), ([attached](https://dgs.virginia.gov/globalassets/business-units/bcom/documents/forms/dgs-30-056_04-15_co-7db.pdf)) for use on all Capital Outlay Projects.

2. For all forms referenced in the attachment by ‘‘CO-”, replace ‘‘CO-” with ‘‘HECO-,’’ except the CO-9a and CO-13.

3. In §1, add definition for the term “Rules,” as follows:

**Rules**: The “Rules Governing Procurement of Goods, Services, Insurance, and Construction” (the “Rules”) attached as Attachment 1 to that certain “Policy Governing the Procurement of Goods, Services, Insurance, and Construction and the Disposition of Surplus Materials” (the “Policy”) adopted by the Board of Visitors of the University of Virginia, included in Exhibit F of  Chapter 3 of the  Management Agreement dated November 15, 2005, by and between the Commonwealth of Virginia and The Rector and Visitors of the University of Virginia (as enacted by Chapters 933 and 943 of the 2006 Acts of Assembly, as amended by Chapters 675 and 685 of the 2009 Acts of Assembly and Chapters 116 and 161 of the 2011 Acts of Assembly) (the “Management Agreement”).

4. In §2 - Contract Documents:

Delete Paragraph (a) and in its place add the following:

“(a). The Contract Between University and Design-Build Contractor (HECO-9DB), the Worker’s Compensation Certificate of Coverage (CO-9a), the Standard Performance Bond (HECO-10), the Standard Labor and Material Payment Bond (HECO-10.1), the Schedule of Values and Certificate for Payment (e-Builder H-12 process), the Affidavit of Payments of Claims (CO-13), the Certificate of Partial or Substantial Completion by Contractor (HECO-13.2a), and the Certificate of Completion by Contractor (HECO-13.2) issued by the University of Virginia in its Higher Education Capital Outlay Manual (HECOM) are forms incorporated in these Design-Build General Conditions by reference and are made a part hereof to the same extent as though fully set forth herein. They must be used by the Contractor for their respective purpose.”

Delete Paragraph (d) and in its place add the following:

“(d) The University of Virginia Facility Design Guidelines, latest edition, and all subsequent updates thereto, is included by reference herein and shall be used by the Contractor’s A/E as guidelines for the design.”

Delete Paragraph (e) and in its place add the following:

“(e) Chapter 8, Project Design Standards and Requirements of the Higher Education Capital Outlay Manual current edition is included by reference herein and shall be used by the Contractor’s A/E as the referenced standards for design.”

5. In §3(e), delete the words “Building Official for State-owned Buildings” and insert in their place the words “Building Official for the University.”

6. Delete §4(a) and insert the following in its place:

(a) §10 of the Rules shall be applicable. It provides as follows:

1.  During the performance of this contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

c. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for meeting the requirements of this section.

2. The Contractor will include the provisions of the foregoing paragraphs a, b, and c in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each Subcontractor or Vendor.

7. Delete §5(a) and insert the following in its place: (a) §11 of the Rules shall be applicable. It provides as follows:

“During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor’s employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each Subcontractor or vendor.

For the purposes of this section, ‘drug-free workplace’ means a site for the performance of work done in connection with a specific contract awarded to a Contractor in accordance with these Rules, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.”

8. Delete §8(a) and insert the following in its place:

For contracts with a value exceeding one million dollars ($1,000,000), the Contractor shall deliver to the Owner or its designated representative, a University of Virginia Standard Performance Bond (HECO-10) and Standard Labor and Material Payment Bond (Form HECO-10.1), each fully executed by the Contractor and one or more surety companies legally licensed to do business in Virginia and each in an amount equal to one hundred percent (100%) of the accepted proposal. If more than one Surety executes a bond, each shall be jointly and severally liable to the Owner for the entire amount of the bond. Sureties shall be selected by the Contractor, subject to approval by the Owner. No payment on the Contract shall be due and payable to the Contractor until the bonds have been approved by the Owner and the Office of the Attorney General of Virginia. To facilitate review of the bonds by the Office of the Attorney General, the power of attorney from the surety company to its agent who executes the bond shall be attached to the bond.

9. In §8(b), delete the references to “§2.2-4337.A.2 of the Code of Virginia” and insert in their place references to “§29(A)(2) of the Rules.”

10. In §8(c), delete the reference to “§2.2-4338 of the Code of Virginia” and insert in its place a reference to “§30 of the Rules.”

11. In §8(d), delete the reference to “five hundred thousand dollars ($500,000)” and insert in its place a reference to “one million dollars ($1,000,000).

12. In §11(b), delete the reference to “§2.2-4332 of the Code of Virginia” and insert in its place a reference to “§25 of the Rules.”

13. Delete §11(c) and insert the following in its place:

(c) During the performance of the Work under this Contract, the Contractor shall maintain Commercial General Liability insurance to include Premises/ Operations Liability, Products and Completed Operations Coverage, Independent Contractor's Liability, Owner's and Contractor's Protective Liability, Contractual, and Personal Injury Liability, which shall insure the Contractor against claims of personal injury, including death, as well as against claims for property damage, which may arise from operations under this Contract, whether such operations be by the Contractor or by any Subcontractor, or by anyone directly or indirectly employed by either of them. The amounts of general liability insurance shall be not less than $1,000,000 per occurrence and $2,000,000 aggregate combined limit. Additionally, the Contractor shall maintain Umbrella/ Excess Liability insurance in an amount not less than $5,000,000. The Commonwealth of Virginia, The Rector and Visitors of the University of Virginia, and their respective officers, employees and agents, shall be named as additional insureds with respect to the Work being procured.

14. Delete §11(f) and insert the following in its place:

(f) The Asbestos Contractor or Subcontractor, as the case may be, shall provide occurrence-based liability insurance with asbestos coverage in an amount not less than $1,000,000 and shall name the following as additional insureds: The Commonwealth of Virginia, The Rector and Visitors of the University of Virginia, their respective officers, employees and agents; the Architect/Engineer (if not the Asbestos Project Designer); and the Contractor (where the asbestos work is being performed by the Asbestos Subcontractor). In those cases where only claims-made liability insurance is available, the policy will remain in force throughout the time of the asbestos work and for a minimum of two years beyond the completion of the work without coverage interruption, and if coverage is discontinued within that two year period, the extended reporting period endorsement must be added to the policy to cover the two year requirement beyond work completion.

15. In §12 delete the entire existing section and section title and insert the following in its place:

**“12. INSURANCE FOR OWNER, UNIVERSITY, AND CONTRACTOR**

1. The University maintains property insurance on existing buildings (including fire, vandalism, and extended coverage).
2. For all projects the Contractor, at its cost, shall obtain and maintain in the names of the Owner, University, and Contractor, **Builders’ Risk Insurance for the total Project in an amount equal to one hundred percent (100%) of the construction Contract Price.**
3. Builders’ Risk Insurance shall be adjusted as required if the Contract Price changes.
4. Insurance agreements shall include a provision that the University may take occupancy of portions of the Work as it is completed, and prior to Substantial Completion of the Work, and that the Builders’ Risk Insurance provided by the Contractor shall continue until the University accepts the entire, completed Work, unless alternative insurance coverage has been approved by the University’s Office of Risk Management (i.e. University property coverage of completed and occupied areas).
5. The amount of any deductible must be acceptable to the University. The Contractor will be liable for any deductible whenever a claim arises.
6. The loss, if any, is to be made adjustable with and payable to the Owner and University, in accordance with its interests, as they may appear.
7. On any Builders’ Risk Insurance policy covering construction projects for the University of Virginia, the following must be added as an insured on to that policy: “The Rector and Visitors of the University of Virginia”.
8. The Owner and University and their officers, employees, and its agents, shall be named as additional insured in any liability policy of insurance issued.
9. The Contractor shall file written evidence of the insurance with the University no later than thirty (30) days following the award of the Contract. In the event of cancellation of this insurance, not less than thirty (30) days prior written notice must be sent to the University. A copy of the policy or certificate of insurance shall be given to the University upon demand.
10. The value of the Builders’ Risk Insurance shall **include** the costs of excavations, backfills, foundations, underground utilities, and site work.
11. The Contractor and the individual Subcontractors are responsible for providing any desired coverage for their buildings, equipment, materials, tools, or supplies that are on-site.
12. Any insurance provided through the University on buildings, construction, additions, or renovations will not extend to the Contractor nor the individual Subcontractors buildings, equipment, materials, tools, or supplies unless these items are to become property of the Owner upon completion of the Projectand the Owner has assumed responsibility for such items at the time of the loss.
13. **The Contractor’s Builders’ Risk Insurance policy covers the Subcontractors and they do not need to provide Builders’ Risk Insurance.**

16. In §13, delete the last sentence.

17. In §15(c), delete paragraph (c).

18. In §15(e), delete paragraph (e) and in its place add the following:

“(e) Chapter 8, Project Design and Standards and Requirements of the Higher Education Capital Outlay Manual current edition is included by reference herein and shall be used by the Contractor’s A/E as the referenced standards for design.”

19. In §23(a), replace “CPSM” with “HECOM”.

20. In §23, add:

“(e) In all Design-Build Contracts the printed Bridging Documents on file with the University govern in the event of any conflict between the printed Documents and any electronic version.  The University makes no warranties or representations as to the accuracy or completeness of any electronic file supplied by the University to the parties to the Design-Build Contract, and if used by any party to the Design-Build Contract, the electronic file is used by that party at its own risk.”

21. In §24(c), replace “CPSM” with “HECOM”.

22. In §36(d), delete the reference to “§2.2-4333 of the Code of Virginia” and insert in its place a reference to “§26 of the Rules.”

23. Delete §36(i) and insert the following in its place:

(i) **Interest.**

(1) Interest shall accrue, at the rate determined pursuant to subsection 2 below, on all amounts owed by the Owner to the Contractor that remain unpaid after seven (7) days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.

(2) The rate of interest charged the Owner pursuant to subsection 1 shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to §58.1-1812 of the Code of Virginia.

(3) Notwithstanding subsection 1, no interest penalty shall be charged when payment is delayed because of disagreement between the Owner and the Contractor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is the subject of the disagreement and shall apply only for the duration of the disagreement.

(4) This section shall not apply to retainage during the period of time prior to the date the final payment is due.

(5) Notwithstanding subsection 1, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller’s Debt Setoff Program, as authorized by the Virginia Debt Collection Act (§2.2-4800 et seq. of the Code of Virginia), commencing with the date the payment is withheld. If, because of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth of Virginia, then interest shall accrue at the rate determined pursuant to subsection 2 on amounts withheld that remain unpaid after seven days following the payment date.

(6) These same provisions relating to payment of interest to the Contractor shall apply also to the computation and accrual of interest on any amounts due from the Contractor to the Owner for deductive change orders and to amounts due on any claims by the Owner.

(7) The date of mailing of any payment by the U.S. Mail is deemed to be the date of payment to the addressee.

24. In §37, delete the references to §2.2-4354, Code of Virginia” and insert in their place references to “§45 of the Rules.”

25. In §38(a), delete the last sentence in the first paragraph and insert the following in its place:

The Contractor agrees and understands that the authority of the Owner’s designee is limited by §8 of the Rules and any applicable statute.

26. In §38(a), add a new paragraph (5) as follows:

(5) **Expedited Critical Change**: Initially by a mutually agreed price-not-to-exceed change to the Contract Price and/or time allowed for completion of the Work authorized based on a Rough Order of Magnitude (ROM) price developed by the Project Team if in their judgment there are compelling reasons for the Work to move forward. The CM/ Contractor proceeds with an expedited Construction Change Directive (CCD) and submits a Fixed Price Change Order proposal as soon as the Project Team finalizes the Scope of Work and validates costs. The Team negotiates any adjustments in good faith.

1. In §38(b), delete the last sentence in the second paragraph and insert the following in its place:

Changes to the Contract time and/or Price shall be effective when signed by both parties.

1. In §43(f), delete the reference to “§2.2-4335 of the Code of Virginia” and insert in its place a reference to “§27 of the Rules.”
2. In §47, delete the respective references to §§2.2-4363, 2.2-4364, 2.2-4365 and 2.2-4366 of the Code of Virginia and insert in their place references to §§53, 54, 55 and 56 of the Rules, respectively.