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**HECO-7**

**General Conditions of the Construction Contract For Capital Outlay Projects**

1. This addendum, HECO-7, modifies the Commonwealth of Virginia’s General Conditions of the Construction Contract DGS-30-054 Form CO-7 (04/21), ([attached](https://dgs.virginia.gov/globalassets/business-units/bcom/documents/forms/dgs-30-054_04-15_co-7.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-7, CO-9a, CO-11, CO-12, CO-13, CO-13.1, and CO-13.2.
3. For all references in the attachment to “Contractor”, replace “Contractor” with “CM/ Contractor”.
4. For all references in the attachment to the “CO-11” and “Change Order”, note that the University’s e-Builder H11 process has superseded these process components.
5. For all references in the attachment to the “CO-12”, “Schedule of Values”, and/or “Certificate for Payment”, note that the University’s e-Builder H12 process has superseded these process components.
6. For all references in the attachment to the “CO-13.1” and “Certificate of Completion by the A/E”, note that the University’s e-Builder process has superseded these process components, with requirements now part of the e-Builder process page when the submitter checks final invoice.
7. For all references in the attachment to the “CO-13.2” and “Certificate of Completion by the Contractor”, note that the University’s e-Builder process has superseded these process components, with requirements now part of the e-Builder process page when the submitter checks final invoice.
8. In §1, replace the definition for the term “Change Order” as follows:

**Change Order**: The University e-Builder H11 process (superseded the CO-11 and HECO-11 Contract Change Order and HECO-11a – Change Order Justification process) initiated on or after the effective date of the Contract that is agreed to by the CM/ Contractor and approved by the Owner, and that authorizes an addition, deletion, or revision in the Work, including any adjustment in the Contract Price and/or the Contract Completion Date. The term Change Order shall also include initiating and confirming change orders issued pursuant to Section 38(a)(3). A Change Order, once signed by all parties, is incorporated into and becomes a part of the Contract.

1. In §1, add a 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”).

1. In §1, replace the definition for the term “Schedule of Values” as follows:

**Schedule of Values**: That portion of the University’s e-Builder H12 process (superseded the Schedule of Values and Certificate for Payment process) prepared by the CM/ Contractor and acceptable to the Owner that indicates the portion of the Contract Price to be paid for each trade or major component of the Work.

1. In §1, replace the definition for the term “Small Business Procurement Plan,” as follows:

**Small Business Procurement Plan**: The proposed type and percentage of small business participation in the Price Proposal/ Total Base Bid Amount submitted by the CM/ Contractor as part of its Proposal/ Bid.

1. In §3(f), delete the words “Building Official for State-owned buildings and real property” and insert in their place the words “Building Official for the University.”
2. Delete §3(m) referencing *Code of Virginia* § 2.2-4321.3 and insert the following in its place:

The Contractor shall fully comply with all applicable laws of the Commonwealth of Virginia including, but not necessarily limited to, §§ 2.2-4321, 58.1-3.4,  58.1-1821, and 58.1-1825 and Chapter 19 of Title 58.1, consisting of §§ 58.1-1900 through 58.1-1905, of the Code of Virginia, relating to the proper classification and misclassification of employees as Independent Contractors. The Department of Taxation is tasked by law to investigate and enforce any compliance issues, and the Contractor’s failure to comply with applicable law may, among other things result in civil penalties and/or debarment. If the Contractor desires to utilize properly classified Independent Contractors on the Project, it must first submit a request in a timely manner (with such additional information as required by the University) and obtain prior written authorization from University’s Project Manager. The Contractor shall, to the satisfaction of the University, cure any failure to comply with any requirements contemplated in this paragraph within the time periods set forth for curing defaults under the Contract. Contractor’s efforts to cure such failure to the University’s satisfaction shall not excuse any delay in the performance of Work and shall not be the basis for any Change Order or any other increased compensation for the Contractor.

1. Delete §4(b) and insert the following in its place:

(b) §10 of the Rules shall be applicable to the Work of the Contract. It provides as follows:

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

a. The CM/ 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 CM/ Contractor. The CM/ 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 CM/ Contractor, in all solicitations or advertisements for employees placed by or on behalf of the CM/ Contractor, will state that such CM/ 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 CM/ 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.

1. In §5(f) delete the words “this chapter” and insert in their place the words “these General Conditions”.
2. In §6(d) delete the word “bid” and insert in its place the words “bid/ proposal.”
3. Delete §8(a) and insert the following in its place:

For contracts with a value exceeding One Million Dollars ($1,000,000), the CM/ 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 (HECO-10.1), each fully executed by the CM/ 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 Contract Price. 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 CM/ Contractor, subject to approval by the Owner. No payment on the Contract shall be due and payable to the CM/ 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.

1. 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”.
2. In §8(c), delete the reference to “Code of Virginia § 2.2-4338” and insert in its place a reference to “§30 of the Rules”.
3. In §9(a), add “or Request for Proposal” at the end of the paragraph.
4. Delete §11(b)(2) and insert the following in its place:

Commercial General Liability insurance including coverage for, Premises/ Operations, Product and Completed Operations, Independent Contractor's Liability, Contractual, and Personal Injury Liability, which shall insure the CM/ Contractor against claims of bodily 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 CM/ Contractor or by any Subcontractor, or by anyone directly or indirectly employed by either of them. The policy shall not exclude or limit the amount of coverage for the Work of the Project or for explosion, collapse, underground operations, mold, or exterior insulation and finish system (“EIFS”). 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 (additional coverage may be required for specific projects). 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 on the Commercial General Liability policy and the Umbrella/ Excess Liability policy. The City of Charlottesville Virginia shall also be named as additional insured with respect to Work being procured on the Commercial General Liability policy and the Umbrella/ Excess liability policy for work performed on the premises of the City of Charlottesville.

An Owners’ and Contractor’s Protective Liability Coverage Policy is required if the additional insured requirement cannot be met and/or the Independent Contractor’s Liability coverage is excluded on the Commercial General Liability and/or the Umbrella/ Excess Liability policy.

On projects over $10,000,000 in construction, the CM/ Contractor shall evidence and maintain Contractor’s Professional Liability limits of not less than $5,000,000 per occurrence and $5,000,000 aggregate. No additional insured requirements apply.

21. Delete §11(b)(4) and insert the following in its place:

Contractor or Asbestos Subcontractor shall provide occurrence-based liability insurance with asbestos coverages in an amount not less than $1,000,000. The following shall be named as additional insureds on this policy: The Commonwealth of Virginia, The Rector and Visitors of the University of Virginia, their respective officers, employees and agents; the A/E (if not the Asbestos Project Designer); and the CM/ 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.

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

Prior to Notice to Proceed, the Contractor shall submit, on the form provided by the Owner, a Certificate of Coverage verifying Workers’ Compensation insurance is in place. If requested, the CM/ Contractor shall likewise obtain a Certificate of Coverage for Workers’ Compensation insurance from each Subcontractor and shall provide a copy to the Owner prior to the Subcontractor beginning Work on the Project.

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

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

1. The University maintains property insurance on existing buildings (including fire, vandalism, and extended coverage).
2. For all projects the CM/ Contractor, at its cost, shall obtain and maintain in the names of the Owner, University, and CM/ 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. Builders’ Risk Insurance shall be provided on an “all risk” or equivalent policy form and shall include, without limitation, insurance against all perils. The insurance shall cover the costs of debris removal, temporary buildings, legal requirements, and compensation for A/E services and CM/ Contractor services required following an insured loss. The insurance shall cover portions of the Work stored off-Site, Work in transit, and all materials, supplies, equipment, machinery, and fixtures that are or will be part of the Project.
5. 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 CM/ 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).
6. The amount of any deductible must be acceptable to the University. The CM/ Contractor will be liable for any deductible whenever a claim arises.
7. 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, and then to any other persons insured thereunder.
8. 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”.
9. Written evidence of this insurance and a copy of the policy or certificate of insurance shall be provided to the University no later than thirty (30) Days following the award of the construction phase Contract. The policy shall not be canceled, dropped, replaced, or materially changed without at least thirty (30) Days prior written Notice to and consent of the University.
10. The value of the Builders’ Risk Insurance shall **include** the costs of excavations, backfills, foundations, underground utilities, and site work.
11. The CM/ 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 CM/ 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. **Subcontractors are covered under the CM/ Contractor’s Builders’ Risk Insurance policy and need not provide Builders’ Risk Insurance.”**
14. In §13, delete the last sentence.
15. Delete §16(e)(9) and insert the following in its place:

(9) Assist in the review and verification of the University’s e-Builder H12 process submitted by the Contractor each month.

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

(i) **Interest.**

(1) Interest shall accrue, at the rate determined pursuant to subsection 2, on all amounts owed by the Owner to the CM/ 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 Code of Virginia §58.1-1812.

(3) Notwithstanding subsection 1, no interest penalty shall be charged when payment is delayed because of disagreement between the Owner and the CM/ 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 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 (Code of Virginia §2.2-4800 et seq.), 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 (7) Days following the payment date.

(6) These same provisions relating to payment of interest to the CM/ Contractor shall apply also to the computation and accrual of interest on any amounts due from the CM/ 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.

1. In §37, delete the references to Code of Virginia § 2.2-4354 and insert in their place references to “§45 of the Rules”.
2. In §38(a), delete the last sentence in the first paragraph and insert the following in its place:

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

1. 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(e), delete the reference to “Code of Virginia, § 2.2-4335” and insert in its place a reference to “§27 of the Rules”.
2. In §47, delete the respective references to Code of Virginia, §§ 2.2-4363, 2.2-4364, 2.2-4365 and 2.2-4366 and insert in their place references to §§ 53, 54, 55, and 56 of the Rules, respectively.
3. In §47(d), delete the last sentence of the paragraph.
4. In §51(2), delete “through DGS’ eVA system” in the first paragraph.