

## 106 - Responsibilities of Design Professionals

**106.1 Qualifications:** The Architect-Engineer and his Sub-consultants shall be qualified design professionals licensed to practice Architecture, Landscape Architecture and Engineering in the Commonwealth of Kentucky, per the Kentucky Revised Statutes. <http://lrc.ky.gov/KRS/322-00/360.PDF>. The Architect-Engineer shall ensure that all aspects of the Project are designed in accordance to the Owner's Project Requirements and are in compliance with applicable codes and regulations. Responsibility for all aspects of the project design and construction documents shall belong to the Architect-Engineer. Services provided by the Architect-Engineer shall meet established and accepted professional standards for design services.

**106.2 Direction:** The Architect-Engineer shall accept directions only from the Division of Engineering and Contract Administration Project Manager. Requests or desires of the Using Agency made directly to the Architect-Engineer will be immediately referred to the Project Manager. Any changes to the project scope must be authorized in writing by the Project Manager.

**106.3 Architect-Engineer Representative:** The Architect-Engineer shall assign a person within the firm who has the responsibility of being present at all meetings and to supervise all significant elements of the work in progress, and shall be cognizant of and assure that all documents on the project have been coordinated. The Architect-Engineer will be a member of the Commissioning Team and participate in all applicable Commissioning activities. This individual shall be a person who has verifiable engineering or architectural design experience and is a Kentucky-registered professional architect, engineer or landscape architect. Each Sub-Consultant within the Architect-Engineer's design team shall assign a lead person for that discipline. This individual shall be a person who has verifiable design experience in the discipline and is a Kentucky-registered professional in that discipline. The Architect-Engineer shall notify the Project Manager of the names of these individuals and the names of alternate persons assigned to each position.

**106.4 Design Quality Control:** The Architect-Engineer shall effectively maintain a quality-control program that will assure that all services, designs, drawings, and specifications required by the contract are performed and provided in a manner that meets professional architectural and engineering quality standards. Errors and deficiencies in the design documents shall be identified, documented, and corrected prior to submitting them to the Project Manager. The Architect-Engineer shall utilize reasonable care in the pre-submission review of the design documents.

The design documents will be systematically reviewed by the Commissioning Authority for compliance with the Owner's Project Requirements. Identified deviations in the design documents will be documented. The Commissioning Team will work together to resolve any design issues uncovered by the Commissioning Process. The Architect-Engineer shall participate in the Commissioning Process in order to assure design quality.

The Architect-Engineer shall furnish copies of all instructions, manuals, and all design requirements to all Sub-consultants to insure a complete coordinated design. The Architect-Engineer and all Sub-consultants shall comply with the design requirements. The Architect-Engineer's responsibility shall be continuous from the inception of design, through construction and warranty phases. The Architect-Engineer shall furnish all services, materials, supplies, equipment, investigations, studies, and travel required in connection with this project as defined by the terms of agreement in their Contract for professional design services.

**106.5 High Performance Building Standards:** The following is 200 KAR 6:070, eff. 7-29-2009.

**200 KAR 6:070. High performance building standards.**

*RELATES TO: KRS 56.770, 56.775, 56.777, 56.872, 164A.580*

*STATUTORY AUTHORITY: KRS 56.777*

*NECESSITY, FUNCTION, AND CONFORMITY: KRS 56.777(7) requires that the Finance and Administration Cabinet promulgate administrative regulations to establish high performance building standards for state building projects, considering recommendations from the High-Performance Buildings Advisory Committee established by KRS 56.777(7). This administrative regulation establishes the criteria for the high performance building standards and the benchmarks by which the standards will be measured in consideration of the Committee's recommendations.*

*Section 1. Definitions. (1) "Committee" means the High-Performance Buildings Advisory Committee established by KRS 56.777.*

*(2) "ENERGY STAR" is defined by KRS 56.770(17).*

*(3) "High performance building" is defined by KRS 56.770(7).*

*(4) "LEED" is defined by KRS 56.770(19).*

*(5) "Major renovation building project" means a renovation project for which the budget exceeds half of the replacement value of the building being renovated.*

*(6) "Replacement value" means the insured value.*

*Section 2. High Performance Building Standards. The standards established in this section shall apply to high performance buildings, in accordance with KRS 56.777.*

*(1) All new construction and major renovation building projects for the amount of \$25 million or more in budget shall be designed, built, and submitted for certification to achieve a rating of Silver Level or higher using the LEED 2009 - New Construction Project Scorecard.*

*(2) All new construction and major renovation building projects between \$5 million and \$25 million in budget shall be designed, built, and submitted for certification to achieve a rating of Certified level or higher using the LEED 2009 - New Construction Project Scorecard.*

*(3) All new construction and major renovation building projects greater than \$5 million in budget shall additionally achieve a minimum of 7 points for new and for existing buildings under the LEED Energy and Atmosphere Credit 1, Optimize Energy Performance in the LEED 2009 - New Construction for Member Ballot.*

*(4) All new construction and major renovation building projects between \$600,000 and \$5 million in budget shall be designed and built using the LEED Rating System as guidance.*

*(5) Any new construction or major renovation building project that fails to achieve the LEED rating required under this section shall be considered to have met the requirements of this section, if:*

*(a) The required rating was not achieved due to the sole failure to receive a point for certified wood, credit 7 in the Material and Resource category of the LEED Rating System; and*

*(b) The project used wood products certified under the American Tree Farm System (ATFS) or the Sustainable Forestry Initiative (AFI).*

*Section 3. Exemption From Standards. A new construction or major renovation building project that is required, or that it will otherwise be in the best interest of the Commonwealth to grant an exemption to meet the high performance building standards*

may be granted an exemption from the standards if there is an extraordinary undue burden in accordance with subsections (2) and (3) of this section.

- (1) An affected agency may request that the Secretary of the Finance and Administration Cabinet, or in the case of a state university, which manages its own capital construction projects under KRS 164A.580, the university's governing board, grant an exemption from the standards in Section 2 of this administrative regulation. This request for exemption shall be made in writing and fully justified.
- (2) The Secretary, or the university's governing board with actual jurisdiction, shall have the nondelegable authority to grant an exemption from the standards in Section 2, if the agency adequately demonstrates that an extraordinary undue burden will be placed upon the agency if project compliance is required, or that it will otherwise be in the best interest of the Commonwealth to grant an exemption. If the Secretary or the university's governing board grants an exemption, the exemption shall specify the extent to which the standards in Section 2 of this administrative regulation shall be waived.
- (3) Factors to be considered in determining whether to grant an exemption shall include:
  - (a) Whether the cost of compliance exceeds a building's life-cycle cost savings;
  - (b) Whether compliance will increase costs beyond the appropriated funding capacity for a project;
  - (c) Whether compliance will compromise the historic nature of a building;
  - (d) Whether compliance will violate federal, state, or local law;
  - (e) Whether the unique nature of a project makes compliance impractical or not feasible.
  - (f) Whether another high performance building program, such as the ENERGY STAR rating system or the Green Globes rating system, will be utilized even if an exemption from the standards in Section 2 of this administrative regulation is granted.
- (4) If a university's governing board grants an exemption, a copy of the exemption shall be promptly provided to the Secretary of the Finance and Administration Cabinet for informational purposes only.

*Section 4. Mandatory Requirement. Pursuant to KRS 56.777(7), each high-performance building shall be designed, constructed, or renovated so that it is capable of being rated as an ENERGY STAR building. An exemption shall not be granted from this requirement.*

*Section 5. For all new construction and major renovation building projects, agencies shall consider and encourage the use of the items identified in KRS 56.777(8). The use of locally grown lumber shall include wood products certified under the Forest Stewardship Council (FSC), the American Tree Farm System (ATFS), or the Sustainable Forestry Initiative (SFI).*

*Section 6. In accordance with KRS 56.777(2), the Finance and Administration Cabinet and universities that manage their own capital construction projects under KRS 164A.580 shall give a preference in the leasing process to high performance buildings over other buildings that do not meet these standards, unless an exemption is granted in accordance with Section 2 of this administrative regulation.*

*Section 7. Universities that manage their own capital construction projects under KRS 164.580 shall provide the Finance and Administration Cabinet with a report on or before September 1 of each odd-numbered year, on the use of energy-efficiency measures, including improvements in energy efficiency planned or realized through the use of high performance buildings standards, in order to allow the Finance and Administration Cabinet to comply with the reporting requirements of KRS 56.782.*

*Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:*

- (a) "LEED 2009 - New Construction Project Scorecard"; and*
- (b) "LEED 2009 - New Construction for Member Ballot".*

*(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Facilities and Support Services, Room 340, Bush Building, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (35 Ky.R. 2371; Am. 2764; 36 Ky.R. 20; eff. 7-29-2009.)*

**106.6 Projects Seeking LEED Certification:** For projects seeking LEED Certification, the Architect/Engineer shall register them as a LEED project with the USGBC. The Architect-Engineer shall determine the appropriate LEED checklist and shall identify, with the Owner's assistance, the LEED credits appropriate for the project. The Architect-Engineer shall conduct design activities accordingly to achieve the desired credits. The Architect-Engineer shall include Contractor requirements relating to LEED documentation and prepare and submit the LEED Design Application to the USGBC. The Architect-Engineer will continue to coordinate with the USGBC until the appropriate LEED certification is achieved and received.

The Architect/Engineer shall provide energy models throughout all design phases of the project as required to document compliance with the required number of points for LEED Energy and Atmosphere Credit 1.

**106.7 Design Schedule:** The Architect-Engineer shall prepare and submit to the Project Manager for approval a design schedule including the following:

- Milestones as originally outlined in the RFP or as provided by the Owner's Project Requirements.
- Significant milestones such as review submittals.
- An updated design schedule will be submitted at each design review meeting or when the progress of the project has significantly changed.

The Architect-Engineer shall submit the Design Schedule to the Project Manager for review and approval within ten (10) working days following the Initial Meeting.

The Architect-Engineer shall assign sufficient personnel to identify all major tasks, including the internal monitoring of scheduling those that control the flow of work. The Project Manager shall be notified in writing should a delay in the work be identified.

When a contract modification or project delay occurs, the Architect-Engineer shall submit a revised design schedule reflecting the change within five (5) working days of the receipt of the request for change.

The submittal dates established by the design schedule are to be delivery dates to all project participants as directed by the Project Manager.

**106.8 Meetings:** The Architect-Engineer shall, coordinate, participate and document all meetings as follows:

- **Site Visit/ Project Discussions:** Site visits shall be arranged through the Project Manager, or at the direction of the Project Manager through the Using Agency Representative. The Architect-Engineer shall prepare a written record of each site visit and/or significant project discussion and submit to the Project Manager. Site investigations must be sufficiently thorough to ensure that design details are compatible with the existing conditions at the project site.
- **Commissioning Reviews and Meetings:** The Architect/Engineer shall participate with the Commissioning Authority throughout the project and develop a Basis of Design (BOD) based on the Owner's Project Requirements (OPR). The Architect-Engineer shall facilitate interim reviews for each phase of design with the Commissioning Authority, and shall actively evaluate the list of commissioning review comments to ensure that each comment has been adequately addressed. The Architect-Engineer shall participate in appropriate Commissioning Team meetings.
- **Project Meetings:** The Architect-Engineer shall prepare written minutes of each project meeting and shall furnish this record within five (5) working days to the Project Manager with copies to all meeting attendees. The written minutes will include the project name and names of all participants, a paraphrase of all discussions, and listing of issues that require follow-up or response.
- **Additional Meetings:** The Project Manager may require additional project meetings during the course of the design or construction of the project. The Architect-Engineer may also request additional project meetings subject to the Project Manager's approval.

**106.9 Review Comments:** After each project submittal, the Architect-Engineer will be furnished design review comments from the Project Manager and the Using Agency Representative through the Project Manager. The Architect-Engineer shall actively review the comprehensive list of comments to ensure that each comment has been adequately addressed, either by incorporation into the project documents, or excepted as listed in the paragraph below. If the Architect-Engineer disagrees technically with any comment and does not intend to comply with it, he shall clearly outline, with ample justification, the reasons for noncompliance within seven (7) working days after receipt in order that the comment can be resolved.

**106.10 Project Budget Limits:** The design shall be limited as defined by the Owner's Project Requirements, unless specific written consent is obtained from the Project Manager. The estimated construction cost of the completed design will not exceed the amount established by the Owner's Project Requirements. The Architect-Engineer shall design the project within the funding limitations. Should the estimated cost exceed the funding limitations, the Architect-Engineer shall make recommendations for reducing the project scope and/or identifying optional bid items of work.

Upon receiving written approval from the Project Manager, the Architect-Engineer shall modify the contract drawings and specifications to incorporate all changes necessary to reduce the base bid cost estimate below the funding limitation.

If revised criteria prevent the Architect-Engineer from meeting the cost limitations, the Architect-Engineer shall notify the Project Manager immediately. The Architect-Engineer shall list the problem criteria and explain the negative impact on the design cost.

**106.11 Value Engineering:** The Project Manager may require the Architect-Engineer to provide Value Engineering studies, either during or after the completion of design, or following bidding. Value Engineering may be undertaken for the following reasons:

- Project design estimate provided by the Architect-Engineer exceeds the construction funds available.
- The lowest bid proposal received during bidding exceeds the available construction funds.

The Architect-Engineer shall identify potential design elements, along with potential cost savings, to be considered for Value Engineering. The Project Manager will then direct the Architect-Engineer to perform technical and economic analyses for selected elements. The Architect-Engineer shall present the completed analyses for consideration by the Project Manager. The Project Manager will direct the Architect-Engineer to incorporate any selected elements into the project design.

**106.12 Compliance with Applicable Codes, Laws and Regulations:** The Architect-Engineer is responsible for complying with all applicable codes, laws and regulations and shall submit the appropriate documents to applicable authorities having jurisdiction over the project.

**106.13 Design Phases:** Upon receipt of written approval of a specific phase of the project the Architect-Engineer shall proceed with the subsequent phase, unless directed specifically in writing to suspend progress of the work at this level of development.

Phase A (20%) – Schematic Design

Phase B (40%) – Design Development

Phase C (60%) – Contract Documents Intermediate Review

Phase C (75%) – Contract Documents Complete and Ready to Bid

Phase D (100%) – Construction Administration

For projects seeking LEED Certification:

Phase D (95%) – Construction Administration

Extended Phase D Services (5%)

The Division of Engineering and Contract Administration will provide the front end documents (i.e., instructions to bidders, General Conditions and typical bidding documents) to the Architect-Engineer upon request. The documents provided by the Division of Engineering and Contract Administration are not to be inserted into the review set or Ready-to-Advertise set of documents by the Architect-Engineer. **See Section 608.3 - Phase C Submittals** for more information.

**106.14 Interior Design:** For the purposes of this manual interior design will be considered either Architectural Interior Design or Comprehensive Interior Design.

- **Architectural Interior Design** is the design of aesthetic aspects (e.g. materials, colors, fixtures etc.) related to fixed architectural interior elements, such as walls, ceilings, floors and built-in fixtures. Such design is typically considered to be within the normal services provided by an Architect-Engineer for a building design.
- **Comprehensive Interior Design** is the design of moveable interior furnishings and accessories and/or modular furniture layouts within a building.

Architectural Interior Design is required for all building interiors regardless of size or scope. The Architect-Engineer should review the Owner's Project Requirements to determine if Comprehensive Interior Design is required for the project. When Comprehensive Interior Design is required, a Certified Interior Designer shall be utilized.

Correctional Industries products shall be given priority consideration for all projects where Comprehensive Interior Design is required. Waiver requirements for this requirement shall be coordinated with the Project Manager. Where feasible and in addition to Correctional Industries, Office of Procurement Services contracts may be used to develop the Comprehensive Interior Design.

Selection of building related finishes and furnishings are to be a team effort using both the Architect-Engineer's and Interior Designer's expertise to insure the Architectural Interior Design and Comprehensive Interior Design are fully compatible in theme, function and aesthetics. The Division of Engineering and Contract Administration and the Using Agency will have input into the interior design.

An Architectural Interior Design narrative addressing the overall basic color scheme concepts and the conscious design considerations for selection of colors, materials, and finishes as it relates to the building's design, and health, safety and welfare of the occupants is to be submitted at Phase B (50%) Design Development.

Architectural Interior Design color boards and Comprehensive Interior Design narrative describing furniture being considered for the project are to be submitted at approximately 60% of the Phase C Contract Documents, or at the Phase C (60%) Intermediate review.

**106.15 Communication with the Press:** The Architect-Engineer shall report any contact from the press immediately to the Project Manager. All communication with the press shall be coordinated with the Secretary's Office of the Finance and Administration Cabinet. The Architect-Engineer shall not talk or provide information to the media without receiving permission from the Finance and Administration Cabinet.